



dissatisfaction with the terms of the agreement. The Commission indicated that it would review those seven contracts on a proper request by any of the affected customers. However, the Commission held that, in the interim, the prices, terms, and conditions contained in those seven agreements would be in force, subject to Detroit Edison's applicable general rules, as approved by the Commission.

On January 6, 2003, the association of steam customers known as the Detroit Institutions Seeking The Regulation of Essential Steam Service (DISTRESS), Acquisition Corporation, Prestige Development Company, LLC, St. Patrick's Senior Center, Inc., Henry the Hatter, M.A.E. Development, LLC, 211 Fort Washington Associates, LLC, and the owners and managers of the Buhl Building, the Penobscot Building, and the First National Building (collectively, DISTRESS et al.), filed a petition for rehearing of the December 6 order. Further, DISTRESS et al. request that the Commission consolidate the contract approval case with Cases Nos. U-13543 and U-13632, creating one single contested case proceeding "to address the rates, terms, and conditions of [Detroit] Edison steam service." DISTRESS et al. petition, p. 2.

On January 27, 2003, Detroit Edison filed a response to DISTRESS et al.'s filing, arguing, among other things, that it does not meet the requirements for rehearing, and otherwise seeks relief outside of the scope of the December 6 order.

On February 7, 2003, DISTRESS et al. filed a reply to Detroit Edison's response.<sup>1</sup>

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACCS, R460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from

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<sup>1</sup>The Commission's Rules of Practice and Procedure do not provide for filing of a reply to a response to a petition for rehearing. Therefore, DISTRESS's second filing is not considered in this order.

compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

DISTRESS et al. argue that Detroit Edison improperly sought and gained ex parte approval of the steam contracts without providing notice to customers that signed those contracts. They point out that the new contracts are the subject of certain ongoing proceedings because the rate for steam service under those contracts is significantly higher than the rate in the previous contracts. In DISTRESS et al.'s view, the Commission granted ex parte approval of a steam rate increase.

DISTRESS et al. further argue that the contracts amount to contracts of adhesion because Detroit Edison used its superior bargaining position to force customers to accept unreasonable and unjust rate increases under threat of terminating service in the absence of agreement.

Additionally, DISTRESS et al. state that some customers that signed the agreement without additional comment did protest the rate increase. They argue that it is not necessary to add words of protest to a contract of adhesion in order to challenge its provisions.

Detroit Edison responds that DISTRESS et al. have failed to meet the requirements for granting rehearing. Further, it argues, DISTRESS et al. seek far greater relief than merely rehearing and reversal of the Commission's December 6 order. It appears to Detroit Edison that DISTRESS et al. seek a Commission review of the worthiness of its steam system purchaser, an issue outside of the scope of Case No. U-13634. In fact, Detroit Edison argues, DISTRESS et al. seek to bring before the Commission interests of customers that did not even have a contract approved in the December 6 order.

Detroit Edison further states that all contracting customers had notice that Detroit Edison would seek approval of the steam contracts. The contract itself provided: “This agreement is explicitly conditioned upon approval in its original form by the Michigan Public Service Commission.” Detroit Edison response, p. 4.

Detroit Edison denies that any of its steam contracts is a contract of adhesion. It points out that no customer is required to sign the contract for steam service, and a customer may elect to self-provide steam or use another means of heating.

The Commission finds that DISTRESS et al.’s petition for rehearing should be denied because it does not meet the standard set out in Rule 403. The petition for rehearing fails to set out a cognizable claim of error in the Commission’s findings or conclusions of law. Nor does it present a claim of newly discovered evidence or facts or circumstances arising subsequent to the close of the record, or unintended consequences resulting from compliance with the decision or order.

Commission approval of executed steam contracts is properly done on an ex parte basis, because the only parties in interest have agreed to the terms. In the case of those registering a protest with their signature, the Commission provided an opportunity for a review of the contracts. However, the Commission does not agree that those persons not commenting when executing the contract can now request that the Commission deny Detroit Edison’s request to approve the contract. Rehearing is therefore denied.

Having denied the rehearing request, there is no case to consolidate with the other proceedings. The request to consolidate is therefore denied.

DISTRESS et al. do not separately argue the motion for a contested case hearing. The Commission notes that the relief DISTRESS et al. seek goes far beyond the issues that arose in Case No. U-13634. That motion is also denied.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACRS, R 460.17101 et seq.

b. The petition for rehearing, the request for consolidation, and the motion for contested case proceedings filed by DISTRESS et al. should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing, the request for consolidation, and the motion for contested case proceedings filed by Detroit Institutions Seeking The Regulation of Essential Steam Service, Acquisition Corporation, Prestige Development Company, LLC, St. Patrick's Senior Center, Inc., Henry the Hatter, M.A.E. Development, LLC, 211 Fort Washington Associates, LLC, and the owners and managers of the Buhl Building, the Penobscot Building, and the First National Building are denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle  
Chairman

( S E A L )

/s/ David A. Svanda  
Commissioner

/s/ Robert B. Nelson  
Commissioner

By its action of March 12, 2003.

/s/ Dorothy Wideman  
Its Executive Secretary

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Commissioner

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Commissioner

By its action of March 12, 2003.

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Its Executive Secretary

