

156 FERC ¶ 61,026  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Michigan Electric Transmission Company, LLC

Docket No. ER15-1248-000

ORDER DENYING FORMAL CHALLENGE AND DISMISSING COMPLAINT  
WITHOUT PREJUDICE

(Issued July 8, 2016)

1. On March 13, 2015, as amended on March 27, 2015, Michigan Electric Transmission Company, LLC (METC) filed its annual informational formula rate update, as required by the METC formula rate Annual True-Up, Information Exchange, and Challenge Procedures (METC protocols) set forth in Attachment O-METC of Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). On April 15, 2016, Consumers Energy Company (Consumers Energy) submitted a formal challenge or, in the alternative, complaint, pursuant to sections 206 and 306 of the Federal Power Act (FPA),<sup>1</sup> Rule 206 and of the Commission's Rules of Practice and Procedure,<sup>2</sup> and section IV.C of the METC protocols, challenging certain inputs of METC's formula rates. As discussed below, we deny the formal challenge as barred under the protocols and dismiss the complaint without prejudice to Consumers Energy refiling the complaint as a separate pleading.

**I. The Formula Rate and Protocols**

2. Attachment O of the MISO Tariff sets forth the formula rate templates and protocols under which METC and other MISO Transmission Owners recover their respective annual transmission revenue requirements and through which they establish

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<sup>1</sup> 16 U.S.C. §§ 824e, 825e (2012).

<sup>2</sup> 18 C.F.R. § 385.206 (2015).

charges for transmission service for facilities that they own that are under MISO's functional control.

3. As relevant here, the METC protocols detail how METC's formula rate is to be updated annually and how it can be challenged. Section II.B of the METC protocols requires METC to update its transmission rates annually by June 1 and to provide its Annual True-Up, actual net revenue requirement, and True-Up Adjustment to MISO and cause such information to be posted on the MISO website and open access same-time information system (OASIS). Section II.C of the METC protocols requires METC to provide its projected net revenue requirement by September 1 to MISO and cause such information to be posted on the MISO website and OASIS. Section IV.A of the METC protocols states that interested parties shall have until the following January 31 to review the inputs, supporting explanations, allocations and calculations and to notify METC of any specific informal challenges to the formula rate annual true-up or projected net revenue requirement. Section IV.G states that a party may not pursue a formal challenge if that party did not submit an informal challenge on any issue. Section IV.G also specifies that, after submitting an informal challenge, a party shall have until April 15 to submit a formal challenge with the Commission.

## **II. Consumers Energy's Formal Challenge and Complaint**

4. In its formal challenge, Consumers Energy challenges the amounts of accumulated deferred income taxes (ADIT) in METC's Accounts 281-283<sup>3</sup> that are used to calculate charges for transmission services over facilities of METC.<sup>4</sup> Consumers Energy alleges that METC unreasonably and imprudently opted out of using bonus depreciation for calculation of its federal income tax expense, thereby understating the ADIT amounts and unduly increasing the transmission charges that Consumers Energy must pay for transmission service, adversely affecting consumers served by Consumers Energy.<sup>5</sup> Consumers Energy filed the formal challenge alternatively as an FPA section 206 complaint.

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<sup>3</sup> See Uniform System of Accounts, 18 C.F.R. pt. 101.

<sup>4</sup> Consumers Energy Formal Challenge at 1.

<sup>5</sup> *Id.* at 2.

5. Consumers Energy notes that prior to filing the formal challenge, it initiated the use of information exchange procedures pursuant to section III of the METC protocols to learn more about METC's formula rate inputs.<sup>6</sup> Consumers Energy alleges that METC continually failed to provide a clear and rational explanation to Consumers Energy's inquiries.<sup>7</sup> Consumers Energy further notes that it did not use the informal challenge procedures described in section IV of the METC protocols because it "did not believe the Informal Challenge procedures would provide a means of addressing the concerns that have prompted this Formal Challenge."<sup>8</sup>

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

6. Notice of Consumers Energy's formal challenge was published in the *Federal Register*, 81 Fed. Reg. 23,696 (2016), with interventions and protests due on or before May 6, 2016. The Michigan Public Service Commission filed a notice of intervention. Wolverine Power Supply Cooperative, Inc. and the Michigan Public Power Agency filed timely motions to intervene. Alliant Energy Corporate Services, Inc. filed a timely motion to intervene and comments supporting Consumers Energy's formal challenge.

7. On May 6, 2016, METC filed an answer to the formal challenge and complaint (METC May 6 Answer). METC argues that Consumers Energy's claims and requests for relief should be denied for both procedural and substantive reasons. METC asserts that under its protocols, the submission of an informal challenge is a necessary prerequisite to the filing of a subsequent formal challenge.<sup>9</sup> METC asserts that any interested party had until January 31, 2016, to notify METC in writing of any specific informal challenge. METC states that Consumers Energy did not notify METC of any specific informal challenge, and thus, Consumers Energy's formal challenge is barred under the protocols and must be dismissed. In addition, METC notes that, *inter alia*, although Consumers Energy filed the formal challenge alternatively as a complaint under FPA section 206, Consumers Energy's pleading has not been noticed or otherwise treated as a complaint by the Commission.<sup>10</sup>

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<sup>6</sup> *Id.* at 8.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 23.

<sup>9</sup> METC May 6 Answer at 5.

<sup>10</sup> *Id.* at 2.

8. On May 23, 2016, Consumers Energy filed an answer to METC's answer. On June 7, 2016, METC filed an answer to Consumers Energy's answer.

#### **IV. Commission Determination**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. 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 an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Consumers Energy's answer or METC's June 7, 2016 answer and, therefore, reject them.

#### **Substantive Matters**

10. In an order on proposed revisions to the formula rate protocols under the MISO Tariff, the Commission stated that it "retain[ed] the requirement that an interested party submit an informal challenge in order to be able to raise *any* issue in a formal challenge, as this will encourage interested parties to actively engage throughout the process."<sup>11</sup> Section IV.G of the METC protocols sets forth this requirement, stating that "[a] party may not pursue a Formal Challenge if that party did not submit an Informal Challenge on any issue during the applicable Review Period." Under sections IV.A and IV.B of the METC protocols, the applicable Review Period for METC's Annual True-Up and its projected net revenue requirement at issue in this proceeding ended on January 31, 2016.<sup>12</sup> As noted above, Consumers Energy acknowledges that it did not submit an informal challenge to METC, providing only that it did not believe the informal challenge procedures would provide a means of addressing its concerns, which we find unavailing.<sup>13</sup> Accordingly, we find that Consumers Energy's formal challenge is barred under the METC protocols and is therefore denied.

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<sup>11</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212, at P 109 (2014) (MISO Protocols Compliance Order); *order on compliance*, 150 FERC ¶ 61,025 (2015) (emphasis in original).

<sup>12</sup> Because January 31, 2016 fell on a weekend, an interested party had until the next business day, February 1, 2016, to submit an informal challenge to METC.

<sup>13</sup> Consumers Energy Formal Challenge at 23.

11. In addition, the Commission has long required that a complaint be made in a separate pleading, and not included in other filings such as a protest.<sup>14</sup> Further, as the Commission explained in the MISO Protocols Compliance Order, “the formal challenge procedures proposed by the MISO Transmission Owners and largely accepted here . . . are distinct from complaints filed pursuant to section 206 of the FPA.”<sup>15</sup> In this proceeding, Consumers Energy has improperly coupled its complaint with its formal challenge. Accordingly, we dismiss Consumers Energy’s complaint without prejudice to Consumers Energy refiling the complaint as a separate pleading.

The Commission orders:

(A) Consumers Energy’s formal challenge is hereby denied, as discussed in the body of this order.

(B) Consumers Energy’s complaint is hereby dismissed without prejudice, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>14</sup> See, e.g., *Louisiana Power & Light Co.*, 50 FERC ¶ 61,040, at 61,062-63; *Entergy Servs., Inc.*, 52 FERC ¶ 61,317, at 62,270 (1990); *Yankee Atomic Elec. Co.*, 60 FERC ¶ 61,316, at 62,096-97 n.19 (1992); *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,292, at P 63 n.55 (2006); *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,250, at P 16 n.23 (2015); *Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,040, at P 18 & nn.35-36 (2016).

<sup>15</sup> MISO Protocols Compliance Order, 146 FERC ¶ 61,212 at P 109.