Consumers Energy

A CMS Energy Company

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August 3, 1999

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

In the Matter of the Application of Consumers Energy Company for <u>Ex Parte</u> Approval of a Special Contract for Electric Service with Steelcase, Inc. Case No. U-12060

Dear Ms. Wideman:

Enclosed for filing in the above referenced matter is an original and four copies of **"Consumers Energy Company's Application for Ex Parte Approval of a Special Contract for Electric Service with Steelcase, Inc."**

Thank you for your assistance in this matter.

Sincerely,

Raymond E. McQuillan

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of CONSUMERS ENERGY COMPANY for Ex Parte Approval of a Special Contract for Electric Service with Steelcase, Inc.	))))	Case No. U- 12060

APPLICATION FOR EX PARTE APPROVAL OF A SPECIAL CONTRACT FOR ELECTRIC SERVICE

CONSUMERS ENERGY COMPANY ("Consumers Energy") hereby applies for ex parte approval of a Special Contract For Electric Service for the supply of retail electric service to Steelcase, Inc., a Michigan corporation ("Steelcase"). In support of this Application, Consumers Energy states as follows:

1. Consumers Energy is a Michigan corporation with offices at 2 12 West Michigan Avenue, Jackson, Michigan 49201. Consumers Energy is presently engaged as a public utility in the business of, among other things, generating, purchasing, distributing and selling electric energy to approximately 1.5 million customers in the lower peninsula of the State of Michigan.

2. Consumers Energy's retail electric business is subject to the jurisdiction of the Michigan Public Service Commission ("MPSC" or "Commission") pursuant to certain provisions set forth in 1939 PA 3, as amended, MCL 460.1 et seq; MSA 22.13(1) et seq; 1909 PA 106, as amended, MCL 460.55 1 et seq; MSA 22.15 1 et seq; and 1909 PA 300, as amended, MCL 462.2 et seq; MSA 22.21, including Section 11 thereof, MCL 462.11; MSA 22.30.

3. Steelcase operates plant and facilities at 1120 36th Street, SE, Grand Rapids, 5555 Broadmoor Ave, Grand Rapids, 1016 N. Monroe Street, Lowell, and 4300 44th Street SE, Grand

Rapids, Michigan. The delivery voltages at the four facilities are 7,200 volts; 7,980/13,800 volts; 7,200 volts; and 7,200/12,470 volts.

4. The Commission and Consumers Energy have recognized Consumers Energy's manufacturing customers' needs to become or stay competitive within their respective industries. For example, in Case No. U-10335, the Commission approved rates which reduced the amount of rate cross-subsidization existing in the Company's retail electric rates. Additional progress on this issue was made in Case No. U-10685. The Commission's willingness to address this issue has resulted in a narrowing of the gap between the cost to serve manufacturing customers and what such customers pay through their electric rates. In addition, in multiple recent cases, the Commission has approved special manufacturing contracts which the Detroit Edison Company and Consumers Energy have entered into with various manufacturing customers.

5. The circumstances surrounding Steelcase provide an example of the types of competitive pressures which exist and which continue to develop in the electric industry. Its electric load could be served by alternative suppliers such as a municipal electric system or its manufacturing processes could be shifted out of Michigan. One of the important factors taken into consideration by Steelcase in establishing its business plans is its need for highly reliable electric service at reasonable prices.

6. By working cooperatively with customers, Consumers Energy can directly enhance their ability to meet competitive challenges. Addressing such issues during the phase-in period of transition to full customer choice remains an important focus of the Company's efforts. These actions enable Consumers Energy to focus management attention on the competitive issues facing the electric utility industry and on the task of retaining and creating jobs throughout its service territory.

7. It is generally recognized that the ability to create and sustain industrial growth affects the future economic viability of an area. Industrial growth results in a positive economic impact which includes new jobs and increased personal income for the citizens of the surrounding geographic area and increased tax revenues for local and state governments. In addition, industrial growth requires other industries to service it, thus creating still further growth.

8. Industrial growth can be promoted by, among other factors, (i) favorable governmental policies, (ii) location of natural resources, (iii) location of a skilled work force, and (iv) the existence of competitively priced energy. Consumers Energy believes that the creation, stabilization and redevelopment of industry throughout its service territory continues to be a paramount goal. The determination of the location of manufacturing facilities, as well as the shifting of production capability, will depend greatly on the implementation and continuation of innovative and flexible electric pricing.

9. As part of its continuing response to increased competition, Consumers Energy has negotiated and executed a Special Contract for Electric Service with Steelcase, a copy of which is attached to this Application as Attachment A. The Special Contract states that Consumers Energy will provide firm electric service to Steelcase at its facilities located at 1120 36th Street, SE, Grand Rapids, 5555 Broadmoor Ave, Grand Rapids, 1016 N. Monroe Street, Lowell, and 4300 44th Street SE, Grand Rapids, Michigan. The term of this special Contract expires on December 31, 2001, which coincides with the January 1, 2002 date for full customer choice under the Commission's retail open access program. A full description of the pricing provisions is contained in Attachment A. The Special Contract provides for a negotiated pricing structure to be applied to the four facilities referenced herein. This pricing structure may be subject to adjustment dependant upon the price of

power determined at the Cinergy Hub. However, Steelcase will not be subject to any charges in excess of those that would otherwise be incurred pursuant to Consumers' standard tariff rates.

10. The Special Contract for Electric Service is the product of good faith negotiations and compromise between Consumers Energy and Steelcase. Both parties negotiated this contract in light of competitive options available to Steelcase. The rates and other terms and conditions specified in the Special Contract for Electric Service are reasonable and in the public interest. A major feature of the Contract is the retention in Michigan of a major customer with attendant regional employment. The contract also enhances the stability of Consumers Energy's customer base.

11. Consumers Energy believes that Steelcase will benefit under the terms of the Special Contract for Electric Service because it will pay a competitive price for electricity. Consumers Energy and its other customers will benefit because (i) retention of this customer in Michigan will further strengthen Michigan's economy; (ii) entering into this contract further enhances Consumers Energy's ability to attract new load and otherwise promote economic development within its service area; (iii) an aggressive response to attract major industrial customers will demonstrate to the financial community Consumers Energy's commitment to meet competitive challenges; (iv) the load served under the Special Contract will provide contribution by this customer to Consumers Energy's system fixed costs. In addition, retention of this customer's load will directly affect the business climate, availability of jobs and general quality of life in an important part of Consumers Energy's service territory.

12. Consumers Energy will serve Steelcase at rates above its variable cost to produce energy. Further, at this time the Company is not requesting a change in the cost of service to other customers. Thus, approval of the Special Contract will not alter any existing electric rates paid by Consumers Energy's other customers and, therefore, may be authorized by the Commission without

notice or hearing as provided by MCL 460.6a; MSA 22.13(6a). Consumers Energy reserves the right to., in the future, seek appropriate rate making treatment which may include a request to recover the revenue effect of the rate discount provided by this contract. Consumers Energy agrees that, in making such a request, it would bear the burden of demonstrating either that (i) the contract terms and prices are justified on the basis of cost of service, or (ii) it is more beneficial to other (non-participating) customers for Consumers Energy to retain Steelcase as a customer under the terms of this contract than if Steelcase relocated outside Michigan and its electric load was transferred elsewhere.

13. Both parties have negotiated the terms of the Special Contract under the belief that the Commission would continue its practice of expeditiously handling requests for approval of such contracts. The Company therefore respectfully requests the Commission to expeditiously approve the attached Special Contract for Electric Service.

WHEREFORE, Consumers Energy Company requests that the Commission approve ex parte the attached Special Contract for Electric Service with Steelcase.

CONSUMERS ENERGY COMPANY

Dated: August 2, 1999

By: ______________________

Carl L. English, Vice President
Electric Transmission and Distribution
Consumers Energy Company
2 12 West Michigan Avenue
Jackson, MI 49201
(5 17) 788-2573

____

Raymond E. McQuillan (P-24100)
Attorney for Consumers Energy Company
212 West Michigan Avenue
Jackson, Michigan 4920 1
(517) 788-0677

ATTACHMENT A

SPECIAL CONTRACT FOR ELECTRIC SERVICE

This Contract, made May 28, 1999 between **CONSUMERS ENERGY COMPANY,** 212 West Michigan Avenue, Jackson, Michigan 49201 (herein "Consumers") and **STEELCASE,** INC., a Michigan corporation, with its headquarters at 901 Eastern Avenue SE, Grand Rapids, Michigan 49508 (herein "Steelcase"). In consideration of the mutual promises and covenants contained in this Contract, the parties agree as follows:

1. **Sole supplier:**

Consumers and Steelcase agree that Consumers shall be the sole supplier of all the electric energy required for the operation of Steelcase's plant and facilities located at Steelcase Inc. (G.R.), 1120 36th Street, SE, Grand Rapids, Mi, 49508; Steelcase Inc. (Kentwood), 5555 Broadmoor Ave, Grand Rapids, Mi, 49512; Attwood Corporation, 1016 N. Monroe St, Lowell, Mi, 49231; Steelcase Inc.(GR Wood), 4300 44th Street SE, Grand Rapids, Mi, 49512 ("premises"), except for emergency backup generation or operation of any existing self-generation equipment at these identified premises. The electric service to be provided hereunder is for Steelcase's sole use at the premises, or such other sites on Consumers' system where the electric load from these specified premises may be transferred, and shall not be transmitted elsewhere or shared (except as provided herein), resold, or used as auxiliary or standby power as to any other source of power supply.

2. **Energy to be provided:**

The electric energy to be supplied shall be firm power provided via the existing transmission and distribution facilities of Consumers Energy Company and shall be alternating current, three phase, 60 hertz. Delivery voltages at the four facilities are: GR-7,200 volts; Kentwood-7,980/13,800 volts; Attwood-7,200 volts; and GR Wood-7,200/12,470 volts. Delivery shall be made at mutually agreeable points on Steelcase's premises and the electric energy shall be metered at the point of delivery by meters furnished, installed and maintained by Consumers. Steelcase shall provide a location for such metering equipment that is suitable to Consumers, and shall also provide adequate protection against damage to, or tampering or interference with, the metering equipment. Consumers shall make periodic tests of its meters and keep them within standards of accuracy required by the Michigan Public Service Commission ("MPSC").

3. **Rates and charges:**

During the term of this Contract, Consumers will provide electric service at the rates and terms attached hereto and made a part hereof as Attachment 1. This Contract does not affect or modify the standby service provided by Consumers under Agreement dated January 1, 1995. Except as otherwise specified in this Contract, the rules and billing practices followed by Consumers with respect to service provided under Consumers' Schedule of Rates Governing the Sale of Electric Service shall apply to the service provided under this Contract. All Rates and charges quoted herein shall not be subject to adjustment unless required by applicable changes in State or Federal laws, rules, or regulations.

4. Effective Date of Contract; Contingencies; Termination:

Consumers' obligation to provide electric service at the rates and terms in Attachment 1 and Consumers' performance under this special Contract for Electric Service are expressly contingent upon MPSC approval of this Contract as to form and content. In addition, either party is not obligated to perform pursuant to the terms of this Contract if (i) the MPSC order approving this Contract adds conditions unacceptable to either party in their sole discretion, or (ii) an order (a) restraining or prohibiting the transactions contemplated by this Contract, or (b) modifying or reversing the MPSC order approving this Contract has been issued by any public authority or court. Subject to the foregoing provisions of this section, this Contract shall become effective April 1, 1999 ("Effective Date"). If the MPSC does not issue an order approving this Contract on or before September 1, 1999, either party may terminate the Contract upon thirty (30) days' notice to the other.

The parties agree to use good faith and their best efforts to fulfill their obligations under this Contract as soon as practicable. If either party fails to perform or satisfy any of the conditions on its part to be performed or satisfied, then the other party shall have the option to (a) waive any condition and continue with the Contract, (b) terminate this Contract and declare it of no further force or effect, or, (c) subject to the provisions of Section 9 (Dispute Resolution) enforce its rights under this Contract.

5. Term of contract; renewals:

This Contract will become effective upon the Effective Date, and shall continue in force until December 31, 2001. Upon expiration or termination of this Contract, Steelcase may return to electric service from Consumers at applicable tariff rates without penalty. Notwithstanding the foregoing, this Contract shall immediately terminate at Consumers' option upon Steelcase's failure to maintain an annual usage level that is at least 75 % of 1998 kWh usage and Steelcase shall, within ninety (90) days of such termination, refund to Consumers an amount equal to the difference between the rates set forth in Attachment 1 and the otherwise applicable standard tariff rates which would have been applied to Steelcase's energy consumption.

6. Voltage and Measurement:

Steelcase equipment must be operated so that voltage fluctuations on Consumers' distribution system shall not exceed permissible limits as established in Consumers' Schedule of Rates Governing the Sale of Electric Service, incorporated herein by reference.

7. Limitations of Liability, Force Majeure:

Consumers' responsibility for variations in the service characteristics shall be only as provided in the Schedule of Rates Governing the Sale of Electric Service.

Except as to rates and charges for power delivered payable under this Special Contract, neither party shall be liable to the other for damages for any act, omission or circumstance occasioned by or in consequence of any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, or by any other cause or causes beyond such party's reasonable control, including any curtailment, order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, or by the making of necessary repairs upon the property or equipment of either party hereto.

8. Dispute Resolution:

The Parties agree that, unless provided otherwise in this Agreement, any disputes between them relating to the formation, breach, interpretation and application of this Agreement and not settled by the management of the Parties shall be submitted to arbitration in accordance with the provisions of the American Arbitration Association and the following additional terms and conditions:

(a) If the parties are not successful in negotiating a resolution to the dispute, then the parties agree to submit the dispute to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association by a sole arbitrator. Arbitration shall take place in a mutually agreeable location in the State of Michigan. The substantive and procedural law of the State of Michigan shall apply to the proceedings. Equitable remedies shall be available in any arbitration. Punitive damages shall not be awarded. This section is subject to the Federal Arbitration Act, 9 USC §1 et seq. and judgment upon the award rendered by the Arbitrator, if any, may be entered by any court having jurisdiction thereof.

(b) Each Party shall be entitled to reasonable discovery through requests for admission, requests for production of documents and by depositions of not more than 10 individuals, and by no other means; and discovery procedures shall be utilized only for the discovery of relevant admissible evidence or information reasonably calculated to lead to the discovery of relevant admissible evidence, and shall not place an undue burden on the Party from whom discovery is sought.

(c) All discovery shall be completed, and the arbitration hearing shall commence within 90 days after appointment of the arbitrator; and absent a finding by the arbitrator of exceptional circumstances, the hearing shall be completed and an award setting forth the findings and reasoning for the arbitrator's decision, shall be rendered within 30 days after the conclusion of the hearing.

(d) The arbitrator shall not have authority to fashion a remedy that includes consequential or punitive damages, and the arbitrator is hereby prohibited from awarding injunctive relief of any kind, whether mandatory or prohibitory.

(e) The award shall be final and binding on all parties and may be enforced in any court of competent jurisdiction, and the court's standard of review of the arbitrator's decision will be whether the arbitrator, considering all the facts and evidence available to him or her at the time, rendered a decision which was not arbitrary or capricious.

(f) Unless the arbitrator, for good cause shown, apportions the costs of the arbitration proceeding between the Parties, the arbitrator's award shall direct the losing Party to pay the costs of the arbitration proceeding, which shall include the arbitrator's bill for services and any amounts charged by the American Arbitration Association in connection with the arbitration proceeding, but which shall not include the attorney fees, experts' fees, or any other expenses incurred by a Party in connection with the preparation for or conduct of the proceeding.

(g) In no event shall either Party be required to arbitrate a dispute based on transactions or occurrences which occurred and were ended more than 24 months prior to the date of the demand for arbitration, and mailing shall not be presumed to be timely in the absence of official postal proof of the date of mailing.

9. **Assignment; No third-party beneficiaries:**

This Contract shall inure to the benefit of and be binding upon the successors of the respective parties hereto. This Contract shall not be assigned, transferred or otherwise alienated by either party except as provided hereunder, and any such attempted assignment shall be void and not merely voidable. The parties do not intend to confer any benefits on any person, firm, or corporation other than the parties and nothing contained in this Contract whether express or implied, is intended to confer upon any person or entity, other than the parties hereto, any rights or remedies.

10. **Entire Agreement; Amendments:**

This Contract and the attachments contain the entire agreement and represent the understanding of the parties with respect to the subject matter contained in this Contract, and all prior agreements or understandings of the parties are superseded and revoked. This Contract may be amended or terminated only by a written instrument executed by Consumers and Steelcase. There are no agreements, restrictions, promises, warranties, covenants, or other undertakings other than those expressly set forth in this Contract.

11. **Governing Law, Interpretation and Venue:**

This Contract shall be governed and controlled by the laws of the state of Michigan as to interpretation, enforcement, validity, construction, and effect and in all other respects. The parties (a) irrevocably submit to the jurisdiction of any Michigan court or the U.S. District Court for the Western District of Michigan, in any action arising out of this Contract, and (b) waive, to the fullest extent that they may effectively do so, the defense of an inconvenient forum. The parties also agree that a final judgment in any such action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Section headings in this Contract are for reference only and do not form a part of this Contract. This Contract is the product of negotiation and neither party shall be deemed to be the drafter of this Contract or any part thereof. If any provision in this Contract is held to be invalid or unenforceable, it shall be ineffective only to the extent of the invalidity, without affecting or impairing the validity and enforceability of the remainder of the provision or the remaining provisions of this Contract.

12. **Notices:**

Any notice that either party may give or is required to give under this Contract shall be in writing and, if mailed, be deemed to have been given three days after being sent by certified or registered mail, postage prepaid, addressed to the other party at the other party's address set forth in this Contract or at any other address that the other party provides in writing. Notices in writing does not include electronic mail (or E-Mail) or facsimile transmission (fax).

If to Consumers:

Francis A. Ernst, Jr.
Consumers Energy Company
212 West Michigan Avenue
Jackson, Michigan 49201

If to Steelcase:

Roger M. Burgess
Steelcase, Inc.
4030 Eastern Ave SE
PO Box 1967
Grand Rapids, MI, 49501

The parties may change the address and person to whom notices are to be sent by written notice to the other party.

13. **No waiver:**

The failure of either party to insist, in any one or more instances, upon strict performance of any of the provisions of this Contract, or take advantage of its rights under this Contract, shall not be construed as a permanent waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

IN **WITNESS WHEREOF,** the parties have executed this Special Contract on the date first written above.

Consumers Energy Company

By: Francis A. Ernst Jr.

Francis A. Ernst, Jr.

Director of Bates

Steelcase Inc.

By: Robert A. Dellard

Title: Sr V.P. Operations

APPROVED AS TO FORM

Ron 6.9.99

CONSUMERS POWER COMPANY

LEGAL DEPARTMENT

CONSUMERS ENERGY COMPANY
Steelcase, Inc. Special Contract

		For Annual Usage Less Than 229 GWh		For Annual Usage In Excess of 229 GWh			
Line	Rate Component	Grand Rapids Rate ($)	Kent Rate ($)	Grand Rapids Rate ($)	Kent Rate ($)	Attwood Rate ($)	Grand Rapids Wood Rate ($)
1	Customer Charge	100	100	100	100	100	100
2	Capacity Charges						
3	On-Peak Demand	6.32	6.75	5.38	5.76	5.66	7.00
4	Maximum Demand	0.52	0.52	0.52	0.52	0.52	0.52
5	Energy Charges						
6	On-Peak	0.039522	0.039522	0.037372	0.037372	0.037372	0.037372
7	Off-Peak	0.033422	0.033422	0.029272	0.029272	0.029272	0.029272

**CONSUMERS ENERGY - STEELCASE, INC.
SPECIAL ELECTRIC SERVICES CONTRACT
PRICING TERMS AND CONDITIONS**

1. To the extent that the market price of power at the Cinergy Hub averages more than 15¢/kWh in any day, Steelcase, Inc will be responsible for the amount in excess of 15¢/kWh times the kWh attributable to the contract facilities during the hours of 11:00 AM to 7:00 PM. However, Steelcase, Inc's total remittance to Consumers will not exceed the remittance that would have otherwise occurred had the facilities been charged at the applicable standard tariff rates.

2. If retail open access service is implemented in Consumers Energy's service territory and Steelcase, Inc qualifies for that service, then Steelcase, Inc may remove facilities described above from this contract and participate in the retail open access program.

3. Commission ordered surcharges applicable to bundled rate customers (e.g., prior year PSCR surcharges, decommissioning surcharges, and open access implementation charges) will also apply to Steelcase.

4. Steelcase will be billed at the applicable standard tariff rates throughout the year. A balancing account will accrue and will be offset by any Ciuergy Hub price adjustment for the same contract year. At the end of the contract year, any excess of savings over the Cinergy Hub adjustments will be credited to Steelcase on the first billing of the subsequent contract year.

Attachment 2

STEELCASE, INC. ELECTRIC USAGE RELATED TO FACILITIES LEASED FROM PENSKE/DIESEL TECH

Steelcase, Inc. currently leases space in a building owned by the Penske/Diesel Tech Corporation. Penske/Diesel Tech, on a monthly basis, bills Steelcase for a portion of the facility's electric usage. For purposes of this special electric service contract Steelcase's portion of the electric usage at the Penske/Diesel Tech facility is included, and shall be priced in accordance with the rates included on Attachment 1.

For billing purposes, Consumers will recalculate the bill for the Penske/Diesel Tech facility pursuant to the rates included on Attachment 1 to the Special Contract for Electric Service. Consumers will then apply Steelcase's percentage of the monthly usage at the facility to the recalculated billing amount. (The monthly percentage will be provided to Consumers by Steelcase.) The resulting revised billing amount to Steelcase will be compared to the original billing amount due from Steelcase to Penske/Diesel Tech. Any difference in the calculations will be reflected as a adjustment to the billing for the 36th Street facility addressed in the special contract.

If Steelcase relocates the processes currently performed at the facility to another facility served by Consumers, the rate identified on Attachment 1 will continue to be applied to the relocated electric usage.