

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;

William L. Massey, and Nora Mead Brownell

101 FERC ¶ 61,402

Wisconsin Public Service Corporation

Docket No. ER03-152-000

ORDER ACCEPTING PROPOSED RATE SCHEDULES
AND ESTABLISHING HEARING PROCEDURES

(Issued December 31, 2002)

1. On November 1, 2002, Wisconsin Public Service Corporation (WPSC) and Upper Peninsula Power Company (UPPCO) (together, Applicants) filed a power purchase agreement (PPA) to replace an existing partial requirements service agreement that will expire under its own terms on December 31, 2002. Under the PPA, WPSC will provide UPPCO with 65 MWs of system capacity and energy for a five-year period through December 31, 2007. The PPA also provides for UPPCO's resale of PPA power back to WPSC in certain circumstances.

2. In this order, we accept for filing and suspend for a nominal period the proposed rate schedules, make them effective January 1, 2003, subject to refund, and establish hearing procedures. This action is in the public interest because it provides for continuation of service to allow UPPCO to meet its ongoing capacity needs and provides for the development of a more complete factual record upon which the Commission may evaluate the justness and reasonableness of the proposed rates, terms and conditions.

Background

3. WPSC and UPPCO are affiliates and subsidiaries of WPS Resources Corporation, an exempt public utility holding company located in Green Bay, Wisconsin. WPSC and UPPCO are both utilities engaged in the generation, distribution and sale of electric energy, and they each provide service to retail and wholesale customers in their respective regions.¹

¹WPSC and UPPCO have sold their transmission facilities to American Transmission Company, LLC (ATCLLC), and rely on ATCLLC's transmission facilities to move power from their resources to their load centers. See Madison Gas & Electric

(continued...)

4. UPPCO currently purchases 65 MWs of firm capacity and energy from WPSC pursuant to a three-year service agreement, which will terminate on December 31, 2002, under WPSC's Partial Requirements Tariff. Applicants state that UPPCO needs to obtain a replacement for this service in order to meet its load (approximately 140 MW), which is projected to remain near current levels for the foreseeable future. According to Applicants, the PPA submitted in the instant filing is the most cost-effective way for UPPCO to meet its capacity needs for the five-year period beginning January 1, 2003.

5. The PPA has two phases for pricing and operating purposes. Phase I is the period prior to entry into commercial service of the Pulliam 31 unit, a 75 MW combustion turbine generating facility that WPSC is now constructing to own and operate and which is expected to enter service on June 1, 2003. During Phase I, UPPCO will receive 65 MW of system capacity and energy and will pay the maximum monthly capacity charge, currently \$5.02 per kW month, as stated in Section 4.11 of Service Schedule A of WPSC's Coordination Sales Tariff CS-1, FERC Electric Tariff, First Revised Volume No. 5, plus a rate equal to 110 percent of WPSC's system incremental costs for the associated energy.

6. During Phase II, when the Pulliam 31 unit is in service, UPPCO will pay a monthly formula capacity rate equal to one-twelfth of the annual fixed costs of the Pulliam 31 unit. The annual fixed costs of the Pulliam 31 unit will be determined pursuant to a cost-of-service formula. For the pre-tax cost-of-capital, the formula rate uses the weighted average of the pre-tax cost-of-capital established in WPSC's Wisconsin-jurisdictional retail rate case or cases that are effective during the billing year. WPSC will use forecasted fixed costs in the formula capacity rate for billing in the current calendar year and will true-up such forecasted costs to actual annual costs by June 1 of the following calendar year.

7. During Phase II, UPPCO may schedule up to 65 MWs of system power for which it will be charged a rate equal to 110 percent of WPSC's system incremental costs. In addition, during Phase II, UPPCO will have the right to request WPSC to dispatch the Pulliam 31 unit for UPPCO's use at any time that it is available for dispatch and will be responsible for the actual variable costs of operating and maintaining the Pulliam 31 unit.

¹(...continued)

Co., et al., 93 FERC ¶ 61,215, order on clarification, 93 FERC ¶ 62,201 (2000); Upper Peninsula Power Co., et al., 95 FERC ¶ 61,487 (2001).

8. WPSC will have the right to dispatch the Pulliam 31 unit for its own use when the unit is available for dispatch and UPPCO is not already dispatching it, providing that WPSC may require UPPCO to forego or immediately curtail opportunity sales for resale from the Pulliam 31 unit to a customer other than WPSC should WPSC need that portion of the Pulliam 31 unit output to maintain service to WPSC's native load. Any dispatch by WPSC of the Pulliam 31 unit will be treated as a sale of energy from UPPCO to WPSC and will be priced at a rate equal to 110 percent of UPPCO's out-of-pocket costs of operating the Pulliam 31 unit to supply such energy to WPSC.

Notice and Pleadings

9. Notice of Applicants' filing was published in the Federal Register, with comments, protests, or motions to intervene due on or before November 22, 2002.² No comments, protests or motions to intervene were filed.

Discussion

10. When evaluating rates for sales between affiliated traditional public utilities, the Commission must ensure that the rates are neither so high, nor so low, as to result in a transaction that subsidizes one company's rate payers at the expense of the other company's rate payers.³ Applicants have not adequately established that the proposed rates will not result in such subsidies. Applicants have also not adequately established that use of the rate of return fixed in WPSC's Wisconsin-jurisdictional retail rate cases will result in just and reasonable rates under the PPA. In addition, we do not believe that the proposed Phase II capacity rate formula contains adequate specificity. These issues cannot be resolved based on the record before us and are more appropriately addressed in a trial-type evidentiary hearing.

11. The Commission's preliminary analysis indicates that the proposed rates, terms and conditions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, the Commission will accept the proposed rate schedules for filing, suspend them for a nominal period to become effective January 1, 2003, subject to refund, and set them for hearing, as ordered below.

² 67 Fed. Reg. 69,522 (2002).

³ See Ameren Services Co., 86 FERC ¶ 61,212, order rejecting rehearing request, 87 FERC ¶ 61,126 (1999).

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The Commission orders:

(A) WPSC and UPPCO's proposed rate schedules are hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2003, subject to refund.

(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 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 1), a public hearing shall be held in Docket No. ER03-152-000 concerning the justness and reasonableness of WPSC and UPPCO's proposed rate schedules, as discussed in the body of this order.

(C) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding, to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, including a date for submission of Applicants' case-in-chief, 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)

Linwood A. Watson, Jr.,
Deputy Secretary.