

103 FERC ¶ 61, 193
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

WPS Canada Generation, Inc.

Docket Nos. ER03-689-000
ER03-689-001

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

(Issued May 19, 2003)

Summary

1. This order accepts for filing rate schedules that will recover costs for providing reactive power service, suspends them for a nominal period, makes them effective subject to refund, and establishes hearing procedures, but holds them in abeyance pending settlement judge procedures. This order benefits customers by ensuring a timely inquiry into whether the proposed rate schedules are just and reasonable.

Background

2. On April 1, 2003, as amended April 8, 2003, WPS Canada Generation, Inc. (WPS Canada) filed rate schedules for the recovery of reactive power and voltage control charges for reactive power services that it provides to Maine Public Service Company (Maine Public)¹ and the Northern Maine Independent System Administrator, Inc.,

¹Maine Public is an investor-owned utility providing transmission and distribution services in Northern Maine, and is one of two transmission system operators operating under the Northern Maine ISA agreements.

(Northern Maine ISA).² WPS Canada is a wholly-owned subsidiary of WPS Power Development, Inc., which, in turn, is a wholly-owned subsidiary of WPS Resources Corporation, an exempt public utility holding company.

3. As a result of a state-mandated divestiture of Maine Public's facilities in 1999, WPS Canada acquired substantially all of Maine Public's generating facilities. Among the facilities it acquired were certain hydro and diesel generating facilities in New Brunswick, Canada, known as the Tinker Facility, which is directly interconnected with Maine Public's transmission facility.³

4. WPS Canada points out that when Maine Public owned the Tinker Facility, it received compensation for the Reactive Power Service that it provided to Maine Public's transmission system. WPS Canada states that, as the current owner of the Tinker Facility, it now provides Reactive Power Services to Maine Public under the terms of its Interconnection Agreement (IA) with Maine Public.

5. WPS Canada further states that the IA requires it to operate its facilities so as to allow Maine Public to maintain normal transmission voltage within a bandwidth of plus or minus 5 percent, and to provide necessary voltage support to Maine Public's transmission system in the event of a system emergency. WPS Canada also states that the IA also requires WPS Canada to operate its transmission system voltage under the direction of the System Operator through the full range of the 138 kV transformer (within a range of plus or minus 15 percent).

²Northern Maine ISA is a Regional Transmission Group that provides reservation, scheduling, dispatch and other services for the Northern Maine transmission system, which includes the Maine Public transmission system and the Eastern Maine Electric Cooperative transmission system. Northern Maine ISA administers the Northern Maine energy, ancillary services and related services markets and performs scheduling adjustments and reconciliations through the provision of balancing energy and ancillary services.

³WPS Canada also acquired other generating facilities from Maine Public. All of these generating facilities are directly interconnected with Maine Public's transmission system. WPS Canada is only filing for charges for reactive power services that it supplies to Maine Public from the Tinker Facility. See Cover Letter at 5; Verified Statement of Mr. Dean S. Matzke (Attachment B at 2 [Statement is not paginated]); Verified Statement of Paul J. Spicer (Attachment C at 2 [Statement is not paginated]).

6. WPS Canada maintains that, as it is contractually obligated to provide Reactive Power Service to Maine Public's transmission system, and is currently providing that service, it is entitled to compensation from Maine Public, or from Northern Maine ISA for that service.⁴ WPS Canada further states that it is submitting its tariff for recovery of the charges for the Provision of Reactive Power Service in accordance with the terms of the IA.

7. WPS Canada asks for a waiver of the Commission's prior notice requirement, to allow its rate schedules to become effective on April 2, 2003. WPS Canada also submits that its rate filing is an initial filing.⁵ WPS Canada maintains that, if the Commission determines that its filing is not an initial filing, then its filing is subject to the abbreviated filing requirements set out in Section 35.13(a)(2)(i) of the Commission's regulations (18 C.F.R. § 35.13(a)(2)(i) (2002)).

Notice, Interventions and Answer

8. Notice of the WPS Canada's filing was published in the Federal Register, 68 FR 19199 (2003), with comments, interventions and protests due on or before April 29, 2003. On April 22, 2003, Northern Maine ISA filed a motion to intervene, and Maine Public filed a motion to intervene and protest. On April 23, 2003, Houlton Water Company (Houlton) filed a motion to intervene and filed comments. On April 25, 2003, the Maine Public Advocate filed a motion to intervene. On April 29, 2003, Northern Maine ISA and Maine Public Service filed comments. On May 7, 2003, WPS Canada filed an answer to Maine Public's protest.

9. Maine Public opposes the proposed charges for reactive power service. Maine Public argues that WPS Canada's request for compensation for reactive power service contradicts the Northern Maine ISA Tariff and Market Rules, which provide for compensation for reactive power services only when a transmission operator asks a generator to back-down its real power production in order to produce reactive power in excess of the technical power factor requirements.

⁴WPS Canada states that it has filed two rates schedules for the recovery of Reactive Power Services, one to recover from Maine Public and another to recover from Northern Maine ISA, because it does not know whether Maine Public would prefer to compensate WPS Canada directly for its provision of Reactive Power Service to the Maine Public transmission system, or whether Maine Public would prefer that Northern Maine ISA administer the compensation.

⁵Cover Letter at 10.

10. Maine Public further argues that WPS Canada is not entitled to compensation for providing reactive power service because it is not providing the service beyond its design limits. That is, according to Maine Public, WPS Canada is providing reactive power only within its design limits, as part of its obligation to operate its facility in a safe and reliable manner and in accordance with good utility practice. Maine Public maintains that WPS Canada is not increasing or decreasing its reactive power output in response to Maine Public's requests, nor is it supplying reactive power in emergency situations. Rather, according to Maine Public, WPS Canada is seeking compensation for supplying inadvertent VARS that are simply part of its specific technical power requirement to participate in the Northern Maine wholesale electric market, and for which no special compensation is necessary. Finally, Maine Public argues that WPS Canada is not entitled to compensation for reactive power that it supplies in emergency situations because the Interconnection Agreement between WPS Canada and Maine Public does not provide specific compensation for the provision of reactive power services in emergency conditions.

11. Northern Maine ISA states that it has never asked WPS Canada to provide reactive power beyond its design limitations or to provide emergency voltage support, and that its rate schedules do not allow it to do so. It asks the Commission to reject WPS Canada's filing as an impermissible collateral attack on Northern Maine ISA's currently effective rate schedules. Northern Maine ISA submits that if WPS Canada thinks that it is entitled to compensation for reactive power, it should become a member of Northern Maine ISA and abide by that entity's arbitration rules. Northern Maine ISA echoes Maine Public's argument that WPS Canada is not entitled to reimbursement for reactive power, because it is not providing that power at the request of the transmission owner or beyond its design limitations or under emergency conditions, but rather merely as part of its function as a generator interconnected with the transmission grid. Northern Maine ISA also argues that WPS Canada's filing is not an initial rate filing.

Discussion

Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the timely motions to intervene in this docket serve to make Maine Public, Northern Maine ISA, Houlton, and the Maine Public Advocate 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 an answer to a protest, unless otherwise permitted by the decisional authority. We are not persuaded to allow WPS Canada's answer to Maine Public's protest and will, therefore, reject it.

Hearing and Settlement Judge Procedures

13. Intervenors have raised issues of material fact concerning WPS Canada's proposed rate schedules that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below. Our preliminary analysis indicates that the proposed rate schedules have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept the proposed rate schedules for filing, suspend them for a nominal period, make them effective April 2, 2003, as requested, subject to refund, and set them for hearing.⁶

14. In order to provide the parties an opportunity to resolve this matter 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.⁷ 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.⁸ 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.

Other Matters

⁶See 18 C.F.R. § 35.3 (2002). See *Central Hudson Gas & Electric Corporation, et al.*, 60 FERC ¶ 61,106 at 61,338-39, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

⁷18 C.F.R. § 385.603 (2002).

⁸If the parties decide to request a specific judge, they must make their joint request to the Chief Judge in writing or by telephone at (202) 502-8500 within five days of this order. FERC's website contains a listing of the Commission's judges and a summary of their background and experience (www.FERC.gov - - click on Office of Administrative Law Judges).

15. WPS Canada asserts that its tariff is an initial filing. We disagree. An initial filing must involve a new customer and a new service.⁹ Maine Public is not a new customer and the provision of reactive power is not a new service. The Tinker Facility has been providing reactive power service to Maine Public for years, although under different ownership.¹⁰ Thus, the proposed rates for reactive power service are not initial rates, but are changed rate schedules.¹¹ Further, we grant the requested waivers of the Commission's regulations.

16. Houlton's request that we determine that under its contract with WPS Energy Services, Inc. (WPS Energy) Houlton would not be liable to pay WPS Canada for reactive power charges is beyond the scope of this proceeding. In any event, we note that Houlton states that WPS Energy agrees that Houlton will not be responsible for any charges for reactive power service during the term of their contract.

The Commission orders:

(A) The proposed rate schedules are hereby accepted for filing, suspended for a nominal period, to become effective April 2, 2003, as requested, subject to refund and set for hearing as discussed in the body of this order.

(B) WPS Canada's requests for waiver of the Commission's regulations are hereby granted.

(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 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

⁹See Florida Power & Light Company, 65 FERC ¶ 61,411 at 63,128 n.28 (1993). See also Delta Energy Center, 102 FERC ¶ 61,352 at P 9 (2003); Duke Energy Moss Landing, LLC, 86 FERC ¶ 61,227 at 61,817 (1999) (the key factor is whether the new company is "providing the same service to the same market.").

¹⁰As WPS Canada itself points out, from June 1, 1995 to at least June 8, 1999, Maine Public provided reactive power to the Maine Public transmission system. See WPS Canada Cover Letter at 4; Maine Public Protest at 3.

¹¹See Florida Power & Light Company v. FERC, 617 F.2d 809, 813-17 (1980).

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held in Docket Nos. ER03-689-000 and ER03-689-001 into the reasonableness of the proposed rate schedules, as discussed in the body of this order. As discussed in the body of this order, we will hold the proceeding in abeyance to give the parties time to conduct settlement judge negotiations.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and procedure, 18 C.F.R. § 385.603 (2001), 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 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.

(E) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and with the Commission 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 60 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(F) If settlement discussions fail, 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 days of the date on which the Chief Judge designates the presiding judge, 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 administrative law 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)

Magalie R. Salas,
Secretary.