

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

March 11, 2005

In Reply Refer To:
Wisconsin Electric Power Company
Docket No. ER05-458-000

James R. Keller
Director, Federal Regulatory Affairs and Policy
Wisconsin Electric Power Company
231 W. Michigan Street, A214
Milwaukee, WI 53203

Dear Mr. Keller:

1. On January 14, 2005, you filed, on behalf of Wisconsin Electric Power Company (Wisconsin Electric), proposed amendments to Wisconsin Electric's Coordination Sales Tariff. Currently, Schedules F, G, H, I and J of Wisconsin Electric's Coordination Sales Tariff provide for sales of certain ancillary services¹ at market-based rates to entities that are not located in Wisconsin Electric's present control area (*i.e.*, 'off-system' sales). The proposed amendments would expand the availability of these services to entities located within Wisconsin Electric's present control area. In addition, the proposed amendments would modify Schedule F, Dynamic Regulation and Frequency Response Service, which currently provides for load regulation and load following services, to also provide for regulation and following of a generator's output. Wisconsin Electric states that generators may require such service, and that the revised tariff sheets will permit generators to request such service in the event it becomes necessary for them to do so.

2. Notice of Wisconsin Electric's January 14, 2005 filing was published in the *Federal Register*,² with protests and interventions due on or before February 4, 2005. WPS Resources Corporation, on behalf of Wisconsin Public Service Corporation, Upper

¹ The five ancillary services provided under these schedules are Dynamic Regulation and Frequency Response Service (a combination of regulation and frequency response service and dynamic scheduling), Energy Imbalance Service, Dynamic Capacity and Energy Service (a combination of regulation and frequency response service and energy imbalance service), Spinning Reserve Service, and Supplemental Reserve Service.

² 70 Fed. Reg. 4836 (2005).

Peninsula Power Company, WPS Power Development Inc. and WPS Energy Services Inc. (collectively, WPS) filed a motion to intervene on February 4, 2005. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motion to intervene of WPS serves to make it a party to this proceeding.

3. Wisconsin Electric's authorization to sell certain ancillary services at market-based rates under its Coordination Sales Tariff was granted under Commission policy established in *Avista Corp.*³ This policy was designed to foster entry into certain ancillary service markets while guarding against potential anti-competitive behavior by third-party suppliers who may have market power. Under this policy, the authority to make sales of certain ancillary services at market-based rates would be granted to third-party ancillary services sellers. The Commission explained that, under this policy, market-based rates are reasonable because the customer will be protected in part by the availability of the same ancillary services at cost-based rates from the transmission provider. This policy, however, does not apply, for example, to sales of ancillary services by a supplier to a traditional franchised public utility affiliated with the supplier, or to sales where the underlying transmission service is on the system of the public utility affiliated with the supplier.

4. Wisconsin Electric's proposed amendments are inconsistent with the policy established in *Avista Corp.*, and Wisconsin Electric has not otherwise provided any support whatsoever for its proposal. First, the proposed service to generators is not one of the ancillary services for which *Avista Corp.* allows sales at market-based rates. Second, the proposed amendments would allow Wisconsin Electric to sell ancillary services to entities located in Wisconsin Electric's control area. In such instances, the underlying transmission service is on the system of a public utility affiliated with Wisconsin Electric, American Transmission Company LLC. That, likewise, is inconsistent with *Avista Corp.* Nor is Wisconsin Electric's proposal to sell the proposed service to generators at market-based rates consistent with its authority to sell capacity and energy at market-based rates, which is currently limited to sales outside the restricted area consisting of the Wisconsin Upper Michigan Systems (WUMS) subregion of the Mid-America Interconnected Network, in which Wisconsin Electric's control area is

³ 87 FERC ¶ 61,223 at 61,881-84, *order on reh'g*, 89 FERC ¶ 61,136 (1999).

located, and the territory served by Wisconsin Electric's affiliate, Edison Sault Electric Company.⁴ We will therefore reject the proposed revisions, without prejudice to Wisconsin Electric refiling its proposal with appropriate support in the future.

By direction of the Commission.

Magalie R. Salas,
Secretary.

⁴ See *Wisconsin Electric Power Company*, 82 FERC ¶ 61,067 (1998). Wisconsin Electric currently has pending before the Commission an application to extend its authority to sell capacity and energy at market-based rates to include sales in the restricted area through the spot markets that the Midwest Independent Transmission System Operator, Inc. plans to operate commencing April 1, 2005. However, that application does not propose to extend Wisconsin Electric authority to make wholesale bilateral sales of capacity and energy in the restricted area.