

110 FERC ¶61,192
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Wisconsin Public Service Corporation Docket No. ER05-409-000

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

(Issued February 28, 2005)

1. In this order, we accept for filing, suspend for a nominal period, make effective March 2, 2005, subject to refund, and set for hearing and settlement judge procedures proposed revisions to Wisconsin Public Service Corporation's (Wisconsin Public Service) per plant book depreciation rates reflected in Wisconsin Public Service's formula rates. This order benefits customers because it provides the parties with a forum in which to resolve their dispute over Wisconsin Public Service's proposed depreciation rates.

Background

2. On December 30, 2004, Wisconsin Public Service filed for a change in its per plant book depreciation rates applicable to certain non-nuclear production plant investments. Wisconsin Public Service states that its wholesale energy production costs are principally recovered through formula rates and that depreciation rates are one of the factors reflected in those formula rates.¹ Since these changes in depreciation rates affect Wisconsin Public Service's formula rates, Wisconsin Public Service states that it is submitting these changes for Commission review as required by section 205 of the Federal Power Act² (FPA) and the Commission's Order No. 618.³

¹ The underlying formula rate was accepted in *Wisconsin Public Service Corp.*, 109 FERC ¶ 61,174 (2004).

² 16 USC § 824d (2000).

³ *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104 (2000).

3. WPSC projects that the proposed new depreciation rates will increase its depreciation costs by \$1,286,175 per year.⁴ In support of its proposed depreciation rates, Wisconsin Public Service submits a depreciation cost study and states that the proposed depreciation rates have been approved by the Public Service Commission of Wisconsin.⁵

4. Wisconsin Public Service requests waiver of the Commission's prior notice requirement to permit an effective date of January 1, 2005, stating that it did not receive the necessary approvals from state regulatory authorities until late December 2004 and that it made the instant filing as quickly as it could. Alternatively, Wisconsin Public Service requests an effective date of March 2, 2005.

Notice and Pleadings

5. Notice of Wisconsin Public Service's filing was published in the *Federal Register*, 70 Fed. Reg. 3014 (2005), with protests and interventions due on or before January 21, 2005. On January 21, 2005, Algoma Group WPS Wholesale Customers (Algoma Group) filed a motion to intervene, conditional protest, and request for investigation and hearing. On February 7, 2005, Wisconsin Public Service filed an answer to the protest.

6. Algoma Group argues that Wisconsin Public Service has not demonstrated that its proposed depreciation rates are "systematic and rational" as required by Order No. 618 and requests that the Commission establish hearing procedures. Algoma Group notes that Wisconsin Public Service has received state approval to construct new generation within the next several years. Since the rates are formula rates, Algoma Group argues that the rate impact from the costs of this new generation, including the recovery through depreciation of the capital costs, will automatically be passed through to customers. Moreover, Algoma Group adds that these new depreciation rates, once they are accepted, can only be challenged in a section 206 complaint where it would bear the burden of demonstrating that the rates are unjust and unreasonable. Finally, Algoma Group requests that the Commission deny Wisconsin Public Service's request for waiver of the prior notice requirement because Wisconsin Public Service has not demonstrated good cause to justify granting waiver.

⁴ Wisconsin Public Service states that the \$1,286,175 is based on 2002 data, the most recent year for which it has complete data.

⁵ Wisconsin Public Service states that it received approval from the Public Service Commission of Wisconsin on December 21, 2004, issued in Wisconsin Commission Docket No. 6690-DU-103.

Discussion

Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214 (2004), Algoma Group's timely, unopposed motion to intervene serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 384.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to allow the answer, and accordingly will reject Wisconsin Public Service's answer.

Commission Determination

8. Our preliminary review of the proposed depreciation rates indicates that they have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed depreciation rates for filing, suspend them for a nominal period, to become effective March 2, 2005, subject to refund, and set them for hearing and settlement judge procedures.

9. In support of its request for waiver of the Commission's prior notice requirement, Wisconsin Public Service states that it did not receive the necessary approvals from the Wisconsin Commission until late December 2004 and that it made the instant filing as quickly as it could. However, Wisconsin Public Service has not explained why it was necessary for it to wait to make its section 205 filing until after the Wisconsin Commission approved the proposed rates. Absent a strong showing of good cause, we deny requests for waiver of prior notice for rate increases that do not implement a contract requirement.⁶ We find that Wisconsin Public Service has failed to make the showing of good cause necessary to justify waiver of the Commission's prior notice requirement for a rate increase and will, therefore, deny such waiver.

10. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. To aid the parties in their settlement efforts, the hearing will be held in abeyance and a settlement judge shall be appointed, 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 the proceeding;

⁶ See *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106 at 61,339, *order on reh'g*, 61 FERC ¶ 61,021 (1992).

⁷ 18 C.F.R. § 385.603 (2004).

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 the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Wisconsin Public Service's proposed depreciation rates are hereby accepted for filing and suspended for a nominal period, to become effective, subject to refund, on March 2, 2005.

(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 Wisconsin Public Service's proposed depreciation rates, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for the 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 (2004), 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 the 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 by telephone within five (5) days of the date of this order.

(D) Within sixty (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

⁸ 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. 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).

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 (sixty) days thereafter, apprising the Chief Judge and the Commission of the parties' progress toward settlement.

(E) If the settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Judge, shall convene a prehearing conference in these proceedings, to be held within approximately fifteen (15) days of the date of the presiding judge's appointment, 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 for in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.