December 15, 2010

Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

RE: File Reference No. 1850-100, Leases

We appreciate the opportunity to comment on the Exposure Draft, Leasing (Topic 840) (ED). This letter contains the comments of both CMS Energy Corporation and Consumers Energy Company.

CMS Energy Corporation, whose common stock is traded on the New York Stock Exchange, is a domestic energy company engaged in electric and natural gas utility services and independent power production, operating through subsidiaries in the United States, primarily in Michigan. CMS Energy Corporation’s consolidated assets are $15 billion and annual operating revenues are $6 billion. Consumers Energy Company, the principal subsidiary of CMS Energy Corporation, provides electricity and/or natural gas to 6.5 million of Michigan’s 10 million residents and serves customers in all 68 counties of Michigan’s Lower Peninsula.

We support the overall goal of the Financial Accounting Standards Board and the International Accounting Standards Board in working toward a converged standard on leasing. We have limited our responses to matters about which we have the most significant concerns. On these and other points, we agree with the comments, questions, and concerns described in the comment letter on the ED submitted by the Edison Electric Institute.

Our concerns about this ED center primarily on the accounting for power purchase and sales agreements. We participate in a number of agreements for which the principal purpose is to obtain or provide electric energy. Often under these agreements, pricing for all benefits received (which may include energy, associated environmental attributes, and/or the ability to claim the producing plant as a capacity resource for regulatory purposes) is per megawatt-hour (MWh) of energy delivered, with no required minimum quantity to be supplied, and is applied to the total amount of energy produced by a specific plant. Even when pricing is per MWh of energy delivered, it is rare for the price to be constant throughout the duration of the contract. Pricing per MWh of energy is often scheduled at higher prices when delivery is during periods of expected high demand (on-peak hours, or summer months) and lower prices when delivery is during periods of expected lower demand.
Under present leasing literature, we have concluded that these agreements are leases, since the purchaser of energy obtains all of the output of a particular plant, and the price is not constant ("fixed") for every MWh of energy delivered. Since all payments under such agreements are contingent upon delivery of energy, however, no lease assets and lease liabilities have been recognized when the agreements have been assessed as non-operating leases. As a result, the recognition of lease revenue or expense has been no different than if the agreements were assessed as executory contracts.

In addition, when we adopted the consensus in EITF Issue No. 01-8, Determining Whether an Arrangement Contains a Lease, codified in ASC 840-10-15 (EITF 01-8), the transition guidance provided for contracts executed or acquired prior to May 28, 2003 to be excluded from the scope of that consensus. Many of our power purchase and sales agreements, which are often long-term in nature, were executed prior to May 28, 2003, and have not been modified since. Therefore, these agreements have not been assessed under lease accounting guidance.

Responses to Questions in the ED

Question 4(c): Do you think that the guidance in paragraphs B1-B4 for distinguishing leases from service contracts is sufficient? Why or why not? If not, what additional guidance do you think is necessary and why?

We do not believe that the guidance in paragraphs B1-B4 for distinguishing leases from service contracts is sufficient. We are aware that there is broad diversity in the practice of implementing present leasing guidance, which is not substantially modified by paragraphs B1-B4 of the ED. Under present leasing guidance, our interpretation of the phrase "fixed per unit of output" (retained in paragraph B4(c) of the ED) is that the price per unit of output should be constant and unchanging over all periods covered by the agreement. We are aware, however, that some other utilities and their audit firms have taken less stringent positions as to the meaning of this phrase. In addition, we have interpreted "output" to mean the physical deliverables (energy, steam, etc.) of the property, plant, or equipment. In contrast, some other utilities have concluded that intangible assets (environmental attributes, regulatory capacity credits, etc.) are also "output". We believe that additional guidance is needed to clarify the intent of the boards in relation to these concepts in order to reduce diversity in practice and increase comparability of financial statements across entities.

Question 13: Do you think that lessees and lessors should present lease income and lease expense separately from other income and expense in the income statement (paragraphs 26, 44, 61, 62, BC146, BC151, BC152, BC157 and BC158)? Why or why not? If not, do you think that a lessee should disclose that information in the notes instead? Why or why not?

We do not believe that lessees and lessors should be required to present lease income and lease expense separately from other income and expense in the income statement. In the type of power purchase arrangement described above, although the arrangement is accounted for as a lease, and some or all of the payments are accounted for as contingent rentals, our presentation of those expenses on the income statement is as purchased power expense, consistent with power purchases under similar arrangements that do not meet the definition of a lease. We believe that a
requirement to present lease income and lease expense separately from other income and expense in the income statement will inappropriately disaggregate similar costs.

**Question 16(a):** This exposure draft proposes that lessees and lessors should recognize and measure all outstanding leases as of the date of initial application using a simplified retrospective approach (paragraphs 88-96 and BC186-BC199). Are these proposals appropriate? Why or why not? If not, what transitional requirements do you propose and why?

We do not believe that the proposed transition guidance is appropriate. The transition guidance in the ED requires entities to “recognize and measure all outstanding contracts within the scope of this guidance as of the date of initial application.” The date of initial application is “the beginning of the first comparative period presented in the first financial statement in which the entity applies this guidance.” We foresee a number of complications if this guidance is retained in the final standard.

For SEC registrants, it is unclear whether “comparative period” is intended to encompass three years (statement of income, statement of changes in equity) or five years (selected financial information). Also, non-SEC registrants may present fewer than three years of financial data under GAAP. If an SEC registrant consolidates a non-SEC registrant, would the subsidiary measure and record affected leases as of the beginning of its own first comparative period presented, or would it be allowed or required to use the beginning of the parent company’s first comparative period presented? We believe that any final transition requirement to use a “simplified” retrospective approach must address the complexities of non-standard presentation periods.

Furthermore, if initial application takes place during a period that has already passed, entities may be required to perform lease accounting assessments on agreements that have already expired. Entities will be required to determine what their assumptions were at multiple past reporting dates (given the proposed provision that significant changes to underlying assumptions result in remeasurement of the lease asset and lease liability). Generally, we do not conduct ongoing evaluations of the most likely lease term and expected contingent rentals under most arrangements, and our assumptions at prior reporting dates are unknown. Also, as related to our power purchase and sales agreements, we do not believe that any type of retrospective application would be useful to our financial statement users, and certainly would not justify the cost of assessing (and reassessing) such agreements.

We recommend prospective application of new lease accounting requirements applied to all outstanding leases as of the effective date of any final standard.

**Question 16(c):** Are there any additional transitional issues the boards need to consider? If yes, which ones and why?

We believe that the boards should explicitly address agreements that were previously scoped out of lease accounting guidance due to the grandfathering provisions of EITF 01-8. As previously mentioned, many of our power purchase and sales agreements have not been assessed under lease accounting guidance, due to these provisions. If the grandfathering provisions of EITF 01-8 are
not retained in any final leasing standard, we estimate that the time and effort spent to implement the new standard will increase at least fourfold. We do not believe that including these older contracts in the scope of a new leasing standard would be cost-justified. We understand that it was not the boards’ intention to change the scope of lease accounting, and we concur with this position.

We recommend that any final standard retain the present scope exception for contracts entered into or acquired before May 28, 2003.

We appreciate the opportunity to provide feedback on the ED and to have input into issues that may significantly impact our company and our industry.

Sincerely,

[Signature]

Glenn P. Barba
Vice President, Controller and Chief Accounting Officer
CMS Energy Corporation and Consumers Energy Company