

156 FERC ¶ 61,107  
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. ER16-1188-000

ORDER ON FORMAL CHALLENGE AND ESTABLISHING HEARING AND  
SETTLEMENT JUDGE PROCEDURES

(Issued August 12, 2016)

1. On March 15, 2016, Consumers Energy Company (Consumers Energy) submitted its annual informational formula rate update regarding Consumers Energy's future transmission revenue requirement under Attachment O of the Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). On April 15, 2016, Michigan Electric Transmission Company, LLC (METC) filed a formal challenge to inputs into Consumers Energy's Attachment O formula rate. METC challenges Consumers Energy's failure in its Attachment O calculations to credit \$10.2 million in annual rental payments received from METC for METC's use of land and land rights and to include all costs for the land and land rights. As discussed below, we set the formal challenge for hearing and settlement judge procedures.

**I. The Formula Rate and Protocols**

2. Attachment O of the MISO Tariff sets forth the formula rate templates and protocols under which Consumers Energy and other MISO Transmission Owners recover their respective annual transmission revenue requirements and through which they establish charges for transmission service for facilities that they own that are under MISO's functional control. Consumers Energy utilizes MISO's generic historical formula rate template and protocols and, as such, does not require any company-specific modifications.

3. As relevant here, Consumers Energy utilizes MISO's generic formula rate protocols which detail how Consumers Energy's formula rate is to be updated annually and how it can be challenged. Section II of the formula rate protocols requires

Consumers Energy to update its transmission rates annually by June 1 and provide this information to MISO. Section III of the protocols provides that interested parties shall have until December 1 to serve reasonable information and document requests on Consumers Energy. Section IV of the protocols states that interested parties shall have until the following January 31 to review the inputs, supporting explanations, allocations and calculations and to notify Consumers Energy of any specific informal challenges to the formula rate annual true-up. After submitting an informal challenge, section IV specifies that a party shall have until April 15 to submit a formal challenge with the Commission.

## II. Background

### A. Consumers Energy Reclassification

4. METC states that, in 2001, Consumers Energy transferred its transmission facilities to METC, which was then a subsidiary of Consumers Energy.<sup>1</sup> METC states that in 2002 Consumers Energy sold METC to an unaffiliated third party controlled by Trans Elect, Inc., which in turn sold METC in 2006 to ITC Holdings Corp., METC's current owner.

5. METC states that Consumers Energy is a new transmission-owning member of MISO, and as such, it has just recently posted an Attachment O.<sup>2</sup> METC states that in Case No. U-17598 before the Michigan Public Service Commission (Michigan Commission), Consumers Energy received authorization to reclassify certain of its distribution facilities as transmission facilities. METC states that, in Docket No. ER15-910-000, Consumers Energy filed with the Commission to reclassify these same facilities as transmission and that on April 16, 2015, the Commission approved Consumers Energy's reclassification filing.<sup>3</sup>

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<sup>1</sup> Formal Challenge at 3.

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

<sup>3</sup> *Id.* at 4 (citing *Consumers Energy Co.*, 151 FERC ¶ 61,033, at P 17 (2015) (Reclassification Order)). The Commission set the effective date of the reclassification of Consumers Energy's facilities 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." Reclassification Order, 151 FERC ¶ 61,033 at ordering para. C. On September 21, 2015, the Commission approved the necessary amendments to Schedules Nos. 7, 8, and 9 in a delegated letter order in Docket No. ER15-1877. On March 31, 2016, the Commission approved the necessary

(continued ...)

## B. The Amended and Restated Easement Agreement

6. METC states that the 2001 intra-corporate conveyance of transmission assets by Consumers Energy to its METC subsidiary did not convey to METC any of the land on which the transmission assets were located.<sup>4</sup> METC states that Consumers Energy and METC instead entered into the Amended and Restated Easement Agreement (AREA), pursuant to which Consumers Energy leases certain land to METC. METC states that pursuant to Section 3 of the AREA, METC pays a rent to Consumers Energy every year of \$10.2 million (AREA Payment) for the easement rights for the land (the Premises) that houses METC's transmission facilities.

7. METC states that Section 1.1 of the AREA provides the definitions of "Transmission" and "Distribution."<sup>5</sup> METC states that, specifically, the AREA defines "Transmission" as:

transmission of electric energy through the Transmission Facilities at voltages of 120 kilovolts or more, intended for delivery of energy across a network, and in no event (regardless of voltage) includes any of the following:

- (i) delivery of electric energy to end-use retail customers;
- (ii) transmission of electric energy through a single circuit (which may consist of any number of wires or cables) running to a substation out of which all electric energy is transmitted at less than 120 kilovolts; and
- (iii) transmission of electric energy between any electric generating plant or facility and the first substation located down-line of such electric generating plant or facility.

METC states that "Distribution," in turn, is defined in AREA Section 1.1 as "all transmission of electric energy, at whatever voltage, that is not 'Transmission' as defined [in the AREA]."

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amendments to the Joint Zone Agreements in Docket No. ER16-844. *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,278 (2016). Thus, the reclassification of Consumers Energy's facilities became effective on April 1, 2016, and Consumers Energy began collecting its transmission revenue requirement as of that date.

<sup>4</sup> Formal Challenge at 4.

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

### C. METC's Informal Challenge

8. METC states that on November 16, 2015, METC submitted a series of questions to Consumers Energy regarding Consumers Energy's Attachment O.<sup>6</sup> METC states that Consumers Energy responded to METC's questions on December 9, 2015. The questions raised by METC focused, in particular, on whether Consumers Energy's Attachment O should credit rental payments received from METC that are related to transmission facilities. According to METC, Consumers Energy responded that the lease payments in question relate to distribution property and, therefore, no credit is warranted.

9. METC states that pursuant to section IV of the protocols, METC submitted an informal challenge to Consumers Energy on February 1, 2016.<sup>7</sup> METC states that on February 26, 2016, Consumers Energy responded to METC's informal challenge. METC states that on March 14, 2016, representatives from METC and Consumers Energy met via telephone to discuss Consumers Energy's response to the informal challenge and were unable to resolve METC's concerns.

### III. Formal Challenge

10. In METC's formal challenge, METC challenges Consumers Energy's failure to credit the AREA Payment paid by METC to Consumers Energy to reduce the revenue requirement calculated under Consumers Energy's Attachment O.<sup>8</sup> METC also challenges Consumers Energy's failure to include transmission-related land and land rights in the transmission revenue requirement calculated in Consumers Energy's Attachment O. METC estimates that, if Consumers Energy properly accounted for transmission-related land and the AREA Payment, Consumers Energy's net revenue requirement would be reduced from \$9.2 million to \$6.1 million, resulting in a 33 percent decrease.

11. Specifically, METC challenges the inputs and allocations associated with Consumers Energy's Attachment O, page 1, line 2 and page 4, line 34.<sup>9</sup> METC notes that Consumers Energy's Attachment O, page 4, line 34 reflects Account 454, Rent from Electric Property. Additionally METC notes that page 4, line 34 references "Note R,"

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<sup>6</sup> *Id.* (citing Exhibit 2).

<sup>7</sup> *Id.* at 6 (citing Exhibit 4).

<sup>8</sup> *E.g., id.* at 1, 7.

<sup>9</sup> *Id.* at 7.

which states that this input “[i]ncludes income related only to transmission facilities, such as pole attachments, rentals and special use.”<sup>10</sup> METC notes that, in responding to METC’s data requests, Consumers Energy stated that “the METC \$10.2 million [annual] lease payment was recorded in FERC account 454.”<sup>11</sup> However, METC notes that in Consumers Energy’s submission of its Attachment O, page 1, line 2, Account 454 lists only \$748. METC states that Consumers Energy’s explanation for this discrepancy is that the “easements that METC attributes the \$10.2 [million annual] lease payment to [Consumers Energy] are accounted for as distribution property by [Consumers Energy] on its books and therefore no rental credit is warranted.”<sup>12</sup> METC states that Consumers Energy argues that Note R does not “require a credit for facilities that have no reasonable nexus with Consumers Energy’s future transmission facilities.”<sup>13</sup>

12. METC states that it was understandable when Consumers Energy had no transmission assets that the AREA Payment from METC would be accounted for by Consumers Energy as distribution property and “treated as an offset to the revenue requirement filed in [Consumers Energy’s] electric rate cases filed at the [Michigan Commission].”<sup>14</sup> METC argues, however, that now that Consumers Energy has transmission assets, the easement payment from METC for transmission assets used in interstate commerce should properly be reflected in Consumers Energy’s transmission accounts and be treated as an offset to its transmission revenue requirement. METC argues that regardless of how Consumers Energy chooses to account for AREA Payment, proper completion of Attachment O and transmission cost-of-service ratemaking principles require that transmission land and land rights, and revenues derived therefrom, be included in the cost-of-service, with the revenues serving as an offset to wholesale transmission rates.

13. METC asserts that Consumers Energy’s argument that METC’s transmission facilities have no reasonable nexus with Consumers Energy’s transmission facilities is also without merit.<sup>15</sup> METC notes that the AREA Payment is specifically for land rent

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<sup>10</sup> *Id.* at 8.

<sup>11</sup> *Id.* (quoting Exhibit 3 at 1).

<sup>12</sup> *Id.* (quoting Exhibit 3 at 1).

<sup>13</sup> *Id.* at 8-9 (quoting Exhibit 5 at 2).

<sup>14</sup> *Id.* at 9 (quoting Exhibit 3 at 1).

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

for transmission facilities and that Consumers Energy records the AREA Payment in Account 454. METC argues that, as a result, and consistent with Account 454, Consumers Energy should properly reflect the AREA Payment as a credit in its Attachment O calculations. METC argues that standard wholesale transmission cost of service ratemaking principles require such rental revenues to serve as an offset to Consumers Energy's transmission revenue requirement.

14. In addition, METC challenges Consumers Energy's Attachment O, page 2, line 2 – Gross Plant in Service, Transmission.<sup>16</sup> METC argues that Consumers Energy fails to include all costs for property used for transmission purposes – whether by Consumers Energy or another party – in its Attachment O calculations. METC notes that Consumers Energy's 2001 FERC Form No. 1 identified and transferred \$66,846,645 in transmission land and land rights to distribution plant. METC asserts, however that Consumers Energy's July 2015 Attachment O filing does not reclassify this amount back into the transmission accounts.

15. Finally, METC notes that Consumers Energy filed a series of Wholesale Distribution Agreements in Docket No. ER16-771-000.<sup>17</sup> METC states that METC protested the rate included in its Wholesale Distribution Agreement with Consumers Energy and the Commission set the proceeding for settlement and hearing procedures.<sup>18</sup> To the extent it is found in Docket No. ER16-771-000 that Consumers Energy did not book the correct costs to the correct plant accounts, METC also challenges the incorrect inputs to Consumers Energy's Attachment O.

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

16. Notice of METC'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. Michigan Public Power Agency filed a timely motion to intervene. Wolverine Power Supply Cooperative, Inc. (Wolverine) filed a timely motion to intervene and comments in support of METC's formal challenge. Consumers Energy filed an answer to the formal challenge (Consumers Energy May 6 Answer).

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<sup>16</sup> *Id.* at 9-10.

<sup>17</sup> *Id.* at 10.

<sup>18</sup> *Id.* (citing *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,262 (2016)).

17. On May 23, 2016, METC filed an answer to Consumers Energy's answer (METC May 23 Answer). On June 3, 2016, Consumers Energy filed an answer to METC's answer (Consumers Energy June 3 Answer).

18. Wolverine agrees with METC that revenues received for assets used for transmission purposes should be credited toward transmission rates, and that transmission-related land and land rights post-reclassification of Consumers Energy's distribution assets to transmission assets should be included in the transmission revenue requirement calculation.<sup>19</sup> Wolverine asserts that if Consumers Energy is receiving revenues for assets, including land, that are used for transmission purposes, those revenues should be credited toward transmission rates and not distribution rates.

**A. Consumers Energy May 6 Answer**

19. In Consumers Energy's May 6 Answer, Consumers Energy argues that the Commission should reject the formal challenge as without merit.<sup>20</sup> Consumers Energy states that it has performed a detailed analysis to estimate the amount of the Premises that contains Consumers Energy's transmission facilities.<sup>21</sup> Consumers Energy states that this analysis shows that approximately 99 percent of the Premises are used exclusively by METC to provide transmission service. Consumers Energy states that, in contrast, Consumers Energy uses only approximately 1.15 percent of the Premises to house its transmission facilities, which it claims is a *de minimis* amount.<sup>22</sup> Consumers Energy states that it therefore did not include the land-related costs associated with the Premises in the calculation of its transmission revenue requirement. Consumers Energy asserts that for the same reason, it properly did not include the AREA Payment<sup>23</sup> as

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<sup>19</sup> Wolverine Comments at 3.

<sup>20</sup> *E.g.*, Consumers Energy May 6 Answer at 1, 3.

<sup>21</sup> *Id.* (citing App. A, Aff. of Mary Anne Marr).

<sup>22</sup> Consumers Energy states that this estimated overlap is very likely an overstatement, as at multiple points in the analysis, Consumers Energy made assumptions to favor METC as a conservative measure. *Id.* at 6-7.

<sup>23</sup> Consumers Energy states that the AREA Payment is \$10,040,900 and that the formal challenge's description of the AREA Payment as \$10.2 million is inaccurate. *Id.* at 2 & n.4 (citing Formal Challenge at 4 and AREA at § 3.1). Further, Consumers Energy states that the total land-related costs associated with the Premises is \$66,139,105 and not \$66,846,645 as identified by the formal challenge. *Id.* at 11 & n.22.

a credit in this calculation, and instead credits the AREA Payment to its retail distribution customers.

20. Consumers Energy argues that the Commission should reject METC's assertion that a credit of the AREA Payment is warranted in the rate calculation under both Note R to the rate calculation and Uniform System of Accounts instructions to Account 454.<sup>24</sup> Consumers Energy asserts that neither requires a utility to credit, in its transmission revenue requirement, a third party's use of land that the utility itself does not use to provide transmission service.

21. Consumers Energy notes that under Attachment O to the MISO Tariff and Commission precedent, only those facilities and land used by a Transmission Owner to provide transmission service should be included in that Transmission Owner's revenue requirement calculation.<sup>25</sup> Consumers Energy argues that, as such, the Commission should not interpret Note R to require a credit of the AREA Payment when Consumers Energy does not use approximately 99 percent of the Premises to provide transmission service. Consumers Energy states that the Commission has recognized that, if a Transmission Owner does not use certain facilities or land to provide transmission service, then it should neither include the cost of those facilities nor provide a credit for them in its revenue requirement.<sup>26</sup> Consumers Energy asserts that the basic reasoning of this principle is straight forward, explaining that if facilities not used to provide service are included in a revenue requirement, then the utility's customers would be paying for facilities for which they receive no benefit.

22. Consumers Energy argues that, given these precedents, the Commission should interpret Note R's reference to "transmission facilities" to refer to the income associated only with Consumers Energy's recently-reclassified transmission facilities, as it is those facilities over which Consumers Energy provides transmission service.<sup>27</sup> Consumers Energy asserts that Note R should not be read to require Consumers Energy to credit the

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<sup>24</sup> *Id.* at 4.

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

<sup>26</sup> *Id.* at 5 (citing *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-A, 78 FERC ¶ 61,220, at n.277 (1997); *Florida Mun. Power Agency v. Florida Power & Light Co.*, 74 FERC ¶ 61,006, at 61,010 (1996)).

<sup>27</sup> *Id.* at 6.

AREA Payment for METC's use of the Premises to reduce Consumers Energy's revenue requirement because Consumers Energy does not use the Premises to provide transmission service, except in a *de minimis* fashion.

23. Consumers Energy asserts that if the Commission were to require Consumers Energy to credit the entire AREA Payment in the calculation of its transmission revenue requirement, then the Commission would be requiring a credit for a payment that has virtually no connection to Consumers Energy's provision of transmission service. Consumers Energy states that the Commission would also be requiring Consumers Energy's transmission customers to pay for land for which they receive no benefit. Consumers Energy argues that the Commission should not permit this outcome because it would violate the fundamental regulatory principle that only facilities and land used by a utility to provide service should be included in the revenue requirement for that service.

24. Consumers Energy argues that, similarly, the Commission should also reject METC's assertion that a credit is warranted under Account 454.<sup>28</sup> Consumers Energy states that Account 454 does not require Consumers Energy to credit the AREA Payment in its transmission revenue requirement because Consumers Energy does not use the Premises to provide transmission service. Consumers Energy notes that the language expressly refers to "property devoted to electric operations by the utility." Consumers Energy argues that the "utility" in this phrase is Consumers Energy and not METC. Consumers Energy also notes that Account 454 does not, for example, refer to "property devoted to electric operations by any utility."<sup>29</sup>

25. In addition, Consumers Energy argues that one cannot logically conclude that all revenues booked in Account 454 should be credited to Consumers Energy's transmission revenue requirement O.<sup>30</sup> Consumers Energy states that some credits are provided in state-regulated retail rates and some are provided in Commission-regulated transmission rates depending on whether the credit relates to Consumers Energy's provision of transmission service. Consumers Energy asserts that credits that have no or little relationship to Consumers Energy's provision of transmission service should not be included in its transmission revenue requirement. Consumers Energy asserts that in

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<sup>28</sup> *Id.* at 7.

<sup>29</sup> *Id.* at 7-8.

<sup>30</sup> *Id.* at 8.

accordance with Account 454, it credits the AREA Payment to its retail distribution customers as a distribution credit.<sup>31</sup>

26. Consumers Energy states that METC appears to take issue with Consumers Energy not re-transferring land-related costs associated with the Premises from its distribution accounts to its transmission accounts after Consumers Energy re-entered the transmission business on April 1, 2016.<sup>32</sup> Consumers Energy asserts that METC's argument fails to recognize that this re-entry into the transmission business does not mean that all of the land-related costs associated with the Premises should be included in Consumers Energy's transmission revenue requirement. Consumers Energy argues that nothing material has changed regarding Consumers Energy's use of the Premises to justify requiring that all of the associated land-related costs be included in Consumers Energy's revenue requirement calculation.

27. In addition, Consumers Energy asserts that if Consumers Energy includes its land-related costs in its transmission revenue requirement, then two transmission revenue requirements – i.e., both Consumers Energy's and METC's – would have costs associated with the same land, even though, with only *de minimis* exception, only METC uses the land to provide transmission service.<sup>33</sup>

28. Consumers Energy argues that given that it is similarly situated as the other Transmission Owners in the Michigan Joint Zone, the Commission should treat it in a similar manner as any other transmission provider.<sup>34</sup> Consumers Energy argues that accepting the formal challenge would amount to discriminatory treatment by requiring Consumers Energy to include the Premises' land costs in its revenue requirement, even though other Transmission Owners only include costs associated with property they actually use to provide transmission service to their customers.

29. Consumers Energy also argues that the formal challenge is contrary to the Commission's policy of encouraging competition in the transmission development

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<sup>31</sup> In response to METC's informal challenge, Consumers Energy asserted that the Premises "[are] used by Consumers Energy for distribution purposes (e.g., for Consumers Energy's 46 kV network)." Formal Challenge, Ex. 5 at 2.

<sup>32</sup> Consumers Energy May 6 Answer at 9-10.

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

<sup>34</sup> *Id.* at 12.

markets.<sup>35</sup> Consumers Energy notes that METC has filed protests, comments, or complaints related to Consumers Energy's re-entry into the transmission business in at least ten Commission or Michigan Commission dockets, including this proceeding. Consumers Energy asserts that METC's formal challenge is an attempt to discourage Consumers Energy from being in the transmission business by denying it transmission revenues and by pressuring it to settle an underlying dispute regarding the ownership of the transmission facilities.

30. Consumers Energy states that it is willing to provide a credit of up to 1.15 percent of the AREA Payment in its rate calculation, which represents the amount of the Premises used by Consumers Energy to provide transmission service.<sup>36</sup> Consumers Energy states that this amounts to a credit of up to \$115,470 annually. Consumers Energy states that if such a credit were provided, Consumers Energy also would include 1.15 percent of the total land-related costs associated with the Premises, \$760,600, in the calculation of its transmission revenue requirement. Consumers Energy states that if these adjustments were made, Consumers Energy's net annual revenue requirement would be reduced from \$9,163,863 to \$9,128,320, a reduction of \$35,543. In addition, Consumers Energy states that it will make any changes needed to the calculation of transmission revenue requirement based on the outcome of the pending proceeding in Docket No. ER16-771-000.<sup>37</sup>

**B. METC May 23 Answer**

31. In METC's May 23 Answer, METC asserts that Consumers Energy's argument that Consumers Energy does not use approximately 99 percent of the Premises to house its recently-reclassified transmission facilities is a "red herring."<sup>38</sup> METC argues that Consumers Energy ignores the fact that the only use of the Premises is for FERC-jurisdictional transmission service provided by MISO over facilities owned by METC.<sup>39</sup>

32. METC asserts that Consumers Energy's failure to include costs associated with the Premises in its transmission revenue requirement calculation is not consistent with

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<sup>35</sup> *Id.* at 12 (citation omitted).

<sup>36</sup> *Id.* at 11.

<sup>37</sup> *Id.* at 13-14.

<sup>38</sup> METC May 23 Answer at 3.

<sup>39</sup> *Id.* at 1-2.

standard ratemaking principles and the requirements of Attachment O.<sup>40</sup> METC asserts that Consumers Energy's failure to credit transmission-related land and the AREA Payment shifts rate treatment of Premises costs to the wrong regulatory jurisdiction, as Consumers Energy's approach would put these credits in state-regulated rates versus Commission-regulated MISO transmission rates. METC argues that because the Premises are exclusively utilized to provide transmission service, they therefore should be properly reflected as such in Consumers Energy's Attachment O.

33. METC notes that because Consumers Energy's Attachment O revenue requirement is collected from all transmission customers in the Michigan Joint Zone, the entire Premises are used to provide transmission service to those transmission customers.<sup>41</sup> METC argues that as a result, the lease payments should properly be reflected in Consumers Energy's transmission accounts, and should be treated as an offset to the transmission revenue requirement.

34. METC also asserts, *inter alia*, that Consumers Energy's argument regarding land-related costs lacks merit.<sup>42</sup> METC argues that revenue crediting the lease payment is the standard ratemaking convention. METC asserts that revenue crediting would eliminate any double counting and would allow the net land cost to be included in MISO transmission service rates.

### **C. Consumers Energy June 3 Answer**

35. Consumers Energy argues that METC's fundamental legal positions are unsupported.<sup>43</sup> Consumers Energy argues that in METC's formal challenge and answer, METC does not cite to any statute, regulation, case law, or unpublished order to support its argument that the costs and revenues associated with the Premises should be accounted for by Consumers Energy in the calculation of its transmission revenue requirement. Consumers Energy argues that given the absence of any support for METC's basic propositions, the Commission should reject METC's formal challenge.

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<sup>40</sup> *Id.* at 3.

<sup>41</sup> *Id.* at 3-4.

<sup>42</sup> *Id.* at 4.

<sup>43</sup> Consumers Energy June 3 Answer at 2-3.

**V. Discussion****A. Procedural Matters**

36. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the 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 a protest or answer unless otherwise ordered by the decisional authority. We accept the METC May 23 Answer and the Consumers Energy June 3 Answer as they have provided information that assisted us in our decision-making process.

**B. Substantive Matters**

37. We find that the formal challenge raises 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. For example, although Consumers Energy has provided evidence that it uses approximately 1.15 percent of the Premises to house its recently reclassified transmission facilities, it has not provided sufficient information regarding the nature and extent of its use(s) (e.g., transmission, distribution, generation, nonutility, etc.) of the rest of the Premises. Such information also may shed light on the proper accounting treatment of the AREA Payment and the land-related costs associated with the Premises.

38. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. 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>44</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding.<sup>45</sup> The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability. The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the

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<sup>44</sup> 18 C.F.R. § 385.603 (2015).

<sup>45</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 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>).

date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties 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) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Consumers Energy's 2016 transmission revenue requirement. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (B) and (C) below.

(B) 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 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.

(C) Within thirty (30) days of the date 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 sixty (60) days thereafter informing the Commission and the Chief Judge of the parties' progress toward settlement.

(D) 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 Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Such 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.