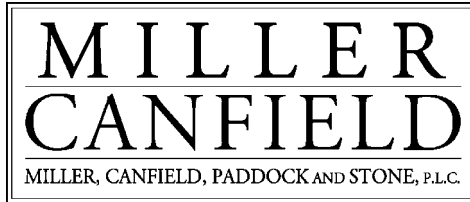


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June 9, 2006

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Re: SEMCO Energy Gas Company
MPSC Case No. U-14649 [e-file]

Dear Ms. Kunkle:

Enclosed for electronic filing is the Answer of SEMCO Energy Gas Company In Opposition to the Attorney General's Request For Rehearing. Also enclosed is a Proof of Service. If you should have any questions, please kindly advise.

Very truly yours,

Sherri Wellman

Digitally signed by Sherri Wellman
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US, O = Miller Canfield
Date: 2006.06.09 14:02:05 -04'00'

Sherri A. Wellman

SAW/lab
Enclosures
cc: Annette Gardiner

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
SEMCO ENERGY GAS COMPANY)
for authority to implement a pilot gas cost)
assistance program in its MPSC Division,) Case No. U-14649
to recover costs related to the program and)
related approvals.)

PROOF OF SERVICE

STATE OF MICHIGAN)
)ss
COUNTY OF INGHAM)

Lisa A. Becker, employed at Miller, Canfield, Paddock and Stone, P.L.C., being duly sworn, affirms that on this 9th day of June, 2006, she served copies of the ***Answer of SEMCO Energy Gas Company In Opposition to the Attorney General's Request For Rehearing*** in the above referenced matter upon the parties listed below by electronic mail.

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Lisa Becker

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Lisa A. Becker

Sworn to before me
on this 9th day of June, 2006.

Edith Loomis

Digitally signed by Edith Loomis
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Edith D. Loomis, Notary Public
Ingham County
My Commission Expires: December 5, 2006

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
SEMCO ENERGY GAS COMPANY)
for authority to implement a pilot gas cost)
assistance program in its MPSC Division,)
to recover costs related to the program and)
related approvals.)

Case No. U-14649

ANSWER OF SEMCO ENERGY GAS COMPANY IN OPPOSITION TO THE ATTORNEY GENERAL'S REQUEST FOR REHEARING

I. INTRODUCTION

On September 30, 2005, SEMCO Energy Gas Company ("SEMCO Gas" or the "Company") filed its Application in this matter. In its Application, the Company sought authority to implement as a pilot the SEMCO Energy Assistance Program ("SEGAP") which would have provided financial assistance to its MPSC Division customers eligible for Energy Direct services from the Michigan Department of Human Services to help pay their bills for natural gas service. As part of SEGAP, SEMCO Gas proposed to recover the gas commodity portion of its Uncollectibles and its Lost and Unaccounted For ("LAUF") gas expenses through the Gas Cost Recovery ("GCR") process. SEMCO Gas represented in its Application, that to be of full benefit, "SEGAP must be approved by the Commission in time for implementation in November 2005...the start of the winter heating season."¹ The Company requested ex parte approval of its Application.

¹ The winter heating season runs from November through March.

Following notice, a prehearing conference was held on November 16, 2005. The Michigan Public Service Commission Staff (“Staff”) participated in the prehearing conference, and the petitions to intervene of the Attorney General (“AG”) and the Residential Ratepayer Consortium (“RRC”) were granted.

Prior to the submission of the Company’s direct case in this matter², on December 22, 2005, the Staff filed its Motion for Summary Disposition (“Staff’s Motion”) for failure to state a claim upon which relief can be granted. On January 4, 2006, the AG filed a response in support of Staff’s Motion, and on January 6, 2006, SEMCO Gas filed its response in opposition to Staff’s Motion. Following oral argument on January 9, 2006, Administrative Law Judge (“ALJ”) Mark E. Cummins ruled that Staff’s Motion should be granted (“January 9 Ruling”). Exceptions to the January 9 Ruling were to be filed on February 21, 2006 and replies on March 6, 2006.

On February 13, 2006, the Company voluntarily filed its Request to Withdraw Filing conditioned on dismissal *without* prejudice (“February 13 Request”), and on that same date Staff filed a response asserting that dismissal should be with prejudice. On February 14, 2006, the AG filed a response to the Company’s February 13 Request opposing withdrawal and asserting that the Application in this matter could only be dismissed upon agreement of all the parties. On February 17, 2006, SEMCO Gas filed a reply to the Staff and the AG asserting that (i) pursuant to MCR 2.504(A)(2) and case law, the Commission is authorized to grant the request for voluntary dismissal; (ii) in response to the February 13 Request, the Commission could not order the Application to be dismissed *with* prejudice, but only make

² The Company was scheduled to file its direct case on January 13, 2006.

dismissal with prejudice a condition to be accepted or rejected by the Company; and (iii) that the Staff and the AG had failed to demonstrate that dismissal *without* prejudice would prejudice them. On March 8, 2006, the AG yet again responded to the February 13 Request by addressing arguments made by the Company in its February 17, 2006 pleading, specifically attempting to demonstrate that he would be prejudiced by the withdrawal for having “expended time and energy reviewing SEMCO’s application and reviewing case law as to whether the application fell within the ambit of Act 304.” The AG renewed his request “that the MPSC grant SEMCO’s request to withdraw its application *with* prejudice.”

On April 25, 2006, the Commission issued its Opinion and Order granting SEMCO Gas’s request to voluntarily withdraw its application *without* prejudice (“April 25 Order”).

On May 19, 2006, the AG filed his Request for Rehearing of the April 25 Order (“Request for Rehearing”). Instead of requesting that the Application be dismissed *with* prejudice as he had done in his previous pleadings, the AG is now seeking a denial of SEMCO Gas’s February 13 Request and the filing of exceptions to the January 9 Ruling or simply an order affirming the January 9 Ruling.³

As discussed below, the AG’s Request for Rehearing should be denied for failure to satisfy the Commission’s long-established standards for rehearing, and because it does not demonstrate that the Commission erred or that there will be unintended consequences arising from compliance with the decision.

³ Pursuant to R 460.17341, SEMCO Gas would be entitled to file exceptions to the January 9 Ruling if the Application is reinstated; the Commission cannot simply affirm the ALJ Cummins’ ruling. Pursuant to the agreement of the parties and the ALJ, the time for filing exceptions and replies was held in abeyance pending a decision on the Company’s February 13 Request to dismiss without prejudice.

II. STANDARDS FOR REHEARING

Rule 403(1), of the Rules of Practice and Procedure Before the Commission, R 460.17403(1), provides:

“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 Commission has held that a petition for rehearing is not merely another opportunity for a party to reargue a position or to express disagreement with the Commission’s decision. In re Commission’s Own Motion, Case No. U-10049, June 12, 1992. A party requesting a rehearing, must be able to show the decision to be incorrect or improper because of (i) errors, (ii) newly discovered evidence, (iii) facts or circumstances arising subsequent to the close of the record, or (iv) unintended consequences of the decision. If the party fails to make these showings, the request will be denied. In re Detroit Edison Co, Case No. U-12121, October 29, 2001 and In re Consumers Power Co, Case No. U-10755, June 5, 1996.

III. DISCUSSION

The Commission should deny the AG’s request for rehearing because it does not satisfy any of the applicable standards for granting rehearing.

Clearly the request for rehearing is not based upon any claim of newly-discovered evidence, or on facts arising subsequent to the close of the record. In this proceeding there was no evidentiary record or facts established. Neither the Company nor any of the parties had the opportunity to make an evidentiary presentation; the parties did not file testimony or engage in discovery or cross-examination. The motion for summary disposition was heard on pleadings and oral argument alone and granted on an interpretation of the law.

Nor is the request for rehearing supported by legitimate claims of error and unintended consequences. Rather the AG has solely based his request on the claim that the Commission erroneously rejected his assertion that dismissal of the application *without* prejudice would disadvantage him. As for such assertion of error, the Request for Rehearing merely reiterates what the AG claimed in his March 8, 2006 Response to SEMCO's February 17 Filing; that "he would be prejudiced". (p 4 of March 8 Response) This re-argument is clearly not an appropriate basis for granting rehearing.

A. The Commission did not err or abuse its discretion in finding that the AG was not prejudiced by dismissal of the application *without* prejudice.

At page 7 of its April 25 Order the Commission found that the AG was not legally prejudiced by dismissal *without* prejudice:

"The Attorney General argues that he would be disadvantaged if the Commission granted SEMCO's request without prejudice because of the time and energy the Attorney General has expended in this case thus far. Whatever time and energy the Attorney General has expended it this matter could be utilized by the Attorney General again should SEMCO chose to re-file its application at a later date. Not only does the Attorney General fail to proffer an argument that would meet the legal prejudice standard, but allowing SEMCO the possibility of re-filing its application would serve to protect its due process rights since a final decision on the case was never made by the Commission." (p 7 of April 25 Order)

The AG in his Request for Rehearing, pp 4-5, claims that the Commission misapplied the standard for determining whether a “defendant” would be prejudiced by a voluntary dismissal. This claim is without merit for several reasons.

First, contrary to the AG’s assertions, pp 4-5, the Commission properly recognized and applied the standard expressed in Lynaum v Coleman [unpublished opinion per curiam COA Docket No. 221103, September 25, 2001] for granting a voluntary dismissal by weighing the competing interests of the parties (p 7 of April 25 Order). The Commission appropriately recognized that the AG did not spend “much time and effort” on this case. The application in this case was filed on September 30, 2005. Prior to SEMCO Gas’s motion to dismiss filed on February 13, 2006, the AG had only filed his Notice of Intervention and Response in Support of Staff’s Motion for Summary Disposition, consisting of a mere 6 pages. Additionally, he had only attended a prehearing conference and a motion hearing. He did not conduct discovery in this matter, nor did he file testimony and exhibits. He did not review testimony and exhibits in support of the Application in that SEMCO Gas did not have the opportunity to make an evidentiary presentation.⁴ Therefore, the AG is clearly not in the same position as the defendants in Rosselott v County of Muskegon [cited by the AG as 123 Mich App 361] wherein the court observed that the lawsuit in question had been pending for three years and during that time the defendants had expended considerable time and money in conducting extensive discovery and compiling several reports in preparation for trial. Similarly, the AG’s reliance on the Commission’s

⁴ It would appear that a majority of the AG’s time in this case has been devoted to opposing the Request for withdrawal. This opposition, of course, seems frivolous when one considers that the motion for summary disposition (something the AG supported) and the request for withdraw, reach the same end result, dismissal of the case.

position in the appeal of Case No. U-13917 (p 6) is misplaced. Unlike this case, Case No. U-13917 was a fully contested case before the Commission that lasted 23 months and then was appealed. It clear that the Commission spent a significant amount of time on that case, and that the appeal had been fully briefed and was merely awaiting the court's decision. Even a rudimentary comparison of the appellate pleadings to the AG's filings in this case demonstrates the disparity between Case No. U-13917 and this case. Furthermore, an entirely different court rule applies in the case of a voluntary dismissal of an appeal (MCR 7.218). That rule is not applicable to this case.

The AG is, as well, not in the same position as the defendants in African Methodist Episcopal Church v Shoulders [cited by the AG as 38 Mich App 210] which involved a complaint filed against the defendants seeking an injunction preventing the defendants from obstructing access to church buildings (31 Mich App 290). In Shoulders, the injunction was granted by summary judgment. On the first appeal [31 Mich App 290], the Court of Appeals found that the defendants were entitled to assert their defenses and remanded the case to the trial court. At the trial court, the plaintiffs' request to dismiss the complaint was granted. Defendants objected in that their church memberships had been terminated in response to the court order. On the second appeal [38 Mich App 210], the Court of Appeals found that the trial court erred in dismissing the complaint because the defendants should have been put in the same position they occupied prior to the inception of the lawsuit, e.g. a church membership in good standing. In the instant matter, with the dismissal of the application, the AG is in the same position that he was prior to the filing of the application,

e.g. Uncollectibles and LAUF continue to be recovered through base rates. The AG, therefore, is not prejudiced by the dismissal.

Additionally, contrary to the AG's claims (p 4), there was sufficient explanation for the need to dismiss SEMCO Gas's Application, and such justification is plain on the face of the pleadings. As discussed supra, the Application stated that its ratemaking approaches were part of the pilot SEGAP and that time was of the essence in approving SEGAP. At paragraph 15 of the Application, SEMCO Gas represents that:

“SEMCO Gas believes that in order to be of full benefit to low income customers, SEGAP must be approved by the Commission in time for implementation in November 2005 (the proposed start time for the pilot). November is the start of the winter heating season and gas prices are forecasted to remain at current high levels.”

With the winter heating season running from November to March, it was clear that in light of the February 9 Ruling, that even if the Company was successful in having the Ruling reversed by the Commission, SEGAP would NOT be implemented during the proposed winter heating season.⁵

Furthermore, the AG's attempt to draw a distinction between this case and other cases on the basis that there was an adverse decision in this case, fails. As correctly recognized by the Commission, there was no final adverse decision issued by the Commission in this case.

“Likewise, an ALJ cannot make a dispositive decision unilaterally. The full Commission must ratify any recommendation that the ALJ may issue before it becomes binding.” (p 6 of April 25 Order)

⁵ The Company generally denies the motives that the AG has ascribed to the Company (e.g. forum shopping) for seeking a dismissal, as without support.

Likewise, the AG has failed to demonstrate that the Commission abused its discretion in granting SEMCO Gas's Request. Pursuant to MCR 2.504(A)(2), it is clearly within the Commission's discretion to grant a voluntary request to withdraw with or without conditions. An abuse of discretion is found only if a reasonable person after considering the facts on which the Commission acted, would say there was no justification or excuse for the ruling made. See generally Bruce v Grace Hospital, 96 Mich App 627, 632; 293 NW2d 654 (1980). Clearly, the Commission in weighing the interests of the parties set forth its justification: that a dismissal *with* prejudice absent a final Commission Order would adversely affect SEMCO Gas more than a final adverse ruling on the merits by the Commission. In that the Application in this matter requested several ratemaking approaches to different costs, as part of a legislative process, if the Commission denied one or more of these requests on the basis of its current policy, that policy may change in the future⁶ or different facts may warrant a change in how that policy is applied to SEMCO Gas. As such, SEMCO Gas would not be precluded from filing for relief. However, a dismissal *with* prejudice might be argued to preclude such filing. This harm to SEMCO Gas clearly outweighs whatever effort the AG expended on this short-lived case. The AG's arguments fail to account for the true nature of these proceedings and the ability of ratemaking policy to change over time and in reaction to different circumstances.

Finally, the AG is incorrect in asserting that the April 25 Order has an "unintended consequence" (p 7) of establishing wrongly reasoned precedent. As discussed supra, the

⁶ For example, the Commission's policy regarding the GCR contingency matrix has changed over the course of several years, e.g. implementation of quarterly vs monthly mechanism in reaction to changing market conditions. See In re Aquila, Inc., d/b/a Aquila Networks – MGU, U-13990, May 17, 2005 Order, p 20.

April 25 Order was correctly reasoned⁷. Moreover, precedent cannot be considered an unintended consequence arising from compliance with a Commission order pursuant to Rule 403; if it was, then every Commission order (excepting orders approving settlement) would meet the standards for rehearing. The intent of “unintended consequence” is to address situations like those identified by Consumers Energy Company in Case Nos. U-13730 and U-12999 (December 2 Orders).

For all these reasons, the AG’s claims that the Commission erred in granting SEMCO Gas’s request to dismiss the application *without* prejudice are without merit and must be rejected.

III. CONCLUSION AND RELIEF

For the reasons discussed above, the AG’s Request for Rehearing does not provide any valid basis for granting a rehearing. SEMCO Gas, therefore, respectfully requests that the AG’s Request for Rehearing be denied.

Respectfully submitted,

Sherri Wellman

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Dated: June 9, 2006

By:

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⁷ Furthermore, the Commission was aware that there was a likelihood that SEMCO Gas may seek similar relief in the future. In that case, the Commission reasoned that the time and energy expended by the AG could be used in that future case (p 7 of April 25 Order).