Glenn P. Barba
Vice President, Controller
and Chief Accounting Officer

October 2, 2015

Submitted via email to reg.comments@pbgc.gov

Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street NW
Washington, DC 20005-4026

Dear Sir or Madam,

Subject: RIN 1212–AB30—Comments on Proposed Regulations under ERISA Section 4010 Annual Financial and Actuarial Information Reporting

CMS Energy thanks you for the opportunity to submit comments on the proposed rules regarding employer reporting under ERISA section 4010. The proposed regulations were published in the *Federal Register* on July 27, 2015.

Who We Are

CMS Energy is one of nation's largest combination electric and natural gas utilities. We employ approximately 7,200 people in the United States. We sponsor a qualified defined benefit pension plan that currently has approximately $2 billion in assets. We have historically made pension contributions in excess of minimum required amounts to ensure our plan remains well-funded.

Summary

We understand the Pension Benefit Guaranty Corporation (PBGC) proposes to limit the existing $15 million waiver of reporting under section 4010 to those controlled groups with fewer than 500 plan participants in all plans of the controlled group. The CMS Energy plan has more than 500 participants, so we would no longer qualify for this waiver if the PBGC made this rule change. We believe this added participant threshold could result in CMS Energy being required to file under section 4010, adding burdensome reporting where the plan does not pose a significant risk to the PBGC. **We believe the PBGC should not change the application of the $15 million waiver in any way,** and this participant count threshold should not be included in final regulations.

A 500 Participant Controlled Group Threshold is Unnecessary and Burdensome

Our pension plan has sufficient assets as compared to the plan's funding target. But when assets are artificially reduced by funding balances (as required for the 80% threshold test), the plan is essentially deemed not to be least 80% funded. The existing calculation of underfunding for the $15 million waiver provides a better measure of the "true" funded status of plans by determining the underfunded amount without reduction for existing funding balances. If this $15 million waiver is limited only to controlled groups with fewer than 500 plan participants, we may need to waive plan funding balances unnecessarily, simply to avoid the burdensome reporting under ERISA section 4010, or we may forego additional funding to the plan because we would no longer have a dollar threshold to potentially reach to eliminate reporting.

Sample calculations for our pension plan are shown in the attachments to this letter, based on the current rules and then hypothetically based on the proposed rules. As shown, we would need to waive $129 million of the plan's funding balances just to avoid section 4010 reporting if the proposed rules were in effect.

Thus, as proposed, the restriction to allow the use of the $15 million waiver only in situations where there are fewer than 500 plan participants across the controlled group is unnecessarily restrictive and burdensome for controlled groups such as ours with well-funded plans, and could actually result in lower funding contributions by some plan sponsors.

$15 Million Threshold on Stabilized Basis is Reasonable without Adjustment

The PBGC has provided guidance, which it proposes to codify, that the calculation of the $15 million waiver is determined reflecting stabilized interest rates as a result of MAP-21 and HATFA. Use of these stabilized rates results in a lower funding target for a temporary period of time. The PBGC believes this lower funding target calculation results in hundreds of plans not being reported to the PBGC and proposes to correct this situation by restricting the availability of the waiver. However, this approach assumes the stabilized rates are inappropriate and does not anticipate the lessened impact of the stabilized rates over time.

MAP-21 and HATFA provided for stabilized interest rates due to a historically low interest rate environment and its consequent impact on pension funding requirements. These changes in required funding assumptions were implemented to more accurately reflect the long-term nature of pension plan liabilities. The $15 million waiver to reporting under ERISA section 4010 was also established as a more accurate measure of true pension plan funding by using assets which are not reduced by any existing funding balances. Thus, using a realistic measure of underfunding for waiving reporting for low levels of underfunding is a reasonable approach to applying the requirements to report to the PBGC and is consistent with the original intent of the waiver. The PBGC should not determine whether or not some plans are exempt from reporting as measured against artificially low rates (i.e., rates which do not reflect interest rate stabilization).

In addition, the stabilized interest rates are currently anticipated to converge with the non-stabilized rates over the next five to eight years, and will have little impact on funding target liabilities from that point forward. Yet, if the proposed rule restricting the $15 million waiver to plans with fewer than 500 participants is finalized, the 500 participant count requirement will remain in effect even after the stabilized rates no longer have a material impact on liabilities. Thus, the original intent of the $15 million waiver (to eliminate reporting for situations that "presented a level of risk and exposure to PBGC that was sufficiently low") will be voided due to a short-term perceived need for additional reporting to the PBGC. We believe the burden of reporting over 200 plans (as anticipated by the PBGC) should not continue indefinitely into the future and the 500 participant restriction should not be implemented.

We believe the PBGC should not change the application of the $15 million waiver in any way. However, if the PBGC proceeds without changes to the measurement of the $15 million waiver or the application of the 500 participant requirement, we strongly encourage including a transition or phase-out of the 500 participant requirement to eventually reflect the original intent of the waiver when stabilized interest rates no longer impact the funding target by more than a de minimis amount.

Closing

In summary, we understand the PBGC's concern that certain plan information may go unreported under ERISA section 4010 due to the impact of MAP-21 and HATFA in the current interest rate environment. However, we believe there are many situations like ours, where the plans in question do not pose significant risk to the PBGC. The additional reporting that would be required for controlled groups with more than 500 participants under the proposed rules would be unduly burdensome, and would not reflect the fact that the impact of MAP-21 and HATFA is expected to be temporary in nature.

We appreciate the opportunity to submit these comments regarding the proposed changes. If you have any questions regarding these comments, please contact the undersigned at the telephone number or email address provided below.

Sincerely,

CMS Energy Corporation

Glenn P. Barba

Glenn P. Barba
Vice President, Controller & Chief Accounting Officer
517-788-2100
glenn.barba@cmsenergy.com

April 15, 2015 Section 4010 Reporting to PBGC Not Required based on Current Rules

	Current Rules	
1/1/2014 ($ millions)	80% Threshold	$15 Million Threshold
Reflect HATFA?	No	Yes
Funding Target	$ 2,006	$ 1,537
Value of Plan Assets	1,870	1,870
Funding Balances	394	N/A
Adjusted VPA	$ 1,476	$ 1,870
Funded Percentage	73%	N/A
Funding Shortfall	N/A	$ 0
Avoids 4010 Reporting?	No	**Yes**

Result: Section 4010 reporting to PBGC was not required by April 15, 2015.

April 15, 2015 Section 4010 Reporting if Proposed Rules Were in Effect

1/1/2014 ($ millions)	No Action Taken 80% Threshold	No Action Taken $15 Million Threshold	If Waive $129 Million of Funding Balances 80% Threshold	If Waive $129 Million of Funding Balances $15 Million Threshold
Reflect HATFA?	No	N/A	No	N/A
Funding Target	$ 2,006		$ 2,006	
Value of Plan Assets	1,870		1,870	
Funding Balances	394		**265**	
Adjusted VPA	$ 1,476		$ 1,605	
Funded Percentage	73%		80%	
Funding Shortfall	N/A		N/A	
Avoids 4010 Reporting?	No		**Yes**	

Result: Section 4010 reporting to PBGC would have been required by April 15, 2015 unless waived $129 million of Funding Balances.