

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

| | | |
|------------------------------------------------|---|------------------|
| In the matter, on the Commission’s own motion, |) | |
| to require CONSUMERS ENERGY COMPANY |) | |
| to show cause why it should not be found in |) | Case No. U-20569 |
| violation of 2013 PA 174, the MISS DIG |) | |
| Underground Facility Damage Prevention and |) | |
| Safety Act, MCL 460.721 <i>et seq.</i> |) | |
| _____ |) | |

At the January 23, 2020 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Daniel C. Scripps, Commissioner
Hon. Tremaine L. Phillips, Commissioner

ORDER

The Commission issued an order opened this docket on June 7, 2019 (June 7 order) and directed Consumers Energy Company (Consumers) to show cause why it should not be found in violation of the MISS DIG Underground Facility Damage Prevention and Safety Act, 2013 PA 174 (Act 174). As indicated in the June 7 order, while tracking dig notices during April and May of 2019, the Commission Staff (Staff) initially determined that Consumers failed to satisfy its statutory obligation as a facility owner or operator to timely mark its facilities after receiving the dig notice from the notification system. June 7 order, pp. 1-2. The Commission ordered the company to file a response by June 28, 2019, with direct testimony, exhibits, work papers, and affidavits supporting the veracity of its response prepared by a person or persons with actual knowledge of the circumstances. *Id.*, p. 2. On June 28, 2019, the company filed its response with

supporting testimony, exhibits, and an affidavit. The company's filing acknowledged untimely responses to staking requests and provided mitigating factors for consideration.

A prehearing conference was held in this proceeding on July 10, 2019, before Administrative Law Judge Dennis W. Mack. Consumers, the Staff, and the Michigan Department of the Attorney participated in the proceeding. Subsequently, the parties filed a settlement agreement on December 20, 2019, resolving all issues in the case.

According to the terms of the settlement agreement, attached as Exhibit A, the parties agree that Consumers shall make the following payments related to the allegations contained in the June 7 order: (i) a civil penalty, in the amount of \$145,000, paid to the Commission and used for underground facility safety education and training; (ii) a direct payment, in the amount of \$100,000, to MISS DIG Systems, Inc. (MISS DIG) for improvements to MISS DIG; and (iii) a donation, in the amount of \$300,000, to The Heat And Warmth Fund (THAW) which, to the extent practicable, shall be used for the benefit of Consumers' customers. The parties agree that the civil penalty amount of \$145,000, the \$100,000 direct payment to MISS DIG, and the \$300,000 donation to THAW will not be recoverable from customers. The parties further agree that the approximate \$1.7 million in costs incurred by Consumers to eliminate the staking backlog experienced in April and May of 2019, which included labor, material, and other expenses, and any costs related to facility damage incurred by the company due to staking non-compliance, will also not be recoverable from customers. The parties also agree that the settlement agreement shall resolve all matters related to staking non-compliance, as alleged in the June 7 order, which occurred between April 1, 2019 and July 1, 2019.

The parties agree that Consumers shall provide monthly staking reports to the Staff beginning the first full month subsequent to the Commission's approval of this settlement agreement and continuing until December 31, 2021.

The parties agree that Consumers shall implement new staking procedures, as provided in Attachment A to the settlement agreement. The parties further agree to hold two technical conferences, the first of which shall occur by March 1, 2020, and the second of which shall occur by March 1, 2021, to discuss the adequacy of Consumers' new staking procedures and make reasonable changes to such procedures, as necessary.

The parties agree that this settlement agreement shall not limit the ability of excavators, facility owners, or facility operators to pursue civil actions in courts of appropriate jurisdiction which seek damages or equitable relief arising out of a violation of the requirements of Act 174, as provided by Section 8, MCL 460.728, of Act 174. However, the parties agree that Consumers shall not be required to pay any additional civil penalties under Act 174, beyond what is provided for in this settlement agreement, pertaining to any allegations of staking non-compliance which occurred between April 1, 2019 and July 1, 2019.

The Commission has reviewed the settlement agreement and finds that the public interest is adequately represented by the parties who entered into the settlement agreement. The Commission further finds that the settlement agreement is in the public interest, represents a fair and reasonable resolution of the proceeding, and should be approved.

THEREFORE, IT IS ORDERED that:

- A. The settlement agreement, attached as Exhibit A, is approved.
- B. Within 30 days of the date of this order, Consumers Energy Company shall pay a fine of \$145,000 to the State of Michigan by delivery of a check for that amount to the Commission's

Executive Secretary. The funds paid shall be credited to a special account and used for underground facilities safety education and training pursuant to MCL 460.732. The fine paid in accordance with this order shall not be recovered in rates or passed through to customers in any manner.

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. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Daniel C. Scripps, Commissioner

Tremaine L. Phillips, Commissioner

By its action of January 23, 2020.

Lisa Felice, Executive Secretary

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

| | | |
|----------------------------------------------------|---|------------------|
| In the matter, on the Commission’s own motion, |) | |
| to require CONSUMERS ENERGY COMPANY to |) | |
| show cause why it should not be found in violation |) | Case No. U-20569 |
| of 2013 PA 174, the MISS DIG |) | |
| Underground Facility Damage Prevention |) | |
| and Safety Act, MCL 460.721 <i>et seq.</i> |) | |
| _____ |) | |

SETTLEMENT AGREEMENT

Pursuant to MCL 24.278 and Rule 431 of the Michigan Administrative Hearing System’s Rules of Practice and Procedure before the Michigan Public Service Commission (“MPSC” or the “Commission”), Mich Admin Code, R 792.10431, the undersigned parties agree as follows:

WHEREAS, On June 7, 2019, the Commission issued an order (“June 7 Order”) in this matter which directed Consumers Energy Company (“Consumers Energy” or the “Company”) to show cause why it should not be found in violation of the MISS DIG Underground Facility Damage Prevention and Safety Act, Public Act 174 of 2013 (“Act 174”). The Commission’s June 7 Order asserted that “[w]hile tracking dig notices during April and May of 2019, the Commission Staff (Staff) has initially determined that Consumers Energy Company (Consumers) failed to satisfy its statutory obligation as a facility owner or operator to timely mark its facilities after receiving the dig notice from the notification system.” June 7 Order, pages 1-2. The Commission ordered the Company to file a response to the June 7 Order in this docket by June 28, 2019 with “prefiled direct testimony, exhibits, work papers, and affidavits supporting the veracity of its response prepared by a person or persons with actual knowledge of the circumstances.” June 7 Order, page 2.

WHEREAS, on June 28, 2019 the Company filed a Response to the Commission's June 7 Order with supporting testimony, exhibits, and an affidavit. The Company's filing acknowledged untimely responses to staking requests and provided mitigating factors for the Commission's consideration.

WHEREAS, a prehearing conference was held in this proceeding on July 10, 2019 before Administrative Law Judge Dennis W. Mack. The parties to the case are Consumers Energy, the Commission Staff ("Staff"), and Michigan Attorney General Dana Nessel ("Attorney General").

NOW THEREFORE, for purposes of settlement of Case No. U-20569, the undersigned parties agree as follows:

1. The parties agree that Consumers Energy shall make the following payments related to the allegations contained in the Commission's June 7 Order in Case No. U-20569: (i) a civil penalty, in the amount of \$145,000, paid to the Commission and used for underground facility safety education and training; (ii) a direct payment, in the amount of \$100,000, to MISS DIG Systems, Inc. ("MISS DIG") for improvements to MISS DIG; and (iii) a donation, in the amount of \$300,000, to The Heat And Warmth Fund ("THAW") which, to the extent practicable, shall be used for the benefit of Consumers Energy's customers.

- a. The parties agree that the civil penalty amount of \$145,000, the \$100,000 direct payment to MISS DIG, and the \$300,000 donation to THAW will not be recoverable from customers.
- b. The parties agree that the costs incurred by the Company to eliminate the staking backlog experienced in April and May of 2019, which include labor, material, and other expenses, and any costs related to facility damage incurred by the Company due to staking non-compliance, will not be recoverable from customers. The parties agree that the Company incurred approximately \$1.7 million of such costs.
- c. The parties agree that this Settlement Agreement shall resolve all matters related to staking non-compliance, as alleged in the Commission's June 7 Order in Case No. U-20569, which occurred between April 1, 2019 and July 1, 2019.

2. The parties agree that the Company shall provide monthly staking reports to Staff beginning the first full month subsequent to the Commission's approval of this Settlement Agreement and continuing until December 31, 2021.

3. The parties agree that the Company shall implement new staking procedures, as provided in Attachment A to this Settlement Agreement. The parties further agree to hold two technical conferences, the first of which shall occur by March 1, 2020 and the second of which shall occur by March 1, 2021, to discuss the adequacy of the Company's new staking procedures and make reasonable changes to such procedures, as necessary.

4. The parties agree that this Settlement Agreement shall not limit the ability of excavators, facility owners, or facility operators to pursue civil actions in courts of appropriate jurisdiction which seek damages or equitable relief arising out of a violation of the requirements of Act 174, as provided by Section 8, MCL 460.728, of Act 174. However, the parties agree that Consumers Energy shall not be required to pay any additional civil penalties under Act 174, beyond what is provided for in this Settlement Agreement, pertaining to any allegations of staking non-compliance which occurred between April 1, 2019 and July 1, 2019.

5. This settlement is entered into for the sole and express purpose of reaching a compromise among the parties. All offers of settlement and discussions relating to this settlement are, and shall be considered, privileged under Michigan Rule of Evidence 408. If the Commission approves this Settlement Agreement without modification, neither the parties to this Settlement Agreement nor the Commission shall make any reference to, or use, this Settlement Agreement or the order approving it, as a reason, authority, rationale, or example for taking any action or position or making any subsequent decision in any other case or proceeding; provided, however, such references may be made to enforce or implement the provisions of this Settlement Agreement and the order approving it.

6. This Settlement Agreement is based on the facts and circumstances of this case and is intended for the final disposition of Case No. U-20569. So long as the Commission approves this Settlement Agreement without any modification, the parties agree not to appeal, challenge, or otherwise contest the Commission order approving this Settlement Agreement. Except as otherwise set forth herein, the parties agree and understand that this Settlement Agreement does not limit any party's right to take new and/or different positions on similar issues in other administrative proceedings, or appeals related thereto.

7. This Settlement Agreement constitutes the entire agreement of the parties and is not severable. Each provision of the Settlement Agreement is dependent upon all other provisions of this Settlement Agreement. Failure to comply with any provision of this Settlement Agreement constitutes failure to comply with the entire Settlement Agreement. If the Commission rejects or modifies this Settlement Agreement or any provision of the Settlement Agreement, this Settlement Agreement shall be deemed to be withdrawn, shall not constitute any part of the record in this proceeding or be used for any other purpose, and shall be without prejudice to the pre-negotiation positions of the parties.

8. The parties agree that approval of this Settlement Agreement by the Commission would be reasonable and in the public interest.

9. The parties agree to waive Section 81 of the Administrative Procedures Act of 1969 (MCL 24.281), as it applies to the issues resolved in this Settlement Agreement, if the Commission approves this Settlement Agreement without modification.

10. This Settlement Agreement may be executed in multiple counterparts.

WHEREFORE, the undersigned parties respectfully request the Michigan Public Service Commission to approve this Settlement Agreement on an expeditious basis and to make it effective in accordance with its terms by final order.

MICHIGAN PUBLIC SERVICE
COMMISSION STAFF

 Digitally signed by
Michael J. Orris
Date: 2019.12.20
08:26:27 -05'00'

By: _____ Dated: December 20, 2019

Michael J. Orris (P51232)
Assistant Attorney General
Attorney for the Michigan Public Service Commission Staff
Public Service Division
7109 West Saginaw Highway
Lansing, MI 48917

CONSUMERS ENERGY COMPANY

 Digitally signed by
Robert W. Beach
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By: _____ Dated: December 19, 2019

Robert W. Beach (P73112)
Attorney for Consumers Energy Company
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Jackson, MI 49201

MICHIGAN ATTORNEY GENERAL DANA NESSEL

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Celeste R. Gill
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-05'00'

By: _____ Dated: December 20, 2019

Celeste R. Gill (P52484)
Assistant Attorney General
Special Litigation Division
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ATTACHMENT A

Damage Prevention & Public Safety Outreach Procedure Monitoring & Managing Staking Requests for Contractor Timeliness

DP-PSO-200

Revision 1.0

Approval Date: [MM/DD/YYYY]

Implementation Date: [MM/DD/YYYY]

Document Owner: [Role]

INTERNAL

Table of Contents

Revision History4

Approvals4

Purpose5

Scope5

Monitor Staking Activities/Remediate Ticket Backlogs.....5

 1. Role of Compliance, Contract Management, Teams.....5

 2. Evaluate Workload Preparedness6

 3. Action Taken (Containment)6

Document Maintenance8

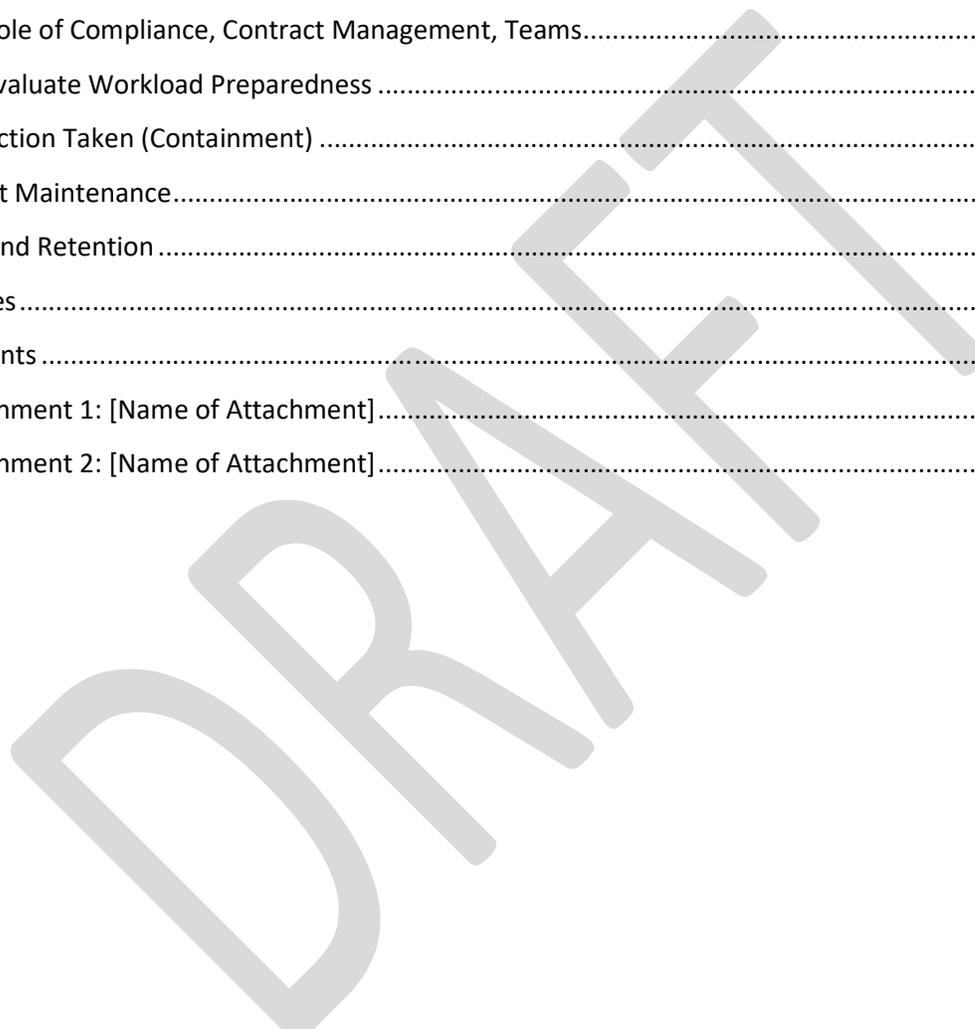
Records and Retention8

References8

Attachments8

 Attachment 1: [Name of Attachment]9

 Attachment 2: [Name of Attachment] 10



Revision History

| Revision | Approval Date | Implementation Date | Revision Description |
|----------|---------------|---------------------|----------------------|
| 1.0 | [dd/mm/yyyy] | [dd/mm/yyyy] | Initial Document |
| | | | |

Approvals

| Area | Title | Signature | Approval Date |
|------|-------|-----------|---------------|
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Purpose

This procedure describes the requirements, and related tasks and activities for monitoring contractor adherence to timeliness and workload management.

Scope

This document applies to monitoring of staking actions that impact Consumers Energy operations, and contractors who complete these requests.

Monitor Staking Activities/Remediate Ticket Backlogs

1. Role of Compliance, Contract Management, Teams

1.1. These teams have the following responsibilities for monitoring staking requests:

- 1.1.1. Every morning, a Contract management team member sends the following daily reports to the applicable contractors:
- DIST Summary – Provides an overview of the contractor’s performance based on the following reports: Timeliness Report, Backlog Detail List Report, and 999 Prior Day Detail Report.
 - Consumers Energy monitors Days in Queue to determine whether action needs to be taken.
 - Timeliness – Identifies the Locate Tickets that were not completed on time over the past 7 days. This report is based on the date the ticket is due. Locate tickets are based on contract parameters: includes only original, normal priority locate tickets excluding those marked as done for Consumers Energy.
 - Backlog Detail List - Identifies the backlog details based on the following tickets:, Not complete 003, On Going 005, Additional Locate Required 009, Late/No Response 999.
 - 999 Prior Day Detail – Identifies the number of tickets that went 999 the prior day.
 - Consumers Energy requires the contractor to follow up with a detailed response to explain why these tickets were coded 999.

1.2 Escalation:

- 1.2.1 Daily dashboard results will be highlighted in Gas Operations and Gas Engineering Daily Operating Reviews.

2. Evaluate Workload Preparedness

2.1. Long-Term

2.1.1. Forecast (30/60-day, annual)

- 2.1.1.1. Contractor to provide reoccurring detailed forecast to Consumers Energy
- 2.1.1.2. Contractor to flag any variances and resource constraints
- 2.1.1.3. Contractor to provide mitigation plans for variances
- 2.1.1.4. Consumers Energy team to review items 2.1.1.1 – 2.1.1.3 and align with Contractor if responses are not sufficient

2.2. Short-Term

- 2.2.1. Consumers Energy team to monitor the following, analyze and initiate containment plans as necessary when out of tolerance. If Consumers Energy determined the plan is not recoverable within 5 working days, containment action is initiated.
 - 2.2.1.1. 98% Completed On Time Metric – based on ticket due date, includes only initial base ticket, normal priority tickets, excludes done for Consumers Energy (reviewing inclusion of emergencies, rushes, retransmits, revision ticket types) - daily
 - 2.2.1.2. 2.75 Days in Queue Metric - open locates/avg completed per day (Pending + backlog)/(Prior 5 bus days avg) - daily
 - 2.2.1.3. 999 Late Ticket Total – associated with contractor responsibility – daily
 - 2.2.1.4. Backlog detail by 003, 005, 009, 999 (threshold definition in progress) - daily
 - 2.2.1.5. Resource Total Management During Peak Forecasts – in alignment with forecast and resource plan - weekly

2.3. Backlog Management (threshold definition in progress)

- 2.3.1. Consumers Energy team to determine strategy to manage backlog scenario including the following considerations:
 - 2.3.1.1. Implementation of Incident Command System Emergency Management structure
- 2.3.2. Align with Contractor on strategy including any containment plans and communication requirements
- 2.3.3. Contractor to update 2.1.1 Forecast procedure incorporating containment plans - daily

3. Action Taken (Containment)

3.1. Consumers Energy to determine containment plan:

- 3.1.1. Consumers Energy staking support
 - 3.1.1.1. Communicate scope of support by Consumers Energy with contractor
 - 3.1.1.2. Contractors submits tickets to Consumers Energy
 - 3.1.1.3. Consumers Energy dispatches ticket through scheduling
 - 3.1.1.4. Consumers Energy executes staking

Monitoring & Managing Staking Requests for Contractor Timeliness

- 3.1.1.5. Consumers Energy enters positive response in MISSDIG system
- 3.1.1.6. Consumers Energy communicates summary back to Contractor
- 3.1.2. Alternate Supplemental Contractor Support
 - 3.1.2.1. Communicate scope of support by Consumers Energy with supplemental contractor
 - 3.1.2.2. Contractors submits tickets to supplemental contractor and copies Consumers Energy
 - 3.1.2.3. Supplemental contractor executes staking
 - 3.1.2.4. Consumers Energy enters positive response in MISSDIG system
 - 3.1.2.5. Consumers Energy communicates summary back to Contractor

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Document Maintenance

This procedure must be updated as needed to correct defects and align with any applicable regulatory requirements. [Click here to enter a Document Change Request.](#)

Periodic Review

If no revisions have been requested, this procedure must be reviewed every 3 years to ensure accuracy and to identify continuous improvement opportunities.

Records and Retention

The document owner must assure compliance with all corporate records standards documented in the Company [Information Governance Policy 0.8.1](#) and applicable records retention practices referenced in the [Information Asset Manager Information SharePoint site](#).

References

The following documents were used to create this procedure or should be used in conjunction with this procedure. Consult these documents for other applicable information.

1. *Document title* ([link location](#))
2. *Document title* ([link location](#))
3. *Document title* ([link location](#))

Attachments

Attachment 1: Name of Attachment (Page X)

Attachment 2: Name of Attachment (Page X)

Attachment 1: [Name of Attachment]

[Attachment Here – Attachments are governed by this procedure and any changes to an attachment require a revision of this procedure.

If the information is governed on its own, it is a Reference and should be linked in the References section.]

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Attachment 2: [Name of Attachment]

[Attachment Here]

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PROOF OF SERVICE

STATE OF MICHIGAN)

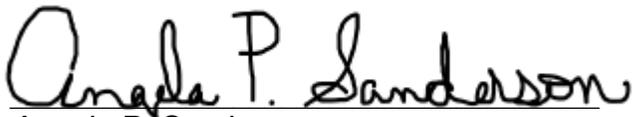
Case No. U-20569

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on January 23, 2020 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).


Brianna Brown

Subscribed and sworn to before me
this 23rd day of January 2020.



Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2024

Service List for Case: U-20569

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American Transmission Company

American Transmission Company

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Phil Forner