

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
SEMCO ENERGY GAS COMPANY for)	
authority to implement a gas cost recovery)	Case No. U-13622
plan and factors for the 12-month period)	
April 2003 through March 2004.)	
_____)	

At the January 22, 2004 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

ORDER DENYING REHEARING

On October 29, 2003, the Commission issued an order (October 29 order) approving a gas cost recovery (GCR) plan and factors for SEMCO Energy Gas Company (SEMCO) for the 12-month period April 2003 through March 2004, pursuant to 1982 PA 304, MCL 460.6h et seq. As part of the GCR plan, the Commission authorized SEMCO to implement a monthly contingency mechanism whereby an adjustment could be made to the GCR factor based on NYMEX prices for the last three trading days of the month.¹

On December 1, 2003, the Residential Ratepayer Consortium (RRC) filed a petition for rehearing, alleging that the Commission erred in approving SEMCO's monthly contingency mechanism because there is no record evidence in this case that describes this mechanism or the

¹The Commission had previously approved a quarterly NYMEX contingency mechanism for SEMCO in Case No. U-13223.

details of how it works. The RRC contends that no SEMCO or Commission Staff (Staff) witness sponsored testimony or any exhibit showing exactly how a year-round monthly contingency mechanism works. However, the RRC readily acknowledges that Staff witness, Robert G. Ozar, did file Exhibit RGO-1, which provided for a quarterly contingency adjustment for the first three quarters of the GCR plan year and a monthly adjustment for the last quarter. Commission rules require that when the evidence consists of technical matters or figures so numerous as to make oral presentation difficult to follow, it shall be presented in exhibit form, the RRC continues, and because the monthly contingency mechanism consists of technical matters so numerous to make oral presentation difficult, the monthly contingency mechanism should have been presented in an exhibit.

On December 15, 2003, the Staff filed a brief in opposition to the RRC's request for rehearing. In its brief, the Staff argues that the RRC had an opportunity to fully examine, critique, and obtain additional information on the monthly contingency mechanism through discovery before the contested case hearing and on cross-examination of SEMCO's expert witness during the hearing. The RRC's claim that the monthly contingency mechanism has not been explained to its satisfaction, the Staff says, does not mean that the mechanism cannot be implemented or explained, and certainly does not warrant the granting of rehearing.

On December 22, 2003, SEMCO filed an answer to the RRC's petition for rehearing. SEMCO urges the Commission to deny the RRC's request for rehearing because it does not satisfy the Commission's standards for granting a rehearing. SEMCO says that the RRC's argument that there is no evidence in this case to describe the monthly contingency adjustment mechanism and how it works has already been fully presented to and rejected by the Commission. SEMCO

characterizes this argument as an attempt at a second chance to cross-examine and argue a position that has already been thoroughly argued and soundly rejected.

Rule 403 of the Commission's Rules of Practice and Procedure, 1999 AC, R 460.17403, 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 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 rehearing.

The Commission is persuaded by SEMCO and the Staff's arguments that the RRC is expressing disagreement with the Commission's decision in its October 29 order and has not presented any claim of error, which has not already been rejected by the Commission. SEMCO's notice of hearing specifically stated that the contingency mechanism was at issue and that the GCR factor proposed in the notice might be approved, rejected, or amended by the Commission. See October 29 order, p. 10. The Commission does not find that the oral presentation of the monthly contingency mechanism was of a technical matter that made oral presentation difficult. The Staff expert, Mr. Ozar, clearly stated on cross-examination that, "We would support a monthly adjustment in the NYMEX." See, 2 Tr, p. 369. The RRC had ample opportunity to cross-examine SEMCO and the Staff's experts regarding the monthly contingency mechanism. Moreover, the Commission is not persuaded that further proceedings to debate the merits of the monthly contingency adjustment mechanism would serve a valid purpose. The RRC has not demonstrated how the adoption of a monthly contingency adjustment in this proceeding would prejudice the RRC

anymore than the contingency adjustment the RRC previously did not oppose. For these reasons, the Commission finds that the RRC's petition for rehearing should be 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.; 1982 PA 304, as amended, MCL 460.6h 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. The RRC's petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the Residential Ratepayer Consortium's December 1, 2003 petition for rehearing is 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/ J. Peter Lark
Chair

(S E A L)

/s/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of January 22, 2004.

/s/ Mary Jo Kunkle
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Suggested Minute:

“Adopt and issue order dated January 22, 2004 denying a petition for rehearing of the Commission’s October 29, 2003 decision that approved SEMCO Energy Gas Company’s gas cost recovery plan and factors for the 12-month period April 2003 through March 2004, as set forth in the order.”