

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
WISCONSIN ELECTRIC POWER COMPANY,)	
d/b/a WE ENERGIES, for approval, pursuant to)	Case No. U-13545
Sec. 6j(13)(b) of 1982 PA 304, of capacity)	
charges associated with purchase agreements)	
in excess of six months.)	
_____)	

In the matter of the application of)	
WISCONSIN ELECTRIC POWER COMPANY,)	
d/b/a WE ENERGIES, for approval of a power)	Case No. U-13556
supply cost recovery plan and factors for the)	
calendar year 2003 and related matters.)	
_____)	

At the January 22, 2004 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

OPINION AND ORDER

History of Proceedings

On September 30, 2002, Wisconsin Electric Power Company, d/b/a/ We Energies, (Wisconsin Electric) filed an application in Case No. U-13545 seeking approval of the capacity charges associated with the Rainey River Energy Corporation (Rainey River) and Ameren Energy Marketing Company (Ameren) long-term purchased power contracts.

Also on September 30, 2002, Wisconsin Electric filed an application in Case No. U-13556 seeking approval of its 2003 power supply cost recovery (PSCR) plan, including capacity charges in excess of six months for agreements with Zion Energy, LLC, (Zion) and Dynegy Power Marketing, Inc., (Dynegy) PSCR factors, and its five-year forecast.

At a prehearing conference on November 13, 2002, Administrative Law Judge James N. Rigas (ALJ) granted leave to intervene to the Industrial Power User Coalition (IPUC) in Case No. U-13556. The IPUC is the International Paper Company and the Louisiana Pacific Company, customers of Wisconsin Electric. The Commission Staff (Staff) also participated.

On December 16, 2002, Wisconsin Electric's motion to consolidate Cases Nos. U-13545 and U-13556 was heard and granted.

The ALJ conducted a hearing on March 24, 2003. The parties stipulated to binding into the record, without cross-examination, all pre-filed testimony and the admission of all pre-filed exhibits (Exhibits A-1 through I-23). In addition, the IPUC's exhibits (Exhibits I-24 through I-29) were admitted as stipulated by the parties.

Thereafter, Wisconsin Electric, the IPUC, and the Staff filed briefs, and Wisconsin Electric and the IPUC filed reply briefs. On June 10, 2003, the ALJ issued a Proposal for Decision (PFD). The IPUC filed exceptions and Wisconsin Electric filed replies to exceptions.

Purchased Power

The IPUC asserts that Wisconsin Electric has failed to justify in its 2003 PSCR plan any movement towards more purchased power, and away from company-owned generation, when the evidence shows that company-owned generation is the less expensive option. The IPUC contends that the utility bears the burden of proving that its decisions are justified and argues that Wisconsin Electric did not meet its burden. Instead, the IPUC claims that the ALJ erred by citing as support

for finding in Wisconsin Electric's favor that the IPUC failed to demonstrate the imprudence of the utility's power purchases.

Wisconsin Electric, however, claims that the company presented substantial testimony explaining its power purchases and that the ALJ correctly found in favor of the company on this issue. Wisconsin Electric argues that the IPUC's criticism of its power purchases fails to take into account the different circumstances existing between its 2003 PSCR plan and the sources and average cost of power presented in its 2000 test year in Case No. U-12725. Wisconsin Electric claims that its 2003 PSCR plan is based upon application of the principles of economic dispatch to conditions projected for the plan year. In addition, Wisconsin Electric asserts that the IPUC failed to take into account witness testimony on changing circumstances that affect its power purchases for 2003 such as planned outages, decreased generation capabilities, and increased power supply requirements.

Furthermore, Wisconsin Electric claims that the IPUC's arguments are merely updates of arguments that the IPUC made in Wisconsin Electric's 2002 PSCR plan case, which the Commission has already rejected. See, Case No. U-13107, pp. 2-3. In Wisconsin Electric's 2002 PSCR plan case, the ALJ and the Commission rejected the IPUC's criticisms of Wisconsin Electric's power purchases as being "superficial." *Id.* At that time, as here, the IPUC compared Wisconsin Electric's planned power purchases for the plan year with reported actual data for year 2000. Where Wisconsin Electric's planned power purchases resulted in greater costs over year 2000 actual costs, the IPUC claimed that those increased costs were not prudent.

Consistent with our prior decision, the Commission continues to find that the IPUC's comparison of plan year costs with actual costs from 2000 to be an insubstantial basis for evaluating the reasonableness of Wisconsin Electric's power purchases. In Case No. U-13107, the

Commission reasoned, “Making a simple comparison between a PSCR plan and reported data two years earlier provides little insight into the utility’s planning decisions. Power supply costs and customer demand and energy requirements can vary from year to year for any number of reasons, including weather, customer usage, the economy, and other circumstances that may or may not be foreseeable. In this respect, the Commission agrees with the ALJ that the comparison used as the basis for the IPUC’s criticism of the plan is superficial and provides an insubstantial basis for evaluating its reasonableness.” *Id.* In this case, the ALJ appropriately found that Wisconsin Electric supplied sufficient evidence of the reasonableness of its power purchases in light of increases in Wisconsin Electric’s system load requirements and decreases in its generation capabilities for the plan year. See, PFD at 6, 10. Consequently, the Commission adopts the ALJ’s findings that Wisconsin Electric’s power purchases for the 2003 PSCR plan year are reasonable.

The IPUC asserts that not only are Wisconsin Electric’s power purchases excessive in amount, but also in price. In support of its position, the IPUC presented testimony comparing the utility’s purchase prices to projections published in Megawatt Daily. Although the Commission rejected a similar comparison in Wisconsin Electric’s 2002 PSCR plan case, the IPUC continues to argue that the index is the best available yardstick by which to measure the prudence of the utility’s purchases. The IPUC contends, in its exceptions, that the ALJ inappropriately shifted the burden of proof in this case when he rejected the comparison noting that the index “failed to account for capacity charges.” IPUC’s Exceptions, p. 4.

The IPUC again resorts to using data from Case No. U-12725 to support its position. The IPUC argues that the cost of Wisconsin Electric’s power purchases should be limited to the level approved in the utility’s PSCR base established in Case No. U-12725. The IPUC further argues,

in its exceptions, that the utility has offered no explanation for costs above those authorized in its PSCR base.

Wisconsin Electric responds by asserting that there is no basis for concluding that the ALJ erroneously placed the burden of proof on this issue. Quoting extensively from the PFD, Wisconsin Electric argues that the ALJ relied upon clear evidence showing the reasonableness of its proposed power purchases. Furthermore, quoting extensively from the Commission decision in Case No. U-13107, the utility points out that the IPUC made similar comparisons in its 2002 PSCR plan case that were previously rejected by this Commission. The utility also notes that many of the projected power costs at issue in this case are pursuant to long-term contracts that were already approved by this Commission in Case No. U-13266.

The Commission finds that the costs of power purchases proposed in this PSCR plan case are reasonable and should be approved. As the ALJ noted, much of Wisconsin Electric's projected power purchases are pursuant to long-term contracts that were previously approved in Case No. U-13266. The capacity charges in the four new contracts (Rainey River, Ameren, Zion, and Dynegy) are approved for the purposes of Sec. 6j(13)(b). The Commission also reiterates its previously stated determination from Case No. U-13107 that spot market prices, like the ones produced in Megawatt Daily, reflect ongoing market volatility and make no provision for the costs of obtaining a long-term contract. The ALJ also correctly noted that the Megawatt Daily comparison fails to take into account capacity charges, which comprises much of the cost of power purchases.

Transmission Charges

The IPUC contends that Wisconsin Electric failed to justify increases in transmission costs over the level of costs built into the utility's PSCR base. The IPUC argues that the increase is the

result of the utility's transfer of its transmission assets to its affiliate, the American Transmission Company, LLC (ATC), and the consequent need to buy back transmission services at substantially higher rates than those embedded in the utility's base. The IPUC's witness admits that the Commission approved PSCR treatment of ATC fees in Case No. U-12725, but contends that the expected customer benefits that would flow from the asset transfer have not materialized. The IPUC further contends that the ALJ did not cite any evidence that the increased costs will bring about any increased customer benefits. Rather, the IPUC contends that the ALJ seemed to accept the utility's argument that the Commission now permits the inclusion of transmission costs in the PSCR factor, the transmission rates are subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC), and therefore the Commission must not now inquire into the prudence of those expenses.

Moreover, the IPUC argues that the PSCR treatment of ATC fees is the subject of an appeal involving Case No. U-12725. Until that appeal is resolved, the IPUC continues to object to the approval of these costs without evidentiary justification. The IPUC encourages the Commission to voluntarily correct this matter on its own. Consequently, the IPUC argues that all of the increased transmission costs over the level approved in Wisconsin Electric's PSCR base should be disallowed.

Wisconsin Electric asserts that the IPUC's claims are baseless and must be rejected. To begin with, the utility quotes the PFD where the ALJ found that the transfer of the utility's transmission assets to ATC, and ATC's involvement in a regional transmission organization, have resulted in specific customer benefits. The benefits identified are improved system reliability through comprehensive, long-term planning for making needed improvements on a regional basis. Wisconsin Electric's Reply to Exceptions, p. 11, quoting the PFD at pp. 11-12. Furthermore,

Wisconsin Electric argues that the PFD correctly noted that the Commission already has found that the transfer of transmission assets to ATC was reasonable and prudent in the September 16, 2002 order in Case No. U-12725. Absent evidence of a change of circumstances, which the utility argues that the IPUC presented none, the IPUC's claim in an impermissible collateral attack on the Commission's prior ruling.

Wisconsin Electric reiterates its position that the FERC sets the applicable transmission rates and it is not the role of this Commission to determine that those FERC-approved rates are just and reasonable. The utility contends that it has no alternative for obtaining the necessary transmission services.

Moreover, Wisconsin Electric contends that the Commission has already approved transmission fees over those approved in the utility's PSCR base in its 2002 PSCR plan case, Case No. U-13107. The utility asserts that the 2003 projected costs are a less than 11% increase over those approved for 2002. The increased costs include costs for ATC's membership in the Mid-America Independent Network and the Midwest Independent Transmission System Operator. Consequently, Wisconsin Electric contends, these costs were reasonably and prudently incurred and should not be disallowed.

The Commission agrees with the finding of the ALJ to permit the inclusion of projected transmission costs over those included in the utility's PSCR base in this case. The Commission has already found, in Case No. U-12725, the transfer of transmission assets to ATC to be prudent and, absent a claim of error or newly discovered evidence or circumstances, will not revisit its decision. Additionally, ATC's rates are subject to FERC jurisdiction and, although the Commission may choose to intervene in a FERC proceeding addressing ATC's rates, once the rates are established they cannot be second-guessed by this Commission. Wisconsin Electric has

testified that it has no alternative source for these transmission services and the Commission has previously approved the inclusion of transmission costs in the PSCR factor. Consequently, the Commission finds that the projected incremental costs for transmission services in Wisconsin Electric's 2003 PSCR plan case are reasonable.

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.; 1982 PA 304, as amended, MCL 460.6h et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC R. 460.17101 et seq.

b. Wisconsin Electric's 2003 PSCR plan, including the associated capacity charges, and its factors are reasonable and prudent, and should be approved.

THEREFORE, IT IS ORDERED that:

A. Wisconsin Electric Power Company's 2003 power supply cost recovery plan is approved.

B. Wisconsin Electric Power Company's capacity charges for long-term purchased power contracts with the Rainey River Energy Corporation, Ameren Energy Marketing Company, Zion Energy, LLC, and Dynegy Power Marketing, Inc., are approved.

C. The authorized power supply cost recovery factor effective for Wisconsin Electric Power Company's 2003 plan year is 4.83 mills per kilowatt-hour.

D. Within 30 days of the date of this order, Wisconsin Electric Power Company shall file tariff sheets reflecting the power supply cost recovery factor approved by this order.

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/ J. Peter Lark
Chair

(S E A L)

/s/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of January 22, 2004.

/s/ Mary Jo Kunkle
Its Executive Secretary

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supply cost recovery plan and factors for the)
calendar year 2003 and related matters.)

Case No. U-13556

Suggested Minute:

“Adopt and issue order dated January 22, 2004 approving Wisconsin Electric Power Company’s power supply cost recovery plan and factors for the 12-month period ended December 31, 2003, and certain long-term power supply contracts, as set forth in the order.”