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June 8, 2001

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Re: MPSC Case No. U-12889

Dear Ms. Wideman:

Enclosed for filing please find the original and 4 copies of the Comments of the Association of Businesses Advocating Tariff Equity in the above-entitled matter. Proof of Service upon the parties of record is also enclosed. Thank you.

Sincerely,

CLARK HILL P.L.C.



Leland R. Rosier

LRR/srf
Enclosures

cc: Parties of Record

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of	)	
SEMCO ENERGY GAS COMPANY	)	
a division of SEMCO Energy, Inc., for	)	Case No. U-12889
ex parte approval of a refund of the Kansas	)	
Ad Valorem Tax Refund dollars.	)	
_____	)	

**COMMENTS OF THE ASSOCIATION OF BUSINESSES
ADVOCATING TARIFF EQUITY**

The Association of Businesses Advocating Tariff Equity (“ABATE”) files these comments to the above-captioned application of SEMCO Energy Gas Company (“SEMCO”) pursuant to the Notice of Opportunity to Comment issued on May 11, 2001.

I.

BACKGROUND

On April 12, 2001, SEMCO filed this application to allow it to distribute a refund , known as the “Kansas Ad Valorem Tax Refund,” ordered by the Commission in its Order Approving Settlement Agreement of December 21, 1998 in Case Nos. U-11215-R and U-11265-R. The refund, which involved a refund received from a SEMCO supplier, Northern Natural, in connection with an ad valorem property tax refund in Kansas, had been placed in an escrow account pending the resolution of litigation regarding the refund. SEMCO’s application indicates that the dispute surrounding the refund was resolved in December 2000, and that SEMCO received its final refund in February 2001. SEMCO has thus applied to the Commission for authority to distribute the refund to its current gas retail customers via a credit to their bills.

ABATE files these comments to SEMCO's application to ensure that the refunds go to all cost-based customers of SEMCO's services, including T-1 Equivalent Customers.

II.

THE KANSAS AD VALOREM TAX REFUND SHOULD BE ALLOCATED AND DISTRIBUTED TO SEMCO'S RATE T-2 TRANSPORTATION CUSTOMERS THAT PAY AT RATES EQUIVALENT TO T-1 RATES

SEMCO's application seeks authority to distribute the Kansas Ad Valorem Tax Refund to the Company's current gas retail customers via a credit to their bills. It is not specified whether the Company considers T-2 transportation customers to be current gas retail customers for purposes of this refund. ABATE files these comments to urge a clarification that T-2 transportation customers that pay at rates equivalent to T-1 rates ("T-1 Equivalent Customers") should be included among the current gas retail customers eligible for the refund.

A. T-2 Transportation Customers Are Paying Cost-based Rates at the Same Level as T-1 Customers and Should Be Treated for Refund Purposes Just the Same as T-1 Customers

ABATE submits that T-1 Equivalent Customers should share in the refund in this case. The instant refund is associated with the cost of providing service to sales and transportation customers and, thus, is credited against such costs. Since the T-1 tariff rate reflects the cost of service to T-1 transportation customers, T-2 transportation customers, which are paying at T-1 equivalent rates, are T-2 customers in form only and are substantively paying the cost-based rate. The fact that the form of the contract for service is called "T-2" does not undercut the fact that those customers contributed in the rates they paid for the same services in the same manner as those customers classified as "T-1" customers. If T-2 customers are paying the same rate as T-1 customers, they obviously are not receiving any discount on the cost of transportation service. Therefore, SEMCO's T-1 Equivalent

Customers should share in the refund because the refund is associated with the cost of providing service to customers who pay at cost-based rates.

B. T-1 Equivalent Customers Do Not Have A Competitive Rate Alternative To The T-1 Rate, And Do Not Pay A Discounted Rate

A refusal to permit the T-1 Equivalent Customers to participate in refunds in some past instances has been rationalized on the theory that, because the customers were given T-2 status, they had the opportunity to “negotiate” a discounted rate, and that their rate should somehow be classified as a “market-based” rate rather than at the T-1 rate simply because of the T-2 status.¹ This is not the case with those paying equivalent T-1 rates. There is no evidence in SEMCO’s filing or elsewhere that T-2 customers have had any negotiations with regard to the rate where the rate adopted is itself at the T-1 rate. Because the T-1 Equivalent Customers are, in fact, paying the same cost-of-service based rate as T-1 customers, and there is no indication of an opportunity for any negotiation of that rate, the T-1 Equivalent Customers should be entitled to participate in any refunds relating to the cost of service.

A common occurrence is where a gas customer seeks an additional contract service (*e.g.*, gas storage) and is required by the utility to sign a T-2 transportation agreement with the utility in conjunction with the contract for this service. In these situations there is absolutely no price negotiation. Indeed, there is no competitive alternative. The T-2 contract is simply priced at the T-1 rate. The T-2 contract may even continue after the other services for which the T-2 contract was originally required are no longer provided. In essence, there is simply no functional or substantive difference as to transportation service between taking that service under a T-2 contract or under a T-1 contract.

¹ See, *e.g.*, Opinion and Order, Case No. U-10490, September 27, 1994.

Failure to allow T-1 Equivalent Customers to share in cost-of-service related refunds is thus a situation of elevating form over substance. A transportation customer that signs a T-2 contract at T-1 rates has no competitive alternative. Indeed, if there were a competitive alternative, the rate would be lower than the T-1 rate that is available to any customer without any bargaining power. A negotiated, competitive rate should be lower than a rate available to any customer, not higher. Since a customer is paying a T-1 rate and that rate covers the cost of service, then anyone paying a higher rate would be paying a premium over the rate available to anyone else. By any definition of a competitive rate, this is not a negotiated, competitive rate.

Those customers that are being served under a T-2 contract while being charged T-1 rates are only T-2 customers due to the utility's administrative convenience. The service itself, and, more importantly, the price paid for the service, is substantively a T-1 arrangement with another name attached. Because there is no competitive alternative where the T-1 rate can be imposed by the utility, the rate is not a negotiated rate and cannot be considered a "market-based" rate.

**C. Failure To Apply The Refund To T-1 Equivalent Customers
Would Be Discriminatory And Anticompetitive**

It is an axiom of utility law that customers should not be charged for a utility service more or less than other customers are charged under similar circumstances and conditions. That is, a utility cannot selectively apply different rates to similarly situated customers. That principle is the rationale for tariffs and for regulating contracts.

T-1 Equivalent Customers are, by definition, taking service and paying rates equivalent to those paid by T-1 customers. However, where a refund is made to the T-1 customer and not to the T-1 Equivalent Customer, these similarly situated customers are no longer paying the same rate. The T-1 Equivalent Customer is now paying more than the similarly-situated T-1 customer. Where the

rate paid by the T-2 customer is the same as that paid by the T-1 customer, there is simply no functional difference as to transportation service between taking that service under a T-2 contract or under a T-1 contract. Failure to pass through the equivalent refund to both of these similarly situated customers results in the T-1 Equivalent Customer paying more, which results in clear discrimination.

It also sends an anti-competitive signal to the market place. It suggests that would be transportation customers should always accept a monopoly utility's standard offer whenever there is any uncertainty. It also has the effect of dissuading customers from entering into contracts which add additional services such as storage. This Commission should, as a matter of policy, promote choices for customers which meet their needs. To deny T-1 Equivalent Customers a refund would have an unwarranted chilling effect on the market.

III.

SUMMARY AND RELIEF

In these comments, ABATE has presented reasons why T-1 Equivalent Customers should legally share in the refund in this case. T-1 Equivalent Customers are obtaining the same service, they have no competitive alternative, and they are already paying for the full cost of the service. In addition, failure to allow T-1 Equivalent Customers to participate in refunds is anti-competitive and discriminatory. While these arguments alone are sufficient to grant these customers relief, it is also simply the right thing to do. These customers are similarly situated and have been paying cost-based rates that support the SEMCO's services. If those costs were overstated, as was the case because of the need for a refund, then these customers will have overpaid the utility for its services. If customers paying overcharges are entitled to refunds, then all overcharged customers should share

in those refunds. T-1 Equivalent Customers have been overcharged, and they should get their money back just like any other overcharged customer.

For these reasons, the Commission should approve distribution of the refund, and should direct that T-1 Equivalent Customers be included among the current gas retail customers eligible for the refund to the full extent that T-1 customers participate.

Respectfully submitted,

CLARK HILL PLC



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Dated: June 8, 2001

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BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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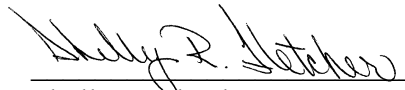
PROOF OF SERVICE

STATE OF MICHIGAN)
) SS:
COUNTY OF INGHAM)

Shelly R. Fletcher, being duly sworn, deposes and says that she is an employee of Clark Hill P.L.C., and that on June 8, 2001, a copy of the Comments of the Association of Businesses Advocating Tariff Equity was served upon:

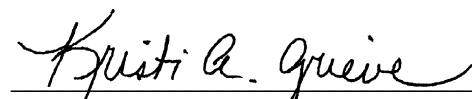
Sherri A. Wellman
Loomis, Ewert, Parsley, Davis & Gotting, P.C.
232 S. Capitol Avenue, Ste 1000
Lansing, Michigan 48911

Service was accomplished by depositing same in a regular mail depository, enclosed in envelopes bearing postage fully prepaid and addressed properly.



Shelly R. Fletcher

Subscribed and sworn to before me
this 8th day of June, 2001.



Kristi A. Grieve, Notary Public
Ingham County, Michigan
My Commission Expires: November 12, 2004