

144 FERC ¶ 61,093
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Wisconsin Public Service Corporation

Docket No. ER13-1040-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS, AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 1, 2013)

1. On March 5, 2013, pursuant to section 205 of the Federal Power Act (FPA),¹ Wisconsin Public Service Corporation (Wisconsin Public) filed proposed revisions to its W-1A Tariff for all requirements service and its Rate Schedule 87 for service to the City of Marshfield, Wisconsin (collectively, Tariffs²) for recovery of the Tariff customers' *pro rata* share of Wisconsin Public's \$440 million costs related to its purchase of the Fox Energy Center (Fox Plant) (March 5 Filing).³ As discussed below, we accept the proposed Tariff revisions for filing, suspend them for five months, to become effective October 5, 2013, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. Starting in 2005, Wisconsin Public annually purchased 500 MW of the capacity from the Fox Plant under a tolling agreement (Tolling Agreement). On December 28,

¹ 16 U.S.C. § 825d (2006).

² Alger-Delta Cooperative Electric Association, the Village of Daggett, Michigan, the City of Stephenson, Michigan and the Village of Stratford Water and Electric Utility, Wisconsin are all-requirements customers under Wisconsin Public's W-1A tariff. The City of Marshfield, Wisconsin receives partial requirements service under Wisconsin Public's Rate Schedule 87.

³ Wisconsin Public submitted both a public version and a non-public privileged and confidential version of its filing.

2012, in Docket No. EC13-56-000, under FPA section 203,⁴ Wisconsin Public, Fox Energy Company LLC (Fox Energy), Fox Energy OP, L.P. (Fox OP), and Fox River Power, LLC (Fox River) filed a joint application for Wisconsin Public to purchase and for Fox OP and Fox River to sell 100 percent of the membership interests in Fox Energy, the owner of the Fox Plant. On January 29, 2013, the Commission authorized Wisconsin Public's purchase of the Fox Plant, a nominal 593 MW natural gas-fired combined-cycle electric generating plant.⁵ As part of its section 203 application to purchase the Fox Plant, Wisconsin Public pledged to hold harmless its five cost-based wholesale requirements customers who are served under its Tariffs. Further, Wisconsin Public stated that it would refrain from recovering any component of the Fox Plant ownership and non-fuel operating costs without first making a section 205 filing with the Commission.

II. The March 5 Filing

3. Wisconsin Public proposes formula rate revisions to its Tariffs for recovery of the Tariff customers' *pro rata* share of Wisconsin Public's \$440 million Fox Plant-related purchase costs. Wisconsin Public states that the \$440 million purchase costs include \$390 million related to the net book value of the Fox Plant estimated original cost, an acquisition adjustment on the purchase of the Fox Plant (Acquisition Adjustment), and costs related to the cost protection contracts for the Fox Plant (Cost Protection Contracts). Wisconsin Public also states that the purchase cost includes \$50 million for Tolling Agreement buyout costs.

4. Wisconsin Public states that the instant filing fulfills Wisconsin Public's ratepayer protection commitment in Docket No. EC13-56-000, i.e., that it would not seek to recover any Fox Plant-related costs, other than fuel costs, from the Tariff customers without making a section 205 filing. Wisconsin Public also states that the Public Service Commission of Wisconsin (Wisconsin Commission) in a February 22, 2013 order approved the recovery of Wisconsin Public's retail customers' share of \$390 million for the Fox Plant and an additional \$50 million for the buyout of the Tolling Agreement.⁶

5. Wisconsin Public argues that it should recover the costs of the Acquisition Adjustment, Tolling Agreement buyout, and Cost Protection Contracts from its Tariff customers because such costs are necessary for it to acquire the Fox Plant. Wisconsin Public states that its acquisition of the Fox Plant is preferable to resource alternatives, and

⁴ 16 U.S.C. § 824b (2006).

⁵ *Fox Energy Co. LLC, et al.*, 142 FERC ¶ 62,066 (2013) (Acquisition Order).

⁶ Wisconsin Public Transmittal at 1.

the purchase provides multiple and tangible customer benefits as found by the Wisconsin Commission.

6. Specifically, Wisconsin Public proposes to include the Acquisition Adjustment in its capacity formula rate to reflect the purchase of the Fox Plant above its original cost. Wisconsin Public states that it seeks to recover the Acquisition Adjustment based on the overall net dollar benefits that will accrue to its customers in the long run. Wisconsin Public proposes to amortize the Acquisition Adjustment over 20 years.⁷

7. Wisconsin Public also proposes to include costs related to the buyout of a Tolling Agreement. Under the terms and conditions of a 2002 Tolling Agreement between itself and Fox Energy Center, LLC's predecessor, Sherry Energy Center, LLC (Sherry), Wisconsin Public provides fuel to Sherry to toll into energy for Wisconsin Public, which reserves 100 percent of the plant's capacity. The Tolling Agreement is set to terminate for 50 percent of the plant's capacity on May 31, 2015 and for the remaining 50 percent of the plant's capacity on May 31, 2016.

8. Wisconsin Public states that it could not purchase the Fox Plant without a buyout of the Tolling Agreement for \$50 million.⁸ Wisconsin Public claims that maintaining the Tolling Agreement until its current termination date is financially disadvantageous versus the alternative of acquiring the Fox Plant, which includes a buyout of the Tolling Agreement. Wisconsin Public states that the Commission supports buyouts of higher-priced fuel contracts in order to substitute lower-priced fuel currently available and has allowed the recovery of prudently incurred costs to do so.⁹ Wisconsin Public states that the \$50 million buyout cost is prudently incurred and a necessary part of acquiring the generating asset, which provides a clear net benefit to ratepayers. In order to recover the Tolling Agreement costs, Wisconsin Public is proposing that such costs be added as a regulatory asset and amortized over nine years, as prescribed by the Wisconsin Commission.¹⁰

9. Wisconsin Public also seeks to include in its capacity formula rate the value of Fox Plant's Cost Protection Contracts, which date back to 2004 and were acquired by Wisconsin Public with the purchase of the facilities. Wisconsin Public states that the Cost Protection Contracts provide protection against potential excessive future capital and/or operations and maintenance costs. Wisconsin Public proposes a 6.5-year

⁷ Ex. WPS-200 (Quigley Test.) at 11.

⁸ Wisconsin Public Transmittal at 5.

⁹ *Id.* at 5 (citing *Kentucky Utilities Company*, 49 FERC ¶ 61,409 (1988)).

¹⁰ Ex. WPS-200 at 11.

amortization period for the Cost Protection Contracts, as prescribed by the Wisconsin Commission.¹¹

10. In its economic analysis, Wisconsin Public examined the Fox Plant acquisition for three planning futures assuming different supply plans for the balance of the Wisconsin Public generating units. Each planning future also compares acquisition of the Fox Plant against building a new facility with 10-year bridge power purchase agreement (PPA). Wisconsin Public's economic analysis assumes amortization periods of 29 years for the plant, five years for the Tolling Agreement buyout, and 15 years for the Cost Protection Contracts.¹² The economic analysis indicates that the acquisition of the Fox Plant provides economic benefits across all supply lines and future planning horizons. Wisconsin Public states that it "indirectly"¹³ assessed the cost of PPAs, but did not consider them a "long-term"¹⁴ solution. Therefore, its analysis did not compare the purchase option against a PPA or the continuation of the Tolling Agreement.

11. Wisconsin Public states that its analysis indicates that, compared to the alternative building/bridge PPA option, the acquisition of the Fox Plant provides long-term positive dollar benefit to the customers beginning in the year 2022. In addition, Wisconsin Public asserts that the Fox Plant purchase, even including Acquisition Adjustment and Cost Protection Contracts costs (though not the Tolling Agreement buyout), costs about \$657/kW compared to Wisconsin Public's estimated cost of \$850/kW to build a plant. Wisconsin Public further argues that the acquisition benefits customers by enabling Wisconsin Public to better manage long-term operations and maintenance at the Fox Plant, allowing it to reduce costs and to increase the ratepayer savings through improvements in operations and maintenance. Wisconsin Public also contends that its ownership of the Fox Plant lessens its reliance on coal-fired generation, thus reducing price risks through a more balanced generation portfolio.¹⁵ Wisconsin Public argues that it could not have obtained these benefits without payment of the full Fox Plant price inclusive of the payment represented by the Acquisition Adjustment – as well as the Tolling Agreement buyout and Cost Protection Contract costs.

12. Wisconsin Public also proposes estimated depreciation rates for the affected gas turbine plant Accounts Nos. 341, 342, 344, 345, and 346. Wisconsin Public states that it

¹¹ *Id.*

¹² *Id.* at 17.

¹³ Ex. WPS-100 (Derricks Test.) at 24.

¹⁴ Ex. WPS-102 at 22.

¹⁵ Ex. WPS-100 at 22-27.

has retained an independent expert to conduct a depreciation rate analysis and it intends to file the estimated depreciation rates with the Wisconsin Commission for approval and subsequently with the Commission for its approval.¹⁶

13. Wisconsin Public requests waiver of the requirements to submit cost of service statements under sections 35.13(d)(1)-(2) (Period I and Period II data Statements AA through BM), 35.13(d)(5) (workpapers related to Period I and Period II data), and 35.13(h) (cost of service statements) of the Commission's regulations.¹⁷ Wisconsin Public states that its filing provides ample support for the proposed Tariff revisions, which are limited in scope and apply only to the Fox Plant purchase. Further, Wisconsin Public also requests waiver of the requirement to submit rate comparisons since: (1) its rate is a formula rate; (2) the rate effect is restricted to the Fox Plant transaction; (3) the meaningful impact of purchasing or not purchasing the Fox Plant is on a long-term rather than annual basis; and (4) the costs have been quantified in its filing.¹⁸

14. Wisconsin Public states that the target closing date for the Fox Plant purchase is March 28, 2013. In order to align the Fox Plant cost recovery with the closing date of the Fox Plant purchase, Wisconsin Public requests waiver of the Commission's prior notice requirements to allow Wisconsin Public's recovery of Fox Plant ownership costs to become effective on March 28, 2013, or on such later date on which the closing of the Fox Plant purchase actually occurs.¹⁹

III. Notice of Filing and Responsive Pleadings

15. Notice of Wisconsin Public's March 5 Filing was published in the *Federal Register*, 78 Fed. Reg. 16,491 (2013), with interventions and protests due on or before March 26, 2013. WPPI Energy filed a timely motion to intervene. The Algoma Group (Algoma Group)²⁰ filed a timely motion to intervene, protest and request for investigation and hearing. On April 4, 2013, Wisconsin Public filed an answer to Algoma Group's protest. On April 12, 2013, Algoma Group filed an answer to Wisconsin Public's answer.

¹⁶ *Id.* at 10-11.

¹⁷ 18 C.F.R. §§ 35.13(d)(1)-(2), 35.13(d)(5) and 35.13(h) (2012).

¹⁸ Wisconsin Public Transmittal at 8.

¹⁹ On March 29, 2013, Wisconsin Public filed a letter with the Commission giving notice of the March 28, 2013 closure of the transaction.

²⁰ The members of Algoma Group are: the City of Marshfield, Wisconsin; the Village of Stratford, Wisconsin; and the City of Stephenson, Michigan.

A. Algoma Group's Protests

16. Algoma Group argues that the March 5 Filing does not adequately demonstrate the extent to which the benefits of the proposed transaction exceed the anticipated costs to wholesale customers. Algoma Group asserts that, taking the analysis in Mr. Derricks' testimony at face value, the purported benefits of the Fox Plant acquisition are a net positive for the wholesale customers over the 50-year expected life cycle of the plant, but that customers will not begin realizing those benefits until after 10 years. At that point, Algoma Group asserts, the purported benefits of the acquisition, derived from a sophisticated comparison of future planning alternatives that rest on a variety of assumptions ranging from expected load growth to future regulatory action, are thus speculative, at best. Moreover, Algoma Group contends that the absence of formula rate cost of service statements and work papers in the March 5 Filing makes it impossible for the customers to evaluate the actual cost impacts that will be incurred if Wisconsin Public's requested formula rate adjustments are approved. Algoma Group contends that, given the speculative nature of the purported benefits and the lack of detail with respect to how the inclusion of acquisition costs will be implemented in the formula, there is no basis for concluding that Wisconsin Public has fulfilled its hold harmless commitment.²¹

17. Algoma Group states that, at this point, it does not contest the prudence of Wisconsin Public's acquisition of the Fox Plant, but it has several concerns with Wisconsin Public's proposed rate treatment of the Fox Plant acquisition costs, including the Tolling Agreement buyout and the Cost Protection Contracts. First, Algoma Group argues that Wisconsin Public has not adequately justified inclusion of the entire acquisition adjustment in its capacity formula rate. Algoma Group argues that, rather than meeting the Commission's requirement to demonstrate that the acquisition provides specific, measurable and substantial benefits to ratepayers, Wisconsin Public's showing in this regard is limited to a speculative, albeit sophisticated present value analysis of purported revenue requirement savings, which, by its own admission, turns positive after about 10 years.²² According to Algoma Group, Wisconsin Public's expected savings are shown to be positive but small over a period that extends to 2070.²³ Algoma Group contends that whether such an assertion meets the Commission's standard for recovery of the requested acquisition adjustment is a material question of fact that should be subject to discovery and examined at hearing. It states that, to the extent Wisconsin Public

²¹ Algoma Group Protest at 3-4. On March 28, 2013, Wisconsin Public made a nearly identical filing in Docket No. EC13-56-000 in response to compliance requirements in that docket, which we do not address in this order.

²² *Id.* at 5 (citing *Public Service Co. of New Mexico*, 137 FERC ¶ 61,119, at P 15 (2011); *Ameren Corp.*, 140 FERC ¶ 61,034 (2012)).

²³ *Id.* at 5.

cannot meet such a standard, the acquisition adjustment would be treated as a below the line shareholder expense.

18. Second, Algoma Group notes that Wisconsin Public proposes to use a 20-year amortization period for the Acquisition Adjustment. Algoma Group also notes that the Wisconsin Commission could prescribe a different amortization period and that Wisconsin Public reserves the right to submit a subsequent filing to conform the wholesale amortization period accordingly. Algoma Group states that the Wisconsin Commission's final decision on this point is unclear, and, thus, it argues that establishment of a 20-year amortization period for the acquisition adjustment should be made by the Commission in this proceeding.²⁴

19. Third, Algoma Group argues that it is unclear from the March 5 Filing why it is necessary to terminate the Tolling Agreement now and incur the \$50 million buyout fee when an agreement for acquisition could still be closed with an effective date to coincide with the expiration of one or both installments of the Tolling Agreement, and thereby save some or all of the buyout costs.

20. Fourth, although Algoma Group states that it is not currently raising an issue with respect to the prudence of Wisconsin Public's proposed acquisition of Fox Plant, it states that it reserves the right to raise additional issues with respect to the various cost components of the transaction as more information about the specific formula rate impacts is ascertained.

21. Based on the concerns it raises, Algoma Group requests that the Commission: (1) require Wisconsin Public to submit a full cost of service impact analysis, with supporting work papers; (2) set the proposed revisions for investigation and hearing; and (3) suspend the March 5 Filing for five months.²⁵

B. Wisconsin Public's Answer

22. Wisconsin Public, in its answer, contends that recovery of the Acquisition Adjustment is consistent with Commission policy. Wisconsin Public asserts that, unlike utilities in the cases cited by Algoma Group where the Commission has rejected use of an acquisition adjustment, Wisconsin Public provided evidence supporting such cost recovery and revised its formula rates to facilitate such recovery. Wisconsin Public argues that its filing is similar to *Entergy*,²⁶ where the Commission accepted a

²⁴ *Id.* at 5-6

²⁵ *Id.* at 6-7.

²⁶ Wisconsin Public Answer at 9 (citing *Entergy Services, Inc.* 133 FERC ¶ 61,099 (2010) (*Entergy*)).

\$103 million acquisition adjustment in connection with the purchase of generation facilities. It asserts that it, like the applicants in *Entergy*, provided evidence that the acquisition satisfied a need at the lowest possible cost and provides tangible and non-speculative ratepayer benefits.²⁷

23. Wisconsin Public also disagrees with Algoma Group's protest of the Tolling Agreement buyout, contending that any delay between purchase negotiations and the actual purchase would be unrealistic. Wisconsin Public states that the Fox Plant's sellers' requirement was to minimize the period between execution of the Purchase and Sale Agreement for the Fox Plant and closing. Furthermore, Wisconsin Public states that as soon as it committed to purchase the plant, it was necessary to assume control over the plant's operation and maintenance and over any physical enhancements or other capital reinvestments needed. In addition, Wisconsin Public claims that waiting until 2015-2016 to complete the purchase would expose Wisconsin Public's purchase to market conditions that would potentially drive costs up or allow another party to purchase the plant altogether.

24. Wisconsin Public also disagrees with Algoma Group's request that the Commission require Wisconsin Public to submit a full cost of service impact analysis, with supporting work papers. Wisconsin Public asserts that Commission policy does not require the submission of statements AA through BM to support formula rate revisions.²⁸

C. Algoma Group's Answer

25. Algoma Group provides a limited answer, stating that the *Entergy* decision in fact supports Algoma Group's requests for a full investigation and hearing. Algoma Group argues that in that proceeding, the Commission found that the proposed rates might not be just and reasonable and set the matter for hearing and settlement procedures, with a nominal suspension period.²⁹

IV. Discussion

A. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding.

²⁷ *Id.* at 8-10.

²⁸ *Id.* at 12-15.

²⁹ Algoma Group Answer at 1-3.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers of Algoma Group and Wisconsin Public because they have provided information that assisted us in our decision-making process.

B. Commission Determination

28. Wisconsin Public's proposed Tariff revisions to include in formula rates purchase costs related to the estimated original costs, an Acquisition Adjustment, Tolling Agreement buyout and Cost Protection Contracts related to its purchase of the Fox Plant, 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.

29. Wisconsin Public asserts that the Commission should allow rate recovery of the entire \$440 million price, including the Acquisition Adjustment, Tolling Agreement buyout and Cost Protection Contracts, given the substantial and tangible ratepayers benefits that the purchased Fox Plant will generate. The Commission has disallowed acquisition adjustments in cost-based rates except in extremely narrow circumstances where an applicant can demonstrate that the acquisition provides specific, measurable and substantial benefits to the ratepayers.³⁰ In *Montana-Dakota*, the Commission provided guidance on the showing required to warrant an acquisition adjustment stating that "a purchaser may include the acquisition adjustment in its rate base after showing that the excess paid over the depreciated original cost results in specific dollar benefits to the pipeline's customers."³¹ The Commission stated that these benefits must be tangible and nonspeculative and may include decreases in rates, improved services or economies in operation which are clearly related and solely the result of the acquisitions.

³⁰ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 258 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007). *See also Longhorn Partners Pipeline*, 82 FERC ¶ 61,146 (1998); *Minnesota Power & Light Co.*, 43 FERC ¶ 61,104, at 61,342, *reh'g denied*, 43 FERC ¶ 61,502 (1988) (*Minnesota Power*); *Duquesne Light Holdings Inc.*, 117 FERC ¶ 61,326, at n.47 (2006); *Montana-Dakota Utilities Co.*, 23 FERC ¶ 61,151 (1983) (*Montana-Dakota*); *Longhorn Partners Pipeline*, 73 FERC ¶ 61,355 (1995) (*Longhorn Partners*).

³¹ *Montana-Dakota*, 23 FERC at 61,335 (quoting *Mid-Louisiana Gas Co., et al.*, 7 FERC ¶ 61, 316 (1979), *aff'd*, *Transcontinental Gas Pipe Line Corp. v. FERC*, 652 F.2d 179 (D.C. Cir. 1981)).

30. Our preliminary analysis indicates that Wisconsin Public's proposed Tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In *West Texas Utilities Co.*,³² the Commission explained that when its preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission will generally impose a five-month suspension.³³ Our preliminary analysis indicates that the rates may be substantially excessive, as defined in *West Texas*, and therefore, we will accept Wisconsin Public's proposed revisions for filing, suspend them for five months, make them effective October 5, 2013, subject to refund, and set them for hearing and settlement judge procedures as discussed below.

31. Additionally, we deny waiver of the 60-day prior notice requirement. The Commission does not permit waiver of the notice requirement for rate increases absent a strong showing of good cause,³⁴ which Wisconsin Public has failed to provide. Accordingly, the earliest date on which Wisconsin Public's filing could become effective, absent suspension, is May 5, 2013, after 60 days' notice of the March 5, 2013 filing. But, with the five-month suspension discussed above, the effective date for Wisconsin Public's Tariff revisions will be five months thereafter or October 5, 2013.

32. Wisconsin Public also requests any waivers of any requirement to submit additional cost of service statements. Specifically, it requests waivers of the requirement to submit sections 35.13(d)(1)-(2) (Period I and Period II data Statements AA through BM), 35.13(d)(5) (workpapers related to Period I and Period II data), and 35.13(h) (cost of service statements).³⁵ The Commission has granted waivers of the requirements to provide such data previously in a series of cases involving transmission formula rates.³⁶ Thus, we will grant the waivers of sections 35.13(d)(1)-(2), 35.13(d)(5), and 35.13(h), as

³² *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982) (finding that when more than 10 percent of a utility's proposed rate increase is found to be excessive, the Commission will suspend the rates for a five-month period).

³³ See, e.g., *Puget Sound Energy, Inc.*, 138 FERC ¶ 61,236 (2012).

³⁴ See *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,399, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

³⁵ Wisconsin Public Transmittal at 8.

³⁶ E.g. *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 94 (2007); *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308, at PP 55-56 (2005), *reh'g denied*, 115 FERC ¶ 61,156 (2006); *Westar Energy, Inc.*, 122 FERC ¶ 61,268, at P 106 (2008).

requested. Nonetheless, to the extent that parties at the hearing ordered below can show the relevance of additional information needed to evaluate this proposal, the presiding judge can provide for appropriate discovery of such information, consistent with our orders in other similar cases.³⁷

33. 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 hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.³⁸ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.³⁹

34. The settlement judge shall report to the Chief Judge and the Commission within 30 days of appointment of the settlement judge 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's proposed Tariff revisions are hereby accepted for filing and suspended for five months, to become effective October 5, 2013, 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 regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning Wisconsin Public's proposed Tariff revisions. However, the hearing will be held in abeyance to give the parties time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

³⁷ See *supra* note 36.

³⁸ 18 C.F.R. § 385.603 (2012).

³⁹ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), 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 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 the 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 a 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)

Kimberly D. Bose,
Secretary.