STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of CONSUMERS ENERGY COMPANY for Revision of its Gas Tariffs Relating to its Rule B11 Customer Attachment Program)	))))	Case No. U-12095

SETTLEMENT AGREEMENT

On August 25, 1999 Consumers Energy Company ("Consumers Energy") filed an Application and Report describing efforts made by Consumers Energy to increase the likelihood that purchasers of residential real estate would be aware of the existence of gas main extension surcharges for which the purchasers may be responsible and to approve revisions of its Tariff B11 Customer Attachment Program ("CAP"). Pursuant to due notice, interested persons were invited to submit comments or petitions to intervene no later than September 28, 1999. No comments or petitions to intervene were filed. A prehearing conference was held October 5, 1999. The Michigan Public Service Commission Staff participated.

Following the prehearing conference, Consumers Energy and Staff negotiated this settlement agreement. Consumers Energy and Staff hereby agree and stipulate to the following facts:

1. Consumers Energy renders natural gas service pursuant to rules, regulations and rates approved by the Commission. Standard rules, regulations and rates governing the sale of natural gas service are set forth in Schedule "M.P.S.C. No. 1-Gas, Consumers Energy Company" ("M.P.S.C. No. 1-Gas"). The Customer Attachment Program (CAP), which provides for extensions of gas mains and/or service lines, is generally described in Tariff B11. Customers may elect to pay the required Customer Contribution for gas main extensions in a lump sum or a fixed monthly surcharge. Tariff

B11 requires subsequent customers requesting gas service at the property address pay the remaining fixed monthly surcharge. See, e.g., Order dated May 27, 1999 in Case No. U-11820. The provisions of Consumers Energy's CAP program are substantially the same as the provisions of the other major Michigan gas utilities regarding main extensions and customer contributions including surcharges.

2. In its Order dated May 27, 1999, the Commission directed Consumers Energy to file an Application addressing actions which will provide better notice to purchasers of real estate who become responsible for taking over CAP surcharges applicable to natural gas service to the purchased property.

3. Michigan statute currently provides for residential real estate sellers to disclose certain mandated information as part of their real estate transaction (SELLER'S DISCLOSURE STATEMENT) in order to afford purchasers certain basic information regarding the property being purchased and possible issues which could incur expense or liability for those purchasers. See the "Seller Disclosure Act," 1994 PA 92; MCL 565.951. Consumers Energy is working in conjunction with the Michigan Association of Realtors and the Michigan Legislature to amend the Seller Disclosure Statement to include an explicit disclosure to any outstanding unpaid CAP surcharge balances for gas main extensions. Disclosure by sellers to buyers at the time of negotiation of the real estate transaction is the best way for sellers and purchasers to identify the issue and to apportion the surcharge responsibility between the parties. House Bill No. 5014 was introduced October 19, 1999 in the Michigan House of Representatives which included the disclosure modifications. The House Bill No. 5014 was passed by the Michigan Senate on February 17, 2000 and presented to the Governor for signature on February 29, 2000. It provides for disclosure by the seller of: "Any outstanding utility assessments or fees, including any natural gas main extension surcharge." The

amendment of the SELLER'S DISCLOSURE STATEMENT by legislation should ensure that purchasers will be fully informed of CAP surcharge responsibilities by the sellers in a timely fashion.

4. The Customer Attachment Program allows for the extension of gas mains to areas in which customers would otherwise require some alternative to natural gas heating such as propane, solar or electric heating or wood heating. While the availability of natural gas service to residential homes enhances property values and reduces heating costs, the benefit conferred is not to the real estate itself but rather benefits those who use the gas service. If homes are sold, this benefit is available to the customer enjoying the cost advantage from using natural gas for heating purposes as opposed to other current alternatives. Therefore, it is reasonable to expect the subsequent customer of the utility to bear the remaining financed cost of the main extension surcharge after the property is sold. Likewise, surcharge information is not information that can legally be recorded with local Register of Deeds offices since the gas main extension is not an assessment against property title or a lien against property title in any fashion.

5. In an effort to better advise sellers of their role when negotiating a sale of their property about successorship CAP surcharge responsibility, Consumers Energy has modified the language contained on its Customer Attachment forms including (i) Agreement for Gas Service Line Area Expansion Program (Form 77); (ii) Agreement for Gas Main Extension Customer Attachment Program (Form 66) ; and (iii) Application for Natural Gas Service Agreement for Gas Main Extension, Customer Attachment Program (CAP) (Form 1245) , by adding substantially the following language in bold print in a conspicuous place near the customer's signature:

> **"You should tell anyone who buys this property from you about this monthly CAP surcharge since your buyer will be responsible for the remaining monthly surcharge payments unless you have already fully paid off the CAP surcharge balance."**

> **"If someone rents this property from you and is responsible for payment of the monthly CAP surcharge, you should tell anyone who subsequently rents this property from you about this monthly CAP surcharge since your tenant will be responsible for the remaining monthly surcharge payments unless you have already fully paid off the CAP surcharge balance."**

Therefore, gas surcharge customers signing the contract documents for gas main extensions should discuss responsibility for any remaining CAP surcharge payments with subsequent purchasers or tenants having surcharge responsibility.

6. Consumers Energy further proposes by bill insert or bill message within three months of the order issued in this matter to remind the audience of its current CAP surcharge customers who sell or rent property with a surcharge balance remaining that they have a current CAP surcharge balance and that in the event they sell or rent the property, purchasers or tenants should be advised of the remaining surcharge and their responsibility to pay it.

7. In an additional effort to make buyers of real estate aware of their potential successorship surcharge responsibility, Consumers Energy will have its Customer Services Representatives discuss the existence of the CAP surcharge upon every occasion that it receives a call to request service changes for property which has a CAP surcharge balance remaining. The customer may already have completed the negotiation of the purchase agreement or rental agreement and perhaps even the sale or rental of the property at that point. Nonetheless, Consumers Energy will advise them how to get additional information regarding the monthly main extension charge for the property or to request a calculation of a lump-sum pay off of the surcharge balance.

8. In the Order dated May 27, 1999, the Commission indicated that the Company could also propose other appropriate changes to the Customer Attachment Program tariffs.

Consumers Energy proposed two tariff modifications. First, Consumers Energy proposed to modify the provisions in Tariff B11.C. **Payment of Customer Contribution**, to state:

> "*Billing of the Fixed Monthly Surcharge shall commence within six months following completion of construction of the main and initial service lines.*"

The proposed wording starts the surcharge within a reasonable period from when construction of the extension and initial service lines are completed and ends the surcharge for all associated accounts at the same time which allows the Company to collect equally from all customers and to collect all the amount financed through the surcharge program.

Second, Consumers Energy proposes to modify the provisions in Tariff B11.E. **Excessive Service Line Fee**, which currently provides:

> "The service line limit is equal to the greater of 400 feet or 150% of the average length of all service lines within the project."

Consumers Energy proposes to delete that provision and substitute the following language:

> *"The Excessive Service Line Fee will be assessed to a customer whose service line requirement is in excess of the Service Line Limit. The Excessive Service Line Fee will be calculated annually to be effective March 1st.*
>
> *The Service Line Limit for an individual service line shall be equal to the point at which the cost of the customer's service requirements are greater than the allowance based on the Cost of Service Model. The Company reserves the right to use a different Service Line Limit for different categories of customers. The Service Line Limit will be calculated annually to be effective March 1st.*
>
> *In calculating the average service line length for a project containing more than one customer, the maximum length of each service line to be included in the calculation is the Service Line Limit for a primary residential home."*

The proposed language eliminates confusing wording and allows the Company to provide service in the most economical manner and reduces unrealistic prescribed conditions that may end up costing the customer additional money.

9. Consumers Energy proposes to submit to the Michigan Public Service Commission Staff annually a description of the system average costs used in its discounted Cost of Service Model (Model) for calculation of the Customer Contribution or any Excessive Service Line Fee, prior to the effective date of those charges.

10. Approval of the modifications to the tariffs as requested herein will not increase the rates and charges for any current customer.

11. Staff has reviewed the application and concludes that the efforts instituted by Consumers Energy should increase the likelihood that purchasers of residential real estate and renters with surcharge responsibility will be aware of the existence of gas main extension surcharges for which the utility customer may be responsible and that this Settlement Agreement will serve the public interest.

12. This Settlement Agreement is made for the sole and express purpose of reaching a compromise and accommodation among the parties. This Settlement Agreement is intended for final disposition of the issues in this proceeding and the parties hereto join in respectfully requesting the Commission to grant its prompt approval. It is the opinion of the signatories hereto that this Settlement will aid in the expeditious conclusion of this case and minimize the expenditure of resources which would otherwise have to be devoted to this matter by the Commission and the parties.

13. Section 81 of the Administrative Procedures Act of 1969 is waived by the signatories.

CONSUMERS ENERGY COMPANY

Dated: March 10, 2000

By: ______________________________
Raymond E. McQuillan (P24100)

MICHIGAN PUBLIC SERVICE
COMMISSION STAFF

Dated: March __, 2000

By: ______________________________
William W. Derengoski (P34242)