

140 FERC ¶ 61,128
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Wisconsin Electric Power Company

Docket No. EL12-81-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued August 15, 2012)

1. On June 29, 2012, Wisconsin Electric Power Company (Wisconsin Electric) filed a petition requesting that the Commission issue a declaratory order authorizing Wisconsin Electric's proposed accounting treatment of costs arising from its buydown of a coal supply agreement (buydown payment). Wisconsin Electric also requests waiver of section 35.14 of the Commission's regulations, to the extent necessary, to permit Wisconsin Electric's recovery of the buydown payment.¹ As discussed below, we dismiss Wisconsin Electric's request for waiver, authorize the recovery of the buydown payment, and approve Wisconsin Electric's proposed accounting treatment.

I. Background

2. Wisconsin Electric sells electricity to retail and wholesale customers in Wisconsin and the Upper Peninsula of Michigan. According to Wisconsin Electric, approximately 90 percent of its load is attributable to retail sales and only five of its customers purchase electricity pursuant to Wisconsin Electric's Formula Rate Wholesale Sales Tariff (formula rate tariff).²

¹ See 18 C.F.R. § 35.14 (2012).

² Wisconsin Electric Power Company, FERC Electric Tariff, Federal Regulatory Electronic Database, [Cover Sheet, Formula Rate Wholesale Sales Tariff, 1.0.0](#), [Availability, Article One, 1.0.0](#), [Definitions, Article Two, 1.0.0](#), [Rate, Article Three, 1.0.0](#), [Buyers Audit Rights, Article Four, 1.0.0](#), [Billing and Payment, Article Five, 1.0.0](#), [Creditworthiness, Article Six, 1.0.0](#), [No Req to Construct, Article Seven, 1.0.0](#), [Force Majeure, Article Eight, 1.0.0](#), [Dispute Resolution, Article Nine, 1.0.0](#), [Standard of Review, Article Ten, 1.0.0](#), [Service Schedule, Load Following Service, 1.0.0](#), [Service](#)

(continued...)

3. Wisconsin Electric states that, in the spring of 2012, it analyzed the operating costs of its generation fleet. Concluding that the projected cost of producing power from some of its generating plants would exceed the locational marginal prices (LMP) at those units' pricing nodes from May through December 2012, Wisconsin Electric assessed opportunities to reduce its overall fuel costs.³ Wisconsin Electric states that its analysis suggested that, by redesignating several of its units as available for economic commitment, rather than "must-run" commitment, Wisconsin Electric could significantly reduce the cost of power for its customers.⁴ Wisconsin Electric states that converting several units from must-run to economic commitment reduced the projected operation of those units, resulting in a net cost savings of \$14 million between May and December of 2012.

4. In turn, Wisconsin Electric assessed its coal delivery requirements. In May 2012, Wisconsin Electric entered into a buydown agreement with its primary coal supplier (Buydown Agreement). Pursuant to the Buydown Agreement, Wisconsin Electric was able to reduce the amount of coal it is obligated to purchase through the remainder of 2012 for a payment of approximately \$7 million. Wisconsin Electric seeks approval by the Commission to recover the buydown payment through its formula rate tariff between September and December 2012, to become effective September 1, 2012.⁵ Wisconsin Electric states that, as a result, its customers would realize savings of approximately \$7 million, with approximately \$3 million in saving accruing from September to December of 2012.⁶

[Schedule, Block Purchase Service, 1.0.0](#), [Svc Agrmt and Confirm, Form of Service Agreement and Confirmation, 1.0.0](#), [Formulas, Exhibit B, 1.0.0](#), [Charge Adjustments, Exhibit C, 1.0.0](#).

³ Wisconsin Electric Petition at 4.

⁴ *Id.* at 5. Wisconsin Electric states that as "must-run" units, its generating plants would be committed at a minimum load level whenever they were available and would be dispatched whenever the LMP was greater than or equal to the incremental cost of the unit. *Id.* at 4. Wisconsin Electric states that, in comparison, modeling the units as available for economic commitment would mean that the units would be committed only when the projected LMPs would justify commitment. *Id.* at 5.

⁵ Wisconsin Electric requests waiver of the Commission's 60-day prior notice requirement, to the extent necessary. *Id.* at 12; *see also* 18 C.F.R § 35.3 (2012).

⁶ According to Wisconsin Electric, the overall reduction in fuel and purchased power costs for its customers from September through December of 2012 is projected to be approximately \$10 million.

II. Notice of Filing

5. Notice of Wisconsin Electric's petition for declaratory order was published in the *Federal Register*, 77 Fed. Reg. 40,608 (2012), with interventions, comments, and protests due on or before July 30, 2012. On July 10, 2012, the Commission issued an errata notice, shortening the comment date to July 20, 2012. No interventions or protests were received.

III. Discussion

6. As discussed below, we dismiss Wisconsin Electric's request for waiver because section 35.14 of the Commission's regulations is specific to fuel adjustment clauses accompanying stated, fixed rates and does not apply to cost-based formula rates. Nevertheless, we authorize Wisconsin Electric to recover the buydown payment under the Buydown Agreement from its customers and approve Wisconsin Electric's proposed accounting treatment of the buydown payment, effective September 1, 2012.

A. Rate Treatment

1. Petition

7. Wisconsin Electric seeks a waiver of section 35.14 of the Commission's regulations pertaining to fuel adjustment clauses to the extent such provisions are applicable.⁷ Wisconsin Electric explains that section 35.14 of the Commission's regulations restricts the recovery of fuel costs through fuel adjustment clauses to "[f]ossil and nuclear fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants."⁸ Wisconsin Electric also notes that, pursuant to *Kentucky Utilities*, the Commission requires utilities to seek a waiver of the fuel clause regulation whenever a utility seeks to recover buydown costs through its fuel adjustment clause.⁹

8. Wisconsin Electric states that its formula rate contains both a capacity component and an energy component.¹⁰ In turn, Wisconsin Electric explains that its energy rate is calculated in two parts. According to Wisconsin Electric, the "Energy Rate – Part I" covers fuel and energy related purchased power costs that can change substantially from

⁷ See Wisconsin Electric Petition at 1, 8-11.

⁸ *Id.* at 8 (quoting 18 C.F.R § 35.14(a)(2)(i)).

⁹ *Id.* (citing *Ky. Utils. Co.*, 45 FERC ¶ 61,409 (1988) (*Kentucky Utilities*)).

¹⁰ *Id.* at 6.

month to month.¹¹ Wisconsin Electric explains that its formula rate uses a monthly estimate of these costs to bill the customer, and then uses a monthly true-up process to adjust for the actual costs incurred in the previous month.

9. Wisconsin Electric suggests that the Commission's regulations relating to fuel adjustment clauses apply to its cost-based formula rate tariff.¹² Wisconsin Electric contends that "fuel adjustment clauses and similar mechanisms are 'intended to keep utilities whole with respect to changes in their cost of fuel.'"¹³ Wisconsin Electric asserts that, like a fuel adjustment clause, the "Energy Rate – Part I" of its formula rate tariff attempts to insulate Wisconsin Electric from the effect of changes in its fuel costs.¹⁴

10. Wisconsin Electric argues that waiver is appropriate in this case because the Buydown Agreement will allow Wisconsin Electric's wholesale customers to realize significant, ongoing financial benefits and consequently satisfies the Commission's ongoing benefits test.¹⁵ Wisconsin Electric states that, pursuant to the ongoing benefits test, the Commission permits a utility to recover buydown costs through a fuel adjustment clause if the utility can demonstrate that the overall cost of the buydown is less than the cost the utility would incur would it have continued to purchase fuel under the existing agreement.¹⁶ Wisconsin Electric states that its customers will realize net savings of approximately \$3 million between September and December 2012 as a direct result of the Buydown Agreement—approximately ten percent of which will affect wholesale customers.¹⁷ Additionally, Wisconsin Electric contends that the Buydown Agreement is straightforward and its benefits are readily identifiable in comparison to lengthy contract

¹¹ *Id.* Wisconsin Electric adds that "The Energy Rate – Part II includes the energy related costs not included in the Energy Rate – Part I and is not implicated by the proposal to flow through [the buydown payment]." *Id.* n.10.

¹² *Id.* at 6, 9.

¹³ *Id.* at 9 (citing *N. States Power Co.*, 48 FERC ¶ 61,012, at 61,085 (1989)).

¹⁴ *Id.*

¹⁵ *Id.* at 9-11 (citing *Kentucky Utilities*, 45 FERC ¶ 61,409).

¹⁶ *Id.* at 9-10 (citing *Kentucky Utilities*, 45 FERC ¶ 61,409).

¹⁷ *Id.* at 6, 10.

periods contemplated in similar agreements that have been previously considered the Commission.¹⁸

11. Further, Wisconsin Electric explains that it seeks to amortize the buydown payment under the Buydown Agreement from September through December of 2012 and that the Buydown Agreement expires in January 2013. Wisconsin Electric contends that its proposal adheres to the Commission's policy requiring buydown costs to be amortized throughout the remaining term of the terminated agreement.¹⁹

2. Commission Determination

12. We will dismiss Wisconsin Electric's request for waiver of the requirements of section 35.14 of the Commission's regulations. Section 35.14 of the Commission's regulations is specific to fuel adjustment clauses accompanying stated, fixed rates.²⁰ It does not apply to cost-based formula rates, such as the rate contained in Wisconsin Electric's formula rate tariff, which does not contain a fuel adjustment clause. Therefore, the requirements of section 35.14 are inapplicable in this case and no waiver is necessary.

13. Nevertheless, the similarities between Wisconsin Electric's proposal and our precedent addressing the recovery of buydown costs through fuel adjustment clauses offer a compelling analogy. The Commission long ago recognized that fuel adjustment clauses "are actually formulas which calculate the changes in the cost of fuel."²¹ As Wisconsin Electric points out, like fuel adjustment clauses, formula rates enable utilities to pass through increases or decreases in their fuel costs to ratepayers without the need to file formal rate changes.²² Further, irrespective of how a utility recovers its fuel costs, utilities incur buydown costs for the purpose of reducing fuel costs that would otherwise be passed on to customers in full.²³ Prudence and good utility practice dictate that

¹⁸ *Id.* at 10-11 (citing *Kentucky Utilities*, 45 FERC ¶ 61,409; *W. Res. Inc.*, 68 FERC ¶ 61,366 (1994); *N. States Power Co.*, 48 FERC ¶ 61,012).

¹⁹ *Id.* at 11 (citing *W. Res., Inc.*, 68 FERC ¶ 61,366; *Delmarva Power & Light Co.*, 49 FERC ¶ 61,016 (1989)).

²⁰ *See, e.g., Treatment of Purchased Power in the Fuel Cost Adjustment Clause for Electric Utilities*, Order No. 352, FERC Stats. & Regs. ¶ 30,525, at 30,800 (1983), *reh'g denied*, Order No. 352-A, 26 FERC ¶ 61,266 (1984).

²¹ *See Minn. Power & Light Co.*, 39 FERC ¶ 61,192, at 61,707-08 (1987).

²² *See N. States Power Co.*, 48 FERC at 61,085.

²³ *Id.*

utilities pursue buydowns agreements in order to minimize fuel costs, “no matter what method of rate recovery is permitted.”²⁴ Thus, we find that Wisconsin Electric’s proposal is sufficiently analogous to a proposal to recover buydown costs through a fuel adjustment clause to warrant application of the principles articulated in *Kentucky Utilities* and its progeny to the rate treatment proposed in this case.

14. Pursuant to the *Kentucky Utilities* line of cases, the Commission typically permits public utilities to pass buydown costs on to their customers through a fuel adjustment clause subject to an ongoing benefits test.²⁵ Public utilities are required to demonstrate that the cost of the replacement fuel plus the cost of the buydown is less than the cost that the utility would have incurred had it continued to purchase fuel under the terminated agreement.²⁶ The Commission generally requires applicants to identify the specific contracts involved and provide a detailed methodology used to calculate savings. Further, the authority to pass buydown costs on to customers has traditionally been subject to an ongoing benefits test, pursuant to which a utility must verify that its customers have realized a savings each month before passing its buydown costs on to customers.²⁷ However, in *Kentucky Utilities*, the Commission forewarned that “the mechanisms and procedures adopted for each utility must be considered on a case-by-case basis.”²⁸

15. In this case, Wisconsin Electric asserts that the Buydown Agreement is expected to result in approximately \$3 million in net savings between September and December of 2012. Wisconsin Electric also proposes to amortize the buydown payment over the course of the Buydown Agreement. Thus, while section 35.14 does not necessarily apply in this case, Wisconsin Electric’s proposed rate treatment appears to be consistent with the requirements of the Commission’s precedent. We will, therefore, authorize Wisconsin Electric’s proposal to recover the buydown payment from its wholesale customers through its formula rate tariff. We find that Wisconsin Electric has supported the net benefits that customers will experience under its proposal. Given the specific circumstances in this case, we will not subject this approval to the ongoing benefits test.

²⁴ *Kentucky Utilities*, 45 FERC at 62,292.

²⁵ *Tucson Elec. Power Co.*, 87 FERC ¶ 61,257, at 61,980 (1999) (*Tucson Electric*).

²⁶ *Id.* (citing *Ky. Utils. Co.*, 45 FERC at 62,293).

²⁷ *Id.* In addition, the Commission has held that the period over which buydown costs are to be amortized should correspond with the remaining length of the terminated fuel agreement. See *Delmarva Power & Light Co.*, 49 FERC ¶ 61,016.

²⁸ *Kentucky Utilities*, 45 FERC at 62,293.

B. Proposed Accounting Treatment**1. Petition**

16. Wisconsin Electric states that it recorded the obligation for the Buydown Agreement as a regulatory asset by debiting Account 182.3, Other Regulatory Assets, and crediting Account 232, Accounts Payable, for approximately \$7 million. Wisconsin Electric proposes to amortize the buydown payment to fuel expense ratably over the remaining four months of the terminated agreement by debiting fuel expense in Account 501, Fuel, and crediting Account 182.3. Wisconsin Electric argues that the Commission has approved identical accounting treatments in other cases involving coal supply contract buydowns.²⁹

2. Commission Determination

17. For the reasons discussed above, our precedent governing the appropriate accounting treatment for the recovery of buydown costs through a fuel adjustment clause offers a compelling analogy in this case. Commission precedent requires public utilities to charge buydown costs to expense as incurred. Alternatively, in the event that the Commission allows future rate recovery, as we have in this case, such costs are to be deferred as a regulatory asset in Account 182.3 and amortized to fuel expense in Account 501 consistent with rate recognition.³⁰ Therefore, we will approve Wisconsin Electric's proposed accounting treatment of the buydown payment because its proposal is consistent with this precedent.

The Commission orders:

(A) Wisconsin Electric's request for waiver is hereby dismissed, as discussed in the body of this order.

(B) Wisconsin Electric is hereby authorized to recover the buydown payment under the Buydown Agreement through its formula rate tariff, as discussed in the body of this order.

²⁹ Wisconsin Electric Petition at 7.

³⁰ See, e.g., *Tucson Electric*, 87 FERC ¶ 61,257.

(C) Wisconsin Electric shall adhere to the accounting requirements discussed in the body of the order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.