111 FERC ¶61,085
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Wisconsin Public Service Corporation Docket No. ER05-637-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued April 19, 2005)

1. In this order, we accept for filing, suspend for a nominal period, make effective April 1, 2005, subject to refund, and set for hearing and settlement judge procedures proposed 2004 values for billing post-employment benefits (PEB) and post-employment benefits other than pensions (PBOP) in Wisconsin Public Service Corporation's (Wisconsin Public Service) cost-based formula rates. This order benefits customers because it provides the parties with a forum in which to resolve their dispute over Wisconsin Public Service's proposed 2004 PEB/PBOP values.

Background

2. On February 23, 2005, Wisconsin Public Service filed its 2004 values for billing PEB/PBOP accruals in its cost-based formula rates[1] for full and partial requirements customers. Wisconsin Public Service states that the PEB/PBOP values are to be used for the true-up of estimates to actual costs included in rates for the service provided during 2004. The values are also to be used for the estimated costs for billings for the period April 1, 2005 through March 31, 2006. Wisconsin Public Service states that the Commission requires that utilities providing service under formula rates must file changes in their PEB/PBOP accrual values for Commission review prior to including such amounts in the formula rates. Wisconsin Public Service states that its request for approval for the use of the 2004 PEB/PBOP accruals for billing under the formula rates is in compliance with Commission policy and the provisions of the Settlement Agreement.

[1] The underlying cost-based formula rates were established pursuant to a settlement agreement in Docket No. ER03-606-000 (Settlement Agreement), which the Commission accepted in *Wisconsin Public Service Corp.*, 109 FERC ¶ 61,174 (2004).

20050419-3009 Issued by FERC OSEC 04/19/2005 in Docket#: ER05-637-000

3. Wisconsin Public Service proposes actual 2004 PEB/PBOP values of $10,477,811 on a company-wide basis. This compares to estimated 2004 PEB/PBOP values of $9,002,626 that were billed during 2004.

4. Wisconsin Public Service requests waiver of the Commission's prior notice requirement to permit an effective date of April 1, 2005, stating that it filed the PEB/PBOP accrual values filing as soon as it was possible after completion of actuarial studies following the 2004 calendar year. Wisconsin Public Service states that the requested effective date is in accordance with the Settlement Agreement and that Commission policy is to grant waiver of the prior notice requirement where the rate change and its effective date are prescribed by an agreement on file with the Commission.

Notice and Pleadings

5. Notice of Wisconsin Public Service's filing was published in the *Federal Register*, 70 Fed. Reg. 11,003 (2005), with protests and interventions due on or before March 16, 2005. On March 16, 2005, the Algoma Group[2] filed a motion to intervene and protest. On March 31, 2005, Wisconsin Public Service filed an answer to the protest.

6. Algoma Group argues that Wisconsin Public Service has not provided adequate explanation or cost support for its 2004 PEB/PBOP accrual values and has not demonstrated compliance with the Commission's PBOP policy.[3] Accordingly, Algoma Group requests that the Commission issue a deficiency letter requiring Wisconsin Public Service to submit testimony and exhibits, including actuarial studies used to derive the 2004 PEB/PBOP accrual values. In the alternative, Algoma Group requests that the Commission accept the filing, suspend it and make it effective subject to refund, and establish hearing procedures. Finally, Algoma Group requests that the Commission deny Wisconsin Public Service's request for waiver of the prior notice requirement because the filing is patently deficient.

---

[2] The members of the Algoma Group are: the Cities of Manitowoc, Marshfield and Stratford, Wisconsin, the Badger Power Marketing Authority, the Alger Delta Cooperative Electric Association, and Washington Island Electric Cooperative.

[3] *Post-Employment Benefits Other Than Pensions*, 61 FERC ¶ 61,330 (1992), *order on reh'g*, 65 FERC ¶ 61,035 (1993).

20050419-3009 Issued by FERC OSEC 04/19/2005 in Docket#: ER05-637-000

Discussion

Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R.§ 385.214 (2004), Algoma Group's timely, unopposed motion to intervene serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 384.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to allow the answer, and accordingly we will reject Wisconsin Public Service's answer.

Commission Determination

8. Our preliminary review of the proposed 2004 PEB/PBOP accrual values indicate that the values have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed 2004 PEB/PBOP values for filing, suspend them for a nominal period, to become effective April 1, 2005, subject to refund, and set them for hearing and settlement judge procedures.

9. Our review of the Settlement Agreement and formula rates indicates that they prescribe the proposed April 1, 2005 effective date.[4] Accordingly, we will grant waiver of prior notice to permit an effective date of April 1, 2005.[5]

10. 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 commence. To aid the parties in their settlement efforts, the hearing will be held in abeyance and a settlement judge shall be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[6] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

---

[4] *See* Settlement Agreement, Appendix A, Rate Schedule W-1A, Article B, section 2.b (full requirements service), and Appendix B, Rate Schedule W-2A, Article B, section 3.a (partial requirements service).

[5] *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

[6] 18 C.F.R. § 385.603 (2004).

20050419-3009 Issued by FERC OSEC 04/19/2005 in Docket#: ER05-637-000

otherwise the Chief Judge will select a judge for this purpose.[7] The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning 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 or provide for the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Wisconsin Public Service's proposed 2004 PEB/PBOP accrual values are hereby accepted for filing and suspended for a nominal period, to become effective, subject to refund, on April 1, 2005.

(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 the justness and reasonableness of Wisconsin Public Service's proposed 2004 PEB/PBOP accrual values, as discussed in the body of this order. However, the hearing will 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 (2004), 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 the 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 by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and the Commission 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

---

[7] 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 the date of this order. FERC's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

20050419-3009 Issued by FERC OSEC 04/19/2005 in Docket#: ER05-637-000

discussions continue, the settlement judge shall file a report at least every 60 (sixty) days thereafter, apprising the Chief Judge and the Commission 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 administrative law judge, to be designated by the Chief Judge, shall convene a prehearing conference in these proceedings, to be held within approximately fifteen (15) days of the date of the presiding judge's appointment, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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 for in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.