

151 FERC ¶ 61,033
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Consumers Energy Company

Docket No. ER15-910-000

ORDER APPROVING RECLASSIFICATION OF CERTAIN ASSETS

(Issued April 16, 2015)

1. On January 23, 2015, Consumers Energy Company (Consumers) filed an application (Consumers Application) requesting that the Commission approve the reclassification of certain Consumers' facilities from distribution to transmission, pursuant to the seven factor test articulated in Order No. 888.¹ Consumers also requests approval to use proxy data for FERC Form No. 1 until Consumers has sufficient historical data to populate Attachment O of the Midcontinent Independent System Operator, Inc. (MISO) Tariff. In this order, we grant the requests.

I. Background

2. Consumers is a combination electric-gas public utility in the business of generating, purchasing, distributing, and selling electric energy to nearly 2 million retail customers in the State of Michigan. Consumers is not currently in the transmission business. In 2001, Consumers states that it transferred its transmission facilities to the Michigan Electric Transmission Company, LLC (METC), then a subsidiary of

¹ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (Order No. 888), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

Consumers.² According to Consumers, it then sold METC in 2002 to an unaffiliated third party controlled by Trans Elect, Inc., which in turn sold METC to International Transmission Company, METC's current owner.³

3. On May 14, 2012, Consumers received a letter from ReliabilityFirst Corporation (ReliabilityFirst) stating that, in the course of conducting a reliability compliance audit, ReliabilityFirst had identified certain facilities that were classified as distribution that ReliabilityFirst determined were, in fact, transmission facilities. Consumers subsequently performed its own analysis and agreed, and also identified other assets that it believes are similarly misclassified.⁴

4. On April 18, 2014, Consumers filed an application with the Michigan Public Service Commission (Michigan Commission) requesting to reclassify the aforementioned facilities from distribution to transmission in Michigan Commission Case No. U-17598.⁵ The Michigan Commission Staff, METC, and Wolverine Power Supply Company, Inc. (Wolverine) intervened in the proceeding.⁶

5. On October 16, 2014, the Michigan Commission approved a settlement agreement reached by the parties (Michigan Commission Staff, METC, Consumers, and Wolverine), which states, in relevant part, that "the settlement agreement may be used as evidence of the parties' agreement that [Consumers'] Assets should be classified as transmission at the FERC."⁷

II. The Consumers Application

6. In its Application, Consumers requests that the Commission approve the reclassification by the Michigan Commission of certain facilities from distribution to transmission under Order No. 888's seven factor test. The Consumers Application provides testimony that was filed as part of Consumers' April 18, 2014 application to the Michigan Commission. This includes: (1) correspondence from ReliabilityFirst

² Consumers Application at 3.

³ *Id.*

⁴ Consumers Application Transmittal at 1; Consumers Application at 6-7.

⁵ Consumers Application at 4.

⁶ *Id.*

⁷ *Id.* Exhibit X, at 5.

indicating that the Group A assets are transmission;⁸ (2) a seven factor test analysis performed by Consumers that demonstrates the Group A and Group B assets should be considered transmission; (3) confirmation that the facilities are above 100 kV;⁹ (4) citations to cases where the Commission has approved reclassifications from distribution to transmission based on similar facts; and (5) citations to Michigan Commission-approved classifications as transmission of facilities owned by other entities in Michigan that are similar to the Group A and Group B assets.

7. Consumers states that the total plant balance for the facilities to be reclassified is \$49.4 million as of November 30, 2014, and that the corresponding accumulated depreciation is \$15.2 million, resulting in a net plant value for the facilities of \$34.2 million. Consumers adds that the facilities to be reclassified represent 1.32 percent of Consumers Distribution Plant.¹⁰ Consumers notes that the Commission has shown deference to a state regulatory commission classification under the seven factor test and Consumers requests that the Commission defer to the Michigan Commission's classification of the facilities in Michigan Commission Case No. U-17598.¹¹

8. Consumers represents that, because the facilities are currently classified and booked as distribution, it will not be able to populate the Attachment O template with actual historical data until after the facilities have been accounted for as transmission under the Uniform System of Accounts for a full calendar year. Therefore, Consumers proposes to submit proxy FERC Form No. 1 transmission pages for its MISO Attachment O formula rate until the facilities have been accounted for as transmission for a full calendar year. According to Consumers, without the approval to submit proxy data,

⁸ ReliabilityFirst identified the Group A assets as transmission during an audit of Consumers' reliability program. The Group A assets comprise equipment (such as circuit breakers, switches, and buswork) located in sixty-nine substations integrated into 138 kV transmission lines. Consumers subsequently identified Group B assets as transmission in its own study. The Group B assets include sixty-five 138 kV line segments and six substations connecting those lines to Consumers' bulk power substations. Consumers seeks reclassification of both the Group A and Group B assets.

⁹ Consumers states that 100 kV is the Commission's bright-line for determining whether an asset is part of the Bulk Electric System. Consumers notes that the Commission has previously stated that the Bulk Electric System definition's 100 kV threshold would serve as an initial "proxy" for determining which facilities are local distribution, and which are transmission.

¹⁰ Consumers Application at 5.

¹¹ *Id.* at 11.

the delay in timing means that it will be incurring transmission-related costs but unable to collect its revenue requirement. To account for the facilities, Consumers states that following Commission authorization of the reclassified facilities, Consumers will make two journal entries containing account numbers, names, and actual amounts for items transferred from distribution plant to transmission plant and from distribution accumulated depreciation reserves to transmission accumulated depreciation reserves.¹²

9. Consumers states that after the Commission approves the reclassification, Consumers and MISO will need to take certain actions requiring the Commission's approval. Specifically, (1) Consumers will need to sign the MISO Transmission Owners Agreement; (2) MISO will need to make a filing with the Commission to add Consumers to MISO Schedule Nos. 7, 8, and 9, which defines the transmission pricing zones under the MISO Tariff; and (3) Consumers will need to join the Michigan Joint Zone, which is governed by MISO Rate Schedule No. 11.¹³ Consumers requests that the reclassification of the facilities from distribution to transmission become effective the first day of the next quarter after the Commission issues an order to approve amended Schedule Nos. 7, 8, and 9 of the MISO Tariff and Consumers' entry into the Michigan Joint Zone. Consumers also requests that the Commission set the effective date by which Consumers shall comply with the Commission's open access regulations, including Order Nos. 888, 889, 890, 2004, and 717,¹⁴ as the first day of the next calendar quarter after the

¹² *Id.* at 15 (citing Consumers Application, Exhibit XVII, entitled "Consumers Energy Company Pro-Forma Distribution Plant to Transmission Plant Journal Entries") (Consumers notes that the only difference between the amounts shown on Exhibit XVII and the actual journal entries is that the actual journal entries will have updated information for depreciation and ongoing asset activity, and any costs which have been recorded in the Cost Centers for the Assets).

¹³ *Id.* at 16.

¹⁴ Order No. 888, FERC Stats. & Regs. ¶ 31,036; *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997); *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009); *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order
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Commission issues an order to approve the amended Schedule Nos. 7, 8, and 9. Consumers states that tying the addition of the facilities to MISO with the compliance date for open access regulations will allow Consumers to smoothly implement its transition back into the transmission business.¹⁵

III. Notice and Responsive Pleadings

10. Notice of Consumers' filing was published in the *Federal Register*, 80 Fed. Reg. 5,742 (2015), with interventions and protests due on or before February 13, 2015. MISO Transmission Owners¹⁶ and Wolverine filed timely motions to intervene. The

No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008); *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, 129 FERC ¶ 61,043, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

¹⁵ Consumers Application at 17.

¹⁶ MISO Transmission Owners for this proceeding are: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, Inc.; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Gulf States Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITCTransmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie
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Michigan Commission filed a notice of intervention. METC filed a timely motion to intervene and comments. On February 23, 2015, Consumers filed an answer to METC's comments.

11. METC states that it supports Consumers' request to reclassify the facilities from distribution to transmission under the Commission's Order No. 888 seven factor test. However, METC provides notice to the Commission that the ownership of these reclassified facilities is under dispute. METC explains that Consumers and METC are parties to a Distribution Transmission Interconnection Agreement, which governs the interconnection between METC's transmission facilities and Consumers' distribution facilities. METC states that pursuant to section 3.4 of the Distribution Transmission Interconnection Agreement "[s]hould future system modifications result in the reclassification of assets, the Parties agree to convey ownership of those assets to the appropriate party."¹⁷ Therefore, according to METC, once the facilities are reclassified, Consumers is required to convey the facilities to METC.¹⁸ METC states, however, that it is not asking the Commission to take any action here with regard to the ownership of these facilities but is simply providing notice to the Commission.¹⁹

12. METC states that the requirement to submit FERC Form No. 1 data to MISO is required under Attachment O of MISO's Tariff and should be subject to separate section 205 approval rather than an application for reclassification of facilities submitted under Order No. 888. METC characterizes Consumers' inclusion of its request to use proxy FERC Form No. 1 data in the Application as a procedural misstep, given that the Consumers Application was filed pursuant to Order No. 888, and METC therefore believes the Commission should reject Consumers' request to submit proxy data.²⁰ METC further states that more work remains to be done before Consumers would be ready to populate a rate template and collect transmission revenues because Consumers

Power Inc.; South Mississippi Electric Power Association; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; and Wabash Valley Power Association, Inc.

¹⁷ METC Comments at 3-4 (citing *Consumers Energy Co.*, Docket Nos. EC02-23-000 *et al.*, (Jan. 30, 2004) (unpublished letter order)).

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 5.

has not updated a number of agreements, including a Wholesale Distribution Service Agreement that would be affected by the proposed reclassification.²¹

13. Consumers' answer emphasizes that METC supports the reclassification of the facilities and that METC does not believe the Commission is the proper forum to address the dispute about the Distribution Transmission Interconnection Agreement. Consumers states that the only aspect of the reclassification that relates to rates is Consumers' request to use proxy data for its initial few Attachment O submissions, which is not a change to the underlying formula rate that would require section 205 approval. However, Consumers asks that the Commission consider Consumers' proxy FERC Form No. 1 request as submitted pursuant to section 205 to the extent the Commission deems necessary.²² Consumers clarifies that it does not seek transmission revenues at this time and acknowledges that it would need to submit future section 205 filings in order to do so. Consumers contends that like any other MISO transmission owner, it will be required under the Attachment O protocols to annually submit its Attachment O formula rate updates to the Commission and post such information on MISO's webpage and OASIS for review by any interested party.²³

14. Consumers also argues that the MISO Tariff does not expressly provide for use of proxy data in an Attachment O, so Consumers could not have submitted its request to use proxy data pursuant to the MISO Tariff. Therefore, Consumers' request to use proxy data was not procedurally flawed as METC alleges. Lastly, Consumers agrees with METC that certain agreements will be affected by the reclassification and that "more work remains before Consumers will be ready to populate a rate template and collect transmission revenues under the MISO Tariff," and that it is currently working with METC and other relevant parties to address such agreements.²⁴

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

²¹ *Id.* at 5-6.

²² Consumers Answer at 3.

²³ *Id.* at 4.

²⁴ *Id.* at 5.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Consumers' answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

17. We approve the Consumers Application to reclassify the Group A and Group B Assets from distribution to transmission, and grant Consumers' request to submit proxy FERC Form No. 1 data until the necessary historical data to populate Attachment O is available. We also grant Consumers' request to set the effective date of the reclassification, and the date on which Consumers must comply with the Commission's open access regulations, as the first day of the next quarter after the Commission issues an order to approve the amended Schedule Nos. 7, 8, and 9 and Consumers' entry into the Michigan Joint Zone, as requested.²⁵ At such future date, Consumers will be required to satisfy each of these Commission regulations.

18. In Order No. 888, the Commission determined that it would defer to state regulatory authorities' recommendations in determining the Commission's jurisdiction and cost allocation for such facilities to be included in rates, provided that such recommendations are consistent with the essential elements of the seven factor test.²⁶ In order for the Commission to grant such deference, state regulators must specifically evaluate the seven indicators and any other relevant facts, and ultimately make recommendations consistent with the elements of Order No. 888.²⁷ As Consumers notes, the Commission has approved the reclassification of assets from distribution to transmission in other cases when provided similar evidence to that provided by Consumers here, i.e., a state regulatory recommendation and study under the seven factor test.²⁸ Our analysis of the Michigan Commission's findings indicates that the Michigan Commission's implementation of the seven factor test is sufficient, and we therefore defer to its findings.

²⁵ Pursuant to Order Nos. 888 and 890 to file an Open Access Transmission Tariff, Order No. 889 to establish an Open Access Same-Time Information System, and Order Nos. 889, 2004, and 717 to comply with the Standards of Conduct.

²⁶ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,784 & n.548.

²⁷ *Id.* n.548.

²⁸ Consumers Application at 11 (citing *MidAmerican Energy Co.*, 140 FERC ¶ 61,028 (2012); Michigan Commission Case No. U-11337).

19. Consistent with previous Commission orders, we also grant Consumers' request to use proxy FERC Form No. 1 data until it has a full year of historical data to populate the Attachment O template.²⁹ As Consumers notes, to do otherwise would require Consumers to incur transmission-related costs without the ability to collect its transmission revenue requirement. We note that, for the purpose of establishing its transmission revenue requirements that rely on inputs for historical periods prior to the reclassification taking effect, Consumers has committed to develop proxy FERC Form No. 1 pages, based on actual data for the period, reflecting what costs would have been booked to transmission accounts instead of distribution accounts for that period had the reclassification been in effect during that period.³⁰ We emphasize, as the parties have noted, that the dispute about the Distribution Transmission Interconnection Agreement between Consumers and METC is outside of the scope of this proceeding and therefore we do not address its merits.

20. Finally, with respect to METC's contention that other agreements must be updated to reflect the reclassification before it can be implemented, we note that Consumers acknowledges that, in order to avoid a potential double recovery, it will need to remove the facilities from the Wholesale Distribution Service rate and include them instead under forthcoming transmission rates under the MISO Tariff.³¹ Furthermore, in its Answer, Consumers states that it is currently working with METC and other relevant parties to address not only the Wholesale Distribution Service joining the Michigan Joint Zone, but other agreements that require revision following reclassification of the Assets.³² We expect Consumers to execute the plan for reclassification by signing the MISO Transmission Owners Agreement, joining the Michigan Joint Zone, making needed modifications to Schedule Nos. 7, 8, and 9 of the MISO Tariff, making necessary modifications to other related agreements, and making the necessary filings, in coordination with MISO, for Commission review and approval.

²⁹ *Midwest Indep. Transmission Sys. Operator*, 134 FERC ¶ 61,016, at P 31 (2011) (accepting, pursuant to section 205, proxy data for FERC Form No. 1 where historical data was not available).

³⁰ Consumers Application at 15-16, Exhibit VI 3-11.

³¹ Consumers Application at 14.

³² Consumers Answer at 5.

The Commission orders:

(A) The Consumers Application to reclassify the Group A and Group B Assets from distribution to transmission is hereby approved, as discussed in the body of this order.

(B) Consumers' request to submit proxy FERC Form No. 1 data until the necessary historical data to populate Attachment O is available is hereby granted.

(C) Consumers' request to set the effective date of the reclassification of the Group A and Group B Assets, and the date on which Consumers must comply with the Commission's open access regulations, as the first day of the next quarter after the Commission issues an order to approve the amended Schedule Nos. 7, 8, and 9 and Consumers' entry into the Michigan Joint Zone is hereby granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.