

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\*\*\*\*\*

In the matter, on the Commission's own motion,	)	
regarding <b>CONSUMERS ENERGY COMPANY's</b>	)	
noncompliance with the Michigan Gas Safety	)	Case No. U-13707
Standards.	)	
_____	)	

At the March 26, 2003 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Laura Chappelle, Chairman  
Hon. David A. Svanda, Commissioner  
Hon. Robert B. Nelson, Commissioner

**ORDER APPROVING SETTLEMENT AGREEMENT**

On June 7, 2002, the Commission Staff (Staff) issued Non-Compliance Report (NCR) 02-04KB recommending that Consumers Energy Company (Consumers) be subject to two civil penalties of \$5,000 each for certain alleged violations of the Michigan Gas Safety Standards. Following numerous discussions, Consumers and the Staff entered into a settlement agreement resolving all issues regarding this NCR.

According to the terms of the settlement agreement, attached as Exhibit A, Consumers has instituted corrective action as outlined in its August 13, 2002 correspondence to the Staff, the Staff accepts that corrective action, and the parties consider NCR 02-04KB to be resolved. As part of that agreement, Consumers agrees to pay \$10,000 as a penalty for the citation set forth in NCR 02-04KB. Nevertheless, the agreement goes on to state that Consumers' payment of that penalty

does not constitute an admission or concession of liability regarding the cause of the damage relating to the incident associated with NCR 02-04KB.

After reviewing Consumers' response to NCR 02-04KB, as well as the agreement reached by the parties, the Commission finds that approval of the agreement is appropriate and in the public interest.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1969 PA 165, as amended, MCL 483.151 et seq.; 1909 PA 300, as amended, MCL 462.2 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACSR 460.17101 et seq.
- b. The settlement agreement is reasonable and in the public interest, and should be approved.

THEREFORE, IT IS ORDERED that:

- A. The settlement agreement, attached as Exhibit A, is approved.
- B. Non-Compliance Report 02-04KB shall be considered resolved.
- C. Consumers Energy Company shall, within 10 days of the date of this order, tender by check \$10,000 to the State of Michigan.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle  
Chairman

( S E A L )

/s/ David A. Svanda  
Commissioner

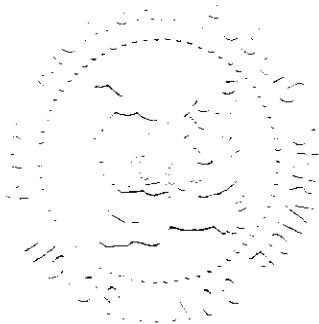
/s/ Robert B. Nelson  
Commissioner

By its action of March 26, 2003.

/s/ Dorothy Wideman  
Its Executive Secretary

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION



Laura Chappelle  
Chairman

W. C. Smith  
Commissioner

Robert B. Allen  
Commissioner

By its action of March 26, 2003.

Blindeman  
Its Executive Secretary

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own )  
motion, regarding CONSUMERS )  
ENERGY COMPANY's non-compliance) )  
with the Michigan Gas Safety Code )  
\_\_\_\_\_)

Case No. U-\_\_\_\_\_

**STIPULATION AND SETTLEMENT AGREEMENT**

On January 22, 2002, a Consumers Energy employee sustained burn injuries while in the process of repairing third party damage on a two (2) inch plastic medium pressure main on Person Highway near Brooklyn, Michigan. At the time of the incident, two Consumers Energy employees were purging a by-pass line around the damaged main. The employees were in two separate excavations. An investigation conducted by the Commission Staff revealed that a contributing factor in the fire was the probable failure of Consumers' employees to follow certain operating procedures; as required by Rule 192.13 of the Michigan Gas Safety Standards titled "General" and associated rule 195.751 titled "Prevention of Accidental Ignition." This investigation resulted in the issuance of Non-Compliance Report 02-04KB. It is the desire of the Commission Staff and Consumers to resolve the issues with respect to this Non-Compliance Report.

Consumers accepts the findings of the Commission Staff and the penalty assessed as set forth in the June 7, 2002 Non-Compliance Report (Attachment 1). Consumers affirmatively states that it has instituted corrective action as outlined in its correspondence to the Commission Staff dated August 13, 2002 (Attachment 2). The Staff of the Commission affirmatively states that it accepts the corrective action and considers this Non-Compliance 02-04KB resolved.

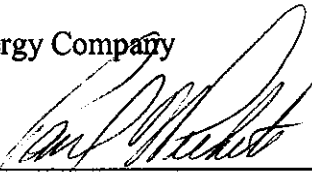
Accordingly, the Parties stipulate and agree as follows:

1. This Stipulation and Settlement is being submitted pursuant to Section 78(2) of the Michigan Administrative Code of 1969 (MAPA). Consumers agrees to waive its procedural rights to a hearing under 1969 PA 165, the Commission's Rules thereunder and the MAPA, and the Parties agree to waive Section 81 of the MAPA; provided this Stipulation and Settlement is approved by the Commission without modification.
2. The Parties agree that Consumers shall pay a total of Ten Thousand Dollars (\$10,000) as a civil penalty for the Non-Compliance citation set forth in the Non-Compliance Report 02-04KB dated June 7, 2002. Five Thousand Dollars (\$5,000) is related to Rule 192.13 and Five Thousand Dollars (\$5,000) is related to Rule 192.751. By agreeing to this penalty in order to

resolve this matter, Consumers specifically does not admit or concede any liability regarding the cause of the damage. Said payment will be tendered by check within ten (10) days following the Commission's acceptance and approval of this Stipulation and Agreement.

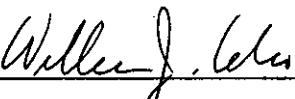
3. The Parties join in requesting the Commission to expeditiously review and approve this Stipulation and Agreement.

Consumers Energy Company

By:   
Paul N. Preketes  
Senior Vice President

Date: 12/6/02

Michigan Public Service Commission Staff

By:   
DIRECTOR, ENERGY OPERATIONS DIVISION

Date: 1/17/03



State of Michigan  
John Engler, Governor

Department of Consumer & Industry Services  
Kathleen M. Wilbur, Director

Public Service Commission

6545 Mercantile Way  
P.O. Box 30221  
Lansing, MI 48909-7721  
Telephone: 517-241-6180  
Website: [cis.state.mi.us/mpsc](http://cis.state.mi.us/mpsc)

June 7, 2002

Commissioners  
Laura Chappelle  
David A. Svanda  
Robert B. Nelson

Mr. Ken Elenbaas, Manager  
Gas Energy Delivery  
Consumers Energy Company  
1945 W. Parnall Road  
Jackson, Michigan 49201

Dear Mr. Elenbaas:

**RE: Non-Compliance 02-04KB  
Notice of Probable Violations and an Opportunity  
for an Informal Hearing to Show Compliance**

This is to provide notice to Consumers Energy Company (Consumers Energy) that the Commission Staff (Staff) is recommending the assessment of civil penalties for probable violations of the Michigan Gas Safety Standard as further detailed below. This also, provides Consumers Energy an opportunity to show compliance at an informal meeting, which could include an opportunity for Consumers Energy to discuss with the Staff the possible resolution of these probable violations. If Consumers Energy declines the opportunity for an informal hearing, it has the right to a formal hearing provided the Commission, at the request of the Staff, issues a formal show cause order for Consumers Energy to show compliance with the applicable gas safety standards.

Ms. Kris Brock, our Gas Safety Engineer, conducted an investigation of an incident that occurred on January 22, 2002. The attached memorandum from Mr. Paul Proudfoot, Supervisor of the Gas Division's Gas Safety Section, to myself, dated May 30, 2002, provides specific information related to that incident. As a result of Staff's investigation, it appears that Consumers Energy has committed a probable violation of Rule 192.13 of the Michigan Gas Safety Standard titled "General" and associated Rule 192.751 titled "Prevention of Accidental Ignition."

The Commission's jurisdiction in this matter is pursuant to 1969 PA 165. Based on Staff's investigation in this matter, we are recommending that Consumers Energy be subjected to a civil penalty of \$5,000 related to Rule 192.13 and a \$5,000 penalty related to Rule 192.751. In determining the amount of the proposed fines, the Staff has considered the following criteria in Section 11 (2), 1969 PA 165:

- a. The effect of the ability of the person charged to continue in business.
- b. The nature, circumstances and gravity of the violation.

Mr. Ken Elenbaas

Page 2

June 7, 2002

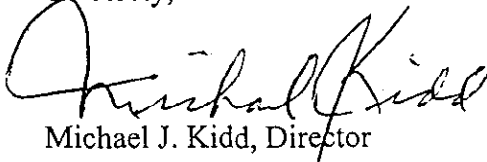
- c. Any good faith effort by the person charged to comply with the requirements of the act.
- d. The degree of culpability of the person charged.
- e. The history of prior violations of the person charged.
- f. The ability of the person charged to pay.
- g. Other matters as justice may require.

These probable violations are considered unresolved. Please provide a written response to this non-compliance notice letter prior to the informal hearing, currently set for 9:30 a.m. on June 27, 2002. The outcome of an informal hearing or meeting could result in any of the following:

- 1. The Staff could change its initial recommendation including retracting parts or all of the non-compliance and lowering or completely dropping its request for civil penalties.
- 2. Consumers Energy and the Staff could reach an agreement on the non-compliance and civil penalty amount. If this were to occur, a stipulation could be drawn up resolving the matter and signed by Consumers Energy and the Staff. The Commission could then approve it in an order approving a stipulation at one of the Commission's regularly scheduled Commission meetings.
- 3. Consumers Energy and the Staff could disagree on either the non-compliance or the civil penalty, or both. If this were to occur, the Staff would request the Commission to initiate a formal proceeding in accordance with the Michigan Administrative Procedures Act of 1969.

In your written response please indicate what actions Consumers Energy will take to comply with Rules 192.13 and 192.751. If you cannot meet on the date noted above, please contact me at (517) 241-6131 or Mr. Proudfoot at (517) 241-6142 to arrange for an alternative meeting date.

Sincerely,



Michael J. Kidd, Director  
Gas Division

Attachment

cc Gas Safety Engineers (w/o attachment)



August 13, 2002

**RECEIVED**  
MICHIGAN PUBLIC SERVICE COMMISSION

AUG 14 2002

GAS DIVISION

Paul Proudfoot  
Michigan Public Service Commission  
6545 Mercantile Way  
PO Box 30221  
Lansing, MI 48909-7721

Dear Mr. Proudfoot

This letter is in response to Non-Compliance 02-04KB probable violations of Rules 192.13 of the Michigan Gas Safety Standard titled "General" and associated rule 192.751 titled "Prevention of Accidental Ignition". The probable violation was discovered during the investigation of the incident that occurred on Person Hwy near Brooklyn, Michigan on January 22, 2002, that resulted in burn injuries to an employee.

Consumers Energy evaluated the causes for this incident and developed recommendations for remedial action. We have developed five recommendations that have been implemented or are in the process of implementation. These recommendations are: 1) review the incident with all Gas Service and Distribution Employees, 2) review industry standards for mitigation of static electricity, 3) develop a standard specifically for installing a temporary by-pass on plastic pipelines, 4) re-enforce expectations that standards will be followed without exception, and 5) review Gas Distribution Standard 5-10 "Working With Blowing Gas".

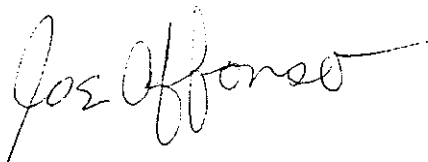
- 1) An immediate action plan was initiated to review this incident with all Gas Distribution and Gas Service employees. Attendance was mandatory and documented ensuring all Gas Distribution and Gas Service employees have been made aware of this incident, its causes, and future expectations.
- 2) Consumers Energy continues to explore industry best practices that minimize or eliminate internal and external static electricity on plastic pipe. We have discussed best practices for static electricity with AGA, GTI, Ionix, and other gas companies who are members of the AGA Distribution Maintenance & Construction Committee. We utilized these best practices as a resource to enhance our knowledge of static electricity. As a result of this research we are evaluating the pipe wrap material used to dissipate external surface static electricity.

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- 3) A specific standard for construction of a temporary by-pass on plastic pipe has been developed and is now in the Gas Distribution Manual, (Standard 5-14-1, Emergency Gas Leaks).
- 4) Consumers Energy management is meeting with all Gas Distribution and Gas Service employees to define expectations for following standards and the consequences for not following standards. Documentation has been developed and will be used at annual and monthly safety meetings to re-enforce expectations for standards adherence.
- 5) Gas Distribution Standard 5-10 "Working With Blowing Gas" identifies the procedure for working around blowing gas. This standard has been revised clarifying the requirements to continuously monitor for gas where gas is escaping to the atmosphere.

If you have any more questions or require any further information please call me any time.

Thank you



Joe Affonso  
Manager, Code and Standards  
Consumers Energy  
JSC-234  
517.788.1835.  
jjaffonso@cmsenergy.com

CC: PNPreketes, Royal Oak  
MCYenglin, Royal, Oak  
TFO'Masta, Royal Oak  
DMDodd, Royal Oak  
KLElenbaas, JSC 240A  
Kris Brock, MPSC

# PROOF OF SERVICE

STATE OF MICHIGAN )

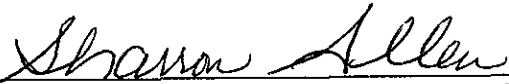
Case No. U-13707

County of Ingham )

Gloria P. Jones being duly sworn, deposes and says that on March 28, 2003, A.D. she served a copy of the attached Commission Order by mailing copies thereof by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

A handwritten signature in cursive script, reading "Gloria P. Jones", written over a horizontal line.

Subscribed and sworn to before me  
this 28<sup>th</sup> day of March 2003

A handwritten signature in cursive script, reading "Sharon Allen", written over a horizontal line.

Notary Public, Ingham, County, Michigan  
My Commission expires August 16, 2004

**Delmer Porter, President  
Aurora Gas Company  
7038 Black River Road  
Onaway, MI 49765**

**U-13707**

**Wayne Schafer, Pres. & CEO  
Citizens Gas Fuel Company  
127 North Main Street  
Adrian, MI 49221-0040**

**U-13707**

**Carl L. English, Pres. & CEO - Natural  
Gas  
Consumers Energy Company  
212 West Michigan Avenue  
Jackson, MI 49201**

**U-13707**

**Stephen E. Ewing, Pres. & CEO  
Michigan Consolidated Gas Company  
2000 Second Avenue  
Detroit, MI 48226**

**U-13707**

**Chuck F. Hauska, General Manager  
Michigan Gas Utilities  
899 S. Telegraph Road  
Monroe, MI 48161**

**U-13707**

**William March, President  
Peninsular Gas Company  
4205 S. 94<sup>th</sup> Street  
Omaha, NE 68127**

**U-13707**

**Steven M. Jurek, Vice President  
Peoples' Natural Gas Company  
1815 Capitol Avenue  
Omaha, NE 68102**

**U-13707**

**Brian Burns, President & CEO  
Presque Isle Electric & Gas Coop., Inc.  
19831 M-68  
Onaway, MI 49765**

**U-13707**

**Jon Kosht, President  
SEMCO Energy Gas Company  
405 Water Street  
P. O. Box 5026  
Port Huron, MI 48061-5026**

**U-13707**

**Matthew J. Coffey, President  
Superior Energy Company  
14428 Wuoski  
Keleva, MI 49645**

**U-13707**

**Larry L. Weyers, Chairman & CEO  
Wisconsin Public Service Corp.  
700 N. Adams Street  
P. O. Box 19001  
Green Bay, WI 54307-9001**

**U-13707**

**Jerome L. Larsen, President & CEO  
Xcel Energy  
1414 W. Hamilton  
P. O. Box 8  
Eau Claire, WI 54702-0008**

**U-13707**

ALL GAS ORDERS

PAGE: 1  
DATE: 02/18/2003

DATABASE SERVICES  
LEXIS NEXIS  
P.O. BOX 933  
DAYTON OH 45401-

MS. LISA DONFRIED  
MICHIGAN CONSOLIDATED GAS COMPANY  
2000 SECOND AVENUE, WCB 1024  
DETROIT MI 48226-

MS. MONICA MARTINEZ  
SENATE DEMOCRATIC STAFF  
ROMNEY BUILDING  
LANSING ID MAIL

MR. FRED BANISTER I.D.  
DEPARTMENT OF MANAGEMENT & BUDGET  
OFFICE OF PURCHASING  
MASON BUILDING  
LANSING ID MAIL

MR. PHILLIP CROSS  
PUBLIC UTILITIES REPORTS, INC.  
8229 BOONE BOULEVARD, SUITE 401  
VIENNA VA 22182-

MR. JOHN PESTLE  
VARNUM, RIDDERING, SCHMIDT & HOWLETT  
BRIDGEWATER PLACE  
P.O. BOX 352  
GRAND RAPIDS MI 49501-0352