

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
DETROIT THERMAL, LLC. , for authority to)	
implement initial default tariffed rates for the)	Case No. U-13691
provision of steam service in the city of)	
Detroit, Michigan.)	
_____)	

At the October 23, 2003 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

OPINION AND ORDER

On September 26, 2003, Detroit Thermal, LLC., filed an application and prepared direct testimony in support of its request for authority to implement initial default tariffed rates for the provision of steam service to customers in Detroit, Michigan.

At the same time, Detroit Thermal filed a motion for an ex parte order authorizing continuing application of the “status quo” rates currently in effect for its 131 customers pending the issuance of the Commission’s final order in this matter. According to Detroit Thermal, establishment of status quo rates is necessary because 95 of the 131 contracts for steam service will expire October 31, 2003, with no provision for renewal.

On October 6, 2003, the School District of the City of Detroit (Detroit Public Schools) filed a request for a hearing and an answer in opposition to Detroit Thermal’s motion to preserve the

status quo. Detroit Public Schools insist that Detroit Thermal created the urgency underlying its September 26 application and motion by delaying the filing of these matters until only 35 days before expiration of the steam supply contracts. Accordingly, Detroit Public Schools insist that the Commission should not grant Detroit Thermal's motion without a hearing. Additionally, Detroit Public Schools argue that the Commission should require Detroit Thermal to refund any portion of current rates ultimately determined to be excessive.

On October 7, 2003, Bagley Acquisition Corporation (Bagley) filed a petition to intervene and an answer in opposition to the motion to preserve the status quo. According to Bagley, approval of the motion to preserve the status quo actually upsets the status quo in a manner that could be detrimental to Detroit Thermal's customers. Citing Northern Michigan Water Co v Public Service Comm, 381 Mich 340; 161 NW2d 584 (1968), Bagley asserts that, if the Commission approves Detroit Thermal's motion, then Bagley and all similarly situated customers will lose their ability to seek refunds should Detroit Thermal's existing rates be determined to be unjust and unreasonable.

On October 14, 2003, the Commission Staff (Staff) filed a response to Detroit Thermal's motion. The Staff states that Detroit Thermal is a public utility and, as such, is subject to the Commission's jurisdiction, including an obligation to continue to provide service to its customers at rates that are just and reasonable. According to the Staff, the Commission should act on its own motion to authorize Detroit Thermal to continue charging existing rates, subject to a condition precedent that Detroit Thermal file with the Commission an affidavit agreeing to refund to such of its customers, revenues collected to the extent that the rates charged prior to completion of the instant case exceed the rate for such customers approved at the conclusion of the case. The Staff also insists that the Commission should indicate that refunds will bear interest at the authorized rate of return approved for Detroit Thermal in the final order in this case.

The Commission finds that the Staff's recommendations should be adopted, with the following modifications. Detroit Thermal is a public utility. As such, it cannot simply cease operations or stop providing service to its customers upon termination of a contract that makes no provision for the continuation of service. Rather, the law is clear. Private companies providing regulated public services are required to offer their services to the public at just and reasonable rates and may not discontinue such services absent regulatory approval. See, *Champion's Auto Ferry, Inc.*, Cases Nos. T-1288 and T-1289, issued January 15, 1997. Pursuant to these principles, the Commission does not agree that it must solicit Detroit Thermal's agreement to refund amounts collected in excess of just and reasonable rates as a condition precedent to an order from the Commission directing Detroit Thermal to continue to serve its customers at its existing rates after expiration of their contracts. Moreover, the Commission finds that Detroit Thermal should be directed to collect such rates under bond,¹ which ensures that funds will be available in the event that refunds are required.

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, 1999 AC, R 460.17101 et seq.

b. Detroit Thermal should be ordered to continue service to customers at just and reasonable rates after expiration of its existing contracts.

¹Nothing in this order should be interpreted as a determination that Detroit Thermal's existing contract rates will remain just and reasonable after termination of the contracts.

c. Detroit Thermal should be ordered to not change any customer's rates without prior approval of the Commission.

d. Detroit Thermal should be directed to file with the Commission a bond suitable to ensure that appropriate refunds, if any, can be made to its customers in the event that the final rates approved in this proceeding require refunds.

e. The Commission should address whether rates charged by Detroit Thermal subsequent to the expiration of a customer's contract are just and reasonable in the context of this proceeding.

THEREFORE, IT IS ORDERED that:

A. Detroit Thermal, LLC., shall continue service to customers at just and reasonable rates after expiration of its existing contracts.

B. Detroit Thermal, LLC., shall not change any customer's rates without prior approval of the Commission.

C. Detroit Thermal, LLC., shall file with the Commission a bond suitable to ensure that appropriate refunds, if any, will be made to its customers in the event that the final rates approved in this proceeding require refunds.

D. The Commission shall address whether rates charged by Detroit Thermal, LLC., subsequent to the expiration of a customer's contract are just and reasonable in the context of this proceeding.

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

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chair

(S E A L)

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of October 23, 2003.

/s/ Robert W. Kehres

Its Acting Executive Secretary

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

MICHIGAN PUBLIC SERVICE COMMISSION

Chair

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By its action of October 23, 2003.

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Suggested Minute:

“Adopt and issue order dated October 23, 2003 ordering Detroit Thermal, LLC., to continue service to its customers at just and reasonable rates, as set forth in the order.”