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LIBER 22549 PAGE 54 \$35.00 MISC RECURDING \$2.00 REMONUMENTATION 03/27/2001 08:24:30 A.M. RECEIPT# 18905 PAID RECORDED - OAKLAND COUNTY G. WILLIAM CADDELL, CLERK/REGISTER OF DEEDS

EASEMENT

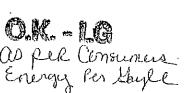
Grand Trunk Western Railroad Incorporated (the "Railroad") a Delaware corporation, with offices at 2800 Livernois, Troy, Michigan 48083, and Consumers Energy Company (the "Grantee"), a Michigan corporation, with offices at 1945 West Parnall Road, Jackson, Michigan 49201, enter into the following agreement.

WHEREAS, the Grantee desires to plan, install, construct, use, maintain, inspect, repair, renew and remove, as the case may be, existing electrical or gas facilities and appurtenances on, over, under, across and/or along the route and parcels of land described on Exhibit A, attached hereto and made a part hereof (the applicable electrical or gas facilities located at each of the individual locations identified on Exhibit A being hereinafter referred to as a "Facility"; and

X

WHEREAS, the Railroad is willing to grant to the Grantee a non-exclusive easement for the Facility on, along, above or underneath the Railroad's right-of-way and property hereinafter described on Exhibit A, in the County of Oakland and State of Michigan.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) (and other valuable consideration) the receipt of which is hereby acknowledged by the Railroad, the Railroad grants to the Grantee, its successors and assigns, a perpetual non-exclusive easement for the sole purpose of installing, constructing, using, maintaining, inspecting, repairing, renewing or removing, as the case may be, the Facility on, along, above or underneath the Railroad's right-of-way and premises described on Exhibit A.



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The foregoing easement is granted on the following terms and conditions:

- 1. Prior to any construction being undertaken, the Grantee shall furnish the Railroad the plans and details of the proposed construction which shall be subject to the acceptance and written approval of the Railroad's Engineer. Any underground Facility shall be at a minimum depth of 5 feet 6 inches below the base of rail and 4 feet below bottom of any ditches or drainage culverts. Any overhead Facility shall have a minimum clearance of 25 feet above the top of rail.
- 2. All the planning, installing, construction, maintenance, repair, renewal or removal, as the case may be, of the Facility, including the furnishing of all labor, materials, tools and equipment, shall be performed by the Grantee at its sole cost and expense.
- 3. Any planning, installing, construction, maintenance, repair, renewal or removal shall be performed without any damage to the Railroad's property, including, but not by way of limitation, changes to the roadbed or surface, subsidence of its lands, and without any interference with the operation of the Railroad.
- 4. Neither the Grantee nor its contractors shall cross over the Railroad's tracks with any equipment except at public crossings. The Grantee shall not allow any equipment, including crane booms, to work any closer than twenty (20) feet from the nearest rail.
- 5. The Grantee shall give notice to the Railroad's Engineer, Narendra Patel, in Pontiac, MI at 248.452.4737 not less than seventy-two (72) hours, excluding Saturdays, Sundays and holidays, before beginning any work or making any inspections, repairs, replacements, renewals or removals to the Facility to allow Railroad to assign a flagman; provided, however, that emergency repairs required to preserve life or property may be made with notice less than seventy-two (72) hours. Grantee shall not perform any work on Railroad property unless a flagman is present or deemed not necessary by Railroad. All inspections, repairs, replacements, renewals or removals of the Facility shall be conducted in such manner as in the sole judgment of the Railroad's Engineer will in no way interfere with the proper and safe operation, use and enjoyment of the property of the Railroad or the poles, wires,

UBER 22549 PG 056

conduits or other equipment located on the property of the Railroad. Upon completion of the work, Railroad property disturbed during the work shall be restored to a neat, level and reasonably safe condition with substantially the same drainage or elevation as it was prior to doing such work.

- 6. During the installation, maintenance, inspection, repair, renewal and removal of the Facility and during any activity involving the easement conveyed, the Grantee, at its own cost and expense, shall reimburse the Railroad for inspection, flagging expenses and any other expenses resulting from the construction, maintenance, repair, replacement, renewal or removal of the Facility, on receipt of bills therefor.
- 7. If the Grantee has any work permitted herein performed by a contractor, the dealings of the contractor shall be handled through the Grantee and not directly with the Railroad; and contracts entered into by and between the Grantee and the contractor relative to said work shall be subject to all the terms and conditions of this Easement Agreement.
- 8. The Grantee hereby agrees to indemnify, defend and to hold the Railroad harmless against any and all construction liens, and all other claims, liabilities, damages and expenses asserted against Railroad as a result of, or in any way related to, the Grantee's occupation and use of the easement area and operations conducted thereon by or on behalf of the Grantee pursuant to the Easement Agreement; provided, however, that the Grantee shall not be responsible for any claims, liabilities or damages resulting solely from the intentional or negligent acts of the Railroad.
- 9. The Grantee acknowledges that installing its Facility on the right-of-way of the Railroad provides some risk that the Facility may be damaged in the course of train operations. Therefore, notwithstanding any other language in this Easement Agreement to the contrary, the Grantee releases the Railroad from any loss, damage and/or claim the Grantee may have against the Railroad resulting from derailments or other accidents of a similar catastrophic nature, from vibration or other activities of the Railroad in the ordinary course of its operations.

10. THIS SECTION LEFT BLANK INTENTIONALLY

UBER 22549 PG 057

11. The parties agree to the following environmental indemnification language:

A. Definitions

- 1. "Hazardous Materials," as used in this article, is as defined in 42 USC 6901 et seq, and any regulations promulgated pursuant thereto.
- 2. "Poilutants," as used in this article, is as defined in 33 USC 1251 et seq, and any regulations promulgated pursuant thereto.
- 3. "Contamination" includes both Hazardous Materials and Pollutants.
- В. Grantee agrees to indemnify and save harmless the Railroad, its officers and directors, employees and agents (each and all hereinafter "Indemnitees"), from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, and costs and expenses incidental thereto (including cost of defense, settlement, and attorneys' fees), which Indemnitees may hereafter suffer, incur, be responsible for or pay out as a result of any governmental or private order, directive, administrative proceeding, rule, regulation, law, statute, ordinance or suit to cease, desist and refrain from all activities relating to the handling, treatment, storage, removal, extraction and disposal of pollutants or hazardous materials in the water or soil and/or ground water of the Easement area, or as a result of bodily injuries (including death) to any person, damage (including loss of use) to any property (public or private), pollution or contamination of or adverse effects on the environment, or any violation or alleged violation of laws, statutes, ordinances, orders, rules or regulations of any governmental entity or agency, caused by or arising out of any Pollutants or Hazardous Materials in the water or soil or ground water of the Railroad's right-of-way and caused by Grantee's acts or omissions or Grantee's Facility.
- 12. It is expressly understood and agreed that the easement herein granted shall in no way preclude the full, free and complete use of the right-of-way and property of the Railroad for the installation and maintenance of railroad tracks thereon and the operation of locomotives, trains and cars thereover; and for any other purpose or use by the Railroad that does not interfere with the Grantee's ability to

URGR 22549 PG 058

install, operate and maintain the Facility, and that the Railroad shall at all times have the full, free and unobstructed use of the said right-of-way and property.

- 13. If the Grantee abandons this Easement, it shall provide written notice to the Railroad of such abandonment and furnish to the Railroad a recordable release of easement.
- 14. In the event of abandonment or discontinued use of the Facility, the Railroad shall have the right to determine which parts, if any, of the abandoned Facility may be allowed to remain on the Railroad's premises and under what circumstances or which must be removed from the Railroad's premises. In any event, the Grantee will, at its sole cost and expense, comply with the Railroad's written determination and restore the land to a neat and level condition satisfactory to the Railroad's District Engineer within sixty (60) days following such delivery of written determination.
- 15. If Railroad changes the grade or alignment of its tracks, installs new tracks or makes additions to or modifications to its existing tracks, Railroad shall notify Grantee in writing of such changes, installations, additions, or modifications, as the case may be. Grantee shall, at its sole cost and expense, and within 30 days from the date of such notice or such longer period of time as may be reasonably necessary for Grantee to acquire approval from an appropriate regulatory agency for a line relocation, commence to relocate, strengthen, support, or otherwise protect or modify the Facility and thereafter promptly complete such work, (any such requested action hereinafter referred to as "Modifications"). Where available, and if necessary, Railroad shall provide so much of its land to Grantee for such Modifications without additional compensation from Grantee. If any governmental agency requires the Grantee to make temporary or permanent Modifications, such Modifications shall be done at no expense to Railroad. All construction in connection with any Modifications shall comply with the terms and condition of this Agreement.

With respect to Modifications, the cost and expense of which is Grantee's

UBER 22549 PG 059

responsibility, Railroad agrees that Grantee shall be given an opportunity to seek alternative methods, reasonably acceptable to Railroad, which would eliminate the necessity of relocating the Facilities, or reduce the cost and expense thereof, including but not limited to the acquisition of additional land at Grantee's sole cost and expense, which could accommodate the relocation or improvement of Railroad's operations.

- 16. a. This Inductive Interference paragraph applies solely to inductive interference between Grantee's Facility and Railroad's railroad track(s), structures, power lines or poles, train control system, communication, signal or other wires, electrical or electronic apparatus ("Railroad's Equipment").
- b. Grantee at its own expense, will at all times, maintain in the electrical system in which Grantee's Facility is a part, the general coordinative methods which are applicable to supply circuits and their equipment as prescribed or specified, as follows:
 - The latest existing amendment or successor publication to the Association of Principles and Practices for Inductive Coordination of Electric Supply and Communications Systems;
 - ii. The latest applicable publication of Electrical Power Research Institute (EPRI);
 - iii. Applicable data or conclusions from the AAR/EPRI Corridor or other applicable EPRI computer program; and
 - iv. Data or conclusions produced jointly by the AAR and EPRI.

In all cases, the latest of the above will prevail, provided it has been made known to Grantee.

c. If Railroad believes these general coordinative methods are not sufficient to avoid inductive interference by Grantee, Railroad shall cooperate with Grantee to determine what specific coordinative methods of providing the best engineering solutions are required. The specific methods so determined shall be put

LIBER 22549 PG 060

into effect and Grantee shall bear the cost of the methods, irrespective of whether the methods are applied to the supply, communication or signal circuits.

- d. This agreement does not require methods be applied to preclude occasional disruption to Railroad's Equipment from events such as power system faults, except if the methods are jointly prescribed or specified by the Association of American Railroads and the Electric Power Research Institute. Nevertheless, Grantee is responsible for the cost of repairing damage to Railroad's Equipment directly caused by these events.
- e. If Grantee's Facility is proven, according to paragraph b, to cause disruptive inductive interference to Railroad's Equipment, then Grantee shall promptly remedy disruptive inductive interference as a result of the presence of Grantee's Facility. If Grantee fails to do so immediately, then Railroad may do so in the most cost effective way, and Grantee agrees to reimburse to Railroad the full cost and expense of the remedy.
- 17. The Grantee shall have the right, from time to time and at no additional cost, to cut, trim remove, destroy, or otherwise control any trees and brush that may, in Grantee's opinion, interfere or threaten to interfere with or be hazardous to the Facility. All trees and brush cut or trimmed by Grantee shall be removed from the premises by Grantee. The method used by Grantee to destroy and control trees and brush shall be approved by the Railroad's Engineer. Grantee shall not use spraying as a method for tree and brush control.
- 18. All notices required to be given by this Easement Agreement shall be given to the parties as follows or as the parties may otherwise advise in writing:

Grantee: Railroad:

Consumers Energy Company

Manager, Asset Management

1945 West Parnall Road

Real Estate Department

Jackson, MI 49201

Grand Trunk Western Railroad Inc.

2800 Livernois

Attention: General & Metering Technology
Services

Troy, MI 48083

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- The rights herein granted and the terms and conditions hereof shall 19. inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto and are deemed to run with the land.
- 20. This Easement Agreement shall be construed, governed and enforced in accordance with the laws of the state of Michigan.

IN WITNESS WHEREOF, this Agreement is effective on <u>Sept. //</u>, 2000.

GRAND TRUNK WESTERN RAILROAD INCORPORATED, a Delaware corporation

Its: Manager, Asset Managemen

CONSUMERS ENERGY COMPANY

Its: Kenneth C Emery, Jr

Senior Vice President

This conveyance is exempt from real estate transfer taxes pursuant to MCL 207.505(1) and MCL 203.526(f).

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STATE OF MICHIGAN)	
COUNTY OF OAKLAND)	
Sept. 11 , 2000 by	t was acknowledged before me on T. J. Rigley, Manager, Asset Management of Grand orated, a Delaware corporation, on behalf of the said
	Notary Public
	County, State of Michigan My Commission Expires:
STATE OF MICHIGAN)	J. A. BREWER Notary Public, Wayne County, MI My Commission Expires 07/31/2002
COUNTY OF JACKSON)	•
The foregoing instrumen	t was acknowledged before me on
September 13 , 2000 Energy Company on behalf of s a Michigan corporation	by Kenneth C Emery, Jr, Senior of Consumers aid Exists. Vice President Corporation Notary Public Jackson County, State of Michigan My Commission Expires: 11/7/2000
Document prepared by: Mary P. Sclawy, Esq. Maxwell, Ponitz & Sclawy PLLC 888 West Big Beaver, Suite 147 Troy, MI 48084 Return to: Josephine J VanEpps Consumers Energy Company 1945 W Parnall Road, P11-030C Jackson, MI 49201	BE 100 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1

Oakland County

Exhibit A

RR File#	RR Sub	RR Mile Post	CEC File #	Date	Location of Applicable Grand Trunk Western Railroad Right of Way and Route of Applicable Facility Across Such Railroad Right of Way Oakland County
L159-293	Holly, Jackson, Pontiac Beltline, Romeo	0.98	60-UG-53	10/15/49	The NW 1/4 of Sec 18, T3N, R10E, City of Pontiac. Route - In an E'ly & W'ly direction within the N'ly r/w of Columbia Avenue, and W of Amherst Avenue. Heal Read World Columbia Avenue August 1998 1998 1998 1998 1998 1998 1998 199
L159-331	Holly, Jackson, Pontiac Beltline, Romeo	35.64	60-UG-	12/01/52	The NE 1/4 of Sec 32, T3N, R10E, City of Pontiac. Route - In an E'ly & W'ly direction between Bagley St and Maple St, and also in a N'ly & S'ly direction, lying S of Maple St.
L159-395	Holly, Jackson, Pontiac Beltline, Romeo	22.68	60-UG-210	10/03/61	The NE 1/4 of Sec 10, T2N, R10E, Bloomfield Twp. Route - In an E'ly & W'ly direction, being South of Square Lake Road, at a point approx. 1250 ft West of Opdyke Road. PARALL ROAD NO SIDURE (19-10-502-001)
L159-422	Holly, Jackson, Pontiac Beltline, Romeo	38.30	39-UG-28	04/13/65	The NE 1/4 of Sec 17, T3N, R10E, City of Pontiac, Pontiac Twp. Route - Lying South of Walton Road and East of Baldwin Avenue, at mile post #2.61. Physical Road Model Control of Walton Road and East of Baldwin Avenue, at mile post #2.61.

RR File#	RR Sub	RR Mile Post	CEC File #	Date	Location of Applicable Grand Trunk Western Railroad Right of Way and Route of Applicable Facility Across Such Railroad Right of Way Oakland County
L159-462	Holly, Jackson, Pontiac Beltline, Romeo	0.97	39-UG-47	05/03/68	The NW 1/4 of Sec 18, T3N, R10E, City of Pontiac, Pontiac Twp. Route - In a NW'ly & SE'ly direction, at a point located between Yale Avenue and Ypsilanti Avenue, and also being located West of Amherst Avenue. Amherst Avenue.
L159-463	Holly, Jackson, Pontiac Beltline, Romeo	2.58	39-UG-46	05/03/68	The NE 1/4 of Sec 17, T3N, R10E, City of Pontiac, Pontiac Twp. Route - In an E'ly & W'ly direction in the North right of way line of Sheffield Street (if extended), and East of Price Street. Physical Road U() Stilled
L170-107	Holly, Jackson, Pontiac Beltline, Romeo	13.25	60-G-103	08/01/42	The SE 1/4 of Sec 16, TIN, R11E, City of Royal Oak, Royal Oak Twp. Route - In a NE"ly & SW'ly direction, at a point approx. 4 ft West of the GTWRR right of way, located S'ly of Oakland Avenue and NW'ly of West Avenue.
L170-129	Holly, Jackson, Pontiac Beltline, Romeo	13.39	60-UG-103	04/01/53	The SE 1/4 of Sec 16, T1N, R11E, City of Royal Oak, Royal Oak Twp. Route - In an E'ly & W'ly direction, at Park Avenue, being West of N. West Avenue, at mile post #13.39.
L170-130	Holly, Jackson, Pontiac Beltline, Romeo	16.58	60-UG-117	03/16/54	The NW 1/4 of Sec 5, Tln, R11E, City of Royal Oak, Royal Oak Twp. Route - In an E'ly & W'ly direction at a point approx. 63 ft S of 14 Mile Road, at mile post #16.58. Pho Sulve (25-05-50-01) Page 2 of 6

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RR File #	RR Sub	RR Mile Post	CEC File #	Date	Location of Applicable Grand Trunk Western Railroad Right of Way and Route of Applicable Facility Across Such Railroad Right of Way Oakland County
L170-143	Holly, Jackson, Pontiac Beltline, Romeo	16.30	60-UG-176	07/13/59	The NW 1/4 of Sec 5, T1N, R11E, City of Royal Oak, Royal Oak Twp. Route - In an E'ly & W'ly direction, at a point approx 10 ft South of the North line of Nakota Street (if extended) at the GTWRR mile post #16.30.
L21-100	Holly, Jackson, Pontiac Beltline, Romeo	17.41	48-UG-4	11/27/67	The NE 1/4 of Sec 31, T2N, R11E, City of Birmingham, Troy Twp. Route - In an E'ly & W'ly direction, at a point approx. 7 ft North of Holland St. and East of Eton Road.
L21-103	Holly, Jackson, Pontiac Beltline, Romeo	16.88	3252-UG-1	12/19/68	The SE 1/4 of Sec 31, T2N, R11E, City of Royal Oak. Route - In a NE'ly & SW'ly direction, at a point SE'ly of the GTWRR mile post #17. Also described as being located North of 14-Mile Road, South of 15-Mile Road and West of Coolidge Highway. The SE 1/4 of Sec 31, T2N, R11E, City of Troy. Route - In a NE'ly and SW'ly direction-West of Hanley Road at MP 16.95; Assignment
L21-57	Holly, Jackson, Pontiac Beltline, Romeo	16.95		07/31/80	The SE 1/4 of Sec 31, T2N, R11E, City of Troy. Route - In a NE'ly and SW'ly direction-West of Hanley Road at MP 16.95; Assignment from SE'RN Mich Gas. Please Road Aug.
L21-95	Holly, Jackson, Pontiac Beltline, Romeo	17.26	48-UG-3	12/29/66	The NE 1/4 of Sec 31, T2N, R11E, City of Birmingham, Troy Twp. Route - In an E'ly & W'ly direction, being South of the North right of way line of Cole Avenue and East of Commerce Ave. PARTICAL STATES OF TWO
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RR File#	RR Sub	RR Mile Post	CEC File #	Date	Location of Applicable Grand Trunk Western Railroad Right of Way and Route of Applicable Facility Across Such Railroad Right of Way Oakland County
L47-11	Holly, Jackson, Pontiac Beltline, Romeo	41.33	39-UG-51	02/20/69	The North 1/2 of Sec 17, T4N, R8E, Springfield Twp. Route - In a N'ly & S'ly direction, at a point approx. 123 ft West of the centerline of Davisburg Road.
L52-14	Holly, Jackson, Pontiac Beltline, Romeo	30.88	60-G	05/25/32	The SW 1/4 of Sec 11, T3N, R9E, Waterford Twp. Route - In a NE'ly - & SW'ly direction, lying South of Dixie Highway, and North of Saginaw Trail, at the GTWRR mile post #30.88.
L92-20	Holly, Jackson, Pontiac Beltline, Romeo	45.97	3496-WX-1/	10/13/71	The SE 1/4 of Sec 34, T5N, R7E, Vlg of Holly, Holly Twp and the NE 1/4 of Sec 3, T4N, R7E, Rose Twp. Route - In a NE'ly & SW'ly direction, at a point 298 feet West of the centerline of East Street and
L92-23	Holly, Jackson, Pontiac Beltline, Romeo	47.66	313-Misc 46KV	06/02/81	The NE 1/4 of Sec 32, and the NW 1/4 of Sec 33, all being in T5N, R7E, Holly Twp. Route - Along the S'ly line of the GTWRR r/w, run thence in a NE'ly direction from the railroad's mile post #47.66, to said railroad's mile post #48.13. Of Reveloped (01-33-502-00)
L92-24	Holly, Jackson, Pontiac Beltline, Romeo	49.66	313-WX-111 46KV	08/19/35	The NW 1/4 of Sec 31, T5N, R7E, Holly Twp. Route - In a N'ly and S'ly direction approx 122 feet East of the West 1/8 line of Sec 31. Ph Reul Road NO Sadwell (61-31-502-00)

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RR File#	RR Sub	RR Mile Post	CEC File #	Date	Location of Applicable Grand Trunk Western Railroad Right of Way and Route of Applicable Facility Across Such Railroad Right of Way Oakland County
L92-27	Holly, Jackson, Pontiac Beitline, Romeo	46.90	313-WX-14 Ybry	03/01/39	The NE 1/4 of Sec 33, T5N, R7E, Vlg of Holly, Holly Twp. Route-In an E'ly & W'ly direction; in a N'ly & S'ly direction and in a NE'ly & SW'ly direction, at a point approx. 210 ft SE'ly of the E 1/8 line of said Sec 33, at a point approx. 140 ft N of the E & W 1/4 line of said Sec 33.
L92-29	Holly, Jackson, Pontiac Beltline, Romeo	49.60	973-WX-4	12/16/40	The NW 1/4 of Sec 31, T5N, R7E, Holly Twp. Route - In a N'ly & S'ly direction, approx. 95 ft E of the N & S 1/8 line of sd Sec 31, said point also being located approx. 3,243 ft W of the railroad's mile post #D-49.
L92-44	Holly, Jackson, Pontiac Beltline, Romeo	46.83	2188-WX-2 YbKV	06/01/57	The SE 1/4 of Sec 33, T5N, R7E, Holly Twp. Route - In a N'ly and S'ly direction 10 feet Northwest of Legrand extended N-South Maple. (P+O -3 -50 200) The SE 1/4 of Sec 34, T5N R7E, Holly Type and the NE 1/4 of Sec 34.
L92-60	Holly, Jackson, Pontiac Beltline, Romeo	45.90	206-MISC	07/14/76	The SE 1/4 of Sec 34, T5N, R7E, Holly Twp and the NE 1/4 of Sec 3, T4N, R7E, Rose Twp. Route - 46 feet Southwest of the main track at MP 45.90. P+ Reul Road No solute (+01-34-502-003)

RR File#	RR Sub	RR Mile Post	CEC File #	Date -	Location of Applicable Grand Trunk Western Railroad Right of Way and Route of Applicable Facility Across Such Railroad Right of Way Oakland County
L92-62	Holly, Jackson, Pontiac Beltline, Romeo	47.83	313-MISC 46KV	06/02/81	The NW 1/4 of Sec 33, T5N, R7E, Holly Twp. Route - In a N'ly & S'ly direction, at a point aprox 45 ft SE'ly of the West line of said Sec 33 (also known as Fish Lake Road). RH Raul Raul Wallel
•		T	v v		PHO1-33-101-001