

129 FERC ¶ 61,071  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Wisconsin Power and Light Company

Docket No. ER09-1644-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULES AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued October 27, 2009)

1. In this order, we accept for filing Wisconsin Power and Light Company's (WPL) proposed changes to the formula rates it charges its partial requirements customers under its PR-1 Tariff (PR-1 Tariff) and the rates it charges its full requirements customers under its W-2A Tariff (W-2A Tariff) and its W-3A Tariff (W-3A Tariff), and suspend them for a nominal period, to become effective January 1, 2008 subject to refund. We also establish hearing and settlement judge procedures.

**I. Background**

2. On August 28, 2009, in Docket No. ER09-1644-000, WPL filed proposed changes to the formula rates it charges its partial requirements customers under its PR-1 Tariff and the rates it charges its full requirements customers under its W-2A Tariff and its W-3A Tariff.<sup>1</sup> WPL states the revisions implement for billing purposes the accounting and reporting guidance for defined benefit post retirement plans issued by the Chief Accountant on March 29, 2007 (Pension Accounting Directive).<sup>2</sup>

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<sup>1</sup> WPL and the wholesale customers agreed to switch from stated rates to the current formula rates in a settlement agreement filed in Docket Nos. ER06-1517 and ER06-1518 on February 8, 2008 and approved by the Commission on August 22, 2008 (Settlement Agreement). *Wisconsin Power & Light Co.*, 124 FERC ¶ 61,179 (2008).

<sup>2</sup> The Chief Accountant issued the Pension Accounting Directive in Docket No. AI07-01-000 and issued a correction in Docket No. AI07-1-001.

3. WPL states that the filing is being made in accordance with the Customers Audit Rights and Related Protocols (Audit Protocols) contained in Attachment D to the Settlement Agreement. WPL states that Section II of the Audit Protocols provides that the “formula rate is intended to yield practicable administrable unit rates that, as trued-up, will reflect the fully allocated embedded costs in a manner that is just, reasonable, and not unduly discriminatory.”

4. WPL states that the existing formula rates were developed prior to the Pension Accounting Directive, but became effective afterward. WPL states that it must add four FERC accounts<sup>3</sup> to rate base to properly reflect the Pension Accounting Directive in the formula rates.

5. WPL requests that the Commission make its proposed revisions effective on June 1, 2007, which WPL states is the date the formula rates initially became effective.<sup>4</sup> WPL states that the proposed revisions will result in a rate increase of approximately \$1.5 million for 2008 and less than \$500,000 for the portion of 2007 that the formula rates were effective.

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

6. Notice of WPL’s filing was published in the *Federal Register*, 74 Fed. Reg. 46190 (2009), with interventions and protests due on or before September 18, 2009. WPL filed a motion requesting an extension of time until October 2, 2009 for interested parties to submit motions to intervene to comments. The Commission granted the motion and extended the deadline for interventions and protests to October 5, 2009.

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<sup>3</sup> WPL seeks to include in the formula rates the following four FERC accounts: (1) FERC Account 128 – Other Special Funds; (2) FERC Account 182.3 – Other Regulatory Assets; (3) FERC Account 253 – Other Deferred Credits; and (4) FERC Account 223 – Advances from Associated Companies.

<sup>4</sup> The charges under the formula change each June 1 to reflect costs incurred during the preceding calendar year. The charges are trued-up annually to ensure that annual revenue recovery matches annual costs.

7. A timely motion to intervene was made by WPPI Energy. A timely motion to intervene and protest was filed collectively by WPPI Energy, Municipal Wholesale Power Group,<sup>5</sup> Great Lakes Utilities,<sup>6</sup> and Badger Group<sup>7</sup> (collectively, Intervenors).

8. Intervenors argue that this matter should be set for further proceedings, encompassing all issues bearing on the justness and reasonableness of WPL's filing.<sup>8</sup> Intervenors also identify two principal substantive concerns regarding the filing. The first concern is whether rate base treatment is appropriate for WPL's overfunding of pensions given Commission policy. The second concern is whether WPL made all the necessary adjustments to rate base or whether the proposed adjustments are incomplete.

9. Intervenors contest WPL's proposed formula revisions that would allow WPL to earn a return on the amount by which its pension plan assets (i.e., pension plan actual fund assets plus pension regulatory assets) exceed its pension obligations (to the extent there is an excess). Intervenors state that this balance represents principal provided by ratepayers or growth of those ratepayer-provided funds. Intervenors state that the Commission's longstanding policy on overfunded pension balances provides that where the overfunding stems from ratepayer-provided funds, it should not be included in rate base and should not earn a return.<sup>9</sup>

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<sup>5</sup> The members of the Municipal Wholesale Power Group consist of the following Wisconsin cities and villages: Belmont, Benton, Black Earth, Elkhorn, Gresham, Hazel Green, Mazomanie, Pardeeville, Princeton, Sauk City, Sheboygan Falls, Shullsburg, Wisconsin Dells and Wonewoc.

<sup>6</sup> Great Lakes Utilities is a joint action agency, formed pursuant to Wisconsin statute, which provides full requirements power and energy services to Wisconsin cities of Kiel and Wisconsin Rapids and takes service from WPL under the PR-1 Tariff.

<sup>7</sup> The Badger Group consists of Rock Energy Cooperative, Adams-Columbia Electric Cooperative, and Central Wisconsin Electric Cooperative.

<sup>8</sup> Intervenors' Protest at 3, n.2, citing *Trans-Allegheny Interstate Line Co.*, 121 FERC ¶ 61,009, at P 9 (2007).

<sup>9</sup> Intervenors' Protest at 4, citing Opinion No. 337, *Southwestern Public Service Co.*, 49 FERC ¶ 61,296, at 62,128 (1989); *order on reh'g* Opinion No. 337-A, *Southwestern Public Service Co.*, 51 FERC ¶ 61,130 (1990).

10. Intervenors argue that the Commission recently clarified that rate base inclusion of Account 128 pension overfunded balances may be appropriate where the source of the pension overfunding is shown to have been shareholder-provided capital.<sup>10</sup> However, Intervenors emphasize that this policy applies only when the utility has sufficiently “demonstrate[d] that there were corresponding reductions in the amount of revenue collected from ratepayers resulting from the crediting of pension income to reduce rates.”<sup>11</sup>

11. Intervenors state that WPL’s filing is skeletal, and does not include the testimony and other information that should be provided in support of such a major increase. Intervenors also state that they have sought, but not yet received, supporting information explaining the source of funds on which WPL is proposing to earn a return.

12. Intervenors also contest WPL including in formula inputs for 2007 and 2008 a qualified pension plan regulatory asset described as an allocation of an OCI-SERVCO asset. Intervenors argue that an off-setting liability associated with inter-unit accounts receivable by or payable to SERVCO is necessary, but WPL has provided no support to indicate why the off-setting liability entry is not included in the formula.

13. Intervenors state that WPL has the burden of proof to justify modifications to its formula rates,<sup>12</sup> especially given the requested effective date which predates the rate filing. Intervenors argue that WPL has not met its burden and the Commission should not approve the filing. Rather, Intervenors request that the Commission suspend the filing,<sup>13</sup> set the case for hearing, and hold the hearing in abeyance pending settlement judge mediation.

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<sup>10</sup> Intervenors’ Protest at 4, citing *Southern Company Services*, 122 FERC ¶ 61,218 (2008), *on clarification and compliance*, 128 FERC ¶ 61,276 (2009) (*Southern II*).

<sup>11</sup> *Southern II*, 128 FERC ¶ 61,276 at P 10.

<sup>12</sup> Intervenors’ Protest at 5, citing *Idaho Power Co.*, 126 FERC ¶ 61,044, at P 18 (2009) and *American Electric Power Service Corp.*, 124 FERC ¶ 61,306, at P 36 (2008).

<sup>13</sup> Intervenors state that, to extent suspension length matters, a five month suspension would be appropriate because no portion of the proposed rate increase has been adequately supported. However, Intervenors note that given WPL’s formula rates and proposed effective date, it is not clear that the suspension length would affect the end result.

### **III. Discussion**

#### **A. Procedural Matters**

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F. R. § 385.214 (2009), Intervenors' timely, unopposed motion to intervene serves to make them a party to this proceeding.

#### **B. Hearing and Settlement Judge Procedures**

15. WPL's proposed changes to its formula rates 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.

16. Our preliminary analysis indicates that WPL's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.<sup>14</sup> Therefore, we will accept WPL's proposed rates for filing, suspend them for a nominal period and make them effective January 1, 2008, subject to refund, and set them for hearing and settlement judge procedures.

17. 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 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>15</sup> 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.<sup>16</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions.

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<sup>14</sup> In addition to issues raised by Intervenors, we note that WPL has included Account No. 253 – Other Deferred Credits and Account No. 223 – Advances from Associated Companies as formula rate inputs in its revised formula rates. These accounts are not specified in the instructions of the Pension Accounting Directive for jurisdictional public utilities.

<sup>15</sup> 18 C.F.R. § 385.603 (2009).

<sup>16</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).

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.

**C. Effective Date**

18. With respect to WPL's request for a retroactive effective date of June 1, 2007, WPL is proposing to revise the formula rates that were established in the Settlement Agreement. The Audit Protocols contained in Attachment D to the Settlement Agreement provide for retroactive adjustments to the formula rates under certain circumstances and limited time constraints. Section II.1 of the Audit Protocols provides that

The Company or a Customer may file under Federal Power Act Section 205 or 206 in order to change the formula rate. If such a filing is made before the affected Service Year(s) or Trued-Up Year(s) becomes final under Sections I.7-I.8 above, and a change to the formula is found to be appropriate, the effective date for such a change will be retroactive so as to encompass the entirety of the affected, non-finalized year(s). To qualify for such retroactivity pursuant to this provision, the filing must (a) address material changes in the formula rate application that were (or, in the case of a filing by a Customer, were to should have been) identified pursuant to sections I.2.b-c above for a True-Up Year; (b) fit within Section I.5.(i), (ii), (iii), or (iv) above; (c) be directed to ensuring that the formula rate as applied to those issues yields a result that reflects the fully allocated embedded cost; (d) be made before the end of the third calendar month following the month that includes the Limitations Date for that True-Up Year; and, (e) result in a final determination to change the formula rate.

This language permits WPL to adjust the formula rate to the beginning of an affected service year for material changes that reflect the fully allocated embedded cost as long as the filing was made before the end of fifteen months after the service year (i.e., before the end of the third calendar month following the month that includes the Limitations Date<sup>17</sup>). For example, according to section 1.10 of the Audit Protocols which provides an illustrative timeline, for service during calendar year 2008, the true-up to the formula must be provided by May 31, 2009 and a filing to change the formula rate must be filed by March 30, 2010 (i.e., fifteen months after the service year ends).

19. WPL submitted the instant filing on August 26, 2009, well before the fifteen month deadline (i.e., March 30, 2010) to make changes to the formula rates for the 2008

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<sup>17</sup> The Limitations Date is defined in Section I.7 of Attachment D to the Settlement Agreement as the second January 29th that follows the end of the Trued-up Year.

service year. However, the filing is after the fifteen-month deadline to make changes to the formula rates for service year 2007 because the fifteenth month would be March 2009. Thus, based on the Audit Protocols contained in Attachment D to the Settlement Agreement, we deny the requested effective date of June 1, 2007, but will grant waiver to permit an effective date of January 1, 2008, which is consistent with the applicable language of the Settlement Agreement.<sup>18</sup>

The Commission orders:

(A) WPL's PR-1, WA-2 and WA-3 Tariff revisions are hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2008, 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 WPL's PR-1, WA-2 and WA-3 Tariff revisions. 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 (2009), 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 designation, 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.

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<sup>18</sup> *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (waiver of notice generally will be appropriate when the rate change and effective date are prescribed by a contract on file with the Commission).

(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 )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.