

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the joint application of)
THE CITY OF BATTLE CREEK AND SEMCO)
ENERGY GAS COMPANY to cede jurisdiction of)
the fixing of rates, charges, and conditions for the)
provision of gas service in the City of Battle Creek) **Case No. U-14882**
and neighboring areas to the Michigan Public)
Service Commission and for approval of SEMCO)
Energy Gas Company’s Battle Creek Division’s)
tariffs, rates, charges and conditions of service.)
_____)

In the matter of the joint application of)
SEMCO ENERGY GAS COMPANY to)
incorporate a gas cost recovery clause in the) **Case No. U-15129**
rates of its Battle Creek Division.)
_____)

In the matter of the application of)
SEMCO ENERGY GAS COMPANY for authority)
to implement a gas cost recovery plan and factors) **Case No. U-15130**
for the 12-month period of April 2007 through)
March 2008 for its Battle Creek Division.)
_____)

At the August 21, 2007 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

ORDER DENYING REHEARING

On June 26, 2007, the Commission issued orders in these cases approving settlement agreements filed in: 1) a joint application by SEMCO Energy Gas Company (SEMCO) and the

City of Battle Creek (Battle Creek) requesting that the Commission accept jurisdiction over the rates, charges, and terms and conditions of service in SEMCO's Battle Creek Division (Case No. U-14882); 2) SEMCO's gas cost recovery (GCR) plan and factors for its Battle Creek Division for its 2007-2008 plan year (Case No. U-15130); and 3) a GCR clause for SEMCO's Battle Creek Division (Case No. U-15129).

On June 26, 2007, Battle Creek Natural Gas Customers United, Inc., (Battle Creek United) a self-described nonprofit consumer watchdog organization filed a complaint with the Commission alleging that the Commission's orders in these cases violated various subsections of the Michigan Constitution, the Battle Creek City Charter, and other statutes and Commission rules. The gravamen of Battle Creek United's complaint is that the arrangement between Battle Creek and SEMCO is probably illegal. Battle Creek United therefore requests that the Commission commence an investigation "to verify if any laws were broken under Michigan law, and recommend the appropriate actions commence to rectify said infractions."

The Commission Staff (Staff) determined that the complaint should be treated as a request for rehearing in the cases at issue, and the Commission agrees. The Commission's rule of practice, 1999 AC, R 460.17403 (Rule 403), provides:

1) A petition for rehearing after a decision or order of the commission shall be filed with the commission within 30 days after service of the decision or order of the commission unless otherwise specified by statute. A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon. The petition shall be accompanied by proof of service on all other parties to the proceeding.

The Staff, SEMCO, and Battle Creek filed responses in opposition to Battle Creek United's petition. The Staff argued that the petition made claims of error that were incorrect because the

Commission had the authority to approve the applications in these cases, and the petition raised issues over which the Commission has no jurisdiction. Moreover, the Staff, SEMCO, and Battle Creek asserted that because Battle Creek United did not participate in the cases as either a party or intervenor, the organization did not have standing to petition for rehearing. Finally, the Staff, and SEMCO observed that the petition had been brought by a corporation that was not represented by an attorney in violation of MCL 600.916, MCL 450.681, and 1999 AC, R 460.17309(1), which provides in part that, “In any proceeding before the commission that is a contested case . . . all parties shall be represented by licensed attorneys, except that individuals who are not licensed attorneys may represent themselves or other parties as permitted by law.”

The Commission agrees that as a non-party to these proceedings, Battle Creek United’s petition for rehearing is not properly before the Commission and should therefore be denied. 1999 AC, R 460.207 (Rule 207) provides for participation in a contested case without intervention. Subrule (2) of this rule specifically states: “An appearance pursuant to this rule entitles the person to make a statement at a time provided for that purpose . . . but the person shall not be regarded as a party to the proceeding.” Battle Creek United took the opportunity to make Rule 207 statements in Case Nos. U-15129 and U-15130 but its representative declined when asked if the organization wanted to participate as a party.¹

MCL 24.287(1) provides, “An agency may order a rehearing in a contested case on its own motion or on request of a party.” (Emphasis added.) Because Battle Creek United was not a party to the captioned cases, it may not petition for rehearing. Because this finding is dispositive, the Commission need not provide extensive discussion of the other arguments in favor of denying the petition raised by the Staff, SEMCO, and Battle Creek.

¹See, Case No. U-15129, Tr 4-5 and Case No. U-15130 Tr 5.

Regarding Battle Creek United's substantive claims, the Commission finds that it had the authority to grant the applications filed. Michigan law permits a municipality and a public utility to join in submitting an application for the Commission to set rates for the utility's service to the municipality. MCL 460.54 provides:

In addition to the rights, powers and duties vested in and imposed on said commission by the preceding section, its jurisdiction shall be deemed to extend to and include the control and regulation, including the fixing of rates and charges, of all public utilities within this state, producing, transmitting, delivering or furnishing steam for heating or power, or gas for heating or lighting purposes for the public use.

* * *

It shall be competent for any municipality and any public utility operating within the limits of said municipality, whether such utility is operating under the terms of a franchise or otherwise, to join in submitting to the commission any question involving the fixing or determination of rates or charges, or the making of rules or conditions of service, and the commission shall thereupon be empowered, and it shall be its duty to make full investigation as to all matters so submitted and to fix and establish such reasonable maximum rates and charges, and prescribe such rules and conditions of service and make such determination and order relative thereto as shall be just and reasonable. Such order when so made shall have like force and effect as other orders made under the provisions of this act.

Moreover, MCL 460.6h vests the Commission with authority to approve an application for a gas cost recovery (GCR) plan and GCR factors.² The Commission further notes that MCL 460.6h(2), MCL 460.6h(5), and MCL 460.6h(12) provide for contested case proceedings for the establishment of a GCR plan, GCR factors, and a GCR cost reconciliation, in which interested parties, such as Battle Creek United, may participate.

Finally, Battle Creek United raises certain legal issues regarding its claims that Battle Creek acted illegally with respect to its grant of a franchise to SEMCO and rates paid to SEMCO for the period before the Commission's June 26, 2007 order. The Commission has no jurisdiction over

²As the Commission did in Case Nos. U-15129 and U-15130.

either the granting of franchises by a local government or the payment of utility rates by a municipality. These claims therefore cannot be entertained by the Commission.

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 petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by Battle Creek Natural Gas Customers United, Inc. 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 E A L)

/s/ Monica Martinez
Commissioner

/s/ Steven A. Transeth
Commissioner

By its action of August 21, 2007.

/s/ Mary Jo Kunkle
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Commissioner

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By its action of August 21, 2007.

Its Executive Secretary