

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

At the January 21, 2003 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**

On September 16, 2002, the Commission issued an order approving base rates for Wisconsin Electric Power Company (Wisconsin Electric). On October 16, 2002, Wisconsin Electric and International Paper Company filed petitions for rehearing. On November 6, 2002, Wisconsin Electric filed an answer opposing International Paper's petition for rehearing.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACS, R 460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

In its petition for rehearing, Wisconsin Electric states that it made a request for authorization to use deferred accounting and escrow treatment for nitrogen oxide (NOx) redemption costs and to reconcile those costs in annual power supply cost recovery (PSCR) reconciliation proceedings. It says that none of the parties opposed this request, that the Proposal for Decision recommended its adoption, but that the September 16, 2002 order did not address it. The petition for rehearing renews the request, and the Staff filed an answer on October 17, 2002 indicating that it did not oppose the request. The Commission finds that it should correct an oversight in its earlier order and grant the request.

In its petition for rehearing, International Paper argues that treating the wholesale transmission charges payable to the American Transmission Company LLC (ATC) as PSCR costs will have unintended consequences. International Paper contends that the Commission would not have reached this result had it known that Wisconsin Electric would be seeking to recover in Case No. U-13556, its 2003 PSCR plan, transmission costs that increased by 77% over the amount used to set rates in this case. International Paper argues that increases of this magnitude will inflict disproportionate harm on large industrial customers with high load factors, who will incur the rate effects through PSCR charges assessed on the basis of energy consumption, without regard to load characteristics that would allocate more of the costs to other customers.

The Commission finds that International Paper's petition does not meet the standard for rehearing in Rule 403. International Paper's claim that Wisconsin Electric is requesting an unexpectedly large increase in its PSCR factor to recover increased transmission charges does not qualify as an unintended consequence of the order within the meaning of Rule 403. The September 16, 2002 order at 14-15 acknowledged that ATC charges would vary in amount from year to year and deemed such variations to be consistent with the recovery of the costs through the

PSCR factor, just as other types of PSCR costs also exhibit variability. The precise dollar amount of increase to be expected in 2003 did not appear on the record in this case,<sup>1</sup> but the order did not make the Commission's determinations contingent upon a limited range of transmission charges that per se excludes the charges cited in International Paper's petition.

On November 6, 2002, the Association of Businesses Advocating Tariff Equity (ABATE) filed a brief addressing the issue raised in International Paper's petition for rehearing, accompanied by a request to file the brief as an amicus curiae. On November 27, 2002, Wisconsin Electric filed an answer opposing the request. Because there is no provision in the Commission's rules or procedures for a non-party to file an amicus brief, the Commission need not address the substance of the brief, which is, in large part, redundant to the position taken by International Paper.<sup>2</sup> Although ABATE cites Rule 207 of the Commission's Rules of Practice and Procedure, R 460.17207, which provides for non-parties to make non-evidentiary statements before the presiding officer during a rate proceeding, the record in this case has closed, and the time contemplated by the rule for making a statement has passed.

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.

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<sup>1</sup> International Paper did provide a projection of ATC rates for 2001-06. 9 Tr. 1163. Wisconsin Electric claims that the projected rate for 2003 is consistent with the transmission costs it is proposing in Case No. U-13556.

<sup>2</sup> International Paper and ABATE are represented by the same law firm. It is difficult to see how ABATE's interests with respect to the issue could diverge in any material respect from those advanced by International Paper on the record in this case.

b. Wisconsin Electric's petition for rehearing should be granted, and it should be authorized to implement its request for deferred accounting, escrow, and reconciliation treatment of its NOx redemption costs.

c. International Paper's petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that:

A. The petition for rehearing filed by Wisconsin Electric Power Company is granted, and Wisconsin Electric Power Company is authorized to implement its request for deferred accounting, escrow, and reconciliation treatment of its nitrogen oxide redemption costs.

B. The petition for rehearing filed by International Paper Company is denied.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

( S E A L )

/s/ Laura Chappelle  
Chairman

By its action of January 21, 2003.

/s/ David A. Svanda  
Commissioner

/s/ Dorothy Wideman  
Its Executive Secretary

/s/ Robert B. Nelson  
Commissioner

b. Wisconsin Electric's petition for rehearing should be granted, and it should be authorized to implement its request for deferred accounting, escrow, and reconciliation treatment of its NOx redemption costs.

c. International Paper's petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that:

A. The petition for rehearing filed by Wisconsin Electric Power Company is granted, and Wisconsin Electric Power Company is authorized to implement its request for deferred accounting, escrow, and reconciliation treatment of its nitrogen oxide redemption costs.

B. The petition for rehearing filed by International Paper Company is denied.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

By its action of January 21, 2003.

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Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated January 21, 2003 granting the petition for rehearing filed by Wisconsin Electric Power Company, but denying the petition for rehearing filed by International Paper Company, as set forth in the order.”