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January 12, 2024

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, MI 48917

RE: MPSC Docket No. U-21445

Dear Ms. Felice:

Enclosed herewith for filing in the above-referenced matter, please find the *Entry of Appearance in an Administrative Hearing, Petition of Retail Energy Supply Association for Leave to Intervene and Certificate of Service*.

If you have any questions, please feel free to contact my office. Thank you.

Very truly yours,

Fraser Trebilcock Davis & Dunlap, P.C.



Jennifer Utter Heston

JUH/dma
Enclosures
cc: All counsel of record

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
PUBLIC SERVICE COMMISSION

ENTRY OF APPEARANCE IN AN ADMINISTRATIVE HEARING

This form is issued as provided for by 1939 PA 3, as amended, and by 1933 PA 254, as amended. The filing of this form, or an acceptable alternative, is necessary to ensure subsequent service of any hearing notices, Commission orders, and related hearing documents.

General Instructions:

Type or print legibly in ink. For assistance or clarification, please contact the Public Service Commission at 517-284-8090.

*Please Note: The Commission will provide **electronic** service of documents to all parties in this proceeding.*

THIS APPEARANCE TO BE ENTERED IN ASSOCIATION WITH THE ADMINISTRATIVE HEARING:

Case / Company Name: SEMCO Energy Gas Company Docket No. U- 21445

Please enter my appearance in the above-entitled matter on behalf of:

1. (Name) Retail Energy Supply Association ("RESA")
2. (Name)
3. (Name)
4. (Name)
5. (Name)
6. (Name)
7. (Name)

Name Jennifer Utter Heston
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Zip 48933 Phone (517)482-5800
Email jheston@fraserlawfirm.com
Date 01/12/2024

Signature: 

<input type="radio"/> I am not an attorney
<input checked="" type="radio"/> I am an attorney whose: Michigan Bar # is P- <u>65202</u> _____ Bar # is: _____ (state)

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
SEMCO Energy Gas Company for)	
approval of a gas cost recovery plan and)	Case No. U-21445
factors for the 12 months ending)	
March 31, 2025.)	
_____)	

PETITION OF
RETAIL ENERGY SUPPLY ASSOCIATION
FOR LEAVE TO INTERVENE

NOW COMES the Retail Energy Supply Association (“RESA”), by and through its attorneys, Fraser, Trebilcock, Davis & Dunlap, P.C., and hereby submits its petition to this Honorable Commission seeking leave to intervene in the above-entitled action pursuant to Rule 410 of the Commission’s Rules of Practice and Procedure, R 792.10410. In support of this petition, RESA states as follows:

1. RESA is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient customer-oriented outcome than a regulated utility structure.¹

2. RESA members are licensed to sell natural gas to retail customers in Michigan: Interstate Gas Supply, Inc. (“IGS”), Just Energy Michigan Corp. (“Just Energy”), and Constellation NewEnergy-Gas Division, LLC (“CNEG”), are licensed Alternative Gas Suppliers (“AGS”). RESA members currently serve Gas Customer Choice (“GCC”) customers

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.



and End Use Transportation (“EUT”) customers on the SEMCO Energy Gas Company (“SEMCO”) system.

3. This docket involves an application by SEMCO for approval of a Gas Cost Recovery (“GCR”) plan for the 12 months ended March 31, 2025. SEMCO requests a base GCR ceiling factor of \$4.0204/Dth consisting of a Balancing and Demand Charge of \$0.9390/Dth. SEMCO’s GCC customers are billed the Balancing and Demand Charge to recover costs associated with balancing service and supplier of last resort (“SOLR”) obligations.

4. Additionally, as part of this proceeding, SEMCO proposes an adjustment to its SOLR obligations. See, Pre-Filed Direct Testimony of Michael. A. Foster. SEMCO puts forth a “SOLR reduction proposal” wherein SEMCO would adjust its design day forecast to reflect a SOLR reduction to 20% from the current 100%. The SOLR reduction proposal is based on SEMCO’s review of AGS historical delivery performance, including during times of extreme cold weather. If approved, the proposal would permit SEMCO to reduce its firm interstate pipeline capacity and peaking supply levels. The capacity reductions would likely result in a cost savings reflected in the Balancing and Demand Charge applied to GCR and GCC customers.

5. RESA members have direct and vital interests in the issues raised in this docket, and that may be raised in this docket. RESA members are both SEMCO customers and GCC suppliers participating in the SEMCO transportation market. RESA members have direct interest in the rates, terms and conditions proposed by the parties to this proceeding.

6. There are several legal bases for standing to intervene in a proceeding before the MPSC. The first is standing as of right. This Commission has repeatedly applied the two-

prong test for standing as of right set forth in *Association of Data Processing Service Organizations, Inc. v Camp*, 397 US 150; 90 S. Ct. 827; 250 L.Ed. 184 (1970), which has been applied to utility matters in *Drake v The Detroit Edison Co*, 453 F Supp 1123 (WD Mich, 1978). As set forth in *Association of Data Processing*, the two-prong test consists of a showing that: (1) the petitioner would likely suffer injury in fact (i.e., its interests are endangered or at issue); and (2) the petitioner's interests that are allegedly endangered are within the zone of interests to be protected or regulated by the statute under consideration. See, e.g., *In re Michigan Consolidated Gas Co*, MPSC Case No. U-10150 (December 8, 1992).

7. RESA satisfies the "injury in fact" test, because changes to SEMCO's GCC or transportation programs will impose costs on RESA members. RESA members will incur a direct financial impact as a result of changes to supply obligations.

8. The second prong of the two-pronged test for standing as a matter of right is a showing that the prospective intervenor's interest falls within the "zone of interests" to be protected or regulated in the context of the case. The rates, terms, and conditions of SEMCO's GCC and transportation programs are of interest to RESA. The rates, terms, and conditions of SEMCO's GCC and transportations programs fall within the zone of interests to be regulated by the Commission in this case, and RESA's interest in fair and reasonable rates fall within the zone of interests to be protected in this case.

9. Having demonstrated that its interest as a ratepayer satisfies the two-pronged test for standing as a matter of right, RESA respectfully submits that it is entitled to intervene in this case as a matter of right.

10. Even if it were determined that RESA does not have standing as a matter of right, it would be entitled to intervene under the Commission's discretionary intervention

standards. “[T]he Commission’s discretion to grant leave to intervene is broader than the two-prong test. As recognized in prior Commission orders, the requirements for standing before the Commission are not as strict as those applied by the courts. Unlike a court of law, an administrative agency can allow intervention whenever the resulting delay will likely be outweighed by the benefit of the intervenor’s participation.” *In re Michigan Consolidated Gas Co*, MPSC Case No. U-10150, p 5 (December 8, 1992) (finding that discretionary intervention was appropriate, and “a detailed discussion of the two-prong test is unnecessary”).

11. Indeed, the two-pronged test does not apply when granting permissive intervention. “The granting of permissive intervention without satisfying the two-pronged test is a long-established Commission practice.” *In re Consumers Gas Co*, MPSC Case No. U-17332, p 4 (May 13, 2014).

12. Discretionary intervention is appropriate where public policy warrants a party’s involvement because a prospective intervenor can provide useful information to the Commission or a unique perspective on the issues to be resolved. See, e.g., *In re Mascotech Forming Technologies, Inc.*, MPSC Case No. U-11057 (June 5, 1996); *In re MCI Metro Access Transmission, Inc.*, MPSC Case No. U-10610 (November 30, 1994); and *In the matter, on the Commission’s own motion, to investigate the appropriateness of instituting a surcharge to assist in the funding of the Gas Technology Institute*, MPSC Case No. U-14561 (October 18, 2005). The Commission has held that a proper case for permissive intervention exists when a proposed intervenor “could be expected to bring helpful information to the Commission’s attention that might not otherwise be available.” *In re International Transmission Co*, MPSC Case No. U-16200 (October 14, 2010).

13. “Permissive intervention has also been granted where a proceeding ‘raises novel questions and important policy issues’ and the intervenor will ‘bring a unique perspective’ to the case.” *In re Consumers Electric Co*, MPSC Case No. U-17319, p 10 (March 6, 2014), quoting, MPSC Case No. U-11057, pp 2-3 (June 5, 1996).

14. RESA is a large and diverse group of retail energy suppliers operating in competitive retail energy markets across the United States. RESA has a proven track record of successful retail competition development activities and promoting vibrant and sustainable retail energy markets for residential, commercial and industrial customers. RESA’s breadth of diverse retail energy market experiences makes it particularly well-suited to bring new and helpful information to the Commission that might not otherwise be available.

15. RESA members are AGSs serving customers on the SEMCO’s system. They have direct knowledge of the impact of proposed changes on AGS entities operating on the system and on the customers they serve. RESA members have valuable insight into the operation of the GCC and transportation programs during the GCR period and can offer important insights into the implications of any changes to SEMCO’s GCC and transportation programs going forward. Thus, RESA has significant interests in this case, offers a unique perspective, and is capable of providing information useful to the Commission.

16. Moreover, RESA’s intervention should be granted now to avoid the possibility of future delay. In order to protect its right to be heard with respect to any future unknown proposals, whether put forth by SEMCO or other intervenors, RESA’s Petition to Intervene should be granted now.

17. Thus, RESA has demonstrated that it warrants intervention in this case both as of right and on a permissive basis.

18. RESA has been granted intervention as a party in numerous cases before the Commission involving natural gas rates and tariffs, including Consumers' general rate cases in Case Nos. U-21308, U-21148, U-20650, U-20322, U-18424, U-17882, U-17643 and U-16418, Consumers' GCC and EUT proceeding in Case No. U-17900, and Consumers' GCR cases in Case Nos. U-21269, U-21063, U-21062, U-20815, U-20542, U-20234, U-20209, U-17693 and U-17133-R. Case No. U-17693 was Consumers' 2015-2016 GCR plan proceeding wherein the Attorney General recommended that the Commission order Consumers to adopt a capacity reservation charge applicable to GCC customers. Case No. U-17133-R was Consumers' 2013-2014 GCR reconciliation case wherein the Attorney General recommended changes to Consumers' Daily Delivery Obligations ("DDOs") tariff provision to allow for mid-month adjustments to DDOs, expanded application of Consumers' Supply Equalization Charge, and expanded opportunities to order variances in GCC deliveries during abnormal weather following the extreme cold of the Polar Vortex of 2014.

19. RESA was granted intervention in numerous prior DTE Gas' GCR cases, including Case Nos. U-21270, U-21065, U-21064, U-20816, U-20544, U-20236, U-20210, U-20076, U-18412, U-18152, U-17941-R, U-17941, U-17691-R, U-17691, U-17332 and U-17131. In Case No. U-17691-R, RESA presented expert witness testimony in support of a reconciliation consistent with the SOLR reservation charge adjustment approved by the Commission in its November 22, 2016 Order and January 31, 2017 Order Denying Rehearing in Case No. U-17691. It was in Case No. U-17131 where DTE Gas first presented a capacity reservation charge and suppliers first presented an alternative capacity assignment plan. In that case, the MPSC adopted the judge's recommendation that the Commission consider the potential for a capacity assignment plan in a future GCR plan case.

20. RESA also actively participated in DTE Gas' 2014-2015 GCR plan proceeding wherein RESA co-presented expert witness testimony in support of a capacity assignment program. Absent a capacity assignment plan, RESA explained that the SOLR reservation charge is anti-competitive, unjust and unreasonable. In that case, DTE Gas objected to RESA's intervention and appealed the presiding officer's ruling granting RESA's petition to intervene. Rejecting DTE Gas' objection to RESA's intervention, the Commission determined:

Both RESA and IGA [sic] have indicated their unique perspective in that they each serve gas choice customers who will be impacted by DTE Gas' proposed reservation charge. They have a proposal for a capacity assignment plan that they argue may prevent unnecessary charges and inefficiencies that could result if DTE Gas' proposals are approved. It appears that these two parties would add to the development of a full and complete record by bringing the issues facing gas choice customers to light.

In re DTE Gas Co, MPSC Case No. U-17332, p. 4 (May 13, 2014).

21. Further, RESA was granted intervention as a party in numerous other proceedings involving EUT and GCC issues, such as Michigan Gas Utilities Corporation's general rate case, Case No. U-17880 (daily balancing requirement on gas transportation customers and GCC tariff changes), SEMCO's transportation balancing tariff case, MPSC Case No. U-15953, SEMCO's general rate cases MPSC Case Nos. U-20479 and U-16169, and in Michigan Consolidated Gas Company's general rate case, MPSC Case No. U-16400.

22. It is the position of RESA that parties' proposals should be carefully examined and revised as necessary to assure that the terms and conditions are just and reasonable, as required by law. Proposals should be carefully scrutinized and any unjustified, unsubstantiated, or imprudently incurred costs should be disallowed.

23. RESA reserves the right to raise new and different positions if, and when, this case proceeds to full hearings and following a full review of the utility testimony filed in this

case and responses to discovery, as may be relevant and appropriate. RESA further reserves the right to take other positions and/or seek other relief based on any proposals that may be submitted by other parties in this case.

24. The relief that RESA seeks in this proceeding is an order approving only those rates, terms and conditions of service that are just, reasonable and lawful. RESA reserves the right to seek other relief based on a review of the filings and/or discovery responses in this proceeding.

25. RESA's interests, as set forth above, are not adequately represented by the present parties and, therefore, it would be detrimental to the public interest to deny this Petition to Intervene.

26. Because the issues set forth above are of great significance to RESA and to the public, a denial of this Petition would result in a miscarriage of justice.

WHEREFORE, RESA hereby respectfully requests that this Honorable Commission grant it Leave to Intervene in the above-entitled proceedings as a full party of record.

Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.
ATTORNEYS FOR RETAIL ENERGY SUPPLY ASSOCIATION



Date: January 12, 2024

By: _____

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
SEMCO Energy Gas Company for)
approval of a gas cost recovery plan and)
factors for the 12 months ending)
March 31, 2025.)
_____)

Case No. U-21445

CERTIFICATE OF SERVICE

The undersigned certifies that, on the 12th day of January 2024, a copy of the *Entry of Appearance in an Administrative Hearing, Petition of Retail Energy Supply Association for Leave to Intervene*, and its *Proof of Service* in the above docket on the persons identified on the attached service list by electronic mail and filed it electronically with the Michigan Public Service Commission.

/s/ Dayna M. Ampe
Dayna M. Ampe



SERVICE LIST FOR U-21445

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