

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
WISCONSIN ELECTRIC POWER COMPANY)	
for authority to increase its rates for the sale)	Case No. U-12725
of electricity in Michigan.)	
_____)	

At the December 20, 2001 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

ORDER REOPENING PROCEEDINGS

On November 14, 2000, Wisconsin Electric Power Company (Wisconsin Electric) filed an application to increase the electric rates in its Upper Peninsula service territory by \$3.74 million annually. At a prehearing conference on January 11, 2001, Administrative Law Judge Barbara A. Stump (ALJ) granted leave to intervene to International Paper Company, the Michigan Community Action Agency Association (MCAAA), and the Michigan Environmental Council and the Public Interest Research Group in Michigan (MEC/PIRGIM). The Commission Staff also participated. The ALJ conducted evidentiary hearings on May 10, 11, and 23 and June 5, 2001 and issued a Proposal for Decision (PFD) on August 21, 2001. The PFD's principal recommendation was to reject the application on the ground that the test year that Wisconsin Electric used to support its request for rate relief did not take into account the utility's transfer of its transmission assets to the American Transmission Company LLC (ATC).

On September 11, 2001, Wisconsin Electric, International Paper, MCAAA, and the MEC/PIRGIM filed exceptions. On September 25, 2001, Wisconsin Electric and International Paper filed replies to exceptions. Although there are a number of issues raised in the exceptions, only one, related to the transfer of the transmission assets to ATC, is dispositive for purposes of this order. Because the Commission is remanding this case to the ALJ for further proceedings, it is not necessary to address the other issues noted in the exceptions at this time.

Wisconsin Electric prepared its rate case by starting with reported financial results for a 1998 historical test year and making adjustments for subsequent changes and forward-looking circumstances to project a 2000 test year. Wisconsin Electric's case thus includes transmission assets in its rate base, even though it formally transferred those assets to ATC on January 1, 2001. ATC is a company formed under Wisconsin law to provide wholesale transmission services, beginning January 1, 2001, by consolidating the transmission assets of Wisconsin-based electric utilities. See Wis Stat 196.485. ATC's operation includes transmission facilities and service in the Upper Peninsula. Wisconsin Electric says that including the ATC transaction in the rate case would have altered many of the computations, most directly by reducing rate base for the transfer of the assets and reflecting the post-transfer charges payable to ATC for transmission service as an additional operating expense, but also in many other respects.

The PFD determined that Wisconsin Electric's treatment of the transmission assets, as reflected in its proposed test year, was an inadequate basis for setting rates. The ALJ found that Wisconsin Electric's evidentiary presentation did not meet the Commission's historical standard for rate cases, which requires the test year to fairly represent the prospective period during which the rates will become effective. See order dated May 7, 1991, Case No. U-9346, at 4-5. In addition to faulting Wisconsin Electric for using stale data based on 1998 financial reports, she

stated that the utility had failed to update the historical data for known and projected changes in circumstances, of which the most notable was the January 1, 2001 transfer of transmission assets to ATC. She said that Wisconsin Electric had planned the transaction well in advance of 2001 and that closing on the transfer the day after the test year ended did not relieve the utility from making rate case adjustments for it. She said that the adjustments were necessary to ensure that the revenues and expenses used to set rates would match the circumstances when the rates would become effective.

Wisconsin Electric argues that its treatment of the transmission assets was reasonable and that the ALJ erred in rejecting it. It contends that its rate case presentation makes consistent use of the same data as the comparable rate application that it filed in Wisconsin in September 1999, that it is not appropriate to impose a further rate adjustment based on a possibility of lowering the revenue requirement, that the adjustment could actually increase rates, and that regulatory lag is not a reason to invalidate a projected test year. It contends that the Commission has previously required a rate case to reflect only those changes that occur prior to or during a projected test year.

Wisconsin Electric claims that, when it filed the application, it did not know, and could not determine, whether the ATC transaction would close on time in light of pending regulatory approvals or what charges it would thereafter pay ATC under transmission tariffs subject to regulation by the Federal Energy Regulatory Commission (FERC). It says that incorporating the transaction in its rate case would require widespread changes that it cannot now quantify or estimate reliably.

Under the circumstances, it says that treating the transmission assets as part of the 2000 test year rate base is a reasonable proxy for the post-2001 effects of the ATC transaction.

International Paper argues that Wisconsin Electric may not rely on deficient evidence, but that the burden of proof requires the utility to provide evidence supporting an appropriate test year,

even if no other party presents an alternative test year. International Paper claims that Wisconsin Electric was aware well in advance that the ATC transfer would close on schedule and that it had secured FERC approval, and informed its shareholders, of the ATC transaction in March 2000. International Paper says that Wisconsin Electric offers nothing more than the unsupported opinion of its witnesses to assert that its rate treatment is in fact a reasonable representation of the rate effects of transferring the transmission assets to ATC.

The Commission finds that Wisconsin Electric's evidentiary support for its requested rate increase fails to account for the means by which it currently obtains transmission service. As such, its presentation is an inadequate basis for ratemaking. Transmission service is a basic component of providing retail electric service, and the assets associated with transmission are material to a determination of the cost of providing utility service. The Commission agrees with the ALJ that Wisconsin Electric's rate case presentation, as it now stands, is not an accurate or reasonable reflection of the circumstances that can be expected when the rates would take effect. The deficiencies in Wisconsin Electric's evidentiary presentation cannot be attributed to regulatory lag because the applicant knew, or should have known, that the ATC transaction would be completed contemporaneous with its rate request.

Under R 460.17401, the Commission has the discretion to reopen the record on its own motion. The rule provides for reopening to correct an evidentiary deficiency if necessary for the development of a full and complete record or there has been a change in conditions of fact such that the public interest requires reopening. The Commission finds that it would not be in the public interest to simply dismiss the application outright. Dismissal could jeopardize the time and resources that the parties and the Commission have already invested in this case, particularly if Wisconsin Electric were to restart the process by filing a new application. The Commission finds

that reopening is necessary to ensure the development of a full and complete record and that it is in the public interest to examine the rate effects of the ATC transfer.

On remand, Wisconsin Electric shall file supplemental evidence that corrects the deficiencies discussed in this order, either by adjusting its test year for the effects of the ATC transfer or by developing a more current test year that reflects the transfer. Thereafter, the other parties shall have an opportunity to file appropriate rebuttal evidence, but the parties may not use the reopened proceedings to raise new issues that are beyond the scope of this order. The ALJ shall conduct a hearing, issue a proposal for decision (which may take the form of a supplement to the existing PFD, if appropriate), and set a schedule for exceptions and replies to exceptions.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. The proceedings should be reopened to permit Wisconsin Electric to provide evidence of the rate effects of the transfer of its transmission assets to ATC and related arrangements for securing transmission service on and after January 1, 2001.

THEREFORE, IT IS ORDERED that:

A. The proceedings shall be reopened and remanded to the Administrative Law Judge to permit Wisconsin Electric Power Company to provide evidence of the rate effects of the transfer of its transmission assets to American Transmission Company LLC and related arrangements for securing transmission service on and after January 1, 2001.

B. On remand, the Administrative Law Judge shall conduct further proceedings consistent this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of December 20, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

B. On remand, the Administrative Law Judge shall conduct further proceedings consistent this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

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Suggested Minute:

“Adopt and issue order dated December 20, 2001 reopening the proceedings to develop a complete record with respect to the transfer of transmission assets by Wisconsin Electric Power Company and its effects upon the pending rate application, as set forth in the order.”