

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX
ATTORNEY GENERAL

P.O. Box 30212
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July 17, 2006

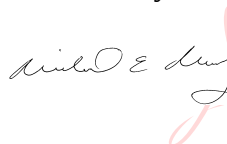
Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Dear Ms. Kunkle:

RE: MPSC Case No. U-14893

Enclosed for filing in the above-captioned case please find the **Attorney General's Notice of Appearance and Intervention**, together with a proof of service. This filing is being submitted electronically pursuant to the Commission's Paperless Electronic Filings Program.

Sincerely,

 Michael Moody
2006.07.17
15:32:31 -04'00'

Michael E. Moody (P51985)
Assistant Attorney General
Tobacco and Special Litigation Division
(517) 373-1123

MEM:wjc
Enclosures
c: All Parties

PROOF OF SERVICE - U-14893

The undersigned certifies that a copy of the **Attorney General's Notice of Appearance and Intervention**, was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepaid thereon on the 17th day of July, 2006.

Wendy J. Cadwell
2006.07.17 15:34:48 -04'00'

Wendy J. Cadwell

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Lansing, MI 48933

Administrative Law Judge:

Sharon L. Feldman
MPSC – ALJ's Division
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Lansing, MI 48911

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of
SEMCO Energy Gas Company
for authority to redesign and increase
its rates for sale and transportation of
natural gas in its MPSC Division and
other relief.

Case No. U-14893

**ATTORNEY GENERAL'S
NOTICE OF APPEARANCE AND INTERVENTION**

MICHAEL A COX, ATTORNEY GENERAL OF THE STATE OF MICHIGAN,
by and through Michael E. Moody, Assistant Attorney General, gives notice of his
appearance and intervention in this proceeding. In support of his appearance and
intervention he says:

I. APPEARANCE

1. He appears and intervenes in this proceeding for and on behalf of the State
of Michigan, its departments, commissions, agencies, as a customer and ratepayer of
SEMCO Energy Gas Company (SEMCO). He also appears and intervenes in this
proceeding for and on behalf of the People of the State of Michigan who are customers
and ratepayers of SEMCO.

II. AUTHORITY TO INTERVENE

2. He is the duly elected and qualified Attorney General of the State of Michigan and holds such office by virtue of and pursuant to the provisions of Const 1963, art 5, sec 21, and by mandate of the qualified electorate of the State of Michigan. He is also the head of the Department of Attorney General created by sections 50 through 52 of the Executive Organizations Act of 1965, 1965 PA 380, MCL 16.10 *et seq*; MSA 3.29(1) *et seq*. It has long been established that the Attorney General of the State of Michigan is the sole and proper legal representative of the state and its officers. *People v Navarre*, 22 Mich 1 (1869); *Babcock v Hanselman*, 56 Mich 27; 22 NW 99 (1885); *Jennings v State Veterinary Board*, 156 Mich 417; 120 NW 785 (1909); *Attorney General v Public Service Commission*, 243 Mich App 487, 504; 625 NW2d 16 (2000).

3. The Attorney General's intervention and appearance in this proceeding is authorized by both statutory and common law. *State of Michigan ex rel Frank J. Kelley v C R Equipment Sales, Inc*, 898 F Supp 509, 513-514 (WD Mich, 1995); see also *Humphrey v Kleinhardt*, 157 FRD 404, 405 (WD Mich, 1994).

4. MCL 14.28 provides in relevant part:

The attorney general shall prosecute and defend all actions in the supreme court, in which the state shall be interested, or a party; . . . and may, when in his own judgment the interests of the state require it, intervene in and appear for the people of this state in any other court or tribunal, in any cause or matter, civil or criminal, in which the people of this state may be a party or interested.

This power is also exercisable at any stage of the proceedings. MCL 14.101; MSA 3.211 states in pertinent part:

The attorney general of the state is hereby authorized and empowered to intervene in any action heretofore or hereafter commenced . . . whenever such intervention is necessary in order to protect any right or interest of the state, or of the people of the state. Such right of intervention shall exist at any stage of the proceeding, and the attorney general shall have the same right to prosecute an appeal, or to apply for re-hearing or to take any action or step whatsoever that is had or possessed by any of the parties to such litigation.

The Attorney General has the right to intervene in any proceeding when the Attorney General, in his own discretion, deems it in the public interest to do so. *People v O'Hara*, 278 Mich 281; 270 NW2d 298 (1936), and *Gremore v People's Community Hospital Authority*, 8 Mich App 56; 153 NW2d 377 (1967). Indeed, the Attorney General "has statutory and common law authority to act on behalf of the people of the State of Michigan in any cause, or matter, such authority being liberally construed." *Michigan State Chiropractic Association v Kelley*, 79 Mich App 789; 262 NW2d 676, 677 (1977).

5. In *Attorney General v Liquor Control Comm'n*, 65 Mich App 88; 237 NW2d 196 (1975), the Michigan Liquor Control Commission issued a complaint against four liquor licensees arising out of criminal convictions in federal court actions. A hearing was conducted before one of the liquor control commissioners, and that commissioner dismissed the complaint. One month later, the Attorney General intervened in the proceedings and filed a petition for rehearing. The Liquor Control Commission issued a written decision and ruled (1) that the Attorney General could not

intervene and (2) that it had no authority to consider a petition for rehearing. The Michigan Court of Appeals ruled that, even after the administrative agency had ruled in favor of the licensee, the Attorney General had the legal authority and duty to intervene and seek review. *Id.* at 91-93.

6. As the chief law officer of the state, the Attorney General has a wide range of powers at common law to represent public interests as he may deem necessary for the protection of public rights. *In re Certified Question*, 465 Mich 537, 543-545; 638 NW2d 409 (2002) and *Mundy v McDonald*, 216 Mich 444, 450; 185 NW 877 (1921).

7. The common law powers and duties of the Attorney General include the power to intervene in all actions which are of concern to the general public. Under common law, the court should only prohibit the Attorney General from intervening or bringing an action when to do so “is clearly inimical to the public interest.” *In re Intervention of Attorney General*, 326 Mich 213; 40 NW 2d 124, 126 (1946). In *Associated Builders & Contractors v Perry*, 115 F3d 386 (6th Cir, 1997), the United States Court of Appeals for the Sixth Circuit affirmed the Michigan Attorney General’s statutory and common law authority to intervene for purposes of protecting the state’s interest.

8. The Attorney General, in his judgment, has determined that the interests of the state and the people of the State of Michigan require him to intervene in this proceeding on their behalf. This proceeding will directly affect the state and people of this state who are customers of SEMCO. The state and correspondingly the taxpayers of this state pay for utility service for the state in the conduct of the people's affairs. In

addition, the people of this state who are customers of SEMCO also pay for utility service for their homes and businesses. Any action taken in this proceeding will directly affect the economy of SEMCO 's service area and the general well being of all of the Michigan citizens and residents of that area. Accordingly, the Attorney General has determined that the state and the people of the State of Michigan have a significant interest in this proceeding.

III. REASONS FOR INTERVENTION

9. The State of Michigan is a body politic established under the Constitution of the United States of America and admitted into the Union by act of Congress under date of January 26, 1837. The State of Michigan, its departments, commissions, and agencies, are substantial customers and ratepayers of SEMCO.

10. Numerous residents of the State of Michigan are customers and ratepayers of SEMCO. The interests of these customers and ratepayers is a public one, common among virtually every such customer and ratepayer in SEMCO's service area or territory.

11. It appears to the Attorney General that this proceeding requires his appearance and intervention because significant interests of the State and its people will be affected. This proceeding will affect not only the State of Michigan but also large numbers of Michigan residents as customers and ratepayers of this public utility company and as taxpayers contributing to the purchase of services by the State of Michigan, its departments, commissions, and agencies.

IV. STATEMENT OF POSITION IN THIS PROCEEDING

12. In response to SEMCO's May 25, 2006 application requesting authority to increase rates for sale of sale and transportation of natural gas and related approvals, the Attorney General states as follows:

a) That SEMCO has the burden of proving that all plants included in its proposed ratebase are used and useful. In addition, SEMCO has the burden of proving the justness and reasonableness of previously unreviewed capital expenditures before the Commission can include capital expenditures in SEMCO's ratebase and in test year expenses.

b) That SEMCO has the burdne of proving that the Company's projected O&M expenditures are just and reasonable before the Commission can approve any proposed rate change resulting from those projections.

c) That SEMCO has the burden of proving that its projected working capital requirements are just and reasonable.

d) That SEMCO's cost-of-service allocations and rate design proposals may be inconsistent with just and reasonable cost-of-service principles.

e) That SEMCO's proposals to modify its rate schedules may not be just and reasonable.

f) That SEMCO's proposals to increase its MPSC-authorized rate of return on rate base and rate of return on common equity may not be just and reasonable.

g) That the Attorney General reserves the right to take additional and different positions based upon future discovery and evidence in this case.

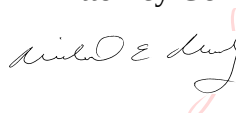
V. RELIEF

Wherefore, the Attorney General requests the Michigan Public Service Commission (MPSC or Commission) to:

- A. Enter his Notice of Intervention and Appearance upon the official record of the above-captioned proceeding and treat him as a party in this proceeding for all purposes,
- B. Establish Just and reasonable rates according to the whole record developed in this case, and
- C. Grant the people, state, and ratepayers any all relief as the facts and circumstances show to be appropriate.

Respectfully submitted,

Mike A. Cox
Attorney General

 Michael Moody
2006.07.17
15:32:59 -04'00'

Michael E. Moody (P51985)
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Dated: July 17, 2006