

148 FERC ¶ 61,142  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

August 27, 2014

In Reply Refer To:  
Wisconsin Public Service  
Corporation  
Docket Nos. ER13-1040-000  
ER13-1040-001  
ER13-1040-002  
AC13-179-000

Fox Energy Company, LLC, Fox  
Energy OP, L.P., Fox River  
Power, LLC, Wisconsin Public  
Service Corporation  
Docket No. EC13-56-001

Carmen L. Gentile, Esq.  
Attorney for Wisconsin Public  
Service Corporation  
Schiff Hardin LLP  
901 K Street, NW  
Suite 700  
Washington, DC 20001

Dear Mr. Gentile:

1. On January 29, 2013, in Docket No. EC13-56-000, the Commission conditionally authorized Wisconsin Public Service Corporation's (WPSC) acquisition of the Fox Energy Center (Fox Plant).<sup>1</sup> Two conditions of the Commission's authorization in the Fox Acquisition Order were that: (1) WPSC would have to make a filing under section 205 of the Federal Power Act (FPA)<sup>2</sup> to seek recovery of costs related to its

---

<sup>1</sup> *Fox Energy Co. LLC*, 142 FERC ¶ 62,066 (2013) (Fox Acquisition Order).

<sup>2</sup> 16 U.S.C. § 824d (2012),

acquisition of the Fox Plant, and (2) WPSC would have to submit its final accounting entries after the transaction was consummated. On August 1, 2013, in Docket No. ER13-1040-000, WPSC made an FPA section 205 filing to seek recovery of costs related to its acquisition of the Fox Plant.<sup>3</sup> The Commission accepted and suspended WPSC's FPA section 205 filing in Docket No. ER13-1040-000 and set the matter for hearing and settlement judge procedures.<sup>4</sup> On September 3, 2013, in Docket No. ER13-1040-001, WPSC filed a request for clarification of the Hearing Order.

2. Separate from its FPA section 205 filing, on September 27, 2013, WPSC submitted its accounting entries. The Commission assigned Docket No. AC13-179-000 to WPSC's accounting submittal, which was not consolidated with the hearing and settlement judge procedures in Docket No. ER13-1040-000, and requested additional information. WPSC submitted the additional accounting information on December 10, 2013.

3. On January 28, 2014, WPSC filed, in Docket Nos. EC13-56-000, ER13-1040-000, ER13-1040-001, and AC13-179-000, a Settlement Agreement and Offer of Settlement (Settlement). The Settlement Agreement is among WPSC, the Algoma Group,<sup>5</sup> and WPPI Energy, Inc. (Settling Parties). The Offer of Settlement is made by WPSC to the Village of Daggett, Michigan (Daggett). Under Article 7.14 of the Settlement, the Offer of Settlement to Daggett is deemed accepted by Daggett if it does not object.

4. On February 12, 2014, Commission Trial Staff (Trial Staff) filed comments, recommending conditional approval of the Settlement subject to the outcome of the proceedings in Docket Nos. AC13-179-000 and EC13-56-000. Trial Staff notes that the Settlement effectively approves WPSC's accounting for the acquisition of the Fox Plant, as proposed in Docket No. AC13-179-000. But Trial Staff notes that WPSC's accounting is being reviewed by the Office of Enforcement and was not set for settlement judge and hearing proceedings or consolidated with Docket No. ER13-1040-000. Thus, Trial Staff takes no position on that accounting and, unless the Office of Enforcement is satisfied with that filing and is ready to close that docket, recommends that the Commission approve the Settlement subject to the outcome of Docket No. AC13-179-000. Likewise, given that the Fox Acquisition Order conditioned the merger on that accounting filing, Trial Staff recommends that the Commission approve the Settlement subject to the

---

<sup>3</sup> WPSC also contemporaneously submitted an identical filing as a compliance filing in Docket No. EC13-56-001.

<sup>4</sup> *Wisconsin Pub. Serv. Corp.*, 144 FERC ¶ 61,093 (2013) (Hearing Order).

<sup>5</sup> The Algoma Group consists of the Village of Stratford Water and Electric Utility; the City of Marshfield, Wisconsin (Marshfield); and the City of Stephenson, Michigan.

outcome of Docket No. EC13-56-000. Also, Trial Staff states that it understands that Daggett will not contest the Settlement. No reply comments were filed.

5. On March 4, 2014, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.<sup>6</sup> Similar to Trial Staff's comments, the Settlement Judge notes that the issues the Settlement resolves from Docket Nos. AC13-179-000 and EC13-56-000 are before the Commission and not subject to the settlement proceedings established by the Hearing Order. The Settlement Judge makes no comment on whether those provisions in the Settlement are fair, reasonable, and in the public interest.

6. Article V of the Settlement provides that WPSC's proposed accounting for the acquisition of the Fox Plant, as submitted to the Commission in Docket No. AC13-179-000 and attached to the Settlement as Attachment C-1, is the same accounting adopted by the Public Service Commission of Wisconsin, is consistent with and integral to the Settlement, and is to be approved as part of the Settlement. Attachment C-2 includes WPSC's responses to questions raised by the Commission's accounting staff.

7. Article VII of the Settlement states that acceptance of the Settlement resolves all issues in Docket Nos. ER13-1040-000, ER13-1040-001, AC13-179-000 and EC13-56-000.<sup>7</sup>

8. On January 29, 2014, WPSC submitted, in Docket No. ER13-1040-002, revisions to WPSC's Rate Schedule 87 and its W-1A Tariff (Settlement tariff sheets) pursuant to the terms of the Settlement.

---

<sup>6</sup> *Wisconsin Public Service Corp.*, 146 FERC ¶ 63,020 (2014).

<sup>7</sup> In its transmittal letter, WPSC acknowledges that Docket No. AC13-179-000 is not consolidated with Docket No. ER13-1040-000, *et al.*, but is being included with the Settlement because WPSC's formula rates subject to the Settlement are keyed off the FERC Uniform System of Accounts and those Accounts directly affect the revenue recovery under those rates. Also, WPSC states that the parties desired to include all issues related to the acquisition of the Fox Plant in a single submission to the Commission. Transmittal Letter at 1-2. On January 27, 2014, in Docket No. ER14-1156-000, WPSC, with the support of Marshfield, filed an interim revision to its power supply agreement with Marshfield (Rate Schedule No. 87), which would enable WPSC and Marshfield to implement the terms of Article IV of the Settlement (Capacity Exchange) in the event a Commission order on the Settlement is delayed for any reason. According to WPSC, the Settlement supersedes the interim revision which would be of no force or effect as of the Commission's approval of the Settlement. On March 10, 2014, the Director, Division of Electric Power Regulation-Central, accepted the interim revision to Rate Schedule No. 87.

9. The Settlement matters we address herein concern Docket Nos. ER13-1040-000, ER13-1040-001 (which settle the matters pertaining to the FPA section 205 filing), ER13-1040-002 (the Settlement tariff sheets implementing the settlement of the FPA section 205 proceeding), and AC13-179-000 (the accounting entries).<sup>8</sup> Further, with respect to WPSC's accounting entries, the Commission appreciates the Settling Parties' desire to address all issues in one submittal. The accounting docket was not consolidated with the FPA section 205 proceeding, and the Office of Enforcement, before whom WPSC's accounting entries, including its responses to the Office of Enforcement's request for additional information, were still pending, was not a participant in the hearing and settlement judge procedures. Nonetheless, we will also approve WPSC's accounting entries in this order, as discussed below.

10. Article 7.10 of the Settlement provides that:

[t]his Settlement is subject to review and modification by the Commission under the public interest standard and subject to the right of any Party to withdraw from the Settlement and render the Settlement null and void in the event the Commission modifies the Settlement in a manner that is unacceptable to that Party.

11. Article 7.11 provides that:

the Rate Schedule 87 and W-1A Tariff provisions are subject to unilateral amendment by WPSC pursuant to FPA Section 205 and subject to revision pursuant to the provisions of FPA Section 206 by any Party or non-Party to the Settlement or by the Commission acting *sua sponte*. The just and reasonable standard shall apply to any of those revisions made by WPSC, proposed by a Party or non-Party to the Settlement, or otherwise ordered by the Commission.

---

<sup>8</sup> While the Settlement states that issues are pending in Docket No. EC13-56-000, that appears to be only with regard to matters within the scope of the FPA section 205 filing, the request for clarification of the Hearing Order, and WPSC's accounting entries. Given that WPSC's FPA section 205 filing (and request for clarification) and its final accounting entries are now the subject of other dockets (i.e., Docket Nos. ER13-1040-000, ER13-1040-001 and AC13-179-000, respectively), we see no need for further action in Docket No. EC13-56-001 and that sub-docket, now overtaken by events, will be terminated.

12. Because it is ambiguous which standard of review the Settling Parties seek to apply to the Settlement,<sup>9</sup> we clarify the framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Settlement.

13. The *Mobile-Sierra* “public interest” presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm’s length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm’s-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Association v. FERC*,<sup>10</sup> however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory “just and reasonable” standard of review on future changes to agreements that fall within the second category described above.

14. The Settlement resolves all issues in dispute in Docket Nos. ER13-1040-000, ER13-1040-001, ER13-1040-002, and AC13-179-000. The Settlement appears to be fair, reasonable and in the public interest and is hereby approved. The Commission’s

---

<sup>9</sup> The Settling Parties indicate, in Article 7.10, that the standard of review that applies to the Settlement is the public interest standard of review. However, in Article 7.11, the Settling Parties indicate that the Rate Schedule 87 and W-1A Tariff provisions are subject to the just and reasonable standard of review. Because the Settlement includes not only payments, but also addresses the depreciation and amortization rates reflected in Rate Schedule 87 and the W-1A Tariff, it is possible that, notwithstanding language indicating that the Settlement is subject to the public interest standard, the Settling Parties, in fact, seek to apply the just and reasonable standard to those depreciation and amortization rates. Consequently, it is unclear which standard applies to those depreciation and amortization rates. We add that, while the Explanatory Statement states that the just and reasonable standard will apply to “future changes” to Rate Schedule 87 and the W-1A Tariff, the Settlement itself does not make this temporal distinction. *See* Explanatory Statement at 10-11 (“The Settlement is subject to the public interest standard of review although *future changes* in Rate Schedule 87 or the W-1A Tariff shall be made pursuant to Section 205 of the FPA if made by the Company and Section 206 if made by a Customer, each subject to the just and reasonable standard.”) (emphasis added).

<sup>10</sup> *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

15. Article III, titled “Lump-Sum Payments,” details the lump-sum, one-time payments that WPSC will make to its customers, the timeline for those payments, and the interest that will apply on refunds if WPSC fails to make those payments in accordance with the timeline. Within 30 days after making such payments, WPSC is directed to file a compliance report with the Commission confirming that it has provided payment in accordance with the terms of the Settlement. We direct WPSC to file this report in eTariff.

16. Article VI, titled “Netting and True-Up,” states that it applies with respect to service provided to a customer in the locked-in period from March 28, 2013, through December 31, 2013. The annual True-Up for 2013 will cause a customer to pay or be paid a net True-Up that recognizes the Fox Plant-related costs actually paid by a customer with respect to the customer’s 2013 service. This True-Up is separate from any lump-sum payment paid to a customer with respect to 2013. Within 30 days after making payments pursuant to the annual True-Up for 2013, WPSC is directed to file a compliance report with the Commission confirming that it has provided payment or been paid in accordance with the terms of the Settlement. We direct WPSC to file this report in eTariff.

17. On September 27, 2013 as supplemented on December 10, 2013, WPSC submitted proposed accounting entries related to the Fox Plant purchase in Docket No. AC13-179-000, including those to clear Account 102, Electric Plant Purchased or Sold. WPSC’s proposed accounting entries clear the purchase through Account 102 and record the original cost and related accumulated depreciation of the acquired assets consistent with Electric Plant Instruction No. 5.<sup>11</sup> WPSC represents that it recognized an acquisition adjustment of \$44.7 million in Account 114, Electric Plant Acquisition Adjustments, for the amount paid in excess of the depreciated original cost of assets acquired. WPSC proposes to amortize these amounts to Account 406, Amortization of Electric Plant Acquisition Adjustments, over a period of 25 years consistent with the retail and wholesale rate recovery. WPSC’s proposed accounting entries related to the purchase of the Fox Plant are approved.

---

<sup>11</sup> 18 C.F.R. Pt. 101 (2014).

18. This letter order terminates Docket Nos. ER13-1040-000, ER13-1040-001, ER13-1040-002, AC13-179-000 and EC13-56-001.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.