



**Action Report**

## Corporate Political Activity

### CMS Energy

April 13, 2017

Ticker	Exchange	Meeting Date	Record Date	Annual Meeting Location
CMS	NYSE	5-5-2017	3-7-2017	Jackson, Michigan

Agenda	
Item	Proposal
1	MGT: Elect directors
2	MGT: Advisory vote on executive compensation
3	MGT: Advisory vote on the frequency of future advisory votes on executive compensation
4	<b>SH: Review/report on political spending</b>
5	MGT: Ratify selection of auditors

**Si2 Briefing** [Corporate Political Activity](#)

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**Links** [Proxy Statement](#); [Corporate Political Engagement](#); [Code of Conduct and Guide to Ethical Business Behavior](#)

**Resolved Clause** Resolved, that the shareholders of CMS Energy Corp. (“CMS” or “Company”) hereby request that the Company provide a report, updated semiannually, disclosing the Company’s:

1. Policies and procedures for making, with corporate funds or assets, contributions and expenditures (direct or indirect) to (a) participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, or (b) influence the general public, or any segment thereof, with respect to an election or referendum.
2. Monetary and non-monetary contributions and expenditures (direct and indirect) used in the manner described in section 1 above, including:
  - a. The identity of the recipient as well as the amount paid to each; and
  - b. The title(s) of the person(s) in the Company responsible for decision-making.

The report shall be presented to the board of directors or relevant board committee and posted on the Company’s website within 12 months from the date of the annual meeting.

**Lead Proponent** New York State Common Retirement Fund

**Vote History** This is the first time that this proposal has appeared at CMS Energy.

**Summary**

CMS Energy has policies on corporate political contributions and trade association activity, but it still falls short in the areas of full disclosure of corporate political contributions and all trade association memberships.

**I. CMS Energy and Political Activity**

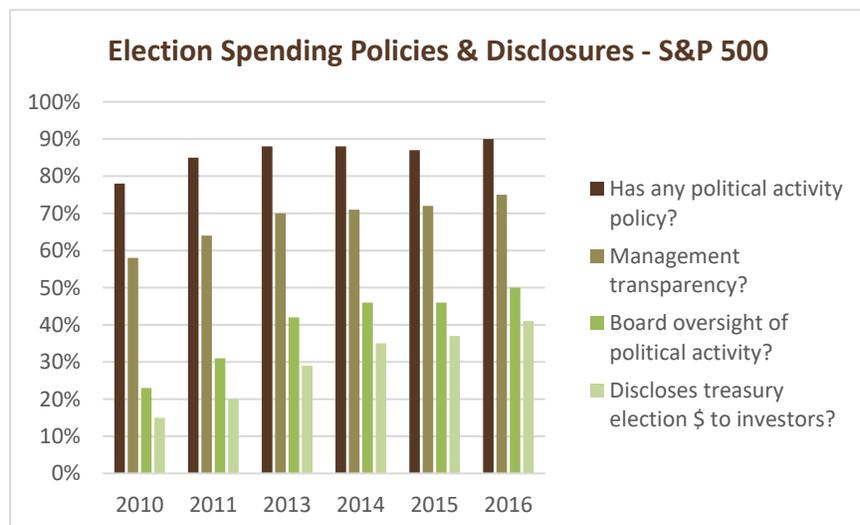
CMS Energy is a combination electric and gas utility company that supplies 6.7 million customers in the state of Michigan, mainly through its Consumers subsidiary.

The Consumers subsidiary owns and operates electric generation, transmission, and distribution facilities and gas transmission, storage, and distribution facilities. The company's electric power is generated through coal-fired plants, oil/gas plants, hydroelectric plants, as well as wind and solar generators. Power generated through coal-fired plants made up approximately 58 percent of net power generated by the company in 2016, while renewables made up 6.5 percent. Of the company's 36,203 gigawatt-hour total power supply, 54 percent is acquired through purchase or interchange.

The company has approximately 7,800 employees, of whom approximately 39 percent are unionized.

***Policies and Disclosures on Political Spending***

The bar chart at right and the table below provide comparative data from Si2's benchmarking research and show how company disclosure on corporate political spending has grown in the last several years. Si2's review of S&P 500 companies' political activity governance practices in 2016 shows that 90 percent of these companies disclosed at least some form of policy on corporate political activity, up from 78 percent in 2010.



The table below (next page)

shows how the company's current spending disclosure policy stacks up against sector peers and the S&P 500, and provides comparative data.

CMS Energy's policies and procedures for corporate political spending are reported on [its Corporate Political Engagement](#) website and in the [Code of Conduct and Guide to Ethical Business Behavior](#). The company states that it engages in the public policy arena because "Policy decisions of lawmakers and regulators at the federal, state and local levels can significantly impact the business environment in which we operate, especially because our core utility business is highly regulated." CMS Energy says that it makes contributions to state and local ballot question committees, grassroots activities, issue advocacy and voter registration.

Corporate Political Spending Policies and Governance			
	CMS Energy	Averages from 2016 Si2 Analysis	
		Utilities Sector	S&P 500
<b>Governance</b>			
Board oversight	Yes	75%	50%
Management transparency*	Yes	89%	75%
<b>Policies</b>			
Campaign spending	Yes	100%	90%
Independent expenditures	No	36%	33%
<b>Indirect spending</b>			
Trade associations	Yes	86%	55%
Other non-profits	No	50%	30%
Discloses memberships	Partial	75%	44%
Discloses payments	Yes	68%	32%
Prohibits trade group use of company \$ for some types of political spending	No	0%	7%
<b>Spending disclosure to investors</b>			
Treasury election \$ reported	No	61%	41%

\*Identifies corporate officer(s) involved in decision-making

**Board oversight:** CMS Energy's policy states: "The Boards of Directors of CMS and Consumers oversee our political engagement policies, programs and practices. The Governance and Public Responsibility Committee is responsible for advising and assisting the Boards with respect to our political engagement."

Company policy also requires that the board approve all contribution requests over \$10,000, that the board approve the overall budget that supports political activities, and that it receives an annual report on political expenditures for review and reference.

According to the charter of the Governance and Public Responsibility Committee, the committee will "Review, revise as needed, and approve the Corporation's political and charitable contributions policy; and; Review political and charitable contributions made on behalf of the Corporation, including payments to tax-exempt organizations, and report to the Board, and recommend Board approval of political contributions as required."

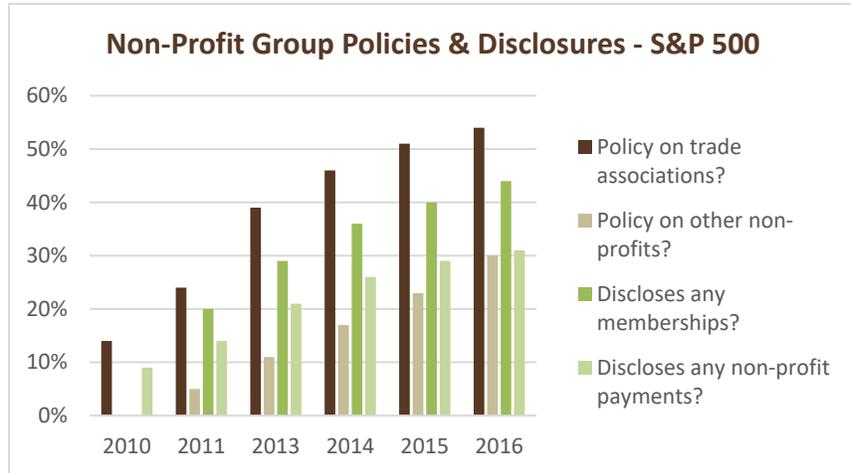
**Management transparency:** CMS Energy says that company management initiates recommendations or requests for contributions, which are then reviewed by the legal department. The general counsel, the senior vice president of governmental, regulatory and public affairs and the vice president and corporate secretary must also review and approve all contributions. Company policy also requires that contributions between \$2,500 and \$10,000 must be approved by the president and CEO, while all requests over \$10,000 must be approved by the president, CEO and the board of directors.

**Prohibited contributions:** Company policy explicitly prohibits the use of treasury funds for contributions to candidates or parties as such activities are illegal under Michigan law.

**Independent expenditures:** CMS Energy does not publish a policy on independent expenditures.

**Disclosure of corporate contributions:** The company does not independently disclose its corporate political contributions.

**Indirect spending:** The bar chart at right provides comparative data from Si2’s benchmarking research and shows how company disclosure on corporate indirect has grown in the last several years. Si2’s review of S&P 500 companies’ indirect spending governance practices in 2016 shows that 54 percent of these companies disclosed at least some form of policy on corporate trade association activity, up from 14 percent in 2010.



**Involvement with trade groups and other non-profit organizations:** CMS Energy's policy does address the subject of trade association activity and lobbying.

**Policy—** CMS Energy's policy on trade association activity states:

CMS Energy and Consumers hold memberships in industry, trade and business associations representing the energy industry and the business community. Engaging with other business and industry stakeholders helps us gain perspective and views on public policy issues that impact our company, our shareholders, our customers and our employees. We make reasonable efforts to track and report payments made to trade associations, chambers of commerce and other tax exempt organizations that may be used for political purposes that would not be deductible as defined under Section 162(e)(1) of the Internal Revenue Code.

**Membership and payment disclosure:** CMS Energy discloses a partial list of its memberships in trade associations after a \$25,000 payment threshold is reached and the association uses a portion of that amount for federal lobbying activities. The company does not disclose information on any other tax-exempt organizations that may spend money on political campaigns. For companies that meet the disclosure threshold, CMS Energy also reports total dues or payments made to those organizations and the subset of those dues and payments used for political and lobbying expenditures. Dues paid by the company help underwrite a percentage of each association’s political expenses. *(See table for available data.)*

Company Involvement with Trade Associations						
Organization	CMS Energy				Most Recent IRS Data	
	On Board	Member	2016 Contributions <sup>#</sup>		Total Dues	Political Spending*
			Dues	Political*		
Edison Electric Institute		X	\$902,994	\$241,642	\$68.9 mil.	\$8.5 mil.
American Gas Association	X	X	\$509,551	\$24,478	\$23.4 mil.	\$414,352

\*Political and lobbying expenses non-deductible under Internal Revenue Code Section 162(e)1.

# The company sets a threshold of \$25,000 in payments before disclosing membership

**Political Spending Record**

Available information from the public record on the company’s corporate contributions to national political committees and state candidates, parties and ballot initiatives shows it has given \$12.3 million in the last four election cycles. These amounts exclude contributions that may have been disbursed through intermediaries discussed above.

The overwhelming majority of CMS Energy's election spending during the last five election cycles occurred in 2012. That year the company contributed \$12,213,929 to the Clean Affordable Renewable Energy for Michigan Coalition, a group opposed to a 2012 ballot proposal (Proposal 12-3: Electricity from Renewable Energy Sources) that would have required utilities to generate 25 percent of their electrical power through renewable energy sources and limited to not more than 1 percent per year electric utility rate increases

charged to consumers only to achieve compliance with the renewable energy standard. CMS Energy's contributions represented approximately 48 percent of the total raised by the group over the 2011-2012 cycle. The measure lost on the November 6, 2012 ballot, with 62 percent voting against.

CMS Energy Political Contributions 2007-2016		
Election Cycle	527 Contributions	State Contributions
2007-2008	\$0	\$0
2009-2010	\$10,000	\$0
2011-2012	\$20,000	\$12,218,429
2013-2014	\$10,000	\$50,000
2015-2016	\$0	\$0
<b>Total</b>	<b>\$40,000</b>	<b>\$12,268,429</b>
527 contributions provided by <a href="#">Congressional Quarterly's CQMoneyLine</a> . State contributions provided by the <a href="#">National Institute on Money in State Politics</a> . Both services may include PAC contributions in their reports. All contributions identified as coming from a PAC were omitted by Si2.		

### CPA-Zicklin Index Rating

CMS Energy was rated by the Center for Political Accountability's CPA-Zicklin Index. Most recently [updated](#) in September 2016, the Index assessed the practices of the 493 largest capitalized companies in the S&P 500. It used a scoring system to rate companies' disclosure, policy and oversight. CMS Energy's performance on key study indicators is noted below.

Consistent with Si2's research, the CPA determined that relatively smaller companies were less likely to have comprehensive policies and more likely to disclose less information about their spending.

**Policies:** The Index found that 274 (56 percent) of the 493 companies it examined reported detailed policies on political activity, while another 164 companies (33 percent) were given partial credit for their policies. It judged CMS Energy to have disclosed a detailed policy and gave the company full credit.

**Oversight:** The CPA found that 47 percent of companies profiled had regular board oversight of political spending, including CMS Energy.

CPA-Zicklin Index Performance – Key Performance Indicators				
Indicator		CMS Energy	Percent of Index	
			Full/Partial Disclosure	Does Not Give
Spending	Direct to candidates/parties/committees	NA	35%	17%
	Direct 527s	No	32%	14%
	Direct independent expenditures	No	22%	19%
	Trade associations	Yes	40%	5%
	501(c)4 groups	No	23%	8%
	Ballot initiatives	No	32%	11%
			Percent of Index Yes	
Policy is publicly disclosed?		Yes	90%	
Semi-annual spending report?		Partial	41%	
Archive of spending? (Full or partial)		No	36%	

Source: 2016 CPA-Zicklin Index of Corporate Political Accountability and Disclosure, Center for Political Accountability.

## II. Proponent Position

The proposal from the New York State Common Retirement Fund argues that shareholders cannot properly assess the risks that companies may be exposed to from direct and indirect political spending if firms do not disclose all their corporate electoral contributions and their support for trade associations and other tax exempt groups.

While the proponent acknowledges that the company has published policies and procedures for corporate political contributions and trade association activities, it feels that the CMS Energy's disclosure is lacking because of its failure to disclose the following:

- Payments to any state-level political candidates, parties, or committees;
- Payments to support or oppose any ballot initiatives or issue campaigns;
- Payments to any tax-exempt organizations, including those organized under Section 501(c)(4) or Section 527 of the Internal Revenue Code, that may be used for election-related purposes; and
- Any independent expenditure made by the Company.

The proponent asserts that the additional disclosure would bring the company into line with peers like **Noble Energy** and **Sempra Energy**, which present that information on their company websites.

## III. Management Position

CMS Energy opposes the proposal and asserts that it "has a responsibility to shareholders to constructively participate in the political process to further the best interests of our shareholders and create long-term shareholder value" and that supporting the legislative process is important, when it is done legally and consistently with the company's business objectives.

CMS Energy says that it complies with all applicable laws and regulations and directs interested shareholders to its company website to review policies regarding the oversight of its political contributions and expenditures.

The company states that it supports many of the proposal's objectives, but believes that the requested disclosures "could have unintended consequences and could hinder the ability to pursue business and strategic objectives." It also believes that, given its current disclosures and oversight, the requested report is not warranted at this time.

## IV. Analysis

### *Key Points at Issue*

- Is CMS Energy keeping pace with industry best practice?
- Do shareholders have enough information on CMS Energy's political spending to assess the risks and opportunities it poses?

**Best practices:** CMS Energy's policies and procedures on corporate political activity contain most elements that watchdog groups consider to be best practice, including extensive board oversight of corporate political activity; disclosure of management/executive positions responsible for the approval of contributions; and a policy on trade association activity.

**Disclosure:** The company does not independently disclose its corporate political contributions.

As for trade association activity, CMS Energy discloses a partial list of trade association memberships, and also provides information on payments made to the associations or the portion of dues used for political and lobbying purposes.

**Expenditures:** While the company's annual expenditures on corporate political contributions appear to usually fall below \$50,000, in 2012 CMS Energy spent over \$12 million to help successfully defeat a single ballot initiative in Michigan. According to the company's current policies, none of the \$12 million was required to be disclosed on the company website, nor would any equivalent future expenditures. Some investors may find these figures to be insignificant, however.

At this point, it appears that company spending has returned to pre-2012 levels.

**Summing up:** In short, while the company has policies on corporate political contributions and trade association activity, it still falls short in the areas of full disclosure of corporate political contributions and all trade association memberships.

### ***Voting Considerations***

**Voting in favor:** Investors may support the proposal if they want to send a message to management that CMS Energy does not provide a comprehensive view of its political activity and related decision-making. Those in favor of more detailed disclosure of direct contributions and more robust oversight are likely to support the proposal. Some shareholders also may use a vote in favor of the resolution to signal unease with a company's refusal to provide more information that could be used to assess its risk exposure from all political activity, including relationships with trade associations and other politically active non-profit groups.

**Voting against:** Investors may decide to vote against the resolution for several reasons. They may believe that current publicly available material from the company and other sources is sufficient and provides shareholders with enough information about the company's approach to politics. Some also may vote against the resolution because they do not consider corporate political spending to be relevant enough (either monetarily or from a public relations perspective) to require additional information. Still others may simply oppose further disclosure and vote against the resolutions because they consider existing campaign finance laws and company policies to be adequate.