

The section 203 application to sell the Kewaunee Plant proposed transferring the qualified decommissioning trust to DEK for decommissioning,³ and refunding to the customers of WPSC and WP&L the value of the non-qualified decommissioning trust.⁴ Since the section 203 application did not specify the details of the refund plan, the Commission directed the applicants to submit appropriate section 205 filings to implement their refund plan.

3. As a result of an NRC inspection, the Kewaunee Plant was shut down on February 20, 2005, for repairs. The unplanned outage had to be resolved to close the sale, and resulted in a loss on the sale of the Kewaunee Plant by WPSC. Further, as a result of the unplanned outage, WPSC experienced significant additional costs.

4. On May 5, 2005, WPSC submitted an accounting letter, in Docket No. AC05-54-000, providing notice to the Commission of its intention to use deferred accounting for certain costs incurred in connection with the unplanned outage at the Kewaunee Plant.⁵ WPSC stated that it would make the appropriate section 205 filings to obtain cost recovery through its rates subject to the Commission's jurisdiction. It further stated that at that time the Commission would determine whether the costs were actually and prudently incurred, the appropriate method of recovery, and whether the recovery is just and reasonable.

5. On June 7, 2005, WPSC filed a Wind-Up Plan pursuant to section 205 concerning the impact of its sale of the Kewaunee Plant on its cost-based wholesale rates (June 7 Filing). WPSC explained that it proposed to create a net regulatory liability consisting of the refunds to customers from the value of the non-qualified decommissioning trust, offset by (1) the net loss on the sale of the Kewaunee Plant and (2) the Kewaunee Plant-related outage costs. WPSC planned to provide the refunds by amortizing the regulatory liability over five years from the effective date as a credit to wholesale customer bills.

6. By order dated August 4, 2005, the Commission accepted for filing in Docket No. ER05-1089-000 WPSC's Wind-Up Plan and related revisions to rates schedules facilitating the refunding of its non-qualified decommissioning trust and suspended the filing for a nominal period, to become effective January 1, 2006, or the date set by the

³ WPSC states that the Nuclear Regulatory Commission (NRC), in an order dated June 10, 2004, found that the funds in the qualified decommissioning trust were sufficient for NRC requirements.

⁴ Payments to a qualified decommissioning trust are tax deductible in the year collected. 26 U.S.C. § 468A. Remaining monies collected during the year, which are not eligible for tax deduction, are deposited into a non-qualified decommissioning trust.

⁵ WPSC estimated that it would incur approximately \$35-45 million of outage costs, which would largely consist of replacement power costs.

relevant order of the Public Service Commission of Wisconsin (Wisconsin Commission), as requested, subject to refund.⁶ The Commission also established a hearing and settlement judge procedures. Further, given the concerns expressed by protesters in Docket No. AC05-54-000, the Commission instituted an investigation under section 206 of the Federal Power Act (FPA) in Docket No. EL05-136-000,⁷ concerning the rate effect of WPSC's deferred accounting treatment reflected in its filing in Docket No. AC05-54-000, established a refund effective date, and established hearing and settlement judge procedures. The Commission also consolidated Docket No. EL05-136-000 with Docket Nos. ER05-1089-000 and AC05-54-000.

II. Proposed Amendment

7. On May 19, 2006, WPSC filed the Proposed Amendment to revise the manner of distributing the value of the non-qualified decommissioning trust related to the Kewaunee Plant originally proposed in the June 2005 Proceeding.⁸ Instead of distributing the value of the trust fund prospectively as part of the customers' future bills as WPSC originally had proposed, WPSC proposes to refund the value of the non-qualified decommissioning trust based on historical payments into the trust fund, increased by the accumulated earnings on those contributions.⁹ WPSC also proposes to reduce from five years to two years the period for amortizing the non-qualified decommissioning trust.

8. WPSC notes that subsequent to making the June 7 Filing, the Wisconsin Commission and the Michigan Public Service Commission both prescribed a method of distributing the value of the non-qualified decommissioning trust based on historical contributions to the trust fund. WPSC also states that customers filing substantive pleadings in the June 2005 Proceeding also favored a historical contribution methodology. WPSC states that it now accepts that a historical contribution methodology is the appropriate method for distributing the value of the non-qualified decommissioning trust.

⁶ *Wisconsin Pub. Serv. Corp.*, 112 FERC ¶ 61,165 (2005) (accepting and setting for hearing wind-up plan and related accounting proceeding).

⁷ 16 U.S.C. § 824d (2000).

⁸ WPSC states that the final liquidated non-qualified decommissioning trust fund balance is approximately \$127 million as of December 31, 2005 (exclusive of amortizations to Michigan retail customers).

⁹ Since WPSC is now proposing to base the refunds on historical contributions to the non-qualified decommissioning trust, WPSC filed new rate schedules with former customers to facilitate the refunds under the Proposed Amendment. WPSC also filed certain revisions to rate schedules to facilitate the refund methodology under the Proposed Amendment.

9. WPSC states that the Proposed Amendment does not alter the overall level of the non-qualified decommissioning trust nor does it affect the treatment proposed by WPSC in the June 2005 Proceeding relating to the offsets to the non-qualified decommissioning trust distributions.

10. WPSC requests waiver of the prior notice requirement to permit an effective date of January 1, 2006. WPSC states that none of the affected wholesale customers have yet received the refund and given the operation of the formula rates, the wholesale customers would not receive a refund until April 2007. Therefore, WPSC claims that granting the requested effective date of January 1, 2006, will clarify and simplify the calculation of the refunds for those customers and since the refunds are historically based, granting the requested effective date should not affect their refunds. Alternatively, WPSC requests an August 1, 2006, effective date (which is the first day of the month following sixty days notice).

III. Motion to Consolidate Proceedings

11. On May 24, 2006, WPSC filed a motion to consolidate the June 2005 Proceeding with the instant proceeding for purposes of hearing and decision and to expedite the instant proceeding so that the litigation of both proceedings may be conducted on a timely basis. WPSC states that there are common issues of fact and law that warrant consolidation of the proceedings. WPSC states that piecemeal litigation of the issues in two separate proceedings, would be difficult, time consuming and unduly costly to all parties. Additionally, WPSC states that the record of each proceeding standing alone would be incomplete and deficient thus unnecessarily burdening the decisions-making process.

12. WPSC also requests that the instant proceeding be expedited so that the litigation would be conducted approximately in accordance with the schedule about to be established for the June 2005 Proceeding and before the administrative law judge already assigned to the June 2005 Proceeding. To facilitate the consolidation and requested scheduling, WPSC states that it will immediately accept all discovery pertinent to both proceedings. WPSC also indicates its willingness to allow in large part the discovery responses initially issued within the settlement context, to be re-issued as “non-settlement” responses upon motion from other parties. Moreover, WPSC states that it does not envision a need to submit additional direct evidence.

13. Finally, WPSC states that, since settlement talks with respect to the June 2005 Proceeding have terminated unsuccessfully, it is unlikely that reserving a settlement period and appointing a settlement judge in the instant proceeding would serve a useful purpose at this time.

IV. Notice and Responsive Pleadings

14. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 109 (2006), with motions to intervene and protests due on or before June 9, 2005. The Algoma Group filed a timely motion to intervene and protest.¹⁰ Among other things, the Algoma Group states that the Proposed Amendment raises concerns as to the proper amount of the non-qualified decommissioning trust to be refunded to wholesale customers,¹¹ the allocation of the refund among wholesale customers, and whether the refund should be in a lump sum or amortized over two years. The Algoma Group requests the instant proceeding be set for hearing. Additionally, the Algoma Group filed a response supporting WPSC's motion to consolidate the proceedings.

15. Subsequently, WPSC filed an answer to the Algoma Group's protest. WPSC states that it does not object to the Algoma Group's request for investigation and hearing, but provides clarifications or corrections with respect to the Algoma Group's pleading. WPSC states that the reduction in the allocation to wholesale customers from \$19.8 million to \$15 million is due to the change in the basis for calculating the refund, i.e., from an allocator using prospective service to historical contribution. WPSC states that the Algoma Group failed to mention that under the Proposed Amendment the Algoma Group's refund will increase and the refund for Wisconsin Rapids will also increase from nothing (since it is no longer a customer of WPSC) to a significant refund based on its historical contributions. WPSC also offers other clarifications or corrections.

IV. Discussion

A. Procedural Matters

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept WPSC's answer because it has provided information that assisted us in our decision-making process.

¹⁰ For purposes of this proceeding, the Algoma Group consists of the Cities of Manitowoc, Marshfield, Wisconsin Rapids and Stratford, Wisconsin; the Alger Delta Cooperative Electric Association; the Washington Island Electric Cooperative; and Badger Power Marketing Authority.

¹¹ The Algoma Group notes that the amount of the non-qualified decommissioning trust refund applicable to wholesale customers under WPSC's Proposed Amendment is reduced from \$19.8 million to \$15 million.

B. Proposed Amendment

17. WPSC's Proposed Amendment raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below.

18. Our preliminary analysis indicates that WPSC's Proposed Amendment has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept WPSC's Proposed Amendment for filing, suspend it for a nominal period, make it effective August 1, 2006, subject to refund and set it for hearing.

19. The Commission's practice is to consolidate Federal Power Act section 205 and 206 proceedings involving similar facts where "a failure to consolidate the dockets would pose substantial risk of redundancy and wasted resources."¹² The factual situation is virtually the same in the proceedings. Moreover, the Algoma Group supports WPSC's motion to consolidate. Thus, we will consolidate Docket No. ER06-1027-000 with Docket Nos. ER05-1089-000, AC05-54-000, and EL05-136-000 for purposes of hearing and decision. The presiding judge previously designated to preside in the latter dockets shall determine whether and what additional process may be necessary to accommodate the consolidation of Docket No. ER06-1027-000.

The Commission orders:

(A) WPSC's Proposed Amendment is hereby accepted for filing and suspended for a nominal period, to become effective August 1, 2006, subject to refund, as discussed in the body of this order.

(B) Docket No. ER06-1027-000 is hereby consolidated with Docket Nos. ER05-1089-000, AC05-54-000, and EL05-136-000 for purposes of hearing and decision.

(C) 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

¹² *Utah Power & Light Co.*, 23 FERC ¶ 61,287 at 61,597 (1983); *see also PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,317 at P 36 (2004) (consolidating a section 206 proceeding with an on-going section 205 hearing in another docket).

public hearing shall be held concerning WPSC's proposed plan to refund the non-qualified decommissioning trust resulting from its sale of the Kewaunee Plant.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.