

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION  
104 FERC ¶ 61,004

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

Wisconsin Power and Electric Company

Docket No. ER03-684-000

ORDER ACCEPTING FOR FILING AND SUSPENDING PROPOSED RATES AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued July 1, 2003)

1. In this order we accept, suspend, make effective subject to refund, and set for hearing and settlement judge procedures, Wisconsin Power & Light Company's (WPL) proposed rates for wholesale power sales to its cooperative customers under Rate Schedules W-2A and W-4A. This action allows the parties to conduct an evidentiary hearing to investigate the reasonableness of the proposed rates.

**BACKGROUND**

2. The current rates in WPL's wholesale Rate Schedules W-2A and W-4A were accepted for filing in Docket No. ER93-676-000 to become effective on October 1, 1993, and apply to WPL's cooperative customers.<sup>1</sup> The base rates for service under the Rate Schedules have remained unchanged since that time. Pursuant to a settlement<sup>2</sup> that WPL reached with its cooperative customers in Docket No. EL97-19-000, WPL eliminated the automatic fuel adjustment clause (FAC) mechanism from Rate Schedule W-2A and agreed to a rate freeze under Rate Schedule W-2A extending until July 8, 2003.

3. WPL proposes to increase its rates for wholesale service under Rate Schedule W-2A and W-4A. WPL proposes to change the customer, meter, energy, and demand charges under Rate Schedule W-2A and the interruptible demand charges that are applicable to cooperative customers under Rate Schedule W-4A. WPL proposes to raise

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<sup>1</sup>Wisconsin Power and Light Co., 65 FERC ¶ 61,210 (1993).

<sup>2</sup>Wisconsin Power and Light Co., 91 FERC ¶ 61,335 (2000).

demand rates by a greater percentage than energy rates to more accurately reflect demand-related costs in the demand component of rates. WPL also proposes to eliminate the reactive billing component of Rate Schedule W-2A, given that WPL is no longer responsible for correcting the cooperatives' power factors. Finally, WPL proposes to restore the FAC to Rate Schedule W-2A.

4. WPL estimates that its proposed rates will result in increased charges for wholesale power sales to its cooperative customers of \$4.7 million per year, or 23.8%, based on calendar-year 2003 data. WPL requests an effective date of July 8, 2003, the first date upon which the new rates could become effective for all three cooperative customers.

### **Notice of Filing and Responses**

5. Notice of WPL's proposed tariff revisions was published in the Federal Register, 68 Fed. Reg. 17,795 (2003), with protests and motions to intervene due on or before April 21, 2003. A timely motion to intervene was filed by Wisconsin Electric Power Company (WEPC). A timely motion to intervene and protest was filed by Badger Cooperative Group (Badger)<sup>3</sup>.

## **DISCUSSION**

### **Procedural Matters**

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make Badger and WEPC parties to this proceeding.

### **Suspension and Hearing**

7. Badger submits that the proposed rate increase is not just and reasonable. More specifically, Badger contends that WPL's requested 12% return on common equity and 58% common equity ratio are unreasonably high. It also raises a number of other cost of service issues, such as: (1) excessive increases in non-fuel production expenses, net production plant-in-service balances, and administrative and general expenses, between

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<sup>3</sup>Badger Cooperative Group's members are Adams-Columbia Electric Cooperative, Central Wisconsin Electric Cooperative, and Rock County Electric Cooperative.

Period I and Period II; (2) unjustified allocation of customer service and information expenses to cooperative customers; and (3) unjustified allocation of third party wheeling costs to wholesale customers.

8. Our preliminary analysis indicates that WPL's proposed rate changes 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 Co.,<sup>4</sup> we explained that when our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in West Texas, we would generally not impose a five-month suspension. Here, our examination indicates that the proposed rates may not yield substantially excessive revenues. Accordingly, we will accept the proposed rate revisions for filing, suspend them for a nominal period, make them effective on July 8, 2003, subject to refund, and set them for hearing.

9. In addition, in order to allow the parties an opportunity to resolve this matter amicably without an evidentiary hearing, 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>5</sup> If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in this proceeding; otherwise, the Chief Administrative Law Judge will select a judge for this purpose.<sup>6</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 the evidentiary hearing by assigning the case to a presiding judge.

The Commission orders:

(A) WPL's proposed tariff revisions are hereby accepted for filing and suspended for a nominal period, to become effective on July 8, 2003, subject to refund.

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<sup>4</sup>18 FERC ¶ 61,189 at 61,374 (1982).

<sup>5</sup>18 C.F.R § 385.603 (2003).

<sup>6</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 listing of the Commission's judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) - click on Office of Administrative Law Judges).

(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 by 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 WPL's proposed tariff revisions, as discussed in the body of this order.

(C) The hearing ordered in Ordering Paragraph (B) above shall be held in abeyance pending settlement judge procedures, as discussed in the body of this order.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within 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.

(E) Within 60 days of the date of this order, the settlement judge shall file a report with the Chief Judge and 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 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(F) 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 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, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The

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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 )

Linda Mitry,  
Acting Secretary.