

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Wisconsin Electric Power Company

Docket No. ER06-1320-000

ORDER ACCEPTING AND SUSPENDING REVISIONS TO RATE SCHEDULES  
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued November 29, 2006)

1. In this order, we accept for filing Wisconsin Electric Power Company's (Wisconsin Electric) proposed revisions to several Restated Power Service Agreements (Rate Schedules 86, 88, 89 and 90), suspend them for a nominal period, make Rate Schedules 86, 88, and 89 effective January 1, 2007, subject to refund, make Rate Schedule 90 effective May 1, 2007, subject to refund, and set all the Rate Schedules for hearing and settlement judge procedures.

**I. Background**

2. The current rates in Rate Schedules 86, 88, and 89 were accepted by the Director of the Division of Tariffs and Market Development – Central, Office of Energy Markets and Reliability (Director) in a letter order dated July 23, 2006.<sup>1</sup> The current rates in Rate Schedule 90 were accepted by the Director in a separate letter order dated July 13, 2005.<sup>2</sup>

3. On August 1, 2006, Wisconsin Electric filed a proposal to increase rates to its wholesale customers under Rate Schedules 86, 88, 89 and 90 by a total of \$16,669,017, or by 22.3 percent. Specifically, Wisconsin Electric proposes to increase its rates for: (1) the City of Crystal Falls (Crystal Falls) under Rate Schedule 86 by \$103,151, or by 11.8 percent; (2) Alger Delta Cooperative Electric Association (Alger Delta) under Rate Schedule 88 by \$83,191, or by 5.5 percent; (3) Ontonagon County Rural Electrification

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<sup>1</sup> *Wisconsin Electric Power Co.*, Docket No. ER06-997-000, *et al.* (July 23, 2006) (unpublished letter order).

<sup>2</sup> *Wisconsin Electric Power Co.*, Docket No. ER05-1032-000 (July 13, 2005) (unpublished letter order).

Association (Ontonagon) under Rate Schedule 89 by \$32,740, or by 13.7 percent; and (4) Wisconsin Public Power Inc. (WPPI) under Rate Schedule 90 by \$16,449,936, or by 22.8 percent. Wisconsin Electric asserts that the rate increases are needed to recover the cost of equipment and facility improvements designed to improve reliability and supply, and to recover costs associated with increased payroll and health benefit costs, taxes, and general inflation.

4. Wisconsin Electric also proposes to implement formula rates to better reflect its costs and avoid frequent, costly, and time-consuming regulatory filings. Wisconsin Electric states that its formula rates are determined using actual costs for the year prior to service and Commission-approved cost of service methods for allocating costs to customers. Wisconsin Electric proposes to true-up the charges after the service year based on reported actual costs during the service year. Wisconsin Electric requests effective dates of January 1, 2007 for the revisions to the rate schedules for Alger Delta, Ontonagon, and Crystal Falls, and May 1, 2007 for the revisions to the rate schedule for WPPI.

## **II. Notice and Responsive Pleadings**

5. Notice of Wisconsin Electric's filing was published in the *Federal Register*,<sup>3</sup> with protests or interventions due on or before September 1, 2006. WPPI filed a motion to intervene. Crystal Falls filed an untimely motion to intervene. WPPI and Crystal Falls (collectively, Protestors) jointly filed a timely protest. Wisconsin Electric filed an answer to the protest.

6. According to Protestors, Wisconsin Electric's proposed formula rate and accompanying terms do not properly reflect principles of just and reasonable ratemaking, and are based on improper assumptions and faulty calculations. Protestors argue that Wisconsin Electric's proposed rate increase is excessive by about \$4.1 million annually as to WPPI, and \$43,000 annually as to Crystal Falls. Protestors also contend that the filing represents adjustments that are about 26 percent excessive as to WPPI, and 49 percent excessive as to Crystal Falls.

7. Protestors also believe that the proposed rate of return on equity of 11.5 percent is excessive, because, among other things, Wisconsin Electric uses the midpoint of a subset of proxy-group companies rather than the median of all proxy-group companies. Protestors propose that Wisconsin Electric's rate of return on equity be no higher than

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<sup>3</sup> 71 Fed. Reg. 47,494 (2006).

9.69 percent. Moreover, Protestors argue that Wisconsin Electric's capital structure calculation improperly includes common equity capital that is invested outside of Wisconsin Electric's regulated utility operations.<sup>4</sup>

8. Protestors contend that the formula for cash working capital improperly includes excessive fossil fuel stocks and capitalized license fees, resulting in over-collection. Protestors note that the company's cost support shows a total-company fossil fuel stock of \$106,942,000, equivalent to an inventory level of 113 days, and the sample formula result uses an average of beginning and end-of-year fossil fuel inventory balances totaling approximately \$101.8 million, equivalent to an inventory level of about 108 days. Protestors argue that the use of the average of the beginning and end-of-year balances for this purpose is especially inappropriate because early winter fuel stocks may exceed year-round (*i.e.*, the average of 13 months) fuel stocks.<sup>5</sup>

9. Protestors also express concern that Wisconsin Electric's formula rate fails to include a revenue credit for interest and dividend income received from investment of utility funds. Moreover, Protestors state that, albeit unintentionally, the formula rate would result in double collection of fees paid to Midwest Independent Transmission System Operator, Inc. Protestors also contend that Wisconsin Electric did not adequately address potential rate modifications in the event of likely changes in Wisconsin Electric's generation fleet, such as wind additions and a sale of the Point Beach nuclear power plant.

10. Protestors state that Wisconsin Electric's proposal should provide for better customer audit rights, because audit rights are essential to the reasonable operation and administration of a formula rate. For example, Protestors state that the deadline for completing the audit and the deadline for giving notice to Wisconsin Electric of objections in the application of the formula rate are too soon after the bills are rendered, and, if Wisconsin Electric were to amend its Form No. 1 after the deadlines had passed, Protestors state that their rights to investigate the changes would be unclear.

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<sup>4</sup> Protestors recommend that the proposed formula be revised to make further deductions for the following accounts: Non-Utility Property (Account 121) less Non-Utility Accumulated Provision for Depreciation and Amortization (Account 122); Investment in Associated Companies (Account 123); Investment in Subsidiary Companies (Account 123.1); and Other Investments (Account 124).

<sup>5</sup> Protestors also contend that Wisconsin Electric inappropriately capitalized license fees as part of working capital instead of treating them as expenses.

11. Wisconsin Electric responds, among other things, that the Commission should set the case for hearing, and institute settlement judge procedures.

### **III. Discussion**

12. 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 serve to make WPPI a party to this proceeding. We will also grant the late intervention of Crystal Falls given the early stage of this proceeding, its interests in this proceeding, and the absence of any undue prejudice or delay. 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 and answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Wisconsin Electric's answer and will, therefore, reject it.

13. Wisconsin Electric's proposed rate schedule revisions raise 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.

14. Our preliminary analysis indicates that Wisconsin Electric's proposed revisions to the four 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 revisions for filing, suspend them for a nominal period, to become effective, as requested, January 1, 2007 and May 1, 2007, subject to refund, and set them for hearing and settlement judge procedures.

15. While we are setting these matters for a trial-type evidential 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>6</sup> If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.<sup>7</sup> The settlement judge

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<sup>6</sup> 18 C.F.R. § 385.603 (2006).

<sup>7</sup> If the parties decide to request a specific judge, they must make their 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 Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) - click on Office of Administrative Law Judges).

shall report to the Chief Judge and the Commission within 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 the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Wisconsin Electric's proposed rate schedule revisions are hereby accepted for filing and suspended for a nominal period, to become effective on January 1, 2007 and May 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 on 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 I), a public hearing shall be held concerning the justness and reasonableness of Wisconsin Electric's proposed rate schedule revisions. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in ordering 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 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 the appointment of the settlement judge, 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.

(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 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, 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.