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STATE OF MICHIGAN

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BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application
of SEMCO Energy Gas Company for
authority to implement a gas cost
recovery plan and factors for the
12-month period of April 2006
through March 2007.

Case No. U-14718

Volume 2

Paperless - E-File

6

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MOTION

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Proceedings held in the above-entitled matter

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before Daniel E. Nickerson, Jr., J.D., Administrative

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Law Judge with SOAHR, at the Michigan Public Service

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Commission, 6545 Mercantile Way, Room C, Lansing,

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Michigan, on Thursday, June 22, 2006, at 9:00 a.m.

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APPEARANCES:

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SHERRI A. WELLMAN, J.D.
Miller, Canfield, Paddock and Stone, P.L.C.
One Michigan Avenue, Suite 900
Lansing, Michigan 48933

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On behalf of SEMCO Energy Gas Company

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ELIZABETH DAHL MacGREGOR, J.D.
2154 Washtenaw
Ypsilanti, Michigan 48197

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On behalf of PAYS America, Inc.

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MICHAEL E. MOODY, J.D.
Assistant Attorney General
MR. STEVEN MEYERAND
525 West Ottawa, Sixth Floor
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Lansing, Michigan 48913

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On behalf of Attorney General Michael A. Cox

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(Continued)

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1 APPEARANCES (Continuing):

2 PATRICIA S. BARONE, J.D.
3 Assistant Attorney General
4 6545 Mercantile Way, Suite 15
5 Lansing, Michigan 48911

6 On behalf of Michigan Public Service
7 Commission Staff

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10 REPORTED BY: Lori Anne Penn (CSR-1315)

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1 Lansing, Michigan
2 Thursday, June 22, 2006
3 At about 9:00 a.m.

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5 (Hearing resumed pursuant to adjournment of February
6 23, 2006.)

7 JUDGE NICKERSON: All right. On the
8 record. Good morning. This is the date and time set for
9 a motion in Docket No. U-14718.

10 My name is Daniel Nickerson, I'm an
11 Administrative Law Judge with SOAHR assigned on this
12 case.

13 Let's take appearances of counsel for the
14 record, please.

15 MS. WELLMAN: Sherri A. Wellman on behalf
16 of SEMCO Energy Gas Company.

17 MS. MacGREGOR: Elizabeth Dahl MacGregor
18 on behalf of PAYS America.

19 MR. MOODY: Michael Moody on behalf the
20 attorney general. And I have with me a law clerk with
21 our office who wants to appear in this case.

22 MR. MEYERAND: Steven Meyerand on behalf
23 of Attorney General Mike Cox requesting permission to
24 appear pursuant to Michigan Court Rule 8.12 and
25 Commission Rule 309. I'm a third-year law student at
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1 Michigan State College of Law under the direction and
2 supervision of Assistant Attorney General Michael Moody.
3 I request permission to appear.

4 JUDGE NICKERSON: All right. Thank you,
5 sir. How do you spell your last name?

6 MR. MEYERAND: M-e-y-e-r-a-n-d.

7 MR. MOODY: And we can file an electronic
8 appearance after we're done today.

9 JUDGE NICKERSON: And it's pronounced?

10 MR. MEYERAND: Meyerand, your Honor.

11 JUDGE NICKERSON: Meyerand?

12 MR. MEYERAND: Yes.

13 JUDGE NICKERSON: All right. Any
14 objection to the request to appear?

15 MS. WELLMAN: No, your Honor.

16 MS. BARONE: No.

17 JUDGE NICKERSON: All right. Request is
18 granted.

19 MS. BARONE: Patricia S. Barone,
20 assistant attorney general, appearing on behalf of the
21 Michigan Public Service Commission Staff.

22 JUDGE NICKERSON: All right. Thank you
23 for your appearances this morning.

24 For the record, I received a motion filed
25 by the staff, I also received a motion filed by SEMCO
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1 Energy, and I received a response to the motions. Was
2 there anything else filed? I have had an opportunity to
3 review the motions and the response.

4 Let's start with Ms. Barone. Anything
5 you'd like to add to your motion, Ms. Barone?

6 MS. BARONE: Just to summarize, your
7 Honor, that staff believes that this filing should have
8 been summarily rejected by the commission. A party lacks
9 any ability to submit testimony in which -- I mean an
10 entity lacks status to present a filing of testimony in
11 cases in which that entity is not a party. And unless
12 and until the commission makes that party a -- I mean
13 that entity -- excuse me -- a party, such a filing is
14 inappropriate.

15 If the commission were to grant the
16 appeal of PAYS, then at that time your Honor would set an
17 appropriate schedule to allow the receipt of evidence and
18 the opportunity to conduct cross-examination, discovery
19 and so forth. But it is not the practice to allow
20 non-parties to participate in a case as if they were a
21 party.

22 Further, the PAYS has mentioned in its
23 response an opportunity to make a Rule 207 statement, and
24 that rule provides, in part, the position to be taken
25 shall be fully and fairly stated. The contentions of the
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1 person shall be reasonably pertinent to the issues in the
2 proceeding, and any right to unduly broaden the issue
3 shall be disclaimed. Therefore, your Honor, I believe it
4 would be inappropriate to make such a statement. And in
5 light of the fact that the entire subject matter of PAYS
6 America would be with respect to energy efficiency
7 issues, which the commission has ruled are not to be

8 heard in PSCR and GCR proceedings, but, of course, are
9 being considered in other proceedings before this
10 commission, and that it, the commission is not adverse to
11 hearing these issues and delving into these issues, it's
12 just not appropriate in these particular cases.

13 I think it's important that this filing
14 be rejected. Frankly, I did not review the testimony in
15 any depth because the point is a non-party doesn't submit
16 testimony, and so I think our motion to reject it should
17 be granted as such, not that it's not relevant or any
18 other basis that you would normally look at a party's
19 proffered testimony. Since it's not a party, it just
20 needs to be sent back essentially, and at such time as
21 PAYS is admitted or were to be admitted, then of course
22 we could consider it at that time. So I'd ask that you
23 grant our motion. Thank you.

24 JUDGE NICKERSON: All right. Thank you,
25 Ms. Barone.

1 Ms. Wellman.

2 MS. WELLMAN: Yes, your Honor. Of course
3 SEMCO Energy Gas Company supports staff's motions and the
4 statements that have been made by Ms. Barone today.

5 I would just want to comment on one
6 thing, your Honor, not to belabor the point, but it's a
7 somewhat, it is in response to PAYS America's, their
8 response, and also I believe to their initial, I think
9 they were correspondences that came with the testimony
10 that was filed. And as Ms. Barone has correctly pointed
11 out, PAYS is not a party to this proceeding. The
12 commission has not overruled your ruling. And only the
13 Rules, the Commission's Rules of Practice and Procedure
14 only provide for filing of testimony by parties to the
15 proceeding. I mean if not, I think that there wouldn't
16 be any point to having petitions to intervene and
17 entertaining petitions to intervene to determine whether
18 a party had standing or not to make further filings.

19 But the one point I do want to emphasize
20 is that PAYS has indicated that, in essence, they're not
21 willing to wait at this point for the MPSC to make its
22 decision on its appeal. And their point is is that if,
23 that if they're not allowed to, you know, file a
24 testimony, then essentially their appeal is going to be
25 rendered moot. And I believe, your Honor, that that

1 argument has no merit. I mean if we follow that argument
2 to a logical end, PAYS is going to argue, if the
3 commission has not so ruled on it, that they should be
4 filing rebuttal, they should be, you know, part of the
5 cross-examination, filing briefs, exceptions. And, your
6 Honor, I don't think it's unheard of that the commission
7 has taken up, you know, an appeal from a ruling in a
8 final order that's issued. So by de facto, PAYS would be
9 participating without having your ruling overturned, and
10 that is not the point of having an initial ruling to
11 determine whether a party has, or whether a person has
12 standing in a case.

13 So again, SEMCO does not feel it should
14 have to respond to any further pleadings made by PAYS in
15 this case until the commission overturns, if it
16 overturns, your ruling. And we would request that you
17 grant our motion and staff's motion to reject the filing
18 and strike the testimony of PAYS America.

19 JUDGE NICKERSON: All right. Thank you,
20 Ms. Wellman.

21 Anything from the attorney general?

22 MR. MEYERAND: Your Honor, the attorney
23 general would object to any non-party filing testimony in
24 a case. We would agree with staff that unless and until
25 PAYS is made a party to this case, they should not be

1 allowed to file testimony.

2 JUDGE NICKERSON: All right. Thank you,
3 sir.

4 All right. Ms. McQueen (sic).

5 MS. MacGREGOR: MacGregor, your Honor.

6 JUDGE NICKERSON: MacGregor. I'm sorry.

7 MS. MacGREGOR: That's O.K.

8 Your Honor, we understand that the
9 commission hasn't considered the appeal and that,
10 therefore, we are not yet a party. We're simply asking
11 to put our testimony on the record and preserve it in the
12 event that we should have a -- should become a party -- I
13 can talk this morning. Sorry -- in the event that we
14 become a party so that timely resolution can be brought
15 to this case.

16 The staff indicated that they haven't
17 looked at the testimony in depth. I would imagine it
18 wouldn't be reviewed in depth unless and until we become
19 a party to this case and, therefore, we're simply asking
20 leave to file things along the scheduled lines and not
21 delay this case, have our right preserved should the
22 appeal be granted.

23 JUDGE NICKERSON: All right. But you
24 recognize that simply by fact that you filed, the parties
25 feel obligated to expense time and effort to prepare

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1 responses to the testimony and to prepare for the
2 testimony in the event that we go to hearing. And so how
3 do you address those concerns?

4 MS. MacGREGOR: That it would, in -- they
5 are not compelled to respond since we are not as of yet a
6 party, and should the appeal be granted, then they would
7 have more time to review the material and prepare.

8 JUDGE NICKERSON: All right. Thank you
9 very much, Ms. MacGregor.

10 Anything else, Ms. Barone?

11 MS. BARONE: No, your Honor.

12 JUDGE NICKERSON: Ms. Wellman.

13 MS. WELLMAN: No, your Honor.

14 JUDGE NICKERSON: All right. I was just
15 looking at the motions that were filed by SEMCO and staff
16 with regard to their prayer for relief basically. SEMCO
17 is asking that the Public Service Commission denies PAYS
18 America petition to intervene, and staff says that the
19 ALJ should reject and remove the attempted filing of
20 direct testimony by PAYS America, Inc., and admonish PAYS
21 that any further attempt by it as a non-party to file
22 improper testimony or pleadings will subject it to the
23 imposition of appropriate sanctions.

24 This is a little unusual in, as my
25 experience has shown, that once a party has been denied

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1 leave to intervene, they typically will file something
2 with the commission if they feel strongly about the
3 ruling, which PAYS has done, and then if the commission
4 has not addressed it by the time we come to hearing, the
5 parties, the party that has been denied petition to
6 intervene typically will not file anything else. But in
7 this case, PAYS has broken that mold, so to speak, by
8 having filed the direct testimony. And I was advised
9 that once a party files something, it goes on the
10 website, it's basically as if it's filed in the docket.
11 And so we can't control that part of it. It's as if the
12 party had filed. What we can control is how that's
13 treated in the context of the proceeding for hearing.

14 I concur with both staff and SEMCO and
15 the attorney general, PAYS is not a party to this
16 proceeding based upon an earlier ruling that I issued.
17 PAYS has appealed that to the commission, the commission
18 has not yet addressed that; but until the commission
19 does, then my ruling stands, which means PAYS is not a
20 party to this proceeding; and as that status, anything
21 that PAYS files must be treated as a non-party, which
22 means that those filings should not be prepared for,
23 there should not be any time or expense expended in
24 preparing for that testimony that has been filed. I
25 don't want to go so far as to attempt to prevent PAYS

1 from filing anything else in the future, but recognize
2 that my ruling here today would treat all of those
3 filings, until such time as their status changes, as a
4 non-party filing.

5 As a non-party filing, I agree with
6 Ms. Barone with regard to Rule 207. Anything that a
7 person -- or a person seeking status under Rule 207, it
8 must be relevant. And based upon my prior ruling, I
9 don't find that that's relevant in this proceeding, and
10 so deny status on Rule 207.

11 All right. Is there anything else for
12 the record?

13 MS. BARONE: No, your Honor.

14 MS. WELLMAN: So may I just clarify, your
15 Honor, that --

16 JUDGE NICKERSON: Please do.

17 MS. WELLMAN: -- as a non-party filing,
18 it's as if it doesn't exist for purposes of this case for
19 us to proceed, and the company and the other parties
20 should not feel a need to respond in any manner because
21 it does not exist for purposes until the commission makes
22 some decision, and then if there is a decision that would
23 require us to respond at that time, we would have to go
24 back.

25 JUDGE NICKERSON: Succinctly stated.

1 MS. WELLMAN: All right. Just trying to
2 make sure. O.K.

3 JUDGE NICKERSON: All right. Anything
4 else?

5 MS. MacGREGOR: No, your Honor.

6 JUDGE NICKERSON: All right. Thank you,
7 Ms. MacGregor, thank you, Ms. Barone, Mr. Meyerand and
8 Ms. Wellman.

9 We're adjourned.

10 (Proceedings adjourned at 9:17 a.m.)

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C E R T I F I C A T E

I, Lori Anne Penn (CSR-1315), do hereby
certify that I reported in stenotype the proceedings had
in the above-entitled matter, that being Case No.
U-14718, before Daniel E. Nickerson, Jr., J.D.,
Administrative Law Judge with SOAHR, at the Michigan
Public Service Commission, 6545 Mercantile Way, Lansing,
Michigan, on Thursday, June 22, 2006; and do further
certify that the foregoing transcript constitutes a true
and correct transcript of my stenotype notes.

LoriAnnePenn
n_____

Digitally signed by LoriAnnePenn
DN: CN = LoriAnnePenn, C = US,
O = Metro Court Reporters, Inc.
Date: 2006.07.07 16:11:07 -04'00'

Lori Anne Penn, CSR 1315
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Dated: