

109 FERC ¶ 61,130  
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 Power & Light Company

Docket No. ER04-1135-000

ORDER ACCEPTING AND SUSPENDING RATE SCHEDULES AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued November 1, 2004)

1. In this order we accept for filing Wisconsin Power & Light Company's (WP&L) proposed Rate Schedules PR-1, W-2A, W-3A, and W-4A, suspend them for a nominal period, to become effective January 1, 2005, subject to refund and establish hearing and settlement judge procedures. This order benefits customers by ensuring the justness and reasonableness of the proposed rate increases.

**I. Background**

2. The current rates in WP&L's wholesale Rate Schedules W-2A and W-4A are the result of a settlement in Docket No. ER03-684-000, wherein WP&L and its cooperative customers agreed to leave the increased settlement rates in effect until January 1, 2005. The settlement also provided for elimination of the automatic fuel adjustment clause (FAC) from Rate Schedule W-2A.<sup>1</sup> The current rates in Rate Schedules W-3A and PR-1 are also the result of a settlement which increased rates. The settlement rates reflected the inclusion of a FAC and were accepted in Docket No. ER02-977-000.<sup>2</sup>

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<sup>1</sup> Wisconsin Power & Light Co., 106 FERC ¶ 61,112 (2004).

<sup>2</sup> Wisconsin Power & Light Co., 99 FERC ¶ 61,036 (2002).

3. On August 17, 2004, WP&L filed proposed rate increases to its wholesale customers under the four rate schedules identified above. WP&L proposes to increase its rates for wholesale service by a total of \$12.2 million or 10.3 percent. WP&L proposes to increase the rates for: (1) partial requirements customers under rate schedule PR-1 by \$1.9 million annually or 9.4 percent; (2) cooperative customers under rate schedule W-2A by \$3.8 million annually or 15 percent; and (3) municipal customers under rate schedule W-3A by \$6.5 million annually or 8.9 percent. WP&L also proposes to increase interruptible rates applicable to cooperatives and municipals under rate schedule W-4A.

4. WP&L states that the proposed rate increase is driven by increases in fuel, administrative and general (A&G) costs, reduced non-firm sales revenues used, in part, to reduce WP&L's wholesale revenue requirements, and general inflation. Furthermore, WP&L asserts that such increases are necessary to allow WP&L the opportunity to earn a reasonable rate of return on its utility investments necessary to serve its wholesale customers. WP&L requests an effective date of January 1, 2005.

## **II. Notices and Interventions**

5. Notice of WP&L's filing was published in the *Federal Register*, 69 Fed. Reg. 53,057 (2004), with protests or interventions due on or before September 7, 2004. Wisconsin Public Power Inc, Municipal Wholesale Power Group, and Great Lakes Utilities (collectively, Wholesale Munis) filed a joint protest. Badger Cooperative Group (Badger Cooperative) filed a motion to intervene and protest. Wisconsin Public Power Inc, filed a motion to intervene, and Municipal Wholesale Power Group, and Great Lakes Utilities jointly filed a motion to intervene. WP&L filed an answer, and Wholesale Munis filed a response to WP&L's answer.

6. The Wholesale Munis protest WP&L's proposal to credit the non-qualified decommissioning funds associated with the Kewanee Nuclear plant back to wholesale customers over the remaining operating license term, which expires in 2013. The Wholesale Munis claim that wholesale customers should receive a lump sum credit to avoid creating intergenerational inequity. Additionally, the Wholesale Munis recognize that some changes to WP&L's FAC may be necessary to address purchases from the Midwest ISO energy markets that meet the criteria for economy purchases; however, the Wholesale Munis state that WP&L's proposed language is overly broad and may result in inappropriate charges being flowed through the fuel clause. Moreover, the Wholesale Munis state that WP&L has made a number of other mistakes in its cost of service, including miscalculating the total applicable revenue credits, allocating too much A&G

expenses to wholesale customers,<sup>3</sup> reflecting depreciation incurred at the holding company level and applying a rate of return on common equity of 11.00 percent. The Wholesale Munis request a maximum five-month suspension and a hearing.

7. Badger Cooperative states that WP&L's filing lacks sufficient documentation to assess the reasonableness of individual cost items; however, Badger Cooperative indicates that it has been able to identify several concerns with the filing. In addition to the issue of whether or not a FAC is appropriate for Rate Schedule W-2A, Badger Cooperative doubts the mechanical accuracy of the proposed FAC. For example, Badger Cooperative states, it is unclear whether FAC revenues have been synchronized with fuel and purchased energy expenses. Additionally, Badger Cooperative expresses concern that the proposed rate increase may result from WP&L's transfer of the Kewanee Nuclear plant even though the Commission relied upon WP&L's representation that the transfer would not affect electric service rates. Moreover, Badger Cooperative expresses concern about other issues, including the rate of return, the increase in capacity reserves and the prudence of certain purchase power transactions. Badger Cooperative requests the Commission to suspend the proposed rates for the maximum five-month period, set the proceeding for hearing and appoint a settlement judge prior to the hearing so that parties may resolve their disputes.

### **III. Discussion**

8. Pursuant to Rule 214, of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest and answer unless otherwise ordered by the decisional authority. We are not persuaded to accept WP&L's or Wholesale Munis' answer and will, therefore, reject them.

9. WP&L's proposed rate schedules 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.

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<sup>3</sup> The Wholesale Munis point out that that while total company A&G expenses have increased 2.3 percent over the last two years, the amount of A&G expenses allocated to wholesale customers has increased 50.1 percent. The Wholesale Munis state that this increase is due to WP&L's improper allocation of certain A&G credits.

10. Our preliminary analysis indicates that WP&L's proposed rate schedules have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept the proposed rate schedules for filing, suspend them for a nominal period, to become effective January 1, 2005, as requested, subject to refund, and set them for hearing and settlement judge procedures.

11. While we are setting these matters for a trial-type evidential 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.<sup>4</sup> 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.<sup>5</sup> 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 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) WP&L's proposed rate schedules are hereby accepted for filing, suspended for a nominal period, to become effective on January 1, 2005, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and 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

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<sup>4</sup> 18 C.F.R. § 385.603 (2004).

<sup>5</sup> 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 listing of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) - click on Office of Administrative Law Judges).

held concerning the justness and reasonableness of WP&L's proposed rate schedules. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in 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 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 in writing or 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 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 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 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 in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.