

155 FERC ¶ 61,104  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Consumers Energy Company

Docket No. ER16-1058-000  
EL16-56-000

ORDER ACCEPTING PROPOSED RATE SCHEDULE, ACCEPTING NOTICE OF  
CANCELLATION, INSTITUTING SECTION 206 PROCEEDING, AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued April 28, 2016)

1. On March 2, 2016, pursuant to section 205(d) of the Federal Power Act (FPA)<sup>1</sup> and section 35.13 of the Commission regulations,<sup>2</sup> Consumers Energy Company (Consumers Energy) submitted proposed revisions to its cost-based revenue requirement for the provision of Reactive Supply and Voltage Control from Generation Sources Service (Reactive Supply Service) from certain Consumers Energy generating units in the Midcontinent Independent System Operator, Inc. (MISO) region.<sup>3</sup> Consumers Energy also submitted a Notice of Cancellation for its Zeeland, Michigan plant (Zeeland Plant) rate schedule.<sup>4</sup> In this order, we accept the proposed revisions for filing, to become effective, May 1, 2016, as requested. We also establish hearing and settlement judge procedures. Further, because Consumers Energy is proposing a rate reduction and a

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. § 35.13 (2015).

<sup>3</sup> Consumers Energy Company, FERC FPA Electric Tariff, Tariffs and Agreements, [Ancillary Services, Rate Schedule FERC No. 116 \(1.0.0\)](#).

<sup>4</sup> The revenue requirement for the Zeeland Plant was accepted as Consumers Energy FERC Tariff Original Volume No. 10. *See Consumers Energy Co.*, Docket No. ER08-467-000, at 1 (Feb. 29, 2008) (delegated letter order).

further decrease may be warranted, we are instituting an investigation pursuant to section 206 of the FPA<sup>5</sup> in Docket No. EL16-56-000 to determine whether Consumers Energy's proposed rate reduction is just and reasonable, and we establish a refund effective date. We also accept Consumers Energy's Notice of Cancellation of the Zeeland Rate Schedule, effective May 1, 2016.

## **I. Background**

2. Consumers Energy states that its total revenue requirement for Reactive Supply Service is currently contained in three independent rate schedules; (a) Rate Schedule No. 116, (b) a plant-specific rate schedule for the Zeeland Plant, and (c) a plant-specific rate schedule for the Jackson, Michigan plant.<sup>6</sup>

3. Consumers Energy states that it seeks to update its revenue requirement for Reactive Supply Service in Rate Schedule No. 116, which has not been updated since its filing in Docket No. ER03-15, which was in the form of one "blanket" rate that covered all of Consumers Energy's generating facilities for which compensation was sought.<sup>7</sup> Consumers Energy states that it has included an updated revenue requirement for the Zeeland Plant's Reactive Supply Service in this revised Rate Schedule No. 116 because Consumers Energy acquired the Zeeland Plant after the Commission accepted the blanket rate for Reactive Supply Service. Further, in order to avoid two rate schedules covering the same service, Consumers Energy has included a Notice of Cancellation for the Zeeland Rate Schedule in this filing. Consumers Energy notes it will maintain the plant-specific rate schedule for the Jackson, Michigan plant at this time.<sup>8</sup>

4. Consumers Energy states that it seeks to update its revenue requirement primarily because it has either acquired, retired, sold or plans to retire generating plants since the Commission last approved Rate Schedule No. 116. First, Consumers Energy states that it has decommissioned its Big Rock Point Nuclear Plant, sold the Palisades Nuclear Plant to Entergy Nuclear Palisades, LLC (Entergy)<sup>9</sup> and acquired the Zeeland Plant. Second,

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<sup>5</sup> 16 U.S.C. § 824e (2012).

<sup>6</sup> Transmittal at 2

<sup>7</sup> *Id.*; see also *Consumers Energy Company*, Docket No. ER03-15-002, *et al.*, at 1 (May 28, 2003) (delegated letter order).

<sup>8</sup> Transmittal at 3.

<sup>9</sup> Consumers Energy notes that under the sales agreement with Entergy, Consumers Energy is entitled to all compensation received by Entergy for reactive power

(continued ...)

Consumers Energy states that it plans to retire seven coal-fired generating units in April 2016 and it has not included those revenue requirements in this filing.<sup>10</sup>

5. Consumers Energy states that the proposed revisions to its Rate Schedule No.116 calculate the revenue requirement for Reactive Supply Service only for the following 18 units located at four generating plants: JHCampbell Units 1, 2 and 3, DEKarn Units 1-4, Ludington Units 1-6, and Zeeland Units 1A, 1B, 2A, 2B and ST2.<sup>11</sup>

6. Consumers Energy states the combined revenue requirement currently reflected in Rate Schedule No. 116 and the Zeeland Rate Schedule is \$19,706,000. Consumers Energy states that the new revenue requirement for the 18 Generating units in this revised filing is \$5,313,604, and is a reduction of over \$14 million from the revenue requirements in the existing rate schedules. Consumers Energy states that the drop in revenue requirement is due to future plant retirements of approximately 970 MW in capacity, depreciation of net plant value, the sale of the Palisades Nuclear Plant, and the reduction in investments associated with providing voltage support.<sup>12</sup>

7. Consumers Energy states that it developed the updated revenue requirement in accordance with the methodology approved by the Commission in *American Electric Power Service Corp. (AEP Methodology)*.<sup>13</sup> Consumers Energy seeks to recover fixed costs attributable to its reactive power production capability (fixed capability component) based on data available as of December 31, 2014.

8. In support of its filing, Consumers Energy submitted the testimony of Michael Wade which described the application of the *AEP Methodology* and the calculations for the revenue requirement associated with each individual Generating Unit and the total of all for the Generating Units.<sup>14</sup>

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received by the plant, but Consumers Energy reserves the right to file for reactive power compensation in the future. *Id.* at 4, n.8.

<sup>10</sup> *Id.* at 4.

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

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

<sup>13</sup> *Id.* at 4-6 (citing *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000)).

<sup>14</sup> *See id.* Appendix 3.

9. Consumers Energy asserts that the *AEP* Methodology generally reflects the fixed costs associated with four groups of plant equipment that contribute to the provision of reactive power and voltage control service: (1) the generator and excitation system; (2) the generator step-up transformer; (3) accessory electrical equipment; and (4) the remaining plant investment.<sup>15</sup>

10. Consumers Energy explains that because plant components within each of the four relevant categories are involved in the production of both reactive power and real power, the *AEP* Methodology calls for the application of appropriate allocation factors to separate the annual revenue requirement associated with these components between real power and reactive power production. Consumers Energy states that the allocation factors used to derive Consumers Energy's revenue requirement are consistent with the *AEP* Methodology.<sup>16</sup>

11. Consumers Energy calculates its annual fixed charge rate specific to each plant, which includes depreciation expense, operation and maintenance expenses, administrative and general expenses, and a Return on Equity (ROE). Consumers Energy applied this annual fixed charge rate to its aggregate investment in the relevant four categories of equipment at each plant to arrive at an annual cost-based revenue requirement for Consumers Energy's provision of reactive service from each of its plants.<sup>17</sup>

12. Consumers Energy states that it used a ROE of 12.38 percent, which is the currently approved MISO-wide ROE, and is currently the subject of a section 206 complaint that has been set for hearing in Docket No. EL15-45-000 (Complaint Proceeding). Consumers Energy affirms that it will make the necessary refunds with interest if the Complaint Proceeding results in a change to the MISO-wide ROE and that it will submit a compliance filing within 60 days of a final, non-appealable order in the Complaint Proceeding consistent with its outcome.<sup>18</sup>

13. Consumers Energy requests a waiver of the Commission's 60-day prior notice requirement under section 35.3(a) of the Commission's regulations,<sup>19</sup> and seeks an

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<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 6.

<sup>19</sup> 18 C.F.R. § 35.3(a) (2015).

effective date of May 1, 2016 for both the revised Rate Schedule No. 116 and the Notice of Cancellation of the Zeeland Rate Schedule. Consumers Energy states that the Commission routinely grants such waivers when an entity files to decrease rates.<sup>20</sup>

## **II. Notice and Responsive Pleadings**

14. Notice of Consumers Energy's filing was published in the *Federal Register*, 81 Fed. Reg. 12,096 (2016), with interventions and protests due on or before March 23, 2016. None was filed.

## **III. Discussion**

15. We accept Consumers Energy's Notice of Cancellation of the Zeeland Rate Schedule effective May 1, 2016. In regard to Consumers Energy's proposed revisions to Rate Schedule No. 116, we find that the proposed revisions raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.<sup>21</sup>

16. Our preliminary analysis indicates that Consumers Energy's proposed revisions to Rate Schedule No. 116 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 Consumers Energy's proposed revisions to Rate Schedule No. 116 for filing, to be effective May 1, 2016, as requested, and set the proposed revisions to Rate Schedule No. 116 for hearing and settlement judge procedures.

17. In addition, because Consumers Energy is proposing a rate reduction, but a further rate decrease may be warranted, we are instituting a section 206 investigation in Docket No. EL16-56-000 with respect to the justness and reasonableness of Consumers Energy's proposed rate.<sup>22</sup> Given the common issues of law and fact, we will consolidate Docket Nos. ER16-1058-000 and EL16-56-000 for purposes of settlement, hearing, and decision.

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<sup>20</sup> Transmittal at 6 (citing *Calpine N.J. Generation, LLC*, 153 FERC ¶ 61,071, at P 6 (2015)).

<sup>21</sup> The Commission recently provided guidance on establishing or revising rates for Reactive Service. *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,246, at PP 23-28 (2016); *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, at PP 24-29 (2016).

<sup>22</sup> See, e.g., *RC Cape May Holdings, LLC*, 152 FERC ¶ 61,224, at P 19 (2015).

18. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than the date of publication of the notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months after the publication date.<sup>23</sup> We will establish a refund effective date of the earliest date possible in order to give maximum protection to customers, i.e., the date of the notice of initiation of the section 206 proceeding in Docket No. EL16-56-000 is published in *the Federal Register*.

19. Section 206(b) of the FPA also requires that if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. Since we are setting the section 206 proceeding in Docket No. EL16-56-000 for hearing and settlement judge procedures, we expect that, if the proceeding does not settle, we would be able to render a decision within eight months of the date of filing of briefs opposing exceptions to the Initial Decision.

20. Regarding the retired units, we note that Consumers Energy may have continued to receive payments for Reactive Supply Service based on a revenue requirement that included the retired units, after it retired those units, and, thus, after "their units were no longer capable of providing that service."<sup>24</sup> We have referred such concern to the Commission's Office of Enforcement for further examination and inquiry as may be appropriate.

21. While we are setting these matters for a trial-type evidentiary hearing, we encourage the participants to make every effort to settle their dispute before hearing procedures commence. To aid the participants in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603

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<sup>23</sup> 16 U.S.C. § 824e(b) (2012).

<sup>24</sup> See *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,132, at P 10 (2014); see also *Desoto Cnty. Generating Co., LLC*, 151 FERC ¶ 61,009, at P 14 (2015) (referring to the Commission's Office of Enforcement the matter of the resource owner possibly receiving payments for Reactive Power Service while its facility was incapable of providing that service); *Duke Energy Conesville, LLC*, 150 FERC ¶ 61,229, at P 8 (2015) (referring to the Commission's Office of Enforcement the matter of the resource owner possibly receiving payments for Reactive Power Service after its units had retired and thus were no longer capable of providing that service).

of the Commission's Rules of Practice and Procedure.<sup>25</sup> If the participants desire, 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>26</sup> The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the participants with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Consumers Energy's proposed revisions to Rate Schedule No. 116 are hereby accepted for filing, to become effective May 1, 2016, subject to the outcome of the hearing and settlement judge procedures ordered herein, as discussed in the body of this order.

(B) Consumers Energy's Notice of Cancellation of the Zeeland Rate Schedule is hereby accepted, effective May 1, 2016, as discussed in the body of this order.

(C) 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 section 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), the Commission hereby institutes a proceeding in Docket No. EL16-56-000, concerning the justness and reasonableness of Consumers Energy's proposed revisions to Rate Schedule No. 116, 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 (D) and (E) below.

(D) 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

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<sup>25</sup> 18 C.F.R. § 385.603 (2015).

<sup>26</sup> If the participants decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days 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>).

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 participants 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.

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

(F) 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.

(G) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of section 206 proceedings in Docket No. EL16-56-000.

(H) The refund effective date established pursuant to section 206(b) of the Federal Power Act will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (G) above.

(I) Docket Nos. ER16-1058-000 and EL16-56-000 are hereby consolidated for purposes for settlement, hearing, and decision.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.