

MAR 23 2006

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

CLERK'S OFFICE  
U.S. DISTRICT COURT  
EASTERN MICHIGAN

In re CMS ENERGY ERISA LITIGATION	)	Master File No. 02-72834
	)	
This Document Relates To:	)	Honorable George Caram Steeh
ALL ACTIONS	)	
	)	<u>Class Action</u>
	)	

**ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT, APPROVING FORM AND METHOD OF NOTICE, AND SETTING A DATE AND TIME FOR A FAIRNESS HEARING**

This litigation involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, *et seq.* ("ERISA"), with respect to the Employees Savings Plan of Consumers Energy Company (the "*Plan*").<sup>1</sup>

Presented to the *Court* for preliminary approval is a settlement of the litigation as against all *Defendants*. The terms of the *Settlement* are set out in a Class Action Settlement Agreement (the "*Settlement Agreement*") dated March 1, 2006, and executed by counsel on behalf of the *Named Plaintiffs* and the *Defendants*.

The *Court* has preliminarily considered the *Settlement* to determine among other things, whether the *Settlement* is sufficient to warrant the issuance of notice to members of the *Settlement Class*. Upon reviewing the *Settlement Agreement* it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. **Preliminary Findings Regarding Proposed Settlement** – The *Court* preliminarily finds that the proposed *Settlement*: (i) appears to be the product of serious, informed, non-collusive negotiations; (ii) has no obvious deficiencies; (iii) does not improperly grant preferential treatment to class representatives or segments of the class; (iv) falls within the range of possible approval; and (v) warrants notice to *Class* members of a formal fairness

<sup>1</sup> Capitalized and italicized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the *Settlement Agreement*.

hearing, at which evidence may be presented in support of and in opposition to the proposed *Settlement*.

2. **Fairness Hearing** – A fairness hearing is hereby scheduled for Thursday, June 15, 2006 at 2:00 p.m. (the “*Fairness Hearing*”) to determine, among other things:

- Whether the *Settlement* should be approved as fair, adequate, and reasonable to those it affects and whether it is in the public interest;
- Whether the litigation should be dismissed with prejudice as to the *Defendants* pursuant to the terms of the *Settlement*;
- Whether the notice, summary notice and notice methodology implemented pursuant to the *Settlement Agreement* (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the *Settlement Class* of the pendency of the litigation, their right to object to the *Settlement*, and their right to appear at the *Fairness Hearing*; (iii) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to notice; and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law;
- Whether *Class Counsel* adequately represented the *Settlement Class* for purposes of entering into and implementing the *Settlement Agreement*;
- Whether the *Plan of Allocation* should be approved;
- Whether the motion for attorneys’ fees and expenses filed by *Class Counsel* should be approved; and
- Whether the application for compensation for *Named Plaintiffs* should be approved.

3. **Class Notice** – The *Parties* have presented to the *Court* a proposed form of *Class Notice*, which is appended hereto as Exhibit A. With respect to such form of *Class Notice*, the

*Court* finds that such form fairly and adequately:

- (a) describes the terms and effect of the *Settlement Agreement* and of the *Settlement*;
- (b) notifies the *Settlement Class* concerning the proposed *Plan of Allocation*;
- (c) notifies the *Settlement Class* that *Class Counsel* will seek compensation from the *Settlement Fund* (1) for the *Named Plaintiffs*, in an amount not to exceed \$15,000 each for Roger D. Schilling, Karen Potter, and Danny Jordan, relating to their representation of the *Settlement Class*, (2) for reimbursement of non-taxable costs of litigation, and (3) for attorneys' fees of *Class Counsel* that do not exceed 30% of the *Settlement Fund*, plus reimbursement of expenses incurred in connection with the prosecution of the *Action*;
- (d) gives notice to the *Settlement Class* of the time and place of the *Fairness Hearing*; and
- (e) describes how the recipients of the *Class Notice* may object to any of the relief requested. The *Parties* have proposed the following manner of communicating the notice to members of the *Settlement Class*, and the *Court* finds that such proposed manner is the best notice practicable under the circumstances, and directs that *Class Counsel* shall:

- By no later than 45 days before the *Fairness Hearing*, cause the *Class Notice*, with such non-substantive modifications thereto as may be agreed upon by the *Parties* and presented to the *Court*, to be mailed, by first-class mail, postage prepaid, to the last known address of each *Person* within the *Settlement Class* who can be identified by reasonable effort. *Defendants* shall provide *Class Counsel* with the names and last known addresses of the members of the *Settlement Class* to the extent such information is within *Defendants*' custody or control.
- By no later than 45 days before the *Fairness Hearing*, cause the *Class Notice* to be published on the website identified in the *Class Notice*.
- By no later than 45 days before the *Fairness Hearing*, cause a summary notice in the form attached hereto as Exhibit B, with such non-substantive modifications thereto as may be agreed upon by the *Parties* and presented to the *Court*, to be published on at least one occasion in USA Today and the Detroit Free Press.

- By no later than 30 days before the *Fairness Hearing*, file and post on [www.Kellersettlements.com](http://www.Kellersettlements.com), [www.mdfpc.com](http://www.mdfpc.com) and [www.mctiguellaw.com](http://www.mctiguellaw.com) their motion for award of attorneys' fees and expenses and *Named Plaintiff* compensation.
- By no later than 7 days before the *Fairness Hearing*, file their motion for final approval of the proposed *Settlement*, and motion for approval of *Plan of Allocation*.
- At or before the *Fairness Hearing*, *Class Counsel* shall file with the *Court* a proof of timely compliance with the foregoing mailing and publication requirements.

4. **Objections to Settlement** – Any member of the *Settlement Class* who wishes to object to the fairness, reasonableness or adequacy of the *Settlement*, to the *Plan of Allocation*, to any term of the *Settlement Agreement*, to the proposed award of attorneys' fees and expenses, or to any request for compensation for the *Named Plaintiffs* may file an objection. An objector must file with the *Court* a statement of his, her or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence that such objector wishes to bring to the *Court's* attention or introduce in support of such objection. The objector must also mail the objection and all supporting law and/or evidence to *Class Counsel*, who shall be responsible for promptly serving all papers received from objectors upon all counsel who are entitled to receive notice pursuant to the *Settlement Agreement*. The addresses for filing objections with the Court and service on counsel are as follows:

To the Clerk of the Court:

David J. Weaver, Clerk of Court  
 United States District Court, Eastern District of Michigan  
 231 W. Lafayette Blvd., Fifth Floor  
 Detroit, Michigan 48226  
 (313) 234-5005

To each of the following designated *Class Counsel* and *Defendants' Counsel*:

Lynn Sarko  
 Keller Rohrback L.L.P.  
 1201 Third Avenue, Ste 3200  
 Seattle, WA 98101-3052  
 Fax: (206) 623-3384

Ellen M. Doyle  
 Malakoff, Doyle and Finberg,  
 P.C.  
 437 Grant Street, Ste. 200  
 Pittsburgh, PA 15219  
 Fax: (412) 281-3262

Wilber H. Boies  
 McDermott Will & Emery LLP  
 227 W. Monroe Street., Ste. 4400  
 Chicago, IL 60606-5096  
 Fax: (312) 984-7700

The objector or his, her or its counsel (if any) must effect service of the objection on counsel listed above and file it with the *Court* by no later than seven (7) days before the date of the *Fairness Hearing*. If an objector hires an attorney to represent him, her or it for the purposes of making such objection pursuant to this paragraph (or for reviewing discovery materials pursuant to paragraph 6 below), the attorney must both effect service of a notice of appearance on counsel listed above and file it with the *Court* by no later than seven (7) days before the date of the *Fairness Hearing*. Filing and service may be effected on the *Court* and counsel by mail, provided facsimile service is made on counsel listed above by no later than seven (7) days before the date of the *Fairness Hearing*. Any member of the *Settlement Class* or other *Person* who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the *Settlement*, and any untimely objection shall be barred.

5. **Appearance at Fairness Hearing** – Any objector who files and serves a timely, written objection in accordance with paragraph 4 above, may also appear at the *Fairness Hearing* either in person or through counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the *Fairness Hearing* must effect service of a notice of intention to appear setting forth, among other things, the name, address and telephone number of the objector (and, if applicable, the name, address and telephone number of the objector's attorney) on counsel listed above (at the addresses set out above) and file it with the *Court* by no later than seven (7) days before the date of the *Fairness Hearing*. Filing and service may be effected on the *Court* and counsel by mail, provided facsimile service is made on counsel listed above by no later than seven (7) days before the date of the *Fairness Hearing*. Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to be heard at the *Fairness Hearing*, except for good cause shown.

6. **Notice Expenses** – The reasonable expenses of all notices required hereby shall

