

154 FERC ¶ 61,262  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.  
and Consumers Energy Company

Docket No. ER16-771-000

ORDER ACCEPTING AND SUSPENDING WHOLESALE DISTRIBUTION  
SERVICE AGREEMENTS AND ESTABLISHING HEARING AND SETTLEMENT  
JUDGE PROCEDURES

(Issued March 30, 2016)

1. On January 27, 2016, Midcontinent Independent System Operator, Inc. (MISO)<sup>1</sup> and Consumers Energy Company (Consumers Energy) submitted, pursuant to section 205 of the Federal Power Act (FPA),<sup>2</sup> six Wholesale Distribution Service Agreements (Agreements), one of which is unexecuted, between Consumers Energy and six individual companies, for service under Schedule 11 (Wholesale Distribution Service) of the MISO Tariff.<sup>3</sup> In this order, we accept the Agreements, suspend them for a nominal period, to become effective April 1, 2016, as requested, subject to refund, and establish hearing and settlement judge procedures.

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<sup>1</sup> MISO states that it joins the filing solely as the administrator of the MISO Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff).

<sup>2</sup> 16 U.S.C. § 824d (2012).

<sup>3</sup> These individual companies are: Cadillac Renewable Energy, LLC; Grayling Generating Station Limited Partnership; Michigan Electric Transmission Company, LLC (METC); Michigan Public Power Agency; Michigan South Central Power Agency; and Wolverine Power Supply Cooperative, Inc. METC is the only customer that did not execute its Agreement.

## **I. Background**

2. Consumers Energy states that, in 2002, it sold its facilities classified as transmission, and thus, until recently was not a transmission owner in MISO. Consumers Energy notes that Schedule 11 provides that only MISO transmission owners or certain other independent transmission companies can provide wholesale distribution service under it.<sup>4</sup> Thus, Consumers Energy states, because some entities connected to its distribution system wanted wholesale distribution service under Schedule 11 of the MISO Tariff, Consumers Energy and METC entered into a wholesale distribution service agreement (METC Service Agreement) in September 2003.<sup>5</sup> Consumers Energy explains that, under the METC Service Agreement, Consumers Energy provided METC with wholesale distribution service, and METC, in turn, provided the wholesale distribution service under Schedule 11 to the other customers.

3. Consumers Energy states that, on April 16, 2015, it received approval from the Commission to reclassify a portion of its distribution assets as transmission assets.<sup>6</sup> Subsequently, Consumers Energy applied to join MISO as a transmission owner, which the MISO Board of Directors approved on August 27, 2015.<sup>7</sup>

## **II. Consumers Energy's Filing**

4. According to Consumers Energy, as of the effective date of its status as a transmission owner in MISO, Consumers Energy is permitted under Schedule 11 of the MISO Tariff to provide wholesale distribution service directly to customers without the use of METC as an intermediary.<sup>8</sup> Consumers Energy states that the Agreements submitted herein are the result of negotiations with each customer.

5. Consumers Energy notes that the rate customers are currently paying for wholesale distribution service under the METC Service Agreement was initially

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<sup>4</sup> MISO, FERC Electric Tariff, SCHEDULE 11(Wholesale Distribution Service).

<sup>5</sup> *Michigan Elec. Trans. Co., LLC*, Docket No. ER03-1154-000, at 1-2 (Sept. 23, 2003) (delegated letter order).

<sup>6</sup> *Consumers Energy Company*, 151 FERC ¶ 61,033 (2015) (Reclassification Order).

<sup>7</sup> Consumers Energy Filing at 2, n.10.

<sup>8</sup> *Id.* at 3.

approved by the Commission based on a 1995 test year.<sup>9</sup> Consumers Energy asserts that, because the rate has not been updated for approximately two decades, the stated rate reflected in the Agreements has increased substantially, from \$0.58 per kW/month to \$1.532 per kW/month.<sup>10</sup> Consumers Energy explains that, to mitigate this significant rate increase, the Agreements do not increase the rate during the first year (i.e., 2016) and phase in the increase over a four year period starting in 2017.<sup>11</sup> Consumers Energy contends that this phased-in rate change will help customers adapt, as many are municipalities with limited and pre-determined budgets.<sup>12</sup>

6. Consumers Energy states that the new rate is calculated using the formula rate spreadsheet template found in Attachment O of the Tariff, which is used to calculate transmission rates in MISO. Consumers Energy contends that the Commission has accepted the use of an Attachment O-style formula for calculation of wholesale distribution rates in the past.<sup>13</sup> Consumers Energy explains that the new rate is based on data from its 2014 FERC Form No. 1.<sup>14</sup> Consumers Energy further explains that the numerator used to determine the new rate is the annual revenue requirement for Consumers Energy's high-voltage distribution facilities (i.e., 46 kV and above) and includes the traditional components of a revenue requirement. Consumers Energy also states that the divisor used to determine the new rate is the average of the 12 monthly coincident transmission peaks for the METC system for 2014, and that the return on rate base is developed as the product of the requested overall rate of return and rate base.<sup>15</sup> Consumers Energy notes that, consistent with the Reclassification Order, it removed the

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 3-4.

distribution facilities that are to be reclassified as transmission facilities from the rate base, to eliminate any double recovery.<sup>16</sup>

7. Consumers Energy states that new rate also reflects a slight increase in the system loss factors from 1.13 percent to 1.34 percent when the metering is on the high side of interconnection, and from 1.68 percent to 2.34 percent when the metering is on the low side of the interconnection. Consumers Energy notes that these loss factors are the same as those approved for the wholesale distribution service system in Consumers Energy's most recent general electric rate case by the Michigan Public Service Commission (Michigan Commission).<sup>17</sup>

8. Consumers Energy requests that the Agreements be effective on April 1, 2016, which is the same date that the reclassification is effective under the Reclassification Order.<sup>18</sup> Consumers Energy asserts that this concurrent effective date will prevent any double recovery for the reclassified assets.

### **III. Notices of Filing and Responsive Pleadings**

9. Notice of Consumers Energy's filing was published in the *Federal Register*, 81 Fed. Reg. 5730 (2016), with interventions and protests due on or before February 17, 2016. METC submitted a timely motion to intervene, motion to reject, and protest. On March 9, 2016 and March 10, 2016, respectively, Michigan South Central Power Agency and Michigan Public Power Agency filed motions to intervene out of time.

10. On March 3, 2016, Consumers Energy filed an answer to METC's protest. On March 15, 2016, METC filed an answer to Consumers Energy's answer. On March 22, 2016, Consumers Energy filed an answer to METC's answer.

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<sup>16</sup> *Id.* at 4, citing the Reclassification Order, 151 FERC ¶ 61,033 at P 14 (The Commission noted that Consumers Energy, in order to avoid double recovery, will "need to remove the [reclassified] facilities from the Wholesale Distribution Service rate and include them instead under forthcoming transmission rates under the MISO Tariff.").

<sup>17</sup> Consumers Energy Filing at 4, citing *Consumers Energy Company*, Case No. U-17735, Michigan Public Service Commission (Nov. 19, 2015) (Michigan Commission Proceeding).

<sup>18</sup> *Id.* at 6, citing Reclassification Order, 151 FERC ¶ 61,033 at Ordering Paragraph (C).

**A. METC's Protest**

11. METC contends that Consumers Energy's filing is patently deficient, as Consumers Energy fails to justify its proposed rate with section 205 of the FPA and Part 35 of the Commission's regulations, and the filing should be rejected.<sup>19</sup> If the filing is not rejected, METC asserts that, in the alternative, the Commission should impose a five-month suspension and set the proceeding for hearing, arguing that the proposed rate increase is "substantially excessive."<sup>20</sup>

12. Specifically, METC contends that, while the new rate represents a 164 percent increase, Consumers Energy has provided no cost support to justify why the increase is so great other than to state that the rate has not been updated for approximately 20 years.<sup>21</sup> Additionally, METC states that, unlike formula rates, Consumers Energy's Attachment O-style formula does not include formula rate protocols that provide mechanisms for customers to review and challenge the inputs to, and calculation of, the rate.<sup>22</sup> METC also asserts that Consumers Energy provides no support for how it derived its revenue requirement or its loss factor calculations.<sup>23</sup> Specifically, METC states that Consumers Energy does not explain the interplay between its loss numbers and the MISO Business Practice Manual (BPM) 012, which METC claims is how transmission losses are supposed to be calculated.<sup>24</sup>

13. METC asserts that, because the Agreements would go into effect before the METC Service Agreement is terminated, Consumers Energy has asked METC to stop providing service to the customers under the METC Service Agreement. METC argues that this approach is confusing and leads to the potential of having multiple agreements in place for the same service. METC also notes that Consumers Energy has not filed a

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<sup>19</sup> METC Protest at 3, citing 16 U.S.C. § 824d (2014); 18 C.F.R. Part 35 (2015).

<sup>20</sup> *Id.* at 1, 9-10, citing *West Texas Utilities Co.*, 18 FERC ¶ 61,189, at 61,374-75 (1982) (*West Texas*) (holding that the Commission will suspend a proposed rate for the maximum period, five months, if the proposed rate increase is found to be "substantially excessive.").

<sup>21</sup> *Id.* at 3-4.

<sup>22</sup> *Id.* at 4.

<sup>23</sup> *Id.* at 5-6.

<sup>24</sup> *Id.* at 5.

wholesale distribution service agreement for Consumers Energy's use of the distribution system and suggests that non-discriminatory open access service requires Consumers Energy to pay its fair share for use of the distribution system.<sup>25</sup>

14. Finally, METC points to a 2002 agreement with Consumers Energy under which METC provides non-discriminatory transmission service over certain facilities owned and operated by Consumers Energy with voltage ratings below 120 kV that are used to serve certain wholesale customers (Operating Agreement).<sup>26</sup> METC notes that the Operating Agreement clearly states that Consumers Energy cannot assess METC (or its customers) for use of distribution facilities that are rated above 120 kV.<sup>27</sup> Therefore, METC argues, to the extent Consumers Energy has included distribution facilities that are rated at, for example, 138 kV in determining the charge assessed in the unexecuted Consumers Energy-METC agreement at issue, these rates including losses calculation should be recalculated to reflect the agreed-upon assessment of facilities at 120kV or below only.<sup>28</sup>

#### **B. Consumers Energy's Answer**

15. Consumers Energy disputes METC's contention that Consumers Energy has not adequately supported its wholesale distribution service rate calculation. Consumers Energy notes that METC does not claim that any particular input in the rate calculation is inaccurate or inappropriate, and Consumers Energy asserts that METC's claim that there is no way to determine if the rate has been accurately determined is without merit. Rather, Consumers Energy states that the majority of the rate inputs come directly from Consumers Energy's publicly available 2014 FERC Form No. 1.<sup>29</sup> In addition, Consumers Energy provides work papers and spreadsheets, claiming that these documents show how various inputs are derived.<sup>30</sup> More specifically, Consumers Energy explains that the current rate is based on a 1995 test year, and, between 1995 and 2014, Consumers Energy has invested substantially in improvements to its distribution system.

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<sup>25</sup> *Id.* at 6.

<sup>26</sup> *Id.* at 8.

<sup>27</sup> *Id.* at 9, n.27.

<sup>28</sup> *Id.* at 9.

<sup>29</sup> Consumers Energy Answer at 5.

<sup>30</sup> *Id.* at 5-9, Exhs. C-H.

For example, Consumers Energy states that the net plant for its system in 1995 was approximately \$201 million<sup>31</sup> and the net plant in 2014 was approximately \$666 million.<sup>32</sup> Consumers Energy notes that this is a 331 percent increase in net plant, which is greater than the proposed rate increase of 264 percent (i.e., \$0.58 to \$1.532).<sup>33</sup>

16. Similarly, Consumers Energy argues that the Commission should also reject METC's assertions that the loss factors are not properly supported, and that the methodology in BMP 012 should have been used. Consumers Energy includes information in its answer further explaining the calculation of the loss factors and notes that the loss factors were derived from a study approved of by the Michigan Commission.<sup>34</sup> In addition, Consumers Energy states that section 34.2 of MISO's Tariff specifies that BPM 012 should be used to calculate losses on transmission facilities, but does not require the same for distribution facilities.<sup>35</sup> Similarly, Consumers Energy states, Schedule 11 of the MISO Tariff, which governs the Agreements, does not require the use of the BPM 012 methodology to calculate losses on distribution facilities used to provide wholesale distribution service; it only requires that the loss factors be in a service agreement and filed with the Commission.<sup>36</sup> Consumers Energy asserts that all the

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<sup>31</sup> *Id.* at 9-10, Exh. J (Affidavit of Daniel S. Alfred (Alfred Aff.)) at P 7).

<sup>32</sup> *Id.* at 10, Alfred Aff. at P 8.

<sup>33</sup> *Id.* at 10.

<sup>34</sup> *Id.* at 14-15, citing Michigan Commission Proceeding, *supra* note 17; *see also* Exh. I and K.

<sup>35</sup> *Id.* at 16, citing MISO Tariff, section 34.2, which provides:

Transmission losses refer to the loss of energy during the transmission of electricity from generation resources to Load, which is dissipated as heat through transformers, transmission lines, and other transmission facilities that are under the functional control of the Transmission Provider. When reporting monthly network coincident peak loads to MISO for billing purposes, load reporting entities will adjust Network Load to account for Transmission losses in accordance with MISO Business Practice Manual – 012

<sup>36</sup> *Id.* at 17, citing MISO Tariff, Schedule 11 at 1.

facilities at issue are distribution facilities, the facilities are not under the functional control of MISO, and Consumers Energy has included the loss factor in the Agreements.

17. Consumers Energy notes that it did not propose a formula rate, but proposed a fixed rate calculated with a formula; thus, no formula rate protocols are needed. In addition, Consumers Energy states that the Agreements do not allow changes to the rates paid by customers without Commission approval. Accordingly, Consumers Energy asserts that the Commission should reject METC's contention that Consumers Energy should have proposed formula rate protocols.<sup>37</sup>

18. Consumers Energy reiterates that there will not be duplicative service, as Consumers Energy has requested that METC stop providing wholesale distribution to customers under the existing METC Service Agreement on the effective date of the Agreements. Consumers Energy states that it will file to terminate the existing METC Service Agreement when the instant filing is accepted by the Commission. Consumers Energy asserts that, given that METC has not identified any specific issue with Consumers Energy's plan or how it could be improved, the Commission should reject METC's assertion that more clarity is needed.<sup>38</sup>

19. Consumers Energy states that METC's assertion that Consumers Energy should have filed an agreement governing Consumers Energy use of its own distribution system is not related to this proceeding, which is limited to whether the Agreements are just and reasonable.<sup>39</sup> Consumers Energy also notes that neither the Commission's regulations nor the MISO Tariff requires such an agreement.<sup>40</sup>

20. Finally, Consumers Energy contends that the Commission should reject METC's assertions regarding the Operating Agreement. Consumers Energy states that, to the extent METC believes that Consumers Energy has breached the terms of the Operating Agreement, METC must raise its arguments in a complaint pursuant to section 206 of the FPA.<sup>41</sup> Consumers Energy also claims that METC's arguments are beyond the scope of this proceeding; the only relevant issue here is whether the Commission should accept the

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<sup>37</sup> *Id.* at 10-11.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 13.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 19, citing 16 U.S.C. § 824e (2012).

Agreements for filing.<sup>42</sup> Additionally, Consumers Energy asserts that METC does not have standing to raise any Operating Agreement issues because it has not followed the dispute resolution provision required within the Operating Agreement.<sup>43</sup> Further, Consumers Energy argues that METC's claim is inconsistent with the plain language of the Operating Agreement.<sup>44</sup>

### C. METC's Answer

21. METC contends that, although Consumers Energy's answer attempts to cure significant deficiencies in its cost support for its wholesale distribution rates, these deficiencies are not appropriately addressed in an answer. Further, METC argues that, even if the Commission finds, in its preliminary analysis, that Consumers Energy has cured the patent deficiencies in its initial filing, a hearing should be held because there are material, cost of service facts that are in dispute.<sup>45</sup> Specifically, METC argues that Consumers Energy is mistaken that it can hide behind the Attachment O template as a hallmark of reasonableness for a fixed rate. METC agrees with Consumers Energy that METC has not challenged Consumers Energy's use of Attachment O to set the initial unit charge. However, METC contends that, as a formula, the reasonableness of Attachment O is predicated on its continued use as a formula, and the well-established protocols and processes that come along with formula administration.<sup>46</sup> METC claims that Commission precedent is clear – it is the Attachment O formula that is reasonable, not necessarily the resultant unit charge itself. Thus, METC asserts that the template is fine as a buildup for an initial stated rate, but it does not make the rate reasonable *per se* as Consumers Energy argues.<sup>47</sup>

22. METC claims there are other reasons why a cost of service hearing is particularly appropriate here: (1) Consumers Energy admits that it has not set wholesale distribution service rates for over 10 years, and its rate base has increased over 300 percent; (2) Consumers Energy moved assets from wholesale distribution cost of service to

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<sup>42</sup> *Id.* at 21.

<sup>43</sup> *Id.* at 21-22.

<sup>44</sup> *Id.* at 22-24.

<sup>45</sup> METC Answer at 2.

<sup>46</sup> *Id.* at 3.

<sup>47</sup> *Id.* at 4.

transmission cost of service; and (3) Consumers Energy relied on *pro forma* inputs to populate its initial transmission Attachment O.<sup>48</sup> Additionally, METC asserts that a hearing is particularly appropriate to ensure Consumer Energy's compliance with the Commission's directive in the Reclassification Order that Consumers Energy is (1) booking the correct costs to the correct plant accounts (wholesale distribution or transmission) and (2) making reasonable and traceable accounting changes to demonstrate that costs that would have been booked to transmission accounts instead of distribution accounts are correctly accounted for.<sup>49</sup>

23. In regard to the distribution facilities that are not under the functional control of MISO, METC questions why Consumers Energy has not entered into an Agency Agreement pursuant to MISO's Appendix G, which authorizes MISO to offer transmission service over facilities that are not transferred to it. METC notes that MISO's BPM 012 would then apply to include these distribution facilities for calculating the loss percentage.<sup>50</sup>

24. Finally, METC asserts that Consumers Energy's arguments regarding the Operating Agreement are misplaced. METC argues that it appropriately raised the provisions of the Operating Agreement to ensure that the wholesale distribution rate, which is at issue in this proceeding, appropriately reflects the parties' agreement that Consumers Energy cannot assess METC (or its customers) for use of distribution facilities that are rated above 120 kV.<sup>51</sup> METC contends that Consumers Energy freely negotiated the Operating Agreement and should not be able to ignore it because it is now an inconvenience for Consumers Energy.

#### **D. Consumers Energy's Second Answer**

25. Consumers Energy asserts that no hearing is necessary regarding whether the stated rate in the Agreements is reasonable. Consumers Energy points out that METC admits that using the Attachment O formula to calculate an initial stated rate is reasonable. Further, Consumers Energy asserts that neither the FPA nor the

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<sup>48</sup> *Id.* at 4-5.

<sup>49</sup> *Id.* at 5, citing Reclassification Order, 151 FERC ¶ 61,033 at P 19.

<sup>50</sup> *Id.* at 5.

<sup>51</sup> *Id.* at 6.

Commission requires a utility to annually update a fixed, stated rate and that METC cites no case law to support such a requirement.<sup>52</sup>

26. Similarly, Consumers Energy argues that no hearing is necessary to ensure compliance with the Commission's directive granting Consumers Energy's request to use *pro forma* inputs to populate its initial transmission Attachment O. Consumers Energy claims that it requested to use *pro forma* inputs in its calculation of its transmission rate under Attachment O, and thus, the vast majority of those inputs are irrelevant to the rates at issue, as they were not used to calculate the wholesale distribution service rate.<sup>53</sup> Additionally, Consumers Energy states that it explained in detail the accounting mechanism used to ensure that the inputs were accurate in the proceeding in Docket No. ER15-910 where the Commission approved Consumers Energy's use of the inputs. Consumers Energy asserts that because the Commission previously approved the use of *pro forma* inputs without a further compliance filing or hearing, the Commission should not require any hearing or compliance filing here regarding the accuracy of these inputs.<sup>54</sup> Finally, Consumers Energy contends that in the instant proceeding, it has explained the limited use of the inputs and that the rate in the Agreements is based on a rate that does not include any of the assets that were reclassified in the Reclassification Order. Consumers Energy asserts that this removal will avoid double recovery for the same set of assets and no further showing is necessary.<sup>55</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), METC's timely, unopposed motion to intervene serves to make it a party to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), the Commission will grant Michigan South Central Power Agency and Michigan Public Power Agency's late-filed motions to intervene given their interests in the proceeding, the early stage of this proceeding, and the absence of undue prejudice or delay.

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<sup>52</sup> Consumers Energy Second Answer at 2-3.

<sup>53</sup> *Id.* at 4

<sup>54</sup> *Id.* at 4-5.

<sup>55</sup> *Id.* at 5.

28. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers filed by Consumers Energy and METC as they have provided information that assisted us in our decision-making process.

**B. Hearing and Settlement Judge Procedures**

29. Our preliminary analysis indicates that the Agreements have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the Agreements for filing and suspend them for a nominal period, to become effective on April 1, 2016, as requested, subject to refund, and set them for hearing and settlement judge procedures.

30. Consumers Energy's filing raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Issues include, but are not limited to, justification of the proposed return on equity and applicability of the loss studies. Further, a hearing is appropriate to ensure that Consumers Energy has complied with the Reclassification Order and that Consumers Energy is booking the correct costs to the correct plant accounts (wholesale distribution service or transmission).

31. We deny METC's request for a five-month suspension. In *West Texas*,<sup>56</sup> the Commission explained that, when its preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, the Commission will generally impose a five-month suspension. In the instant proceeding, our preliminary analysis indicates that the proposed rates may not be substantially excessive, as defined in *West Texas*, and therefore, as stated above, we accept Consumers Energy's proposed rates in the Agreements, suspend them for a nominal period, making them effective April 1, 2016, subject to refund, and set them for hearing and settlement judge procedures.

32. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>57</sup> If the parties desire,

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<sup>56</sup> 18 FERC ¶ 61,189.

<sup>57</sup> 18 C.F.R. § 385.603 (2015).

they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>58</sup>

The Commission orders:

(A) Consumers Energy's Agreements are hereby accepted for filing and suspended for a nominal period, to become effective April 1, 2016, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Consumers Energy's Agreements, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every

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<sup>58</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.