

103FERC ¶ 61,116  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Wisconsin Public Service Corporation  
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Docket No. ER03-606-

ORDER ACCEPTING AND SUSPENDING RATES AND ESTABLISHING  
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 2, 2003)

1. On March 10, 2003, Wisconsin Public Service Corporation (WPSC) filed a request to increase its full and partial requirements wholesale rates pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2000). In this order, the Commission accepts the rates for filing as modified, suspends them for a nominal period to become effective May 11, 2003, subject to refund, sets them for hearing, and establishes settlement judge procedures. This order benefits customers because it will enable WPSC to continue to provide energy to its wholesale customers while providing a fair return on investment.

**Background**

2. In WPSC's request to increase its wholesale rates, it asserts that its current rates are now producing negative common equity returns. This rate increase, which is the first general wholesale rate increase in nearly twenty years, would apply to WPSC's "W-A1" tariff customers which take full requirements service, its "W-A2" tariff customers which take partial requirements service, and its partial requirements service to the City of Marshfield, Wisconsin which is served under FERC Rate Schedule No. 51.

3. The proposed rates are formula rates, based on a cost-of-service study submitted in this filing, and are intended to track WPSC's annual costs. The proposed rates consist of a capacity rate and an energy rate. The capacity rate is determined each year based on the prior year's Form No. 1 data and is adjusted annually to account for WPSC's actual costs. The proposed monthly energy rate is based on an estimate of monthly energy costs with a true-up based on actual costs, done on a monthly basis. By contrast, the existing rates are stated energy and capacity charges plus fuel adjustment clauses.

4. WPSC proposes to recover, through the capacity charge portion of the formula rate, the costs of pollution control equipment and 50 percent of WPSC's other construction work in progress (CWIP) balances related to the production function.

5. In addition to their formula rate proposal, WPSC also requests a fifty basis point incentive adder to its common equity return allowance, in light of the recent proposed transmission pricing policy statement issued in Docket No. PL03-1-000,<sup>1</sup> for its divestiture of its transmission assets to American Transmission Company, LLC (ATCLLC).

6. WPSC requests an effective date of May 11, 2003.

### **Notice of Filing, Interventions, and Protest**

7. Notice of WPSC's filing was published in the Federal Register, 68 Fed. Reg. 14,230 (2003), with comments, protests, and interventions due on or before March 31, 2003. Timely motions to intervene were filed by Upper Peninsula Power Company, Wisconsin Electric Power Company, and Wisconsin Public Power Inc. On March 31, 2003, Algoma Group WPS Wholesale Customers (Algoma Group)<sup>2</sup> filed a timely motion to intervene and protest. On April 15, 2003, WPSC filed an answer in response to Algoma Group's protest.

8. The Algoma Group asserts in its protest that the proposed rates are unjust and unreasonable, requests maximum suspension of the rates, and requests that the rates be set for hearing. Algoma Group takes issue with the inclusion of CWIP and nuclear fuel CWIP in the development of certain allocation factors (as opposed to just allowing the CWIP amounts in rate base),<sup>3</sup> and the inclusion of non-plant related costs in the use of Allocation Method N for O&M-related working capital, prepayments and nuclear decommissioning costs. Algoma Group also protests WPSC's functionalization and allocation of jurisdictional cost items. They specifically point to the fact that such

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<sup>1</sup> Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid, 102 FERC ¶ 61,032 (2003)(Proposed Transmission Pricing Policy).

<sup>2</sup> The Algoma Group is comprised of the Cities of Manitowoc, Marshfield and Stratford, Wisconsin; the City of Stephenson, Michigan; the Alger Delta Cooperative Electric Association; and the Washington Island Electric Cooperative.

<sup>3</sup> The allocation factors specifically mentioned by Algoma Group are Allocation Method M (Net Electric Plant) and Allocation Method V (Corporate).

methods result in negative wholesale plant.<sup>4</sup> Algoma Group protests the use of a three-year amortization period for the Kewaunee Nuclear Power Plant "gap" (KNPP GAP) expense,<sup>5</sup> proposing instead that this expense be amortized over a ten-year period. Algoma Group also requests that the Commission reject WPSC's formula rate proposal, as unreasonable and potentially producing excessive rates.

## **Discussion**

### **Procedural Matters**

9. Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.214 (2002), 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) (2002), prohibits answers to protests unless otherwise accepted by the decisional authority. We are not persuaded to allow WPSC's answer in this case.

### **Proposed Rates**

10. WPSC's proposed rates are formula rates supported by a cost of service study based upon a 12-month test period ending on December 31, 2003. WPSC proposes rates that would result in a wholesale rate increase of approximately \$4,165,686 for the Period II test year (2003). The overall impact would result in an average increase of approximately 21% for the eight wholesale customers, with individual increases ranging from 11.6% to 33.8%.

### ***CWIP in Rate Base***

11. WPSC includes certain types of CWIP in its rate base. More specifically, it has included approximately \$8.5 million of non-pollution control CWIP in its rate base. However, WPSC has not met the requirements of 18 C.F.R. § 35.25 (2002) to support the inclusion of CWIP in rate base. Accordingly, we will summarily reject the inclusion of

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<sup>4</sup> Algoma Group protest at 9.

<sup>5</sup> According to the WPSC filing, the KNPP "GAP" program is a five year project designed to bridge the "gap" between the current KNPP corrective action systems, methods and documentation and industry and Nuclear Regulatory Commission standards.

CWIP in rate base, but we do so without prejudice to WPSC making a future filing with additional support for the inclusion of CWIP in rate base.

### ***Formula Rate Matters***

12. As mentioned earlier, WPSC has proposed to adopt a formula rate. Algoma Group requests rejection of the formula rate and takes note in their protest that the proposed formula rate includes no right for customers to audit WPSC's books to determine whether or not the formula is being applied appropriately. Secondly, they argue that, even if customers are given audit rights, there is no arbitration or other similar provision to allow for the resolution of issues with respect to application of the formula other than by way of formal litigation.

13. We will not grant Algoma Group's request for rejection of WPSC's formula rate. As stated in Florida Power and Light Company, we do not have a preference for stated over formula rates,<sup>6</sup> and we are not opposed to the adoption of formula rates in this proceeding. In the past, in fact, we have accepted full cost of service formula rates.<sup>7</sup> We thus do not find cause to reject WPSC's proposal for a formula rate. However, as described in Midwest Independent Transmission System Operator, among other cases, we do require that the data inputs and formula allocations be clearly specified so that they cannot be revised at the company's discretion.<sup>8</sup> Such matters should be addressed in the hearing and settlement judge procedures ordered below.

14. With regard to Algoma Group's protest concerning audit rights and an arbitration or other similar provision, we are setting these matters for hearing and settlement judge procedures, and the parties are urged to develop a process for the review and resolution of issues regarding the application of the proposed formula rate other than by way of formal litigation.

### ***Acceptance, Suspension, and Hearing and Settlement Judge Procedures***

15. Algoma Group protests the proposed rates, claiming that they are unjust and unreasonable. It takes issue with WPSC's costs, cost allocation methods, and

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<sup>6</sup> 68 FERC ¶ 61,214 at 62,027 (1994), reh'g denied, 70 FERC ¶ 61,158 (1995).

<sup>7</sup> Middle South Services, Inc., Opinion No. 124, 16 FERC ¶ 61,101 at 61,219 (1981).

<sup>8</sup> 101 FERC ¶ 61,221 at P 64 (2002).

amortization period for the KNPP GAP expense. These are matters best addressed in the hearing and settlement judge procedures ordered below.

16. Our preliminary analysis indicates that WPSC's proposed rates as modified have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In West Texas Utilities Company,<sup>9</sup> we explained that when our preliminary analysis indicates that the proposed rates may be unjust and unreasonable, but may not be substantially excessive (as defined in West Texas) we will generally impose a shorter suspension. In the instant proceeding, our preliminary examination finds that the proposed rates may not be substantially excessive. Accordingly, we will accept the rates for filing as modified, suspend them for a nominal period, to become effective May 11, 2003, subject to refund, and set them for hearing and settlement judge procedures.

17. In order to provide the parties an opportunity to resolve these matters among themselves, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>10</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding, otherwise, the Chief Judge will select a judge for this purpose.<sup>11</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order 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.

### **Incentive Adder**

18. In addition to the rate proposal submitted in this proceeding, WPSC also requests an additional fifty-basis point incentive adder to its common equity return allowance due to its divestiture of its transmission assets to American Transmission Company, LLC

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<sup>9</sup> 18 FERC ¶ 61,189 (1982).

<sup>10</sup> 18 C.F.R. § 385.603 (2002)

<sup>11</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 the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience. ([www.ferc.gov](http://www.ferc.gov), click on "Legal Matters" and then on "Office of Administrative Law Judges").

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(ATCLLC).

19. WPSC's request for an incentive adder is rejected. We take this opportunity to clarify our intention in the proposed transmission pricing policy statement. In an instance where a public utility divests transmission facilities to an ITC, it is our intent that the incentive adder follow the transmission facilities.<sup>12</sup> Therefore, the adder would go to the resulting transmission facilities owner, which in this example would be ATCLLC (provided that ATCLLC meets the independence standard and other criteria contained in the proposed transmission pricing policy statement, should it be adopted), and not to the divesting public utility, WPSC. The benefit to the divesting public utility will come from the fact that the transmission facilities being sold will carry a higher sales price due to the availability of the incentive adder to the purchasing public utility. So, WPSC would not qualify for an incentive adder to its common equity return allowance.<sup>13</sup>

The Commission orders:

(A) WPSC's proposed rates, as modified as discussed in the body of this order, are hereby accepted for filing and suspended for a nominal period to become effective on May 11, 2003, subject to refund, as discussed in the body of this order.

(B) WPSC's request for a fifty basis point incentive adder is hereby rejected, as discussed in the body of this order.

(C) WPSC's inclusion of CWIP in the rate base is hereby rejected, as discussed in the body of this order.

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<sup>12</sup>While WPSC notes that we stated that "[a] public utility that has divested its transmission facilities to an ITC would qualify for the ITC incentive adder once the ITC has transferred operation control of its transmission facilities to an approved and operating RTO and meets the independent ownership criteria," see Proposed Transmission Pricing Policy, 102 FERC ¶ 61,032 at P 28, we misspoke. It is the entity that turns over operational control to the RTO that qualifies for the incentive adder. See id. at P 24, 27 n.29, 28.

<sup>13</sup>We also note that the proposed transmission pricing policy statement is a proposal, and has not been adopted as yet. We further note that we have not addressed in this order whether ATCLLC is an ITC that would qualify for an incentive adder.

(D) 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 regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of WPSC's proposed rates. As discussed in the body of this order, we will hold the hearing in abeyance to give the parties time to conduct settlement judge negotiations.

(E) Pursuant to Rule 603 of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.603 (2001), the Chief Administrative Law Judge is hereby authorized 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 in writing or by telephone within five (5) days of the date of this order.

(F) Within sixty (60) days of the date of this order, 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.

(G) If the 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 convene a conference in this proceeding to be held within approximately fifteen (15) days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, 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 and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

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( S E A L )

Magalie R. Salas,  
Secretary.