

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

In re CMS ENERGY ERISA LITIGATION     )  
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This Document Relates To:                 )  
**ALL ACTIONS**                                    )  
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Master File No. 02-72834

Honorable George Caram Steeh

Class Action

**PLAN OF ALLOCATION**

**I. Definitions.**

1. Capitalized terms used herein shall have the meanings ascribed to them in the *In re CMS Energy ERISA Litigation Class Action Settlement Agreement* or in this Plan of Allocation.
2. “Member” means a person who is a member of the Settlement Class, provided that “Member” shall not include any of the Defendants.
3. “Settlement Administrator” means the administrator of the Settlement Fund described in Section 7 of the Settlement Agreement pursuant to this Plan of Allocation.

**II. Amount to Be Distributed.**

The total amount to be distributed to the Members (the “Distribution Amount”) shall be the Net Proceeds as defined in Section 8.2.4 of the Settlement Agreement, minus any reasonable and necessary out-of-pocket expenses for the implementation of the Plan of Allocation, as contemplated by Section 2.1.4 and described in Section 8.2.4 of the Settlement Agreement.

**III. Calculation of Each Member’s Share of the Distribution Amount.**

The Settlement Administrator shall calculate, for each Member, a Net Loss. The Net Loss for each Member shall be calculated as follows:

1. "Net Loss" will be, for each Member =  $A + B - C - D - E$ , provided that if  $A + B - C - D - E$  is less than zero for a Member, such Member's Net Loss will be zero.

A = the dollar amount of the Member's Plan account balance invested in the CMS Stock Fund at the beginning of the Class Period.

B = the dollar amount added to the Member's Plan account balance invested in the CMS Stock Fund during the Class Period.

C = (i) the dollar value of the Member's Plan account balance invested in the CMS Stock Fund as of December 31, 2005), minus (ii) the dollar value as of December 31, 2005, of any investment in the CMS Stock Fund made after the end of the Class Period.

D = the dollar amount credited to the Member's Plan account balance resulting from dispositions from the CMS Stock Fund from the beginning of the Class Period through December, 2005, other than dispositions of stock acquired after the end of the Class Period.

E = the dollar amount credited to the Member's Plan account balance resulting from dividends received with respect to the CMS Stock Fund from the beginning of the Class Period through December 31, 2005, other than dividends received with respect to stock acquired after the end of the Class Period.

In calculating the value of Company Stock as of December 31, 2005, the closing price per share as reported in the records of the Plan's recordkeeper for such date shall be employed. Further, for Members whose Plan accounts made investments in the CMS Stock Fund after the end of the Class Period, the following provisions shall apply for purposes of calculating C, D and E in this Paragraph 2:

- If such Member's Plan account made investments in the CMS Stock Fund after the end of the Class Period, C shall be calculated as follows: The number of shares of CMS Stock sold after the end of the Class Period shall be multiplied by a fraction, the numerator of which shall be the number of shares of CMS Stock held at the end of the Class Period and the denominator of which shall be the numerator plus the number of shares of CMS Stock acquired after the end of the Class Period through December 31, 2005. The product of this multiplication shall be subtracted from the numerator, and the dollar value of the resulting number of shares as of December 31, 2005, shall be the value described in subparagraph C.

- D shall be calculated as follows: The dollar amount credited to the Member's Plan account balance resulting from dispositions from the CMS Stock Fund after the end of the Class Period through December 31, 2005 shall be multiplied by a fraction, the numerator of which shall be the number of shares of CMS Stock acquired after the end of the Class Period and the denominator of which shall be the numerator plus the number of shares of CMS Stock held at the end of the Class Period. The product of this multiplication shall be subtracted from the total dollar amount credited to the Member's Plan account balance resulting from dispositions from the CMS Stock Fund from the beginning of the Class Period through December 31, 2005, and the result shall be the dollar amount described in subparagraph D.
- E shall be calculated as follows: The dollar amount credited to the Member's Plan account balance resulting from dividends received with respect to the CMS Stock Fund after the end of the Class Period through December 31, 2005 shall be multiplied by a fraction, the numerator of which shall be the number of shares of CMS Stock acquired after the end of the Class Period and the denominator of which shall be the numerator plus the number of shares of CMS Stock held at the end of the Class Period. The product of this multiplication shall be subtracted from the total dollar amount credited to the Member's Plan account resulting from dividends received with respect to the CMS Stock Fund from the beginning of the Class Period through December 31, 2005, and the result shall be the dollar amount described in subparagraph E.

2. To the extent data is not available to the Settlement Administrator to determine the account balances of Members at the beginning of the Class Period, the Settlement Administrator may perform the foregoing calculations using data as of the latest date prior to the beginning of the Class Period that is available.

3. The Net Losses of the Members as calculated in Section III above will be totaled to yield a loss to the Plan as a whole over the Class Period (the "Plan's Loss").

4. The Settlement Administrator shall calculate for each Member his or her "Preliminary Fractional Share" of the Plan's Loss, i.e., by dividing each Member's Net Loss by the Plan's Loss.

5. The Settlement Administrator shall then calculate for each Member his “Preliminary Dollar Recovery” of the Distribution Amount by multiplying the Member’s Preliminary Fractional Share by the Distribution Amount.

6. The Settlement Administrator shall identify all Members whose Preliminary Dollar Recovery is greater than zero but less than ten dollars (\$10.00). All such Members shall receive an allocation from the Distribution Amount of zero, and the Preliminary Dollar Recovery otherwise allocable to such Members shall, at the direction of Class Counsel, either be reallocated among the other Members proportionately in accordance with their Net Losses (the “Reallocation”), or forfeited to the Plan.

7. The Settlement Administrator shall then, taking into account the Reallocation (if applicable), recalculate the Preliminary Fractional Shares and the Preliminary Dollar Recoveries so as to arrive at the “Final Fractional Share” and the “Final Dollar Recovery” for each Member. If there is no Reallocation, the Preliminary Fractional Shares and the Preliminary Dollar Recoveries shall be the Final Fractional Shares and the Final Dollar Recoveries, respectively. The sum of the Final Dollar Recoveries must equal the Distribution Amount.

#### **IV. Distribution of the Allocated Amounts.**

1. Members who are current Plan participants (“Current Members”). As soon as practicable after deposit of the Net Proceeds into the Plan, the Settlement Administrator shall cause to be deposited into each Current Member’s account his or her Final Dollar Recovery as calculated above. The deposited amount shall be allocated among the Member’s investment options in accordance with the existing investment elections then in effect and treated thereafter for all purposes under the Plan as assets of the Plan properly credited to that Member’s account.

2. Members who are former Plan participants or beneficiaries thereof (“Former Members”). The Settlement Administrator shall invest each Former Member’s Final Dollar Recovery in a suitable short term investment vehicle, the primary purpose of which is the preservation of assets, pending distribution to the former Member. The deposited amount, plus interest, shall then, as soon as is practical, be distributed to the Former Member in the same manner as a qualified distribution from the Plan pursuant to ERISA and the Internal Revenue Code.

**V. Continuing Jurisdiction**

The Court will retain jurisdiction over this Plan of Allocation to the extent necessary to ensure that it is fully and fairly implemented.