

JERROLD OPPENHEIM
57 MIDDLE STREET
GLOUCESTER, MASSACHUSETTS 01930-5736 USA
+1 (978) 283-0897
Fax +1 (978) 283-0957
JerroldOpp@DemocracyAndRegulation.com
www.DemocracyAndRegulation.com

March 9, 2006

Mary Jo Kunkle, Executive Secretary
Michigan Public Service Commission
P.O. Box 30221
6545 Mercantile Way
Lansing, Michigan 48909-7721

Dear Secretary Kunkle:

RE: SEMCO Energy Gas Co., GCR, Case No. U-14718 (e-file/paperless)

Dear Secretary Kunkle:

Enclosed for filing are the Application of PAYS America, Inc., for Leave to Appeal the Ruling of the Presiding Officer Denying Petition to Intervene; and Brief of PAYS America, Inc. in Support of its Application for Leave to Appeal the Ruling of the Presiding Officer Denying Petition to Intervene; and Proof of Service as to the aforementioned filings.

Please contact me if there are any questions.

Respectfully,

 **Jerrold
Oppenheim**
Signature
Not Verified

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Jerrold Oppenheim
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Oppenheim, c=US
Date: 2006.03.09
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Reason: for PAYS
America, Inc.

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 gas cost) Case No. U-14718
recovery plan and factors for the 12-month) (e-file/paperless)
period of April 2006 through March 2007.)

**APPLICATION OF PAYS AMERICA, INC.,
FOR LEAVE TO APPEAL THE RULING OF THE PRESIDING OFFICER
DENYING PETITION TO INTERVENE**

PAYS America, Inc. ("PAYS"), by its attorneys Jerrold Oppenheim and Elizabeth Dahl MacGregor, hereby applies to the Michigan Public Service Commission ("MPSC" or "Commission") for Leave to Appeal the Ruling of the Presiding Officer Denying Petition to Intervene, pursuant to Rule 337 of the Commission's Rules of Practice and Procedure, 1992 AACS R 460.17201, and the Commission's Notice of Hearing dated February 2, 2006.

On February 16, 2006, PAYS filed its Petition to Intervene in this case. That petition was based on Rule 460.17201 of the Michigan Public Service Commission's Rules of Practice and Procedure, which allows intervention by any person who claims an interest in a proceeding. (R 460.17201(2)). That petition is attached hereto and made a part hereof.

On February 21, 2006, SEMCO Energy Gas Company (SEMCO) filed an Objection to the Petition to Intervene. At the pre-hearing conference on February 23, 2006, Administrative Law Judge Daniel E. Nickerson, Jr., (ALJ) denied Petitioner's Application for Leave to Appeal on the basis that PAYS could show no injury in fact. The ALJ's oral opinion did not address the actual basis for Petitioner's amendment, *i.e.*, that it sought discretionary permission to intervene in the proceeding based on the fact that it could offer evidence and information about the reasonableness and prudence of the rates for the good of the public-at-large.

PAYS now files this Application for Leave to Appeal and, in support of this Application, PAYS states:

1. Rule 337 provides, in pertinent part, "(2) The commission will grant an application and review the presiding officer's ruling if any of the following provisions apply: ... (b) A

decision on the ruling before submission of the full case to the commission for final decision will prevent substantial harm to the appellant or the public-at-large.”

Granting Applicant’s Petition to Intervene only at the end of the case would preclude Applicant from participating in the evidentiary phases of the case (including presentation of testimony, filing of discovery, conduct of cross-examination, and briefing). Thus a decision on the presiding officer’s ruling denying intervention, if the Commission’s decision is to grant permissive intervention, would prevent the substantial harm to the Applicant of being precluded from the evidentiary phases of this case. Such preclusion would injure the interest of the public-at-large.

As detailed in the attached Brief in Support of Application for Leave to Appeal the Ruling of the Presiding Officer Denying Petition to Intervene, precluding Applicant from the evidentiary phases of the case would injure the interest of the public-at-large by denying to this Commission evidence and argument concerning flaws in SEMCO’s load forecast and plan that would unreasonably and imprudently raise the cost of gas by ignoring the potential impact of energy efficiency. Applicant PAYS thus seeks in this proceeding to do exactly what this Commission as approved in an earlier GCR case: ask this Commission to exercise its statutory authority under M.C.L. sec. 460.6h to find that SEMCO’s plan does not minimize the cost of gas.

2. Applicant’s Petition to Intervene, attached hereto and made a part hereof, explicitly sought leave to permissively intervene and explicitly eschewed argument that it had a right to intervene. The ruling of the Administrative Law Judge, however, was limited to one prong of two-prong test for intervention as of right. The Administrative Law Judge thus did not address Applicant’s Petition for permissive intervention.
3. Applicant submits that the Commission should therefore grant Leave to Appeal the Ruling of the Presiding Officer Denying Petition to Intervene since to do so would prevent substantial harm to Applicant and to the public-at-large and because the presiding officer did not rule on Applicant’s proffered ground for permissive intervention.
4. Applicant further submits that it would be in the public interest for the Commission to grant its Petition for permissive intervention, as further set out in the attached Brief in Support of its Application for Leave to Appeal the Ruling of the Presiding Officer Denying Petition to Intervene.

WHEREFORE, for all these reasons, Applicant PAYS America, Inc. respectfully prays that this Commission grant it leave to appeal the ruling of the presiding officer denying its petition to intervene, and that this Commission reverse the presiding officer's ruling and permit PAYS American, Inc. to intervene in this case.

Respectfully submitted,

PAYS America, Inc., by its attorneys

 **Elizabeth Dahl MacGregor**

Signature Not Verified

Elizabeth Dahl MacGregor (P64386)

Attorney for Petitioner to Intervene PAYS America Inc.

2154 Washtenaw Ave.

Ypsilanti, MI 48197

(734)485-1295

(734)485-1142 (fax)

Liz@YpsiLawyer.com

Digitally signed by Elizabeth Dahl
MacGregor
DN: cn=Elizabeth Dahl MacGregor,
c=US
Date: 2006.03.09 18:06:38 -05'00'

 **Jerrold Oppenheim**

Signature Not Verified

Jerrold Oppenheim

57 Middle Street

Gloucester, Mass. 01930

978-283-0897

978-283-0957 (fax)

JerroldOpp@DemocracyAndRegulation.com

Massachusetts Board of Bar Overseers No. 545820

Illinois Attorney Registration No. 2114216

Digitally signed by Jerrold Oppenheim
DN: cn=Jerrold Oppenheim, c=US
Date: 2006.03.09 18:02:56 -05'00'
Reason: for PAYS America, Inc.

Dated: March 9, 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 gas cost) Case No. U-14718
recovery plan and factors for the 12-month) (e-file/paperless)
period of April 2006 through March 2007.)

**PETITION TO INTERVENE
OF PAYS AMERICA, INC.**

PAYS America, Inc. (PAYS), by its attorneys Jerrold Oppenheim and Elizabeth Dahl MacGregor, hereby petitions the Michigan Public Service Commission (“MPSC” or “Commission”) for leave to intervene in the above-captioned proceeding, pursuant to Rule 201 of the Commission’s Rules of Practice and Procedure, 1992 AACSR 460.17201, and the Commission’s Notice of Hearing dated February 2, 2006. In support of this Petition, PAYS states:

I. STATEMENT OF INTEREST

1. Petitioner PAYS America, Inc. is a non-profit organization that has no financial stake in the outcome of this proceeding. PAYS has been funded by the Michigan Department of Labor & Economic Growth to “address SEMCO consumers’ gas costs by developing and proposing a pilot Pay As You Save® (PAYS®) tariff for one or more of the SEMCO service areas,” including by presentation to the Public Service Commission by asking to intervene in a GCR case and by participating therein.

2. Petitioner’s interest in the plan’s failure to minimize the demand for gas at the times that stored gas is required is based on the fact that Petitioner is a non-profit organization the mission of which includes disseminating information regarding the Pay As You Save® (PAYS®) approach to enable consumers to minimize their use of gas and hence their utility’s demand for gas. This public-oriented interest will be damaged if the plan is approved in spite of the plan’s failure to minimize the demand for gas at the times that stored gas is required.

3. The relief sought by Petitioner is authorized by M.C.L. sec. 460.6h(3) through (7). Petitioner will seek Commission disapproval or amendment of the plan as well as the Commission’s indication that on the basis of present evidence, the Commission will be unlikely to permit the gas utility to recover a portion of the gas purchase and storage costs in future gas cost recovery plan cases.

II. GROUNDS FOR INTERVENTION

4. PAYS seeks to intervene in this proceeding for the purpose of challenging the reasonableness and prudence of the gas cost recovery plan in this case (“the plan”), including the reasonableness and prudence of the utility’s decisions to obtain gas in the manner described in the plan and the reasonableness and prudence of the legal and regulatory actions taken by the utility to minimize the cost of gas purchased by the utility.

5. Petitioner will show that the plan fails to minimize the cost of gas purchased by the utility by failing to minimize the amount of gas needed to be purchased and placed into storage,. Each therm of gas injected into and/or retrieved from storage causes costs of injection and/or retrieval, as well as costs of purchasing the gas, financing the purchase, and, in the case of SEMCO Energy Gas Co., leased storage. The plan fails to minimize the amount of gas purchased and placed into storage by failing to take legal and regulatory actions to minimize the demand for gas at the times that stored gas is required for consumption, and at other times.

6. A PAYS® tariff is a means of enabling consumer purchases of energy efficiency measures that would otherwise not be purchased as a result of barriers in the market. If the Commission authorizes the proposed implementation of SEMCO PAYS® tariffs, all costs will be paid by those benefiting from the purchase of PAYS® products, and not by other customers..

7. PAYS® tariffs have been successfully implemented since 2002 by two utilities in New Hampshire. On December 30, 2004, in Order No. 24,417, the New Hampshire Public Utilities Commission ordered “That the PAYS® Programs as currently in effect at PSNH and NHEC be continued through 2007 in accordance with the modifications set forth above.” The Michigan Public Utilities Commission ordered both Detroit Edison (Case No. U-13808, November 23, 2004) and Consumers Energy Co. (Case No. U-14347, December 22, 2005) to investigate implementing the PAYS® approach. Additionally, Wyandotte Municipal Services and one other unregulated Michigan municipal utility are considering implementing PAYS® tariffs. PAYS® has support in the SEMCO service area from prospective customers, vendors, and others whose participation is necessary to implementation of a PAYS® tariff.

8. The PAYS® approach is unique. Presentation of the PAYS® approach to minimizing demand for gas and a utility’s associated cost of purchasing and storing gas will thus be a relevant, useful and unique contribution to this case.

9. PAYS America, Inc. has unique access to the expertise of the two energy efficiency experts who originated the PAYS® concept and who designed the New Hampshire pilots as well as to a former New Hampshire Commissioner who was on that Commission when New Hampshire ordered and authorized the first-in-the-nation PAYS® pilots. No other party can bring this expertise before the Commission. The contribution of this expertise is that it is in the public interest to help minimize the cost of gas to SEMCO and hence to

its customers. Purchase of PAYS® products will lead to a direct reduction in SEMCO's demand for gas, and forecast thereof, enabling SEMCO to reduce its cost for purchase, injection, retrieval, financing, and storing of gas.

IV. RELIEF REQUESTED

WHEREFORE Petitioner PAYS America Inc. seeks as relief the following:

A. The Commission's finding that the plan fails to minimize the cost of gas purchased by the utility.

B. The Commission's finding that the plan fails to minimize the cost of gas purchased by the utility by failing to minimize the amount of gas needed to be placed into storage.

C. The Commission's finding that the plan fails to minimize the amount of gas placed into storage by failing to take legal and regulatory actions to minimize the demand for gas at the times that stored gas is required for consumption.

D. The Commission's determination that the plan is not reasonable or prudent.

E. The Commission's determination that the legal and regulatory actions taken by the utility to minimize the cost of gas purchased by the utility are not reasonable or prudent.

F. The Commission's determination that implementation of a PAYS® tariff is a legal and regulatory action SEMCO could take that would reduce its demand for gas at the times that stored gas is required for consumption.

G. The Commission's determination that, on the basis of present evidence, as a consequence of the above findings the Commission will be unlikely to permit the gas utility to recover a portion of the gas purchase and storage costs in the plan from its customers in rates, rate schedules, or gas cost recovery factors established in the future.

H. The Commission's determination that, on the basis of present evidence, that if SEMCO does not take such actions as filing PAYS® tariffs in order to significantly reduce system demand that enables it to correct its five-year forecast and lower its costs for gas, as a consequence of the above findings the Commission will be unlikely to permit the gas utility to recover a portion of the gas purchase and storage costs in the plan from its customers in rates, rate schedules, or gas cost recovery factors established in the future.

I. The Commission's determination that SEMCO is authorized to implement PAYS America's recommendation for the PAYS® tariff.

FOR ALL THESE REASONS, Petitioner PAYS America, Inc. respectfully prays that it be permitted to intervene in this case.

Respectfully submitted,

PAYS America, Inc., by its attorneys

Elizabeth Dahl MacGregor (P64386)
Attorney for Petitioner to Intervene PAYS America Inc.
2154 Washtenaw Ave.
Ypsilanti, MI 48197
(734)485-1295
(734)485-1142 (fax)
Liz@YpsiLawyer.com

Jerrold Oppenheim
57 Middle Street
Gloucester, Mass. 01930
978-283-0897
978-283-0957 (fax)
JerroldOpp@DemocracyAndRegulation.com

Massachusetts Board of Bar Overseers No. 545820
Illinois Attorney Registration No. 2114216

Dated: February 16, 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 gas cost	)	Case No. U-14718
recovery plan and factors for the 12-month	)	(e-file/paperless)
period of April 2006 through March 2007.	)	

**BRIEF IN SUPPORT OF
APPLICATION OF PAYS AMERICA, INC.,
FOR LEAVE TO APPEAL THE RULING OF THE PRESIDING OFFICER
DENYING PETITION TO INTERVENE**

PAYS America, Inc. ("PAYS"), by its attorneys Jerrold Oppenheim and Elizabeth Dahl MacGregor, submits this brief to the Michigan Public Service Commission ("MPSC" or "Commission") in support of its Application for Leave to Appeal the Ruling of the Presiding Officer Denying Petition to Intervene, pursuant to Rules 337 and 339 of the Commission's Rules of Practice and Procedure, 1992 AACSR 460.17201, and the Commission's Notice of Hearing dated February 2, 2006. In support of this Application, PAYS states:

I. Leave to appeal should be granted to prevent substantial harm to the public-at-large.

Under Rule 337, "The commission will grant an application and review the presiding officer's ruling if ... [a] decision on the ruling before submission of the full case to the commission for final decision will prevent substantial harm to the appellant or the public-at-large." Leave to appeal should therefore be granted because waiting to the end of the case to decide Applicant's Petition to Intervene would effectively deny intervention, and thus prevent the Commission from hearing the evidence and argument offered by PAYS, even if intervention were then granted. Granting Applicant's Petition to Intervene only at the end of the case would preclude Applicant from participating in the evidentiary phases of the case (including presentation of testimony, filing of discovery, conduct of cross-examination, and briefing). Thus a decision on the presiding officer's ruling denying intervention, if the Commission's decision is to grant permissive intervention, would prevent the substantial harm to the Applicant and the public-at-large of PAYS being precluded from the evidentiary phases of this case.

II. The Denial of Applicant's Petition to Intervene did not rule on the claims of the Petition.

Applicant's Petition to Intervene explicitly sought leave to permissively intervene and explicitly eschewed intervention of right.¹ The Denial of Applicant's Petition to Intervene at the Pre-Hearing Conference (February 23, 2006) was limited to one prong of the two-prong test for intervention as of right and did not address any other contentions. Applicant submits that the policy of the Administrative Procedure Act requires full consideration of all contentions advanced by a Petitioner.² The Denial did not address Applicant's Petition for permissive intervention, which should therefore be considered by this Commission on appeal.

III. It is in the public interest that Applicant's Petition for permissive intervention be granted.

The crux of this appeal now before the Commission is whether it would be in the public interest for the Commission to accept PAYS as an intervenor in this case. (SEMCO Objection, par. 5). The only argument before the Administrative Law Judge on this issue was the claim by SEMCO Energy Gas Co. ("SEMCO" or "the Company") (joined orally by Staff) that Commission precedent bars from cost recovery cases the design or implementation of DSM (demand-side management) measures or "extensive investigation" thereof. The SEMCO argument fails both because it misrepresents Commission precedent and because it misrepresents PAYS' Petition to Intervene in this case.

PAYS proposes to do *exactly* what this Commission *approved* in the case SEMCO heavily relies on (Michigan Gas. Co., Case U-9742, 1991):

The major purpose of the hearing in this case is to provide information sufficient for the Commission to evaluate the GCR plan... demand-side management activities ... *can be relevant* in that context. [Intervenor] may be able to develop information designed to show that Michigan Gas has not engaged in reasonable and prudent activities that could lower the cost of gas ... greater conservation efforts could lower peak-day demand, which might have an effect on peak supply costs for the period. *That is a relevant issue in a GCR plan case.* (affirming a motion to compel discovery and distinguishing programs that only save money for customers individually; emphasis supplied)

¹ Contrary to SEMCO's implication, the Petition makes no claim based on any action of Utility Consumer Participation Board (*see* SEMCO Objection, par. 7), although that Board's funding of Applicant is an indication that there is a public interest to be redeemed by listening to evidence that Applicant has to present.

² For example, M.C.L. sec. 24.285 provides that "A decision or order shall not be made except upon consideration of the record as a whole." Sec. 24.281 requires that a "proposal for decision shall contain a statement of the reasons therefor and of each issue of fact and law necessary to the proposed decision."

PAYS seeks intervention in this case to make the same case – that SEMCO’s plan is unreasonable and imprudent because it fails to minimize the cost of gas needed to be purchased and stored. PAYS proposes to establish that SEMCO’s plan fails to take actions to minimize demand for gas at times stored gas is required, *i.e.*, on-peak, and that such failure results in a failure to minimize the cost of gas. Applicant proposes to file testimony of former New Hampshire Public Utilities Commissioner Nancy Brockway, Esq. to establish that SEMCO’s five-year forecast is not reasonable because it assumes no utility-facilitated gas energy efficiency. Utility-facilitated gas energy efficiency could significantly reduce demand beyond the price-induced efficiency to which SEMCO limits its analysis.

Commissioner Brockway is prepared to testify that SEMCO’s five year plan to meet its forecast gas demand is not reasonable because it is driven by its unreasonable forecast. If SEMCO’s forecast were reduced, as is reasonable given the demand reductions possible from utility-facilitated efficiency, SEMCO would need to procure less gas. The higher SEMCO’s demand forecast, the more gas SEMCO needs to put in storage. Thus, if SEMCO’s forecast demand were reduced, the Company could reduce the amount it needs to put into leased storage, and thereby reduce its storage costs. The Commission has not recently heard evidence about the link between demand reduction and the cost of gas.

PAYS also proposes to establish that adoption of a PAYS tariff is one legal or regulatory action SEMCO could take to minimize the cost of gas.³ This description does not involve design, implementation or “extensive investigation” of efficiency measures. Rather, PAYS proposes to point to one such demand-reduction strategy as a way SEMCO could discharge its statutory responsibility to minimize the cost of gas.⁴

Indeed, PAYS does not seek a determination in this proceeding that SEMCO must file a PAYS® tariff or any other demand management program. PAYS does not propose, and the public interest does not require, that this GCR case become in any way a forum for litigation concerning details of efficiency program design. Cost recovery, program design, and other details concerning efficiency can be reviewed in the appropriate docket, not a GCR.

³ A PAYS® tariff would, for example, allow customers to increase the efficiency of their heating systems. Home heating has a high coincidence with SEMCO’s system peak, so increasing the efficiency of home heating would reduce peak demand. Reducing SEMCO’s need for gas at the time of its peak would reduce SEMCO’s need for stored gas, thus reducing its costs for purchase, injection, and depressurization of gas as well as of leased storage.

PAYS customers would pay for these measures over time on their utility bill. Measures would be selected and payments set so that energy bill savings exceed payments for the measure from the first payment. PAYS charges are attached to the meter location and are paid by successive customers at that location. The incentive for participating customers to purchase PAYS products is to get immediate net savings with no debt obligation. The benefit to the utility and all its ratepayers is reduced gas demand at peak and thus reduced costs of stored gas.

⁴ The PAYS testimony would show that the PAYS® approach would produce gas cost reduction without incurring utility costs and without requiring the introduction of system benefits funding or the funding of one customer’s efficiency investments via payments by other customers.

Rather, PAYS seeks in this proceeding that this Commission exercise its statutory authority under M.C.L. sec. 460.6h to find that SEMCO's plan does not minimize the cost of gas. PAYS also seeks to ask this Commission to determine that PAYS is an approach – not an exclusive or mandatory approach – that SEMCO could take to meet its statutory responsibility to minimize the cost of gas.⁵

As a corollary, PAYS seeks a finding from the Commission that, should SEMCO not take legal and regulatory actions in order to significantly reduce system demand and enable it to correct its five-year forecast and lower its costs for gas, as a consequence the Commission would be unlikely to permit SEMCO to recover a portion of the gas purchase and storage costs in the plan from its customers in rates established in the future.⁶

PAYS submits that raising statutory issues in this way – however distasteful to the Company – does not constitute impeding a proceeding. Rather, it redeems the purpose for which interventions are allowed: the pursuit of the public interest.

⁵ While PAYS has no doubt that Staff will do a fine job in this case, no Staff can be as focused on one issue as an intervenor can. Applicant submits that as an intervenor it can therefore provide to the Commission valuable insight, unique information, and perhaps points of view alternative to what the Commission would otherwise hear. Indeed, the best SEMCO can come up with for precedent is a case where the Commission denied intervention by a gas producer after the gas producer had failed in four previous interventions to even testify on the promised topic. (Consumers Power Co., U-9433, 1990) No one even alleges that is the case here. Rather, PAYS submits its contribution to the Commission would be more analogous to that of the Gas Technology Institute (GTI), a non-profit organization with a public purpose agenda, which sought and received permissive intervention in Case No. U-14561 (2005) to provide the Commission unique information directly from a uniquely knowledgeable source.

⁶ PAYS seeks to introduce sufficient evidence, including evidence concerning a PAYS® tariff as a credible demand-reduction tool for lowering forecast demand and related gas costs, to warrant this determination under MCL 460.6h(7). “The commission may also indicate any cost items in the 5-year forecast that on the basis of present evidence, the commission would be unlikely to permit the gas utility to recover from its customers in rates, rate schedules, or gas cost recovery factors established in the future.” MCL 460.6h(7).

RELIEF

WHEREFORE, for all these reasons, Applicant PAYS America, Inc. respectfully prays that this Commission grant it leave to appeal the ruling of the presiding officer denying its petition to intervene, and that this Commission reverse the presiding officer's ruling and permit PAYS America, Inc. to intervene in this case. PAYS submits that it would be a valuable party to the Commission in this proceeding and that its intervention should therefore be allowed.

Respectfully submitted,

PAYS America, Inc., by its attorneys

 **Elizabeth Dahl MacGregor**
Signature Not Verified

Elizabeth Dahl MacGregor (P64386)
Attorney for Petitioner to Intervene PAYS America Inc.
2154 Washtenaw Ave.
Ypsilanti, MI 48197
(734)485-1295
(734)485-1142 (fax)
Liz@YpsiLawyer.com

Digitally signed by Elizabeth Dahl MacGregor
DN: cn=Elizabeth Dahl MacGregor, c=US
Date: 2006.03.09 18:07:28 -05'00'
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978-283-0897
978-283-0957 (fax)
JerroldOpp@DemocracyAndRegulation.com

Digitally signed by Jerrold Oppenheim
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Massachusetts Board of Bar Overseers No. 545820
Illinois Attorney Registration No. 2114216

Dated: March 9, 2006

STATE OF MICHIGAN

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In the matter of the application of)
SEMCO ENERGY GAS COMPANY)
for authority to implement a gas cost) Case No. U-14718
recovery plan and factors for the 12-month) (e-file/paperless)
period of April 2006 through March 2007.)

PROOF OF SERVICE

I certify that I served a true copy of the Application of PAYS America, Inc., for Leave to Appeal the Ruling of the Presiding Officer Denying Petition to Intervene; and Brief of PAYS America, Inc. in Support of its Application for Leave to Appeal the Ruling of the Presiding Officer Denying Petition to Intervene, upon the following parties by electronic mail (e-mail), which each has agreed to accept as valid service in this case, pursuant to allowance of the Commission, addressed as follows:

Administrative Law Judge:

Daniel E. Nickerson, Jr. (P36294), MPSC – ALJ's Division
denicke@michigan.gov

MPSC Staff:

Patricia S. Barone (P29560), Assistant Attorney General, Public Service Division
baronep@michigan.gov

Attorney General

Michael Moody, Assistant Attorney General, Michigan Attorney General's Office
Tobacco and Special Litigation Division
moodyme@michigan.gov

SEMCO Energy Gas Co.:

Sherri A. Wellman, Miller, Canfield, Paddock, and Stone, P.C.
Wellmans@MillerCanfield.com

The Residential Ratepayers Consortium

David Shaltz
dshaltz@sbcglobal.net

Signed:

 **Jerrold
Oppenheim**
Signature
Not Verified

Digitally signed
by Jerrold
Oppenheim
DN: cn=Jerrold
Oppenheim,
c=US
Date: 2006.03.09
18:04:05 -05'00'

Dated: March 9, 2006