

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Suedeem G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Northern States Power Company (Wisconsin)

Docket No. ER06-1319-000

ORDER ACCEPTING AND SUSPENDING RATE SCHEDULE  
AND ESTABLISHING HEARING AND SETTLEMENT  
JUDGE PROCEDURES

(Issued September 28, 2006)

1. In this order we accept for filing changes in rates, terms and conditions for service by Northern States Power Company (Wisconsin) (Northern States Power) to ten wholesale electric requirements customers, suspend them for five months, to become effective March 1, 2007, subject to refund, and establish hearing and settlement judge procedures.

**Northern States Power's Filing**

2. On July 31, 2006, Northern States Power, a wholly-owned subsidiary of Xcel Energy Inc., filed changes to the rates, terms and conditions for service to ten wholesale electric requirements customers in Wisconsin and Michigan<sup>1</sup> (collectively the W-1 Customers).

3. Northern States Power states that the W-1 Customers currently take requirements service under fully bundled rates established in 1993. Here, Northern States Power proposes to unbundle power and energy sales service from transmission service. It also

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<sup>1</sup> The ten customers include nine municipalities in Wisconsin (Village of Bangor, City of Barron, City of Bloomer, Village of Cadott, City of Cornell, City of Medford, City of Rice Lake, City of Spooner, and Village of Trempealeau) and the City of Wakefield, Michigan.

proposes to increase the rates for unbundled power and energy sales to the W-1 Customers as compared to the power and energy sales component embedded in the currently effective bundled rate. The unbundled rate for transmission will be a pass-through of costs assessed to Northern States Power for the W-1 Customers' load by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). Based on 2006 cost of service data, Northern States Power states that the overall proposed rates for unbundled service will represent a \$3,965,383 annual increase in revenues from the W-1 Customers. Additionally, Northern States Power proposes to conform its Fuel Cost Adjustment Clause (Fuel Clause) to the Commission's fuel clause regulations adopted by Order No. 352,<sup>2</sup> and codified at 18 C.F.R. § 35.14 (2006).

4. With respect to the Fuel Clause, Northern States Power also seeks: (1) to recover all charges billed to the Northern States Power system related to transactions in the Midwest ISO wholesale energy market, with limited exceptions; (2) waiver of Fuel Clause regulations to permit Northern States Power to flow through the Fuel Clause, without economic screens, the energy costs associated with Wisconsin-mandated purchases of renewable energy imposed on all electric utilities within Wisconsin, including the nine Wisconsin W-1 customers; (3) waiver of post-purchase economic screening of all purchases from the Midwest ISO market and the use of "Non-Asset Energy" which was purchased originally, not to serve native load, but was used to do so when it became the lowest cost resource available; and (4) waiver of post-purchase economic screening of forward or financial purchases insulating native load against price volatility.

5. Northern States Power states that, because this is the first rate case that it has filed since the issuance of Order No. 614<sup>3</sup>, it also proposes to revise and restate the service agreements with the W-1 Customers to reflect unbundling, to add new definitions and provisions and to conform formatting, titling and numbering requirements. Northern States Power also submits the City of Medford and City of Rice Lake electric service agreements which have been conformed to Order No. 614, but with no other changes.

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<sup>2</sup> *Treatment of Purchased Power in the Fuel Cost Adjustment Clause For Electric Utilities*, Order No. 352, FERC Stats. & Regs. Regulation Preambles 1982-1985 ¶ 30,525, *reh'g denied*, Order No. 352-A, 26 FERC ¶ 61,266 (1984).

<sup>3</sup> *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221 (Apr. 7, 2000), FERC Stats. & Regs. Regulation Preambles 1996-2000 ¶ 31,096 (2000).

6. Northern States Power requests that the Commission make the rates effective October 1, 2006.

### **Notices, Interventions, Protests, and Responsive Pleadings**

7. Notice of Northern States Power's filing was published in the *Federal Register*, 71 Fed. Reg. 48544 (2006), with interventions or protests due on or before August 21, 2006. The W-1 Customers<sup>4</sup> filed a timely motion to intervene, protest and request for maximum suspension and hearing.

8. The W-1 Customers argue that the filing is not just and reasonable and is deficient because Northern States Power failed to provide work papers and other supporting documents sufficient to justify the proposed rate increase. The W-1 Customers argue that "approximately 88.3 percent [of Northern States Power's] \$28,283,237 wholesale revenue requirement is allocated to Northern States Power Company (Wisconsin) . . . from Northern States Power Company (Minnesota) through the Interchange Agreement." The W-1 Customers allege that the underlying support for a large portion of that percentage remains missing or inadequate.

9. The W-1 Customers further argue that the proposed wholesale revenue requirement is "substantially overstated because revenue credits for off-system sales are at best understated and at worst not included at all." The W-1 Customers also argue the proposed wholesale revenue requirement is substantially overstated because Northern States Power "failed to reflect the results of its recent loss study when developing the wholesale demand allocation factors for Period II."

10. According to the W-1 Customers, a return on equity (ROE) of 9.64 percent is more appropriate than the proposed 11.5 percent, because Northern States Power's application of the discounted cash flow methodology is significantly flawed and fails to meet the applicable legal standards for a fair return.

11. The W-1 Customers further argue that Northern States Power's proposed proxy group violates the requirement that the risks and business profiles of the proxy group members should be comparable to those of the utility whose ROE is being set; that Northern States Power inappropriately uses the midpoint of the range of reasonable returns rather than the median; and that there is no justification for the application of a 25 basis-point size "premium."

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<sup>4</sup> The W-1 Customers are identified as the "Municipal Intervenors" in their protest.

12. The W-1 Customers state that Northern States Power did not justify the proposed increase in the Distribution Substation Demand Charge and therefore recommend eliminating the increase.

13. Also, according to the W-1 Customers, the two-year amortization of rate case expenses is too short and a longer amortization period would result in a reduction in the wholesale revenue requirement.

14. The W-1 Customers also raise a concern that Northern States Power inappropriately assigned the cost of the Wholesale Control Period Demand Rider in the cost of service study for this proceeding.

15. The W-1 Customers object to Northern States Power's recovery of energy costs associated with the state-mandated purchases of renewable energy and other categories of specified purchase energy costs, including forward or financial energy purchases. They also object to a waiver of economic screening for "forward" or "financial" purchases in the Fuel Clause.

16. Finally, according to the W-1 Customers, Northern States Power's current rates may have been, and may continue to be, adequate based on the Period I data provided by Northern States Power.

17. The W-1 Customers do, however, support Northern States Power's unbundling of services and rates.

18. On September 5, 2006, Northern States Power filed an answer. Northern States Power responds that the W-1 Customers' arguments are flawed. Northern States Power requests that the Commission set the filing for hearing and that the Commission provide for a 90-day period of settlement discussions before trial-type procedures begin. Northern States Power further requests that the Commission order that, after 90 days, the settlement Judge report to the Chief Judge whether further settlement activities would likely be productive and that the Chief Judge then determine whether to continue the settlement process or to assign a hearing judge to oversee a hearing.<sup>5</sup> Northern States Power also renews its request for a nominal suspension.

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<sup>5</sup> Northern States Power notes that it is authorized to advise the Commission that the W-1 Customers support the request for settlement judge procedures.

## **Discussion**

### **Procedural Matters**

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F. R. § 385.214 (2006), the timely, unopposed motion to intervene of the W-1 Customers serves to make them a party to this proceeding.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Northern States Power's answer because it has provided information that has assisted us in our decision-making process.

### **Commission Review**

21. Northern States Power's filing raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

22. Our preliminary analysis indicates that Northern States Power's proposed rates 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 Northern States Power's proposed rates for filing, suspend them and make them effective, subject to refund, and set them for hearing and settlement judge procedures.

23. In *West Texas Utilities Company*,<sup>6</sup> the Commission explained that when its preliminary analysis indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission generally would impose a maximum suspension. In the instant proceeding, our preliminary analysis indicates that Northern States Power's proposed rates may be substantially excessive. Therefore, we will suspend Northern States Power's proposed changes for the maximum five-month period, to become effective March 1, 2007, subject to refund.

24. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. 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>7</sup> If the parties desire, they may, by

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<sup>6</sup> 18 FERC ¶ 61,189 (1982).

<sup>7</sup> 18 C.F.R. § 385.603 (2006).

mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>8</sup> The settlement judge shall report to the Chief Judge and the Commission within thirty (30) 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.

The Commission orders:

(A) Northern States Power's filing is hereby accepted for filing and suspended for five months, to become effective March 1, 2007, subject to refund, as discussed in the body of this order.

(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 Northern States Power's filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2006), 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 within five (5) days of the date of this order.

(D) Within thirty (30) 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

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<sup>8</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 and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) - click on Office of Administrative Law Judges).

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.

(E) 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 Commission, 888 First Street, N.E., 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 )

Magalie R. Salas,  
Secretary.