

131 FERC ¶ 61,188
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Northern States Power Company (Wisconsin)

Docket No. ER10-992-000

ORDER ACCEPTING AND SUSPENDING ELECTRIC SALES
TARIFF AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued May 28, 2010)

1. In this order, the Commission accepts 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, suspends them for a nominal period, to become effective July 1, 2010, subject to refund, and establishes hearing and settlement judge procedures.

I. Background

A. Northern States Power's Formula Rate

2. On April 1, 2010, Northern States Power, a wholly-owned subsidiary of Xcel Energy Inc., filed with the Commission, pursuant to section 205 of the Federal Power Act,¹ an Electric Sales Tariff for Wholesale Full Requirements Services (Tariff) to convert ten wholesale full requirements electric customers in Wisconsin and Michigan²

¹ 16 U.S.C. § 824d (2006).

² 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.

(collectively, the W-1 Customers) from cost-based stated rates to a cost-based formula rate.

3. The W-1 Customers currently take full requirements service under the Northern States Power's Firm Power Sales for Resale Service rates (W-1 Rate Schedule), which established cost-based stated rates for firm power sales for resale service, based on a 2006 test year.³ Northern States Power states that the proposed Tariff will convert its rates for full requirements service to the W-1 Customers from fixed cost-based production stated rates to a cost-based formula rate that will allow it to collect revenues sufficient to recover significant increases in its costs to provide service to its W-1 Customers. Further, the proposed Tariff allows for the means to recover, from the W-1 Customers, certain transmission expenses that Northern States Power and its affiliate, Northern States Power Company (Minnesota) (together, the NSP System) incur as part of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) zonal rate for the NSP System pricing zone but that are not presently reflected in the transmission cost recovery provisions of the W-1 Customer rates.

4. Northern States Power points out it has not filed a rate increase for its W-1 Customers since 2006. Northern States Power states that generation plant in service has increased by \$880 million and its non-fuel operation and maintenance expenses have increased \$28 million between 2006 and 2008. Further, the NSP System will continue to make investments of \$900 million in two new wind farms and \$1.1 billion in upgrades to nuclear facilities.

5. In support of its filing, Northern States Power demonstrates that if the proposed formula rates were in effect for the period of July 2009 to June 2010, the increase in revenues from the W-1 Customers would be \$1,314,406, or 4.4 percent, with individual increases ranging from 2.8 to 6.6 percent.

6. In general, the proposed formula rate consists of a production demand and energy (on-peak and off-peak) rate and is intended to track Northern States Power's annual costs. The demand and non-fuel energy rates as well as the base fuel cost used on the Fuel Cost Adjustment will be determined each year (commencing July 1st). Northern States Power's inputs will be based on the prior year's FERC Form No. 1 data plus adjustments

³ See *Northern States Power Company (Wisconsin)*, 116 FERC ¶ 61,304, at P 3 (2006); *Northern States Power Company*, 119 FERC ¶ 61,246 (2007) (letter order accepting uncontested settlement in Docket No. ER06-1319-000).

reflecting the projected changes in billings under an Interchange Agreement⁴ from Northern States Power (Minnesota) to Northern States Power. The rates are trued-up annually to account for Northern States Power's actual costs adjusted for known and measurable costs associated with the Interchange Agreement.

7. The proposed formula rate also includes fixed values for the rate of return on equity (ROE) and Post-Retirement Benefits Other Than Pensions (PBOP). Northern States Power proposes a ROE of 11.1 percent based on the midpoint of the zone of reasonableness, determined by application of the Commission's preferred discount cash flow methodology. The depreciation rates to be used in the formula will be those filed and accepted by the Commission under the Interchange Agreement. In addition, the PBOP amount will be set at the level actually incurred in 2010. Northern States Power also proposes to fix its monthly Billing and Customer Service Charge and the monthly Distribution Substation Demand Charge.

8. Finally, Northern States Power is also proposing, as part of the filed rate, associated Formula Rate Implementation Procedures (Implementation Procedures) that describe how the formula will be updated in future years, how customers' challenges will be resolved, as well as the means for implementing any changes to annual rate calculations. In addition, the Implementation Procedures require Northern States Power to make a section 205 filing to change any of the fixed values included in the formula.

B. Miscellaneous Revisions to Tariff Service Agreements

9. Northern States Power also proposes revisions to its tariff and tariff service schedules in order to convert eight W-1 Customers from individual rate schedules to service agreements under the proposed Tariff. Northern States Power states that at this time, the City of Medford and City of Rice Lake agreements will stay as individual rate schedules but may, upon agreement, also be added as service agreements under the

⁴ The "Agreement to Coordinate Planning and Operation and Interchange Power and Energy" (commonly known as Interchange Agreement) provides for the sharing of production and transmission costs of Northern States Power and Northern States Power (Minnesota) related to their operation of an integrated system. The Interchange Agreement provides that the cost of the integrated system will be shared between Northern States Power and Northern States Power (Minnesota) according to demand and energy ratios based on the usage of each company. The costs are recorded in FERC Account No. 557, Other Power Supply Expenses and FERC Account No. 566, Miscellaneous Transmission Expenses.

proposed Tariff. Northern States Power states that the proposed conversion will also satisfy the Commission's new e-tariff filing rules.⁵

10. Northern States Power proposes revisions to change the terms of the Control Period Demand Rider to reflect the fact that the capacity requirements for the NSP System are now established by Module E to the Midwest ISO's Open Access Transmission, Energy and Operating Reserve Market Tariff (Midwest ISO Tariff), replacing the capacity reserve (planning reserve) requirement and testing requirement under the Mid-Continent Area Power Pool Generation Reserve Sharing Pool.

11. Additionally, Northern States Power proposes to modify Rate Schedule W-1 (Attachment A to the Tariff) to reflect changes to Schedule 2 (Reactive Supply and Voltage Control from Generation or Other Sources Service) to the Midwest ISO Tariff to allow partial pass-through of the billed Schedule 2 charges. Finally, Northern States Power also proposes to eliminate Rate Schedule P and Rate Schedule SO₂, presently attached to the W-1 Rate Schedule, because no W-1 Customer has taken service under these rate schedules for a number of years.

C. Effective Date

12. Northern States Power requests that the Commission accept the proposed Tariff effective June 1, 2010. It also requests that the Commission accept the Formula Rate template as the "rate" for service to the W-1 Customers and the associated Implementation Procedures, effective June 1, 2010, but permit Northern States Power to delay charging the W-1 Customers the rates derived by the formula until July 1, 2010 when the rates for Formula Rate Year July 1, 2010-June 30, 2011 are to take effect pursuant to the schedules established by the Implementation Procedures.

II. Notice of Filing and Responsive Pleadings

13. Notice of Northern States Power's filing was published in the *Federal Register*, 75 Fed. Reg. 18,494 (2010), with interventions or protests due on or before April 22, 2010. The W-1 Customers⁶ filed a timely motion to intervene, protest and requests for rejection, maximum suspension and hearing. On May 7, 2010, Northern States Power filed an answer to the W-1 Customers' protest. On May 20, 2010, the W-1

⁵ *Electronic Tariff Filings*, 130 FERC ¶ 61,047 (2010).

⁶ The W-1 Customers are identified as the "Municipal Intervenors" in their protest.

Customers filed a response to Northern States Power's answer, and Northern States Power filed a further response on May 24, 2010.

14. The W-1 Customers argue that the proposed formula is not just and reasonable and should be rejected because it does not meet the Commission's transparency requirements for formula rates. If the Commission does not reject the filing, the W-1 Customers request that the Commission order a full evidentiary hearing, but hold the hearing in abeyance pending settlement talks. They also state that the Commission should suspend the proposed formula rate for five months and thereafter put it into effect subject to refund.

15. Generally, the W-1 Customers argue that the filing raises significant cost of service issues that will result in substantially excessive revenues, and that the proposed Implementation Procedures are unreasonably narrow and improperly restrict the W-1 Customers' ability to challenge the formula rate and inputs.

16. The W-1 Customers argue that the proposed formula's resulting rate increase for wholesale customers will be at least 14.4 percent, rather than the 4.4 percent impact that Northern States Power suggests. The W-1 Customers state that their own analysis -- which uses an "apples-to-apples" comparison of fuel clause data from 2009 under the current stated rates compared to fuel clause data from the same period under the proposed formula -- shows that Northern States Power "grossly underestimated" the rate impact. In contrast, Northern States Power used 2008 fuel data when applying the present rates and 2009 fuel data when applying the proposed formula rates. The W-1 Customers state that the Commission should at the very least set the matter for hearing so that the W-1 Customers and Commission staff can conduct the discovery necessary to obtain the data, currently lacking in the proposed filing.

17. The W-1 Customers assert that the proposed formula fails to meet the Commission's criteria for an adequate formula rate filing. They state that Northern States Power failed to provide workpapers and other supporting documents sufficient to support its request to adopt formula rates. Specifically, the W-1 Customers state of the resulting total \$31 million wholesale revenue requirement produced by the proposed formula, less than about \$7.5 million (or about 24 percent) of the underlying formula costs have been supported and documented by Northern States Power. The W-1 Customers state that the lack of data generally surrounds the costs and revenues allocated to Northern States Power through the Interchange Agreement. The W-1 Customers state that this lack of transparency makes the formula rate proposal deficient and that the Commission should reject it and, at a minimum, require Northern States Power to make an informational filing with respect to the Interchange Agreement that would include all the supporting workpapers with calculations so that the inputs flowing from the Interchange Agreement to the formula can be verified.

18. The W-1 Customers raise seven cost of service issues. First, they claim that Northern States Power has not justified a ROE of 11.1 percent because it inappropriately applied the midpoint of the range of reasonableness yielded by its proxy group. The W-1 Customers also point to a range of Commission-approved ROEs for Northern States Power and affiliated entities of between 9.33 percent and 10.88 percent in order to suggest that Northern State Power's proposed ROE of 11.1 percent is unjust and unreasonable.

19. Second, the W-1 Customers assert that the proposed formula calculates the return on total capital based on a common equity balance that is inconsistent, overstated and shows a lack of conceptual understanding of what should be included or excluded from a properly developed wholesale formula rate. For example, the W-1 Customers state that Northern States Power was inconsistent in its exclusion of Investment in Subsidiary Companies in FERC Account No. 123.1 from the common equity balance.

20. Third, the W-1 Customers state that Northern States Power improperly included deferred debits and deferred credits in the wholesale formula base before they were justified and authorized by the Commission.

21. Fourth, the W-1 Customers assert that Northern States Power included a placeholder for franchise requirements in the formula, and state that there should not be a placeholder for distribution related costs in a formula determining wholesale power costs.

22. Fifth, the W-1 Customers argue that Northern States Power's proposed wholesale energy rate design contradicts principles of time-of-use pricing, by failing to accomplish the goals of sending a price signal to the customer to shift energy usage from high cost periods to low cost periods and by failing to appropriately reward the wholesale customers for reducing on-peak energy usage. Specifically, they assert that Northern States Power's approach in computing its proposed energy price differential distorts the price signal and results in a movement in the energy price ratio upward to reflect a proper price signal, not downward. They further state that the energy pricing should not be formulaic but should be fixed and changeable only by Northern States Power through a Federal Power Act section 205 filing.

23. Sixth, the W-1 Customers contend that Northern States Power's distribution demand charge is a 20.2 percent increase for five of the W-1 Customers and is excessive. They state that Northern States Power is using stale data from 2008 and that using more current data would lower the proposed distribution demand charge to a more reasonable level, thus representing only a 4.2 percent increase.

24. Finally, the W-1 Customers claim that Northern States Power is proposing to increase the customer charge by 112.5 percent and that this is excessive.

25. The W-1 Customers argue that the proposed formula's Implementation Procedures unlawfully restrict the W-1 Customers' complaint rights. Further, they state that under the Implementation Procedures they will have no choice but to undertake annual comprehensive and costly reviews of Northern States Power's formula rate calculations.

26. The W-1 Customers also state that they do not object to Northern States Power's proposal to restate the Electric Service Agreements for the Cities of Rice Lake and Medford, provided that the amended agreements accurately reflect the original agreements with the amendments.

27. In its answer, Northern States Power requests that the Commission suspend the formula rate template for only a nominal period to take effect June 1, 2010, subject to refund, authorize Northern States Power to delay implementation of calculated formula rates until July 1, 2010, put in place settlement judge procedures and, only if such settlement procedures fail to produce a relatively prompt resolution, set the proceeding for a trial-type hearing. Additionally, Northern States Power states that, as part of the settlement process, the parties will be able to work through issues associated with the filing. However, Northern States Power states that it would vigorously challenge the W-1 Customers' proposal to impose fixed energy charges.

28. Northern States Power maintains that the protest and motion to reject the formula rate focuses mainly on the Interchange Agreement involving issues of documentation, lack of transparency and the ROE used under the Interchange Agreement. Northern States Power requests that the Commission summarily reject such arguments as a collateral attack on the Interchange Agreement. Northern States Power states that the W-1 Customers' claim that the formula rate lacks sufficiency and support is misleading because, among other things, the Interchange Agreement costs have been the same for decades, and because there is already ample transparency. Northern States Power also states that the W-1 Customers' allegation of a \$216 million difference in net production plant can be reconciled because the W-1 Customers made an error in calculating and because of the unavoidable timing lag in the final adjustment to the Interchange Agreement fixed charge calculations.

29. With respect to the W-1 Customers' challenge to the return on common equity for the formula rate, Northern States Power urges the Commission to consider the imposition of a nominal suspension in exchange for Northern States Power's agreement to a return on common equity of no more than 10.4 percent, rather than the 11.1 percent midpoint reflected in the filing.

30. In their response to Northern States Power's answer, the W-1 Customers reiterate their request that the Commission reject or suspend for 5 months and set for hearing with settlement judge procedures, the proposed formula rate because of the lack of

transparency and its reliance on the Interchange Agreement. The W-1 Customers argue that due to this lack of transparency and misplaced reliance on the Interchange Agreement formulas, Northern States Power should be required to revise its proposed formula rate so that each input to the formula is tied to Northern States Power's or Northern States Power (Minnesota)'s FERC Form No. 1.

31. In addition, the W-1 Customers take issue with Northern States Power's offers in its answer relating to the ROE and energy rate design. Regarding Northern States Power's offer to lower the proposed ROE, the W-1 Customers believe it serves merely to underscore the unjustness and unreasonableness of allowing the formula to pass through 75 percent of its costs from the Interchange Agreement at a ROE of 11.47 percent. Furthermore, W-1 Customers believe that Northern States Power's offer to change its energy rate design (i.e., change in on-peak/off peak ratio) among other things, increases the regulatory burden for the wholesale customers and reflects a misuse of the underlying data.

32. Finally, in its May 24, 2010 pleading, Northern States Power replies that the W-1 Customers essentially paraphrased their initial protest and that the issues would be best addressed in discovery and settlement discussions. However, Northern States Power raises several points. With respect to the W-1 Customers' challenge to Northern States Power's right to convert to a formula rate, Northern States Power argues that the W-1 Customers appear more than satisfied to benefit from the Interchange Agreement, as they have for decades, but prefer to pay their proportionate share of the associated NSP System costs only on a lagging, irregular basis. Northern States Power additionally states that the W-1 Customers are not currently paying their share of costs because they are paying outdated stated rates based on a stale test year. Northern States Power stresses that it will continue to bear the burden of proof under the formula rate and that the W-1 Customers will have ample opportunity to review and to challenge the formula rate costs and inputs associated with the Interchange Agreement.

III. Discussion

A. Procedural Matters

33. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motion to intervene of the W-1 Customers serves to make them parties to this proceeding.

34. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Northern States Power's answer and the two

subsequent responses because they have provided information that has assisted us in our decision-making process.

B. Hearing and Settlement Judge Procedures

35. Upon review, we find that 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. 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.

36. Accordingly, we will accept Northern States Power's filing, suspend it for a nominal period, make it effective subject to refund, and set it for hearing and settlement judge procedures.⁷ We will establish July 1, 2010 (the date Northern States Power requests to begin charging the W-1 Customers the proposed rates) as the effective date.

37. We will deny the W-1 Customers' request to reject the filing because the filing lacks certain workpapers and other supporting documents. We find that the filing meets the minimum threshold filing requirements and is not patently deficient.

38. In addition, our review of the Implementation Procedures states that Northern States Power will provide its 2010 PBOP charges and Actuarial Study to the Commission in an informational filing, which does not meet our policy.⁸ The Commission requires that changes to PBOP amounts should be filed under a section 205 filing. We will therefore require that a section 205 filing be made in order to implement the PBOP charges in the formula rate.

39. 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

⁷ We will deny the W-1 Customers' request for a five-month suspension. In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), 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 that order, we would generally impose a nominal suspension. Here, our examination indicates that the proposed rates may not yield substantially excessive revenues.

⁸ *Maine Yankee Atomic Power Co.*, 66 FERC ¶ 61,375 (1994).

hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹⁰ The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of his/her appointment 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 a nominal period, to become effective July 1, 2010, 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 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 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.

⁹ 18 C.F.R. § 385.603 (2009).

¹⁰ 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 - click on Office of Administrative Law Judges).

(D) Within thirty (30) days 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 Commission, 888 First Street, NE, 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.