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September 30, 2006

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

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

Dear Secretary Kunkle:

Enclosed for filing is the Comment of PAYS America, Inc. regarding the proposed settlement filed September 27, 2006; and Proof of Service as to the aforementioned filing.

Please contact me if there are any questions.

Respectfully,

Jerrold Oppenheim, Esq.

Signature Not Verified

Digitally signed by Jerrold Oppenheim, Esq.
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Date: 2006.09.30 18:34:15 -04'00'

STATE OF MICHIGAN

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	)	Case No. U-14718
recovery plan and factors for the 12-month	)	
period of April 2006 through March 2007.	)	

COMMENT OF PAYS AMERICA, INC.

This is the Comment of PAYS America, Inc. ("PAYS") on the Settlement proposal by SEMCO Energy Gas Co. (SEMCO), Attorney General Michael A. Cox (AG), the Residential Ratepayer Consortium (RRC), and the Commission Staff (MPSC), filed in this case on September 27, 2006. 1

On February 16, 2006, PAYS America, Inc. filed a Petition to Intervene in this case. That Petition was denied by Administrative Law Judge Daniel E. Nickerson, Jr. (ALJ). PAYS subsequently filed a Leave to Appeal and sought to have testimony considered in this case. The Commission has not acted on those requests. Therefore, PAYS has not been party to the settlement negotiations. PAYS files these comments on the Settlement Agreement recognizing that, until the Commission acts on our appeal from the denial of leave to intervene, we are not a formal party to the docket. If the Commission determines not to overturn the ALJ's decision on our petition for leave to intervene, we then request that these comments be accepted as a non-party comment.

1 In addition, attached for the record is PAYS' July 6, 2006 appeal of the Administrative Law Judge's ruling rejecting PAYS' testimony in this case. As SEMCO notes (Response, July 19, 2006), the appeal was properly served and SEMCO has responded to it. Due to a clerical error, an earlier filing was re-filed in place of the appeal. PAYS seeks leave to replace the erroneous foiling with the attached appeal since no party is prejudiced by the clerical error.

The Settlement Agreement fails to recognize or address the principle that Demand Side Management (DSM) can lower the cost of gas. DSM (such as the PAYS® method advanced by PAYS America, Inc.) reduces consumers' use of gas, thus minimizing the demand for gas. Failure to consider such measures injures the interest of the public-at-large when it ignores the potential impact of energy efficiency. The Settlement Agreement's endorsement of the demand forecast and fuel requirements forecast of SEMCO might be taken to be an implicit rejection of the value of DSM in lowering gas costs, despite the reservation in the Settlement Agreement of rights to argue the prudence of SEMCO's gas costs in a future reconciliation case. At best, then, the Settlement Agreement is silent on the issue PAYS sought to raise through its petition for leave to intervene.

In a recent decision in a PSCR case, the Commission noted that it didn't intend to suggest that a party to an Act 304 case should be precluded from proposing a rate design solution that encourages the efficient use of energy or conservation measures by a utility's customers. Likewise, the Commission determined that the preclusion of intervenor testimony regarding non-rate design energy efficiency or conservation measures in an Act 304 proceeding does not apply to more appropriate forums, such as individual rate cases or special proceedings. It also encouraged the petitioner in that case, Michigan Environmental Council and Public Interest Research Group (MEC/PIRGIM), to raise energy efficiency and conservation concerns in such other forums. Consumers Energy Co, case no. U-14701 (August 22, 2006), p. 11. We understand that the decision in U-14701 reflects a decision to divide the consideration of various matters between Act 304 dockets (e.g. GCRs and PSCRs and their respective reconciliations) and other dockets where a less compact schedule can be accommodated.

In the instant docket, without further clarifying language or conditions, the Commission's acceptance of the Settlement Agreement could undermine the precedent set in U-14701. It might be argued that the Commission had the opportunity to hear from a proponent of DSM in a GCR and chose not to do so, and that no provision was made for consideration of gas DSM. While various facts could be cited to distinguish the two cases, it would be easy to remedy the problem in a straightforward way. So, to avoid the unintended result of distinguishing PSCR cases and GCR cases on the DSM issue, acceptance of the Settlement Agreement could be explicitly conditioned on a determination by the Commission that the presentation in other dockets of issues relating to the merits of the PAYS(r) system and of DSM generally to lower SEMCO unit gas costs are not precluded by the adoption of the Agreement. Such a condition would also explain the failure to approve the appeal from our Petition for Leave to Intervene on a ground consistent with the precedent set in U-14701 on the scope of Act 304 fuel clause proceedings.

We recommend the adoption of such a condition. Including such a condition would ensure that there is a forum to raise energy efficiency solutions and conservation concerns that have an impact on Act 304 issues. It would also help to preclude arguments that may be raised that Act 304 funding is not available for DSM efforts in any except GCR and PSCR types of cases, even if issues having an impact on unit energy costs are in some cases (like DSM) handled in other types of dockets.

Jerrold Oppenheim, Esq.

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Elizabeth Dahl MacGregor, Esq.

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(734)485-1142 (fax)

Dated: September 30, 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 recovery plan and factors for the 12-month period of April 2006 through March 2007.	)))))	Case No. U-14718 (e-file/paperless)

PROOF OF SERVICE

I certify that I served a true copy of the foregoing Comment of PAYS America, Inc., 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
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Attorney General
Michael Moody, Assistant Attorney General, Michigan Attorney General's Office
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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:

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Jerrold Oppenheim, Esq.

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Dated: September 30, 2006

ATTACHMENT

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

APPEAL OF PAYS AMERICA, INC.
OF THE JUNE 22, 2006 RULING BY
THE ADMINISTRATIVE LAW JUDGE
FINDING ITS PROFFERED TESTIMONY IRRELEVANT

Pursuant to Rule 460.17337 of Michigan Public Service Commission's Rules of Practice and Procedure, PAYS America, Inc. (PAYS), by its attorneys Jerrold Oppenheim and Elizabeth Dahl MacGregor, files the instant Appeal of PAYS America, Inc. of the Ruling of the Administrative Law Judge Finding the Testimony of Nancy Brockway and Harlan Lachman Irrelevant, pursuant to Rule 337 of the Commission's Rules of Practice and Procedure, 1992 AACS R 460.17201. In support of this Appeal, 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."
2. On February 16, 2006, PAYS America, Inc. petitioned to intervene in this proceeding. The Petition was denied on February 23 and PAYS America appealed that denial to the Commission on March 9. Staff and SEMCO opposed the appeal on March 23 and the appeal remains pending.
3. PAYS America filed the testimony of Nancy Brockway and Harlan Lachman on May 30 to avoid having its appeal become moot due to the passage of the

deadline for the filing of testimony. On June 1 and 2, 2006, MPSC Staff and SEMCO filed their respective Motions to Reject that Testimony.

4. PAYS filed a Response to those motions on June 13, 2006, asking the testimony be allowed to avoid having PAYS' pending appeal become moot. In the alternative, PAYS requested the testimony be accepted as the statement of a non-party, as permitted under Rule 207, R 460.17207.

5. On June 22, 2006, an oral ruling by Administrative Law Judge Daniel E. Nickerson, Jr., the presiding officer in this proceeding, found PAYS's proffered testimony admissible as the statement of a non-party but irrelevant and therefore not to be considered under Rule 207.

6. Rule 207 states, in relevant part, that in a proceeding to fix rates, a person may appear without a formal petition for leave to intervene, and that an appearance pursuant to this rule entitles a person to make a statement. Such a statement shall be reasonably pertinent to the issues in the proceeding.

7. Here, the testimony is proffered to show that SEMCO is not pursuing customer efficiency measures and is thus not taking all appropriate legal and regulatory actions to minimize the cost of purchased gas as it is required to do under MCL 460.6h. Testimony is also proffered to give an example of possible actions SEMCO could take to minimize the cost of purchased gas, such as the Pay As You Save® approach to conservation (including the mechanics of such an approach should SEMCO choose to adopt it).

8. The testimony is proffered to further show that, if SEMCO does not take all appropriate actions to minimize the cost of purchased gas, the price of gas will increase for its customers, thus causing substantial harm to the public at large. The proffered testimony demonstrates that efficiency measures would reduce peak demand, which would in turn reduce the need for gas storage to meet peak demand, which would in turn lower the overall cost of purchased gas.

9. The proffered testimony is thus probative of material statutory issues in this proceeding and is therefore relevant. Therefore, however the Commission may rule on the merits with respect to the issues raised by PAYS in this proceeding, the proffered testimony is "reasonably pertinent" to issues in the proceeding

under Rule 207. The issue in this proceeding is whether SEMCO "engaged in reasonable and prudent activities that could lower the cost of gas … [G]reater 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." (Michigan Gas. Co., Case U-9742, 1991).

WHEREFORE, for all these reasons, PAYS America, Inc. respectfully prays that this Commission find the proffered testimony relevant, and that this Commission reverse the presiding officer's ruling and permit PAYS America, Inc. to offer testimony or, in the alternative, a statement of a non-party, in this case.

Respectfully submitted,

PAYS America, Inc., by its attorneys,

? Signature Not Verified Elizabeth Dahl MacGregor, Esq. Digitally signed by Elizabeth Dahl MacGregor, Esq. DN: cn=Elizabeth Dahl MacGregor, Esq., c=US Date: 2006.09.30 18:39:10 -04'00'

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Illinois Attorney Registration No. 2114216

Dated: July 6, 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.	)	

PROOF OF SERVICE

I certify that I served a true copy of the Appeal of PAYS America, Inc. of the Ruling by the Administrative Law Judge Finding its Proffered Testimony Irrelevant, 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
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MPSC Staff:
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The Residential Ratepayers Consortium
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Signed:

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Dated: July 6, 2006