



**CONSUMERS POWER COMPANY
EMPLOYEES
FOR BETTER GOVERNMENT**

212 W. MICHIGAN, JACKSON, MICHIGAN 49201

July 28, 1994

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
AUG 4 2 56 PM '94

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

ADR 1994-27

Re: Advisory Opinion Request

Dear Members of the Commission:

Consumers Power Company Employees for Better Government - Federal (CPCo EBG Fed) is considering the solicitation of shareholders of CMS Energy Corporation. Consumers Power Company is a subsidiary of CMS Energy Corporation, and the shareholders solicited would be employees of Consumers Power Company, CMS Energy, and other CMS subsidiaries whose employees are enrolled in the Employees' Savings and Incentive Plan as amended through August 1, 1992 and who consequently are shareholders in CMS Energy Corporation.

Attached hereto is a copy of the Plan. A brief outline of the provisions of the Plan is as follows:

1. The Plan covers employees of Consumers Power Company, its wholly owned subsidiaries, NOMEKO, and other CMS Energy companies which have adopted the Plan. (§ 2.1 Definitions, page 21, Plan)
2. All regular employees may join the Plan. (§ 2.1 Definitions, page 21, Plan)
3. Transferring between participating CMS Energy companies does not affect the employee's continued participation in the Plan. (§ 5.7, page 29, Plan)
4. Regular employees may contribute from 1% to 16% of their regular compensation subject to restrictions imposed by the IRS. (§ 5.1, 5.2 & 5.3, pages 27 & 28, Plan)

5. The Company will match at least 1/2 of the amount contributed by the employee up to 3% of the employee's salary. In addition the Company has an incentive matching contribution feature. (§ 5.10 & 5.12, pages 30 & 31, Plan)
6. The employee's contributions may be invested in three funds as designated by the employee. (§ 2.1, Definitions, pages 21 & 22 and § 5.4, pages 28 & 29, Plan)

Fund A: Bonds and other debt instruments.

Fund B: Common stocks (other than CMS Energy stock).

Fund C: CMS Energy Corporation common stock.

7. All Company matching contributions are invested in Fund C. (§ 5.10 & 5.12, pages 30 & 31, Plan)
8. Employee's right to the Matching Employer or Incentive Contribution vests at the rate of 10% per year for the first (4) four years of service and 20% per year for the next (3) three years of service. The employee is 100% vested after seven (7) years of service. (§ 8.4(d), page 40, Plan)
9. Employees may contribute to the Plan in three ways.
 - a. Elective Employer Contributions - 401(k) (Before Tax). (§ 5.2, pages 27 & 28, Plan)

Employee may elect to have the Company contribute on the employee's behalf from 1% to 12% of the employee's regular straight-time pay reducing the employee's taxable Compensation by the amount contributed.
 - b. Participant Contribution (After Tax) (§ 5.1, page 27, Plan)

Employee may contribute from 1% to 6% of employee's regular straight time pay. The employee's entire regular Compensation is reported for tax purposes. The 6% limit is reduced by the percentage of the Elective Employer Contributions.
 - c. Voluntary Contribution (After Tax) (§ 5.3, page 28, Plan)

Employee may contribute from 1% to 10% of employee's regular straight time pay. The 10% limit is reduced by the percent by which Elective Employer Contributions exceed 6%.

10. Withdrawal.

a. Elective Employer Units.

The IRS restricts the employee's right to withdraw Elective Employee Units without tax penalty until age 59 1/2. However, if the employee has an immediate and heavy financial need for medical reasons, purchase of a residence, college tuition or to prevent eviction, the employee may withdraw his/her vested Elective Employer Units with substantial tax penalty.

(§ 8.4(b), page 39, Plan)

b. Participant Units.

Employee may withdraw his/her Participant Units. However, employee may only make one withdrawal a year. (§ 8.4(a), pages 38 & 39, Plan)

c. Voluntary Units.

Employee may withdraw part or all of the value of his/her Voluntary Units at any Valuation date. (§ 8.4(c), pages 39 & 40, Plan)

11. Withdrawal of matching employer and incentive contributions.

The employee may withdraw that part which is vested as indicated above. If units are withdrawn before all units are fully vested, the non-vested units are forfeited subject to restoration if entire amount withdrawn is repaid. Furthermore, a unit may not be withdrawn until it has been in the employee's account at least 2 years unless the employee has continuously participated in the Plan for 60 full months.

Should an employee withdraw all or part of matching employer and incentive units, employee's participation in the Plan is restricted for three to twelve months depending on the percentage of the value withdrawn from the fund. (§ 8.4, pages 40, 41 & 42, Plan)

12. Voting of CMS Energy Corporation stock.

The employee has the right to give voting instructions for shares in the employee's account and the trustee must comply. (§ 6.6, page 34, Plan)

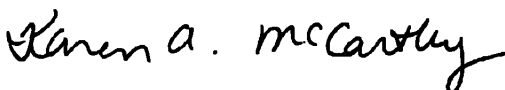
13. Dividends.

Dividends paid by CMS Energy are credited to Fund C and credited to the employee's account in proportion to employee's interest therein. (§ 6.1, 6.2, 6.4, 6.8 & 7.2, pages 33, 34 & 35, Plan)

CFR 114.1(h) defines Stockholder to mean, "a person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends." Based on a review of the Savings and Incentive Plan it appears that employees of Consumers Power, Consumers Power subsidiaries, CMS Energy and CMS Energy subsidiaries which participate in the Plan are stockholders of CMS Energy and as stockholders of CMS Energy Corporation may be solicited and are eligible to participate as a member of Consumers Power Company's Employees for Better Government - Federal. However, in accordance with 11 CFR 112.1 Consumers Power Company's Employees for Better Government - Federal is requesting an advisory opinion to assure that it is in full compliance with the Federal Election Commission's regulations and the Federal Election Campaign Act should it solicit contributions from employees who are at least 10% vested in the Savings and Incentive Plan.

Thank you for your time and consideration. If you need additional information, please contact George F. Hill at (517) 788-1660.

Sincerely,



Karen A. McCarthy
Chairman

Ⓟ employee benefits Ⓟ employee benefits

SAVINGS
AND
INCENTIVE
PLANNING

august 1, 1992

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introduction

This document constitutes part of a prospectus covering securities that have been registered under the Securities Act of 1933.

The description presented on the following pages is a summary of the Employees' Savings and Incentive Plan as amended through August 1, 1992, and explains in general terms the principal features of the Plan. For your convenience, the complete text of the Plan is also included in this booklet if you should wish to review it in greater detail. This description uses, sometimes without defining, certain terms which are defined in the Plan section of this booklet. When used they are capitalized. If you want further clarification of the terms and conditions of the Plan, you may contact the Retirement Plans Department, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, Telephone Number 8-1831 or 8-0251.

General TAX NOTES are included which reflect our understanding of the Internal Revenue Code of 1986 as amended; however, you should consult your tax adviser for specific application of this complicated Act to your own situation.

IF THERE ARE ANY INCONSISTENCIES BETWEEN THE PLAN LANGUAGE AND STATEMENTS APPEARING IN THE SUMMARY PORTION OF THIS BOOKLET OR MADE BY ANY PERSON, THE ACTUAL PROVISIONS OF THE PLAN SHALL GOVERN.

some information about the plan

- The Plan covers employees of Consumers Power Company, its wholly owned subsidiaries, NOMECO, and other CMS Energy companies which have adopted the Plan.
- You may contribute from 1% to 16% of your regular Compensation.
- The Company will match at least 1/2 of the amount you contribute up to a match of 3% of your salary.
- The Company pays all the costs of the Plan.
- Each Plan year ends on December 31.
- The Plan is a defined contribution plan intended to qualify under Section 401 of the Internal Revenue Code of 1986.
- The Normal Retirement Date under the Plan is "Retirement Age" as defined in Section 216(f) of the Social Security Act in effect on June 1, 1989.
- The Plan Administrator is Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, Business Telephone (517) 788-0354.
- S. K. Smith, Jr. and T. A. McNish have been appointed by the Company to administer the Plan.
- The Trustee of the Plan is NBD Bank N.A., 611 Woodward Avenue, PO Box 222A, Detroit, Michigan 48232.
- T. A. McNish, 212 West Michigan Avenue, Jackson, Michigan is the agent for service of legal process. Service of process may also be made upon the Trustee or the Plan Administrator.

- The Employer Identification Number is 38-0442310.
- The Plan Number is 002.
- The Company has the right to amend or terminate the Plan at any time.
- The Company's right to discipline or discharge employees is not affected by any of the provisions of the Plan.

eligibility & enrollment

- You are eligible to join the Plan if you are a regular employee.
- To join the Plan, you should send an Enrollment Form to: The Retirement Plans Department, 212 West Michigan Avenue, Jackson, Michigan 49201. The form is available in the Retirement Plans Department or your Human Resources office.
- Enrollment will be effective on the next administratively feasible pay date.
- Transfers between participating CMS Energy companies will not affect your continuing in the Plan.

your contributions

ELECTIVE EMPLOYER - 401(k) (Before Tax)

- You may *elect* to have the Company contribute for you from 1% to 12% of your regular straight-time salary or wages including cost of

living allowances by agreeing to have your Compensation reduced by the same percentage.

- If your regular annual Compensation is more than \$60,535 (may be adjusted for inflation by Plan administrators) the most you can have contributed is 9% of your Compensation.
- Your reduced Compensation will be the amount reported to Federal, State and Local Governments for income tax purposes.
- Your regular Compensation without reduction will be used by the Company for all other purposes, for example, pension and insurance calculations.
- If your annual regular Compensation is \$60,535 or more (may be adjusted for inflation by Plan administrators) the Company may have to reduce your contribution to prevent the IRS disqualification of the Plan. If that should happen, the reduction will be treated as Participant or Voluntary Contribution and included in your Compensation for tax purposes.

PARTICIPANT CONTRIBUTIONS (After Tax)

- You may contribute from 1% to 6% of your regular straight-time salary or wages including cost of living allowances through payroll deduction.
- The 6% limit is reduced by the percent of Elective Employer Contributions, if any.
- Your entire regular Compensation will be reported to Federal, State and Local Governments for income tax purposes.

VOLUNTARY CONTRIBUTIONS (After Tax)

- You may also contribute from 1% to 10% of your regular straight-time salary or wages including cost of living allowances through payroll deduction.
- The 10% limit is reduced by the percent by which Elective Employer Contributions exceed 6%.

ADJUSTMENTS

If your annual regular Compensation is \$60,535 or more (may be adjusted for inflation by Plan administrators), the Company may have to reduce your Participant and Voluntary Contributions to prevent IRS disqualification of the Plan. If that should happen, your Voluntary Contributions would be affected first, then your Participant Contributions if necessary. The contributions would be returned to you.

CHANGES

- You can increase or decrease the amount of your contribution at any time and it will be effective as soon as practicable.
- If you discontinue Elective Employer or Participant Contribution, further contributions cannot be made for three months.

company contributions

MATCHING EMPLOYER CONTRIBUTIONS

- The Company will contribute one-half of your monthly contribution, up to a maximum Matching Employer Contribution of 3% of your straight-time salary or wages including cost of living.

INCENTIVE MATCHING CONTRIBUTIONS

- Each year the Company will set a performance goal of two factors, (1) earnings and (2) comparison of the Company's gas and electric rates with other major investor-owned utilities. The overall goal will be based 70% on earnings and 30% on energy rates.
- Additional Company match based on achievement of goal is:

Percent of Goal

**Incentive Match
as Percent of Your Contribution**

80%	10%
90%	25%
100%	40%
110%	50%

- The Incentive Match will be prorated for exact percentage of goal achieved above 80% and less than 110%.
- The Incentive Match will be determined at the end of each year and will be based on your net Elective Employer and Participant Contributions of up to 6% of your Compensation for the year.
- The Plan administrators may exclude Incentive Contributions to the accounts of certain Officers of Employers.
- Company contributions are deductible by the Company on its Federal income tax returns.

investment funds

FUND A

Consists of investment contracts issued by insurance companies or financial institutions, U.S. Government obligations, corporate debt obligations and other debt instruments, and temporary investments.

FUND B

Consists of common stocks (other than CMS Energy stock) and temporary investments.

FUND C

Consists of CMS Energy Corporation common stock and temporary investments.

DESIGNATION OF FUNDS

- You choose the percentage of your contributions to be invested in Fund A, Fund B, or Fund C.
- You can allocate your contributions all in one fund or split them between two or three funds.
- The Company's contributions, Matching and Incentive, will be invested in Fund C.
- You may change the allocation of your future contributions at any time. The change will be effective as soon as feasible.
- You may switch past contributions between funds as of a future Valuation Date (last business day of each month).

VOTING OF CMS ENERGY CORPORATION COMMON STOCK

- You will be given an opportunity to give voting instructions for shares in your account and the Trustee will comply with your instructions.

your account

- The value of your individual account is based on the number of units held for you in any of the three funds as of each Valuation Date (the last business day of each month).

- The value of the units is determined by dividing the market value of each fund's investments by the total number of units held by employees in that fund.
- If the market value of the fund's assets increases, your account will increase in value; if the assets decrease in value, your account will decline in value.
- With each monthly contribution you will purchase units. For example:

Compensation - \$1,000 per month, 6% contribution, allocated to Fund C, unit value \$6.00

\$1,000	Salary
$\times \quad 6\%$	
\$ 60	Contribution
<u>+6.00</u>	Unit Value
10	Units of Fund C Purchase

- Each quarter and each year-end you will receive a personal statement of your account showing activity in your account for the period.

distributions

RETIREMENT OR DISABILITY

- If you were under 50 years old on January 1, 1986, you may elect to receive your entire account balance including Company contribution in:
 - a "lump sum" at or after age 59-1/2 (if retirement before age 59-1/2, payment may be deferred until age 59-1/2) or
 - installments over not more than the number of years shown in Appendix A as of your nearest birthday, or

- (c) taxable single sum if your retirement is before age 59-1/2, or
- (d) a deferred payment, either lump sum or installments.

INCOME TAX NOTE:

- a) "Lump sum" after 59-1/2: One time election for 5-year forward averaging.
- b) Installments: After-tax contributions prorated over installment period until recovered.

- If you were age 50 or over on January 1, 1986, you may elect to receive your entire account balance including Company contributions in:

- (a) a "lump sum," or
- (b) installments over not more than the number of years shown in Appendix A as of your nearest birthday, or
- (c) a deferred payment, either "lump sum" or installments. However, you must begin receiving a distribution by April 1 of the year following the year in which you reach 70-1/2 years of age.

INCOME TAX NOTE:

- a) "Lump sum":
 - (1) Choice of 10-year forward averaging using 1986 Tax Tables or 5-year forward averaging.
 - (2) Favorable capital gains treatment for pre-1974 contributions still available.
- b) Installments: After-tax contributions prorated over installment period until recovered.

LAYOFF

You may elect to receive your entire account balance including Company contributions in:

- (a) taxable single sum, or
- (b) installments over not more than the number of years shown in Appendix A as of your nearest birthday.

DEATH

If you die before retirement or distribution has been completed, the entire balance in your account will be paid in a "lump sum" to your spouse or other beneficiary if your spouse has given notarized consent.

TERMINATION OF EMPLOYMENT

- You will be entitled to receive the value of your Elective Employer, Participant and Voluntary Contributions.
- Of Company contributions, both Matching Employer and Incentive Contributions, you will be entitled to 10% of the value for each of the first four years of service and 20% for each of the next three years. After seven years of service you will be 100% vested.
 - You are credited with a year of service when you have completed 1,000 Hours of Service in a calendar-year. (For SE-W and OM&C employees all Hours of Service including overtime are counted. EA&P employees are credited with 10 hours for each day compensated.)
- You may receive the value of your account (including vested Company contributions) in:
 - (a) a taxable single sum at the time of termination of employment, or

- (b) a taxable single sum at your Normal Retirement Date, if the taxable portion is over \$3,500.

INCOME TAX NOTE:

Taxable portion (all earnings, Elective Employer and Matching Employer Contributions) is fully taxable plus additional tax of 10%; however, no tax assessed if rolled over to an IRA. (If age 50 on January 1, 1986, 10-year forward averaging available once.) Normal Retirement Date distribution not subject to additional tax of 10%.

- If you are reemployed within 24 months following your termination of employment and you repay thereafter, the entire amount of your Elective Employer and Participant units, the amount you forfeited will be restored to your account.

METHOD OF PAYMENT

All payments from Fund A and Fund B will be made only in cash. "Lump sum" or single sum payments from Fund C will be made in shares of common stock of CMS Energy and/or cash.

withdrawals while you are employed

ELECTIVE EMPLOYER UNITS

- After age 59-1/2 - you may withdraw all or part of the value of your Elective Employer units.
- Before age 59-1/2 - you may withdraw part of the value of these units only in the event of financial hardship.
 - (a) You must have an immediate and heavy financial need for:

- (1) medical expenses for you, your spouse or dependents
- (2) expenses for the purchase of your principal residence
- (3) college tuition for the next term for you, your spouse, children or dependents
- (4) expenses to prevent eviction from your principal residence

(b) The withdrawal must be necessary to meet the financial need and you certify that it cannot be met by:

- (1) reimbursement or Compensation by insurance or otherwise
- (2) reasonable liquidation of your assets without creating an additional financial need
- (3) stopping your contributions to the Plan
- (4) all other withdrawals and loans from the Plan and loans from commercial sources on reasonable terms
- (5) all reasonably available resources of your spouse or minor children

(c) Earnings on your Elective Employer Contributions earned after January 1, 1989 are not available for a hardship withdrawal.

INCOME TAX NOTE:

Fully taxable, plus additional tax of 10% of withdrawal.

PARTICIPANT UNITS

- You may withdraw all or part of the value of your Participant units.
- If you do, you will not be able to make another withdrawal for one year.

VOLUNTARY UNITS

You may withdraw all or part of the value of your Voluntary units at any Valuation Date.

INCOME TAX NOTE:

- a) Contributions (not earnings) before January 1, 1987 are available without tax.
- b) Withdrawals of amounts attributable to contributions made after 1986 will be prorated between contributions and earnings on all Participant and Voluntary Contributions.
- c) Additional 10% tax on taxable portion.

Example:

Pre-1987 after-tax contributions	\$2,000
After-tax contributions made after 1986	1,000
Earnings on all after-tax contributions	500
Other Accounts: Elective Employer and Earnings, Matching Employer and Earnings	<u>3,000</u>
Total account	\$6,500

To withdraw \$3,000 with minimum tax liability:

1. Withdraw \$2,000 pre-1987 contribution on nontaxable basis.
2. Additional \$ 1,000 is taxable in same proportion as after-tax contributions and earnings ($\$1,000 = 2/3$ of \$1,500). Therefore of the \$1,000, \$667 ($2/3$) is nontaxable and \$333 ($1/3$) is taxable. Other accounts are not considered. Also additional tax of 10% will apply to \$333 portion.

MATCHING EMPLOYER AND INCENTIVE CONTRIBUTIONS

- You can withdraw only that part which is vested. You will be fully vested after seven years of Service.
- Also, you cannot withdraw these units until they have been in your account for at least two full years.
- If you withdraw units before you are fully vested, you will forfeit the non-vested part of your account. (You may repay the entire amount of the withdrawal and the forfeited amount will be restored to your account.)
- If you withdraw these units, you cannot resume participation in the Plan as follows:

Amount of Withdrawal of Matching Employer and Incentive Units	Period of Time
Less than 25% of the value	3 full calendar months
25% or more, but less than 50% of the value	6 full calendar months
50% or more, but less than 75% of the value	9 full calendar months
75% or more of the value	12 full calendar months

INCOME TAX NOTE:

Fully taxable plus additional tax of 10%.

loans

- You can borrow money from the Plan for extraordinary or emergency needs. For example, home purchase, home improvements, college expenses or high school tuition for your children. The Plan administrators will determine on a uniform basis, what is an extraordinary or emergency need.
- Unless government regulations permit the loan to be secured by more than 50% of the value of your total vested units, the amount of the loan cannot be more than 50% of the value of your total vested units.
- Your loan must be at least \$1,000 and no more than \$50,000.
- Your loan will be secured by your account balance.
- If you wish to borrow money from the Plan you must complete an application and return it to the Retirement Plans Department.
- Repayment of your loan must be by payroll deduction over not more than five years.

Exception: a loan to acquire your principal residence may be repaid over a longer period not to exceed ten years.

- **Interest Rate** - the Plan administrators will determine the interest rate on loans based on many factors including generally prevailing rates. (Current rate is available from Retirement Plans Department or your Human Resources office.)
- As the loan is repaid, your payments including interest will be credited to your account in the fund(s) from which the loan was taken.

- Your loan will be considered in default if you leave employment or miss any payments under the Plan. Upon default the Plan administrators are authorized to use any legal means to assure the loan is repaid.

beneficiary designation

When you enroll in the Plan, you may designate a beneficiary with the notarized consent of your spouse to receive any distribution in the event of your death. If you die while you have units in your account, your spouse or your beneficiary generally will receive the entire value of the units credited to your account in a lump sum payment.

domestic relations orders

Under law, the Plan administrators must follow certain court orders in domestic relation situations which give all or a part of your account to one or more alternate payees, such as a spouse, ex-spouse, child or other dependent. The order may require the payment to the alternate payee whether or not you have retired. You will be notified if a court order is received by the Plan administrators.

rollover contributions

The Plan permits under certain specified conditions rollovers from employee benefit plans of former employers. Distribution or withdrawal

of these contributions is likewise subject to specified legal and Plan conditions.

claims procedure

In the administration of any complex program, occasional questions or problems may arise. If you or your beneficiary have a claim for benefits under the Plan, it must be filed with the Plan administrators, Consumers Power Company, Employees' Savings and Incentive Plan, 212 West Michigan Avenue, Jackson, Michigan 49201. Written notice of the disposition of your claim will be sent within 30 days after the claim is filed. If the claim is denied, the reasons for denial will be set forth in writing. If a change could be made in the claim to bring about approval, an explanation of what must be done will be given.

You, your beneficiary or your duly authorized representative may appeal the denial of the claim, review pertinent documents and submit issues and comments in writing to the Plan administrators. If further consideration is denied, a hearing may be requested within 90 days after notification of the denied claim. The hearing will take place within 30 days, and the decision in writing will be sent within 30 days after the hearing.

statement of erisa rights

As a participant in the Employees' Savings and Incentive Plan of Consumers Power Company you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all Plan participants shall be entitled to:

- Examine, without charge, at the Plan Administrator's office and upon request at local Human Resources' offices all Plan documents and copies of all documents filed by the Plan with the U.S. Department of Labor, such as annual reports and Plan descriptions.
- Obtain copies of all Plan documents and other Plan information upon written request to the Plan administrators. The Administrator may make a reasonable charge for the copies.
- Receive a summary of the Plan's annual financial report. The Plan administrators are required by law to furnish each participant with a copy of the summary annual report.

In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries. No one, including your employer, your union or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining an Employees' Savings Plan benefit or exercising your rights under ERISA. If your claim for a benefit is denied in whole or in part, you must receive a written explanation of the reason for the denial. You have the right to have the Plan administrators review and reconsider your claim.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials from the Plan and do not receive them within thirty days, you may file suit in a federal court. In such a case, the court may require the Plan administrators to provide the materials and pay you up to \$100.00 a day until you receive the materials, unless the materials were not sent because of reasons beyond the Administrator's control. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court. If it should happen that Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

If you have any questions about your Plan, you should contact the Plan administrators. If you have any questions about this statement or about your rights under ERISA, you should contact the nearest Area Office of the U.S. Labor-Management Services Administration, Department of Labor.

securities information

An indeterminate number of interests in the Plan and 3,478,260 shares of common stock of CMS Energy issued and to be issued pursuant to the Plan are registered under the Securities Act of 1933 (Securities Act) with the Securities and Exchange Commission.

The summary description of the Plan and the Plan contained in this booklet provide information required by Part I, Item I of Form S-8 of the Securities Act and are hereby provided to the Plan Participants as part of the Securities Act Section 10(a) prospectus.

Certain documents which are filed regularly with the Securities and Exchange Commission are hereby incorporated by reference and are a part of this Securities Act Section (10)(a) prospectus and the registration statement. These include CMS Energy's annual report on Form 10-K, its quarterly reports on Form 10-Q, the annual report of the Plan on Form 11-K and interim reports on Form 8-K.

As a Participant in the Employees' Savings and Incentive Plan of Consumers Power Company, you are entitled to obtain without charge, upon written or oral request, the documents which are incorporated by reference into the Plan's registration statement. In addition, you may obtain without charge, upon oral or written request, other documents which are required to be delivered to employees pursuant to Rule 428(b) under the Securities Act. These documents may be obtained from the Retirement Plans Department, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, Telephone Number (517) 788-0251.

EMPLOYEES' SAVINGS AND INCENTIVE PLAN

OF CONSUMERS POWER COMPANY

SECTION 1. ESTABLISHMENT OF THE PLAN

1.1 Establishment of the Plan. Consumers Power Company (hereinafter sometimes referred to as "Consumers"), a Michigan corporation, with its principal executive office and place of business at Jackson, Michigan, has established a savings plan, effective as of November 1, 1961, which is described herein and which, as it may be amended from time to time, shall be known as the "EMPLOYEES' SAVINGS AND INCENTIVE PLAN OF CONSUMERS POWER COMPANY" (hereinafter referred to as the "Plan"). This restatement of the Plan specifically includes Amendments made through August 1, 1992.

SECTION 2. DEFINITIONS

2.1 Definitions. Whenever used in the Plan, the following terms shall have the respective meanings as set forth below, unless the context clearly indicates otherwise:

"Compensation" A Participant's regular straight-time salary or wages including cost of living allowances from an Employer, before any adjustment for Elective Employer Contributions under this Plan, or deductions for taxes, Social Security, etc., which, as so defined, shall continue to be used by the Company in the administration of salary and related benefit programs where applicable; provided however that annual Compensation of any Participant from the Employers shall be disregarded for all purposes under the Plan to the extent such Compensation exceeds \$200,000 (or such other cost-of-living adjusted amount as determined by the Secretary of the Treasury).

"Compensation Rate" The amount of a Participant's Compensation per pay period.

"Disability" Total and permanent disability of a Member as is established by evidence satisfactory to the Employer.

"Elective Employer Contributions"

Moneys or property received by the Trustee resulting from a Participant's action under Section 5.2.

"Employee"

Any person regularly employed by an Employer.

"Employer/ Employers"

Consumers (and its wholly owned subsidiaries) and the wholly owned subsidiaries of CMS Enterprises Company which were prior to June 12, 1987 wholly owned subsidiaries of Consumers and any successor or successors, and any one or more of the following corporations, CMS Energy Corporation, and its subsidiaries wholly owned, directly or indirectly, if the Board of Directors of such corporations determine to adopt the provisions of the Plan; and each of such companies.

"ESOP Loan"

An immediate allocation loan made by an Employer for the purpose of making contributions on behalf of the Employers contemplated by Sections 5.10 and 5.12 and which satisfies the requirements of Section 5.15.

"Fiscal Year"

A period commencing on January 1 of any year and ending on December 31 of such year.

"Former Participant"

A Participant who has died, has reached his Retirement Date, has had his employment with an Employer terminated on account of a Disability, or otherwise has terminated his employment with an Employer, or who because of change in employment status with an Employer is no longer eligible as an Employee under the Plan.

"Fund A"

The Investment Fund forming part of the Trust Fund consisting of the moneys which the Employers shall direct the Trustee to place in such fund, and such obligations issued or fully guaranteed by the United States of America or any agency or instrumentality thereof, corporate bonds, notes, certificates, or any other similar evidence of indebtedness, debentures (other than corporate bonds and debentures issued by the Employers), interest bearing deposits with financial institutions other than the Trustee, and contracts with insurance companies including but not

limited to deposit administration contracts, guaranteed investment contracts, or similar type contracts, together with all income and accretions thereon, and cash, temporary investments of any type, or cash equivalents, all within the limitations specified in the trust agreement.

"Fund B"

The Investment Fund forming part of the Trust Fund consisting of the moneys which the Employers shall direct the Trustee to place in such fund, and such common stocks and securities convertible into common stock (other than securities of the Employers), together with all income and accretions thereon, and cash, temporary investments of any type, or cash equivalents, all within the limitations specified in the trust agreement.

"Fund C"

The Investment Fund forming part of the Trust Fund consisting of the moneys or securities which the Employers shall direct the Trustee to place in such fund, common stock of CMS Energy Corporation, and other securities of CMS Energy Corporation convertible into common stock of CMS Energy Corporation, together with all income and accretions thereon, and cash, temporary investments of any type, or cash equivalents, all within the limitations specified in the trust agreement.

"Fund D"

The Investment Fund forming part of the Trust Fund consisting of the promissory notes of Members, which the Employers shall direct the Trustee to place in such fund, together with all income and accretions thereon.

"Hours of Service"

The hours during a fiscal year for which an Employee directly or indirectly is entitled to Compensation as paid or as becomes payable by an Employer for the performance of duties during the applicable computation period, and for other times for which no duties are performed (irrespective of whether the employment relationship has terminated) as for example, vacations, holiday, sickness and incapacity but excluding hours for payments for workers' compensation, unemployment compensation, payments under disability insurance, and retirement under this Plan,

provided overtime hours shall be at straight time only, and provided further, each Employee paid semimonthly shall be credited with ten (10) Hours of Service per day for each day for which the Employee is directly or indirectly compensated by an Employer. Each Employee will also be credited with an "Hour of Service" for each hour of back pay, either awarded or agreed to by an Employer, irrespective of mitigation of damages. The aforesaid hours shall be credited in accordance with Department of Labor Regulation 2530.200b2(b) and 2(c), when applicable.

"Inactive Participant"

A Participant who is not currently making Participant contributions under the Plan, and for whom Elective Employer Contributions are not currently being made under the Plan.

"Incentive Contributions"

Money or property received by the Trustee under Section 5.12.

"Investment Fund"

An investment fund forming part of the Trust Fund as may be established by the Plan administrators from time to time, all within the limitations specified in the Trust Agreement.

"Investment Manager"

Any person, firm or corporation, which is registered as an Investment Adviser under the Investment Advisers Act of 1940; is a bank as defined in that Act; or is an insurance company qualified to perform management services in more than one state, and which has acknowledged in writing that it is a fiduciary with respect to the Plan.

"Leased Employee"

Any person (other than an Employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Section 414(n)(6) of the Internal Revenue Code of 1986, as amended) on a substantially full-time basis for a period of at least one year, and such services are of a type historically performed by employees in the business field of the recipient

employer. Contributions or benefits provided a leased employee by the leasing organization which are attributable to service performed for the recipient employer shall be treated as provided by the recipient employer.

A leased employee shall not be considered an Employee of the recipient if: (i) such employee is covered by a money purchase pension plan providing: (1) a non-integrated employer contribution rate of at least ten percent (10%) of Compensation, as defined in Section 2.1 of the plan, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under Section 125, Section 402(a)(8), Section 402(h) or Section 403(b) of the Code; (2) immediate participation; and (3) full and immediate vesting; and (ii) leased employees do not constitute more than twenty percent (20%) of the recipient's non-highly compensated work force. Notwithstanding any foregoing provisions to the contrary, leased employees shall not be considered Participants of this Plan.

"Matching Employer Contributions"

Moneys or property received by the Trustee under Section 5.10.

"Member"

A Participant, Inactive Participant, or Former Participant.

"Named Fiduciary(s)"

The Employers who shall have authority to control and manage the operation and administration of the Plan.

"Participant"

Any Employee who meets the eligibility requirements of the Plan, who elects to enroll under the Plan, and who is currently making Participant Contributions under the Plan or for whom Elective Employer Contributions are being made under the Plan.

"Participant Contributions"

Moneys received by the Trustees from a Participant under Section 5.1.

"Retirement Date"

The Valuation Date immediately preceding the date a Member actually retires from employment with his Employer on his Normal, Early or Deferred Retirement Date as set forth below:

- (a) **Normal Retirement Date.** The first day of the month upon which the Employee reaches "Retirement Age" as defined in Section 216(l) of the Social Security Act, as amended and in effect on June 1, 1989.
- (b) **Early Retirement Date.** The date, which shall be the first day of a month, on which an Employee retires at his election on or after the date which is 120 months preceding Normal Retirement Date.
- (c) **Deferred Retirement Date.** The date, which shall be the first day of a month, of retirement after Normal Retirement Date.

"Rollover Contributions"

Moneys or property received by the Trustee under Section 5.14.

"Service"

The number of years of employment with an Employer; provided, however, that successive periods of employment with any of the Employers shall be added together in calculating a period of Service. Moreover, employment with an Employer shall not be regarded as having been interrupted by, and Service shall include, periods of time during which a person is laid off by an Employer on account of lack of work, provided he returns to work with an Employer within a reasonable time after he is offered reemployment; and periods of time during which a person is on leave of absence from an Employer to serve in the Armed Forces of the United States or of any State thereof, provided he returns to work with an Employer within the time prescribed by law for the exercise of reemployment rights; and periods of time during which a person is on any leave of absence authorized by an Employer. A year of Service is any Fiscal Year during which the Employee completes at least 1,000 Hours of Service. Further, "Service means all employment on or after

temporary employment, with an Employer, including companies which are members of a controlled group with the Employer within the meaning and application of Section 414 of the Code and with entities which are predecessors to an Employer as provided in the regulations issued under ERISA.

"Trust Fund" The moneys, securities, or other property held by the Trustee under the trust agreement between the Trustee and the Employers, including the investment funds defined herein, held by the Trustee and into which all contributions and earnings thereon shall be paid, and out of which all payments and distributions shall be made.

"Trustee" The bank, banking association or trust company with which the Employers enter into a trust agreement as provided in the Plan.

"Valuation Date" The last business day or any other business day of each calendar month designated by Consumers.

"Voluntary Contributions" Moneys received by the Trustee from a Participant under Section 5.3.

2.2 Gender. Any masculine terminology used herein shall also include the feminine.

SECTION 3. ELIGIBILITY

3.1 Eligibility. Each Employee is eligible to become a Participant on date of employment. Each Employee represented on July 1, 1992 by the Utility Workers Union of America, AFL-CIO, and its Michigan State Utility Workers Council, with respect to Employees of Consumers Power Company, shall be first eligible to become a Participant on August 1, 1992 for the first pay period beginning on or after such date. If applicable, each Employee of Michigan Gas Storage Company represented on September 1, 1992 by Local 358 of the Utility Workers Union of America, AFL-CIO, shall be first eligible to become a Participant on October 1, 1992 for the first pay period beginning on or after such date. If a former Participant is reemployed by an Employer as an Employee, he shall be eligible to become a Participant on the first pay date next following the date of such reemployment.

SECTION 4. ENROLLMENT

4.1 Enrollment. An Employee eligible to become a Participant may enroll under the Plan by making an application in writing on a form supplied by his Employer and, upon receipt by the Plan administrators, such enrollment shall become effective on a pay date following the date he is eligible to become a Participant.

4.2 Acceptance of Plan by Participant. The filing of an application for enrollment with the Plan administrators under the Plan shall constitute an acceptance of the terms and provisions of the Plan.

SECTION 5. CONTRIBUTIONS

5.1 Participant Contributions. Each Participant may, so long as he remains a Participant, contribute to the Plan each pay period not less than one percent (1%) nor more than six percent (6%) of his then Compensation Rate; provided, however, that such six percent (6%) maximum shall be reduced by the percent, if any, elected under Section 5.2. Contributions of a Participant shall be deducted by his Employer on each pay date from the Compensation of such Participant with respect to such pay period. A Participant may adjust the rate of his contribution at any time by giving his Employer advance notice in writing. A Participant may discontinue contributions as of any pay date by giving his Employer advance notice in writing, but if a Participant discontinues contributions without at the same time making an election under Section 5.2, he may not resume contributions before the first pay date following the lapse of three (3) months from the date of discontinuance. Each Inactive Participant or Former Participant, who is eligible to become a Participant, may resume contributions under the Plan, by giving his Employer advance notice in writing.

5.2 Elective Employer Contributions. Each Participant may, so long as he remains a Participant, elect on a form provided by his Employer, to have his Compensation reduced each pay period not less than one percent (1%) nor more than nine percent (9%) of his then Compensation and to have his Employer contribute such amount to the Plan out of its current or accumulated earnings and profits; provided however, that a Participant whose annual Compensation is less than \$60,535 (or such larger amount as the Plan administrators may prescribe) may elect up to twelve percent (12%) of his then Compensation. A Participant may adjust the rate of such contribution at any time by giving his Employer advance notice in writing. A Participant may discontinue his election as of any pay date by giving his Employer advance notice in writing, but if a Participant discontinues his election without at the same time electing

to make Participant Contributions under Section 5.1, he may not make another election before the first pay date following the lapse of three (3) months. Each Inactive Participant or Former Participant, who is eligible to become a Participant, may elect under this Section 5.2 by giving his Employer advance notice in writing. Notwithstanding the foregoing, the Employer may reduce the percent elected for any group of or all Participants for purposes of complying with Section 401(k) of the Internal Revenue Code or regulations adopted pursuant thereto. In such event, such amount not considered Elective Employer Contributions shall be considered as Participant Contributions under Section 5.1 or Voluntary Contributions under Section 5.3 as the Plan administrators may deem appropriate.

5.3 Voluntary Contributions. Each Participant may, so long as he remains a Participant, contribute to the Plan each pay period, not less than one percent (1%) nor more than ten percent (10%) of his then Compensation Rate; provided, however, that such ten percent (10%) shall be reduced by the percent, if any, by which contributions elected under Section 5.2 exceed six percent (6%). Contributions of a Participant shall be deducted by his Employer on each pay date from the Compensation of such Participant with respect to such pay period. A Participant may adjust the rate of his contribution at any time by giving his Employer advance notice in writing. A Participant may discontinue contributions as of any pay date by giving his Employer advance notice in writing.

5.4 Designation of Investment Funds. At the time of designation of his Participant, Elective Employer, Voluntary, or Rollover Contributions under the Plan, each Participant shall specify the proportions of such contributions to be allocated to his account in various Investment Funds. A Participant may elect to allocate such contributions entirely to one such fund or he may elect to have such contributions allocated between two (2) or more of such funds; provided however, Participant and Voluntary Contributions may not be allocated or reallocated to Fund C unless an effective Registration Statement has been filed with the Securities and Exchange Commission (SEC) or such contributions are otherwise exempt under the Security Act of 1933. Since the selection of investments involves an element of risk, the Participant shall make his own decision concerning the investment of such contributions and no representative of an Employer, or the Trustee, is authorized to make any recommendation to any Participant concerning the various investment options which are available under the Plan. Changes in the allocation of a Participant's future contributions among the available investment funds may be effected at any time by giving his Employer advance notice in writing of each such change. All or a part of a Member's past Participant, Elective Employer, Voluntary, or Rollover Contributions which are in a

Member's account on a Valuation Date may be reallocated among the Investment Funds on a Valuation Date by giving his Employer advance notice in writing of such change. If a reallocation of such prior contributions is made, the value of the units to be reallocated shall be determined as of the Valuation Date selected by such Member and such units shall be cancelled. Units of value equal to the value of the units that were cancelled shall be placed in the Investment Fund(s), as requested by such Member, as of the Valuation Date selected by such Member. The value of the units shall be determined under the provisions of Section 7.2. A Member may not select a Valuation Date which precedes the date of such request for a change in allocation of such contributions.

5.5 Inactive Participants. Each Participant whose contributions have been discontinued in accordance with the provisions of Section 5.1 or 5.2, so that contributions are no longer being made under either Section, shall thereupon become an Inactive Participant.

5.6 Changes in Employment Status. If a Member's employment status with an Employer is changed so that he is no longer eligible as an Employee under the Plan, he shall be a Former Participant and, as such, he may not make or have made by his Employer any contributions under the Plan. However, his account shall share in the net income or loss of the Trust Fund. If such Former Participant's employment status with an Employer is again changed so that he is eligible as an Employee under the Plan, he may resume participation as of a pay date following the date of such later change in employment status.

5.7 Transfers of Employment From One of the Employers to Another. If a Member's employment is transferred from one of the Employers to another, the status of such Member as a Participant, Inactive Participant or Former Participant shall not be changed by reason of such transfer of employment.

5.8 Transfer of Participant Contributions and Voluntary Contributions to Trustee. All payroll deductions of Participant Contributions and Voluntary Contributions shall be held in trust by the Employers until paid over to the Trustee. The amount of such deductions shall be transferred to the Trustee monthly at such time, or times, as may be convenient to the Employers. Such transfers to Fund C may be in the form of Company securities as described in Section 5.10 for Matching Employer Contributions and shall be valued in the manner therein provided.

5.9 Transfer of Elective Employer Contributions to Trustee. All Elective Employer Contributions shall be transferred to the Trustee

monthly at such time or times as may be convenient to the Employers. Such transfers to Fund C may be in the form of Company securities as described in Section 5.10 for Matching Employer Contributions and shall be valued in the manner therein provided.

5.10 Matching Employer Contributions. Each of the Employers shall contribute to the Trustee each month out of its current or accumulated earnings and profits an amount equal to fifty percent (50%) of that amount contributed by or for each of its Participants for such month pursuant to Sections 5.1 and 5.2 as is not in excess of six percent (6%) of each such Participant's then Compensation Rate. All Matching Employer Contributions shall be allocated to Fund C. Such contributions may, but need not be, in the form of authorized but unissued common stock of CMS Energy Corporation or other securities convertible into such common stock, treasury securities, or securities of CMS Energy Corporation acquired by the Employers for purposes of such contributions. For purpose of such contributions, such common stock or other securities shall be valued at the average of the closing price for such common stock or other security, as shown in a composite report of one or more generally recognized Exchanges including the New York Stock Exchange for the five (5) trading days preceding the date of transfer to the Trust.

5.11 Crediting of Matching Employer Contributions to Participants. The contributions of each of the Employers shall be credited to the accounts of its Participants in the same proportion as the amount of contributions of or for each Participant of such Employer for such month pursuant to Sections 5.1 and 5.2 not in excess of six percent (6%) of such Participant's then Compensation Rate bears to the total amount of such contributions of all Participants of such Employer for such month.

5.12 Incentive Contributions. Each year the Company will determine and publish a performance goal for such Fiscal Year which shall consist of two factors: (1) earnings and (2) Consumers' gas and electric rates for customers as compared with those of other major investor-owned utilities. Seventy percent (70%) of the award will be based on earnings and thirty percent (30%) on energy rates. If eighty percent (80%) of the determined performance goal for the year is achieved, the Employer will contribute to the Trustee out of its current or accumulated earnings and profits an amount equal to ten percent (10%) of that amount contributed for such Fiscal Year pursuant to Sections 5.1 and 5.2 as is not in excess of six percent (6%) of all Participants' Compensation, by or for all Participants who are such as of December 31 of such Fiscal Year and Former Participants who retired, died, were disabled, or were laid off for lack of work during such Fiscal Year; if ninety percent (90%) of the

determined goal is achieved, the contribution shall be twenty-five percent (25%); if 100%, the contribution will be forty percent (40%); and if 110%, the contribution will be fifty percent (50%). The contribution percentage will be prorated based on actual achievement percent of performance goal between eighty percent (80%) and 110%. The entire Incentive Contributions shall be allocated to Fund C. Such contributions may be in the form of Company securities as described in Section 5.10 and shall be valued in the manner therein provided. The Plan administrators may exclude Incentive Contributions to the accounts of certain Officers of Employers.

5.13 Limitation on Participant Contributions, Elective Employer Contributions and Matching Employer Contributions to Participants. Notwithstanding the foregoing, there shall not be credited to any Participant's account during a calendar year an amount exceeding the lesser of \$30,000 (or such larger amount as the Secretary may prescribe) or twenty-five percent (25%) of the Participant's Compensation representing the sum of (a) any Employer's contribution; (b) the Participant's contributions; and (c) forfeitures. The foregoing limitations of this Section 5.13 for a Participant shall be further reduced with respect to Participants eligible in this Plan and in other defined contribution plans of the Employer such that such limitations with respect to this Plan and such other defined contribution plan or plans shall apply as aggregate limitations to all defined contribution plans of the Employer.

Participant contributions and/or Employer contributions under this Plan may be further reduced to the extent necessary as determined by the Plan administrators to prevent the sum of the following fraction, computed as of the close of the Plan's Fiscal Year, from exceeding 1.0:

The fraction obtained by dividing the Participant's projected annual Retirement Income under the Employer's Pension Plan by the lesser of (i) 125% of the dollar limit in effect under Section 415(b)(1)(A) of the Internal Revenue Code for the limitation year or (ii) 140% of the Participant's average Compensation for his highest three consecutive years of service.

If as a result of either the allocation of forfeitures or a reasonable error in estimating a Participant's annual Compensation, the annual additions for a particular Participant would cause the limitations of Section 415 applicable to that Participant for the limitation year to be exceeded, the excess amounts in the Participant's account must be used to reduce Matching Employer Contributions for the next limitation year (and succeeding limitation years, as necessary) for that Participant if that Participant is covered by the Plan of the Employer as of the end of the

limitation year. However, if that Participant is not covered by the Plan of the Employer as of the end of the limitation year, then the excess amounts must be held unallocated in a suspense account for the limitation year and allocated and reallocated in the next limitation year to all of the remaining Participants in the Plan (subject to the limitations of Section 415) before any Matching Employer Contributions and Employee contributions which would constitute annual additions may be made to the Plan for that limitation year. Furthermore, the excess amounts must be used to reduce Matching Employer Contributions for the next limitation year (and succeeding limitation years, as necessary) for all of the remaining Participants in the Plan. For purposes of this paragraph, excess amounts may not be distributed to Participants or Former Participants.

5.14 Rollover Contributions. The Plan may receive on behalf of a member any portion of a qualified total distribution as defined in Section 402(a) of the Internal Revenue Code as amended, resulting from participation of the Member in an employee benefit plan maintained by a former employer. Any qualified total distribution shall not include employee contributions as defined in Section 402(a) of the Internal Revenue Code as amended. The provisions of Sections 5.10, 5.11, 5.12 and 5.13 shall not apply to Rollover Contributions. The Plan administrators in their sole discretion may require satisfactory evidence from the Member or from a transferring Trustee that the distribution is a qualifying rollover distribution and that the prior employee benefit plan is a qualified Plan under the Internal Revenue Code. The Plan administrators may establish any other terms or conditions as they may deem appropriate to accept such transfer.

5.15 Immediate Allocation Loan. The proceeds of an immediate allocation loan shall be contributed by the Employers to the Trustee within twelve (12) months of the closing date of the loan and such amounts shall be allocated to Participants in accordance with the provisions of Sections 5.10 and 5.12. The Trustee shall purchase shares of common stock of CMS Energy Corporation within thirty (30) days of receipt of each such contribution. An Employer may enter into one or more such loans in accordance with the terms of this Plan and the Trust Agreement and in conformity with any applicable federal or state law. Each such loan shall be for a specific period not to exceed 84 months. The Employers shall be the sole guarantor of such loan and the assets of this Plan shall not be encumbered in any way by such loan.

With respect to any Matching Employer or Incentive Units allocated to a Participant's account with the proceeds of an immediate allocation loan, if the Member has attained age 55 and has been a Participant in the Plan

for ten (10) years after September 1, 1987, he may, but need not, diversify the portion of his account representing twenty-five percent (25%) of such units within ninety (90) days after the close of each Fiscal Year of a five (5) year period beginning with the year following the year in which he has attained age 55 and completed ten (10) years of participation, except for the last year of such period when the percentage available for diversification shall be fifty percent (50%). Such Member may elect to have such amount distributed to him or be allocated to any other fund offered pursuant to the Plan. Such distribution or reallocation shall be effected as of the Valuation Date coincident with or next succeeding the Member's election.

5.16 Compliance with Applicable Law. This Plan shall be tested in compliance with the requirements of Section 401(k) and 401(m) of the Internal Revenue Code of 1986 and regulations issued in accordance with said sections, and the Plan shall operate in compliance with all applicable requirements. Specifically, the provisions and requirements of Sections 410(k)3 and 401(m)2 and applicable regulations are incorporated by reference. Participants covered by a collective bargaining agreement shall be tested separately from other Participants as a group.

SECTION 6. TRUST FUND AND THE TRUSTEE

6.1 Trust Agreement. The Employers will enter into a trust agreement with a bank, banking association, or trust company. The trust agreement shall be deemed to form a part of the Plan and any and all rights and benefits which may accrue to any Member under the Plan or his beneficiaries shall be subject to all the terms and provisions of the trust agreement. It will provide for the administration of the Trust Fund by the Trustee. The Employers shall have the right to change the Trustee and to add trustees, and the right to terminate or amend the trust agreement, in whole or in part, provided that no such termination, amendment or other action by the Employers shall divert any part of the Trust Fund to purposes other than the exclusive benefit of the Members under the Plan or their beneficiaries. The Trustee shall account to the Employers from time to time for all contributions under the Plan received by it and the earnings on the Trust Fund.

6.2 Investment Funds. The investments of the Trust Fund shall be held and maintained by the Trustee in four (4) separate funds to be known as Fund A, Fund B, Fund C, and Fund D as hereinbefore defined or such other Investment Funds as may be established from time to time by the Plan administrators. The contributions of the Members shall be allocated to such Funds by the Trustee, pursuant to the direction of the

Employers. The entire Matching Employer and Incentive Contributions of the Employers shall be allocated to Fund C. All of the foregoing provisions of this Section are subject to the provisions of Section 5.13.

6.3 Investment Manager. The Employers may at any time enter into an agreement with an Investment Manager to employ it to direct the Trustee with respect to the investment of all or a portion of the Trust Fund.

6.4 Reinvestment of Investment Funds. All interest, dividends, and other income produced by Investment Funds shall be reinvested in the same Investment Fund which produced such interest, dividends and other income.

6.5 Ownership of the Trust Fund. The Trustee shall hold the Trust Fund for the exclusive benefit of the Members under the Plan, or their beneficiaries. However, the ownership of the Trust Fund shall be in the Trustee, as such, and, except as otherwise provided herein, the Trustee shall have the same powers of management with respect to any and all of the assets of the Trust Fund as if it were the absolute owner thereof.

6.6 Voting of the Common Stock of CMS Energy Corporation. Each Member under the Plan shall be entitled to give voting instructions with respect to his interest in the common stock, including fractional shares, of CMS Energy Corporation held by the Trustee in Fund C. Written notice of any meeting of shareholders of CMS Energy Corporation and a request for voting instructions will be mailed by CMS Energy Corporation to each Member for return to the Trustee or its designee. The Trustee shall vote the common stock of CMS Energy Corporation held by the Trustee in accordance with the written instructions received from the Members. The Trustee shall vote only those shares of common stock of CMS Energy Corporation held by the Trustee for which it receives written instructions from Members.

6.7 Expenses and Taxes. Brokerage fees, commissions, stock transfer taxes and other charges and expenses in connection with the purchase and sale of securities for each investment fund, or distributions therefrom, shall be charged to such fund. Any income and other taxes payable with respect to each investment fund shall likewise be charged to such fund. Except as otherwise provided in Section 14.1, all other expenses and charges incurred in the administration of the Plan, including the Trustee's fees and expenses, shall be paid by the Employers, with each Employer bearing such portion thereof as may be mutually agreed by them.

6.8 Valuation of Trust Fund. The value of each Investment Fund shall be determined separately by the Trustee as of each Valuation Date. In determining such value the Trustee shall take into account, among other things, the market value of the securities held, accrued income and expense, and uninvested cash.

SECTION 7. MEMBERS' ACCOUNTS

7.1 Accounts and Records. The accounts and records of the Plan shall be maintained by the Employers and will disclose the status of the accounts of the Members under the Plan in each Investment Fund.

7.2 Method of Determining Interests of Members. The interest of each Member under the Plan in an Investment Fund shall be represented by units allocated to his account. The initial value of each unit in an Investment Fund shall be One Dollar (\$1.00) and one unit will be credited to each Member's account for each dollar paid into the Trust Fund on his behalf prior to the first Valuation Date. On each subsequent Valuation Date the value of a unit in each fund shall be determined by dividing the value of such fund on that date by the number of outstanding units. Any amount paid into the Trust Fund on behalf of a Member subsequent to the first Valuation Date shall be allocated to such Member as of the most recent Valuation Date and credited to his account in terms of units, the number of which shall be calculated by dividing such amount so allocated by the then unit value. The units credited to a Member's account in each Investment Fund shall be designated "Participant units," "Elective Employer units," "Voluntary units," "Matching Employer units," "Incentive units," or "Rollover units," as the case may be, to reflect the source of the contributions as provided in Sections 5.1, 5.2, 5.3, 5.10, 5.12 and 5.14. Each unit of each investment fund shall have an equal beneficial interest in a fund and none shall have any preference or priority over any other. All determinations made by the Plan administrators shall be made in accordance with generally accepted principles of trust accounting, and such determinations when so made by the Plan administrators shall be conclusive with respect to the facts so found and shall be binding upon the persons having any interest under the Plan.

7.3 Accounting to Members. Employers shall, not less frequently than annually, mail to each Member having an account balance under the Plan a statement setting forth such Member's account under the Plan. Such statement shall be deemed to have been accepted as correct unless written notice of specific objection thereto is received by the Employer within thirty (30) days after such mailing to the Member.

SECTION 8. DISTRIBUTION

8.1 Retirement, Disability or Layoff. As of a Member's Retirement Date, or the date his employment with his Employer is terminated on account of a Disability, or the date he is laid off by his Employer on account of lack of work, the value of the units credited to the Member's account shall be available for distribution to such Member. Such Member shall elect one of the following methods of distribution of the value of the units credited to the Member's account in each Investment Fund, (i) in a lump sum; (ii) in annual installments of approximately the same number of units over not more than the number of years shown in Appendix A; (iii) deferment of payment; provided however, that if the distribution is occasioned by layoff the member may select this option (iii) only if the taxable portion of such distribution exceeds Three Thousand Five Hundred Dollars (\$3,500). With respect to (i), the value of the distribution will be based on the entire value (as of the Valuation Date next succeeding or coincident with such event) of the units credited to the Member's account. With respect to (ii), the value of each distribution will be based on the entire value (as of the Valuation Dates selected by the Members) of the units to be distributed on such Valuation Date. The initial distribution shall be within the twelve (12) month period following the Member's Retirement; Disability; or Layoff. With respect to (iii), the Member shall notify the Plan administrators prior to the future Valuation Date as of which he elects a lump sum or annual installments as provided in subparagraph (ii) above. Such payments from Investment Funds other than Fund C will be made only in cash. Lump sum distributions from Fund C will be made in common stock of CMS Energy Corporation and/or cash. Matching Employer Contributions shall be non-forfeitable upon the Employee's attainment of normal retirement age. A distribution must begin no later than April 1 of the year following the year in which the Member attains age 70-1/2 whether such Member is retired or an Employee. Unless the Member elects otherwise on or before his Retirement Date, his account value, after any required tax withholding, will be paid to him in a lump sum as provided above, in which event such distribution from Fund C will be made only in common stock of CMS Energy Corporation. (Cash will be paid in lieu of fractional shares.) Notwithstanding any other provision, a Member who has retired may reallocate Matching Employer and Incentive units to other Investment Funds as of a future Valuation Date coincident with or subsequent to his retirement.

8.2 Death. Upon the death of a Member prior to his Retirement Date there shall be paid to the Member's spouse, if the Member is married, or if such spouse consents and such consent is witnessed by a Notary Public to the beneficiary or beneficiaries designated by such Member in

a lump sum, the entire value of the units credited to the account of such Member in each Investment Fund, unless the Member has elected installment payments for such spouse or for such beneficiary or beneficiaries in which event the provisions of Section 8.1 governing such payments shall be applicable. Upon the death of a Member following the date he commences to receive a distribution hereunder, the entire value of any units credited to his account in each Investment Fund, shall be paid to his spouse, if the Member is married, or if such spouse consents and such consent is witnessed by a Notary Public to his designated beneficiary or beneficiaries in a lump sum in cash, unless the Member has elected installment payments for such spouse or for such beneficiary or beneficiaries in which event the provisions of Section 8.1 governing such payments shall be applicable. However, before a distribution under this Section 8.2 is made to such beneficiary or beneficiaries, the Employer may require proof satisfactory to it that the Member was not married at the time of death.

8.3 Termination of Employment. In the event a Member's employment with his Employer shall be terminated for any reason other than those specified in Sections 8.1 and 8.2, there shall be paid to such Member, the value of any Participant, Elective Employer, Voluntary, or rollover units credited to his account, in a lump sum at his election, either as of the Valuation Date next succeeding or coincident with the date of termination of employment, or (if the amount of the distribution exceeds Three Thousand Five Hundred Dollars (\$3,500)) as of the Valuation Date coincident with his Normal Retirement Date, plus the value at such Valuation Date of ten percent (10%) of any Matching Employer and Incentive units credited to his account in such investment funds, determined as of the Valuation Date next succeeding or coincident with his termination of employment, for each of the first four (4) years of Service he had with the Employers, and twenty percent (20%) for each of the next three (3) years of Service up to one hundred percent (100%) of the value of any Employer units credited to his account after seven (7) full years of Service he had with the Employers. If the Member is paid as of the Valuation Date next succeeding or coincident with the date of termination of employment and if the total value of (i) such Member's Participant, Elective Employer or Voluntary units credited to his account in all Investment Funds, and of (ii) any Matching Employer units payable to him pursuant to the next preceding sentence, and of (iii) any withdrawals previously paid to such Member is less than the total Participant, Elective Employer and Voluntary Contributions allocated to such funds, then such Member shall be entitled to receive in addition such of the remaining part of the value of the Matching Employer units credited to his account in the investment funds as will not exceed the difference between the total Participant, Elective Employer or

Voluntary Contributions and the total value of (i) his Participant, Elective Employer, and Voluntary units in the investment funds, and of (ii) any Matching Employer units payable to him pursuant to the next preceding sentence, and of (iii) any withdrawals previously paid to him. Any Matching Employer and Incentive units credited to such Member's account which are not payable to him under this Section 8.3 shall be forfeited and shall be applied to reduce the Matching Employer's Contributions to the Plan; provided, however, that if the Member returns to the employ of an Employer within twenty-four (24) months after his termination, and if the Plan has not been terminated or partially terminated at such time, and if at any time after his reemployment, the Member repays the entire amount of the units distributed at termination, the amounts previously forfeited, if any, shall be credited to the Member's account balance as Matching Employer units. In such case, the Employer whose Matching Contributions were reduced as a result of such forfeiture shall contribute an amount equal in value to such units credited to the Member's account. The repayment of Participant, Elective Employer or Voluntary units will be allocated to a fund or funds selected by the Participant on the next succeeding Valuation Date following such repayment. The units so credited to the Participant's account will be determined based on the unit value of such fund or funds on such Valuation Date. A transfer of employment from one of the Employers to the other shall not be considered a termination of employment under this Section 8.3. A Member's or a Participant's account balances resulting from Participant, Elective Employer, Voluntary or Rollover Contributions, shall be non-forfeitable at all times. Notwithstanding any foregoing provision to the contrary, there shall be no distribution of Matching Employer units in excess of Three Thousand Five Hundred Dollars (\$3,500) to a Member whose employment has terminated and which would result in a forfeiture of any remaining part of the value of Matching Employer units credited to such Member's account which is not payable to him under this Section 8.3 unless said Member consents to such distribution.

8.4 Withdrawals. In the event a Member requests the withdrawal of all or part of the value of his account balance under the Plan while remaining in the employ of an Employer, such withdrawal will be made as follows, at the Member's option:

- (a) **Withdrawal of the value of all or any portion of the Participant units credited to his account:** The value of the distribution will be based on the entire value (as of a Valuation Date chosen by the Member succeeding or coincident with the date of the withdrawal request) of the units to be withdrawn. A Member may withdraw all or a part of the value of his Participant units; however, when a Member has

withdrawn all or a part of his Participant units, he shall thereupon be ineligible to make another withdrawal for a period of one (1) year from such date. Withdrawal of units from Investment Funds other than Fund C will be made only in cash; withdrawal of units from Fund C, if applicable, will be made in common stock of CMS Energy Corporation and/or cash; and/or

- (b) Withdrawal of the value of all or any portion of the Elective Employer units credited to his account: The value of the distribution will be based on the entire value (as of a Valuation Date chosen by the Member succeeding or coincident with the date of the withdrawal request) of the units to be withdrawn. A Member may not withdraw all or a part of the value of his Elective Employer units unless he has attained the age of 59-1/2 or upon the existence of a hardship by the Member. If the Member experiences an immediate and heavy financial need for (i) medical expenses for the Member, his spouse or dependents, (ii) expenses for the purchase of Member's principal residence, (iii) college tuition for the next term for the Member, his spouse, children, or dependents, (iv) expenses to prevent eviction from the Member's principal residence, and the withdrawal is necessary to meet such financial need, he may apply for a withdrawal of that portion of the value of his Elective Employer units which does not represent earnings on his Elective Employer Contributions earned after January 1, 1989. Such application shall be in such form as the Administrators shall prescribe and shall include a certification by the Member that the financial need cannot be met by (i) reimbursement or Compensation by insurance or otherwise, (ii) reasonable liquidation of his assets without creating an additional, immediate and heavy financial need, (iii) stopping his contributions to the Plan, or (iv) all other distributions and nontaxable loans that the Member can obtain from any qualified retirement plan and through loans available from commercial sources on reasonable terms and the amount needed is not reasonably available from all resources of his spouse and/or minor children, if such applies. The withdrawal shall not include any Elective Employer units credited to his account within two (2) full years preceding the date of withdrawal unless the Member has continuously been a Participant in the Plan for a period of at least sixty (60) full calendar months preceding the withdrawal and has not, within such period, received a withdrawal under Section 8.4(a), (b) or (d). Such withdrawal will be made only in cash; and/or
- (c) Withdrawal of the value of all or any portion of the Voluntary units credited to his account: The value of the distribution will be based on the entire value (as of a Valuation Date chosen by the Member succeeding or coincident with the date of the withdrawal request) of

the units to be withdrawn. Withdrawal of units from an Investment Fund other than Fund C will be made only in cash; withdrawal of units from Fund C, if applicable, will be made in common stock of CMS Energy Corporation and/or cash; and/or

- (d) Withdrawal of all or any portion of the units credited to his account representing Matching Employer or Incentive Contributions as hereinafter determined: The value of any such Employer units that a Participant may withdraw is equal to ten percent (10%) of the value (as of a Valuation Date chosen by the Member succeeding or coincident with the date of the withdrawal request) of any such Employer units credited to his account for each of the first (4) four years of Service he had with the Employers, and twenty percent (20%) for each of the next three (3) years of such Service, up to one hundred percent (100%) of the value of any Matching Employer or Incentive units credited to his account after seven (7) years of Service he had with the Employers. A Member may withdraw all or a part of the value of his vested Matching Employer or Incentive units. Withdrawal of Matching Employer or Incentive units from Fund C, if applicable, will be made in common stock of CMS Energy Corporation and/or cash.
- (e) Withdrawal of the value of all or any portion of the Rollover units credited to his account: The value of the distribution will be based on the entire value (as of a Valuation Date chosen by the Member succeeding or coincident with the date of the withdrawal request) of the units to be withdrawn. The Plan administrators shall apply the requirements of paragraph (b) to all of such distribution unless they shall have received evidence satisfactory to them that all or part of such distribution is not attributable to contributions made to an employee benefit plan pursuant to Section 401(k) of the Internal Revenue Code.

The portion of the Matching Employer and Incentive units whose value is so included in the value of the account balance of such Member shall be his vested Matching Employer and Incentive units.

If such Member requests the withdrawal of his entire account balance of Participant and Elective Employer units and if the total value of (i) such Member's units credited to his account in Fund A, Fund B, and Fund C, and of (ii) any vested Matching Employer units payable to him pursuant to this Section 8.4, and of (iii) any withdrawals previously paid to such Member is less than his total Participant and Elective Employer Contributions under the Plan, then, in addition, such Member shall be entitled to receive such of the remaining part of the value of the Matching Employer units credited to his account in the investment funds

as will not exceed the difference between his total Participant Contributions and Elective Employer Contributions and the total value of (i) his Participant and Elective Employer units in the investment funds, and of (ii) any vested Matching Employer units payable to him pursuant to this Section 8.4, and of (iii) any withdrawals previously paid to him. Notwithstanding any of the foregoing provisions of this Section 8.4, such Member may not withdraw any part of the value of Matching Employer or Incentive units credited to his account until such units have been so credited to his account for at least two (2) full years unless the Member has continuously been a Participant in the Plan for a period of at least sixty (60) full calendar months preceding the withdrawal and has not within such period received a withdrawal under Section 8.4(a), (b) or (d). If a Member requests the withdrawal of all of such units, the portion of such units which is not vested and not otherwise payable to him under this Section 8.4 shall be forfeited. If a Member requests the withdrawal of a part of his Matching Employer or Incentive units, the portion of such units which is not vested shall be forfeited in the proportion that the amount withdrawn bears to the value of such Member's account balance. The forfeited amounts of Matching Employer and Incentive units credited to a Member's account shall be applied to reduce the Employer's contributions to the Plan; provided, however, that if the Member repays the entire amount previously withdrawn, the amount forfeited as a result of such withdrawal, if any, shall be credited to the Member's account balance as Matching Employer units and the Employer, whose contributions were reduced as a result of the forfeiture, shall contribute an amount equal in value to the units credited to the Member's account. The actual number of such units shall be determined by dividing the amount forfeited by the value of the units on the next succeeding Valuation Date. Notwithstanding any other provision of this Section 8.4, if a Member requests the withdrawal of all or part of his account balance of Participant, Elective Employer, or Voluntary Units, no portion of his Matching Employer or Incentive Units shall be forfeited because of such request.

When a Member has withdrawn all or part of his Matching Employer and/or Incentive units, he shall thereupon be ineligible to make contributions as provided under Sections 5.1 and 5.3, or to elect to have contributions made for him under Section 5.2 of the Plan and may only resume participation if otherwise eligible under the Plan, on the first administratively feasible or any succeeding pay date next following the lapse of a period of time from the date of such withdrawal as follows:

Amount of Withdrawal of Matching Employer and Incentive Units	Period of Time
Less than 25% of the value	3 full calendar months
25% or more, but less than 50% of the value	6 full calendar months
50% or more, but less than 75% of the value	9 full calendar months
75% or more of the value	12 full calendar months

8.5 Application for Distribution. Each person eligible to receive a distribution under the Plan shall apply for such distribution by signing an application form to be furnished by the Employer which last employed the Member requesting the distribution or through whom such distribution is claimed. Each such person shall also furnish such Employer with such documents, evidence, data or information in support of such application as the Employer deems necessary or advisable.

SECTION 9. LOANS

9.1 Loans to Members. The Trustee shall, upon the approval and direction of the Plan administrators, lend from Fund D to a Member an amount, which shall not exceed the lesser of (a) fifty percent (50%) of the then current value of his Participant, Elective Employer, Voluntary, vested Matching Employer, vested Incentive, and Rollover units as appearing on the record of the Plan or (b) \$50,000; provided, however, that if such loan amount is less than \$10,000, it may exceed fifty percent (50%) of the Member's account balance to the extent that governmental regulations permit the use of more than fifty percent (50%) of the Member's account balance as the sole security for the loan, but it shall not exceed eighty percent (80%) of the then current value of his Participant, Elective Employer, Voluntary, vested Matching Employer, vested Incentive, and Rollover units as appearing on the records of the Plan. Cash equal to the amount of such loan shall first be transferred to Fund D from the account balances of the Member in other Investment Funds, as the Plan administrators, after consultation with the Member, shall determine and instruct the Trustee, and the amount of the loan shall then be paid in cash to the Member from Fund D as soon as practicable after such transfer. Records shall be maintained by the Plan administrators to evidence the interest of each Member in Fund D, subject to the terms and conditions of the loan. It is not contemplated that the basic procedures of Section 7.2 will be applied to Fund D, but that loan disbursements, repayments, and earnings will be debited and credited to individual accounts of Members in Fund D. All loans shall