

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
WISCONSIN PUBLIC SERVICE CORPORATION)	
for approvals pursuant to Section 6j(13)(b) of 1982)	
PA 304 and Section 32(c) of the Public Utility)	Case No. U-14040
Holding Company Act of 1935, and deferred)	
accounting approvals.)	
_____)	

At the August 10, 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

ORDER APPROVING SETTLEMENT AGREEMENT

On February 27, 2004, Wisconsin Public Service Corporation (WPS Corp) filed an application seeking approvals arising out of the sale of the Kewaunee Nuclear Power Plant (KNPP) by WPS Corp and Wisconsin Power and Light Company (WPL) as sellers to Dominion Energy Kewaunee, Inc. (Dominion). Specifically, WPS Corp sought (i) approval, pursuant to Section 6j(13)(b) of 1982 PA 304 (Act 304), MCL 460.6j(13)(b), of the capacity charges associated with the purchase power agreement (PPA) between WPS Corp and Dominion, (ii) specific determinations, pursuant to Section 32(c) of the Public Utility Holding Company Act of 1935 (PUHCA), as amended, 15 USC 79z-5a, regarding the KNPP's status as an eligible facility, (iii) approval to defer for accounting purposes all gains and losses resulting from the sale and the transaction and transition costs incurred by WPS Corp to achieve the sale, and (iv) approval to continue to depreciate all

assets transferred to Dominion until the closing date of the sale. The application was accompanied by a redacted version of the testimony and exhibits of Bradley A. Johnson and Paul J. Spicer.

Pursuant to due notice, a prehearing conference was held on April 21, 2004. Administrative Law Judge Sharon L. Feldman presided over the proceeding and the Commission Staff entered its appearance. The petitions to intervene of Attorney General Michael A. Cox, Great Lakes Pulp Company, and Dominion were granted.¹

On May 4, 2004, a hearing was held to address the issuance of a protective order that was subsequently issued on May 11, 2004. Thereafter, confidential information supporting WPS Corp's application was filed under seal and the case proceeded in a confidential manner.

In its application and supporting testimony, WPS Corp represents that the KNPP is located in Kewaunee County, Wisconsin, and was placed into commercial operation in 1974. WPS Corp owns 59% and WPL owns 41% of the KNPP. Since 1974 and as recent as WPS Corp's last electric rate case before the Commission, Case No. U-13688, WPS Corp's costs associated with the ownership and operation of the KNPP were included in the company's cost of service in determining WPS Corp's revenue requirement. Pursuant to an asset sale agreement dated November 7, 2003, WPS Corp and WPL have agreed to sell the KNPP to Dominion. In accordance with the agreement, WPS Corp and WPL will transfer their undivided interests in the KNPP, together with appurtenant facilities and equipment, to Dominion. Subject to certain adjustments and prorations, Dominion will pay \$220 million to WPS Corp and WPL for 100% ownership and control of KNPP. The purchase price will be allocated in relation to WPS Corp's and WPL's current ownership interests in the KNPP. WPS Corp and WPL are transferring their qualified nuclear decommissioning trust funds to Dominion but are retaining their non-qualified

¹At a hearing held on May 4, 2004, WPL's petition to intervene, limited to addressing the issuance of a protective order, was granted without objection.

nuclear decommissioning trust funds for amortization to their customers, the collective pre-tax value of which at the sale's closing is expected to be approximately \$193 million.

WPS Corp further represents that in connection with the sale, WPS Corp and WPL will enter into PPAs with Dominion for the purchase of virtually all of the capacity, energy, and associated ancillary services from the KNPP through the end of the current Nuclear Regulatory Commission (NRC) operating license, which expires on December 21, 2013. There are capacity charges associated with the PPA which are in excess of six months. These capacity charges are referred to in the PPA as "Capital Recovery Cost," "Fixed O&M Labor and Labor Related Costs," and "Fixed O&M Non-Labor Costs," as each is uplifted by gross receipts license fees. WPS Corp requests Commission approval of the capacity charges pursuant to Section 6j(13)(b) of Act 304.

Additionally, WPS Corp represents that under the PPA it will purchase its proportionate share of the KNPP's generating capacity and associated energy at fixed pricing that approximates the forecasted cost to WPS Corp of continued ownership of the KNPP through the term of the current NRC operating license. The PPA guarantees a capacity factor during non-refueling outage periods that is higher than the KNPP's historical availability, with premiums and penalties for Dominion based on its performance against the capacity factor guarantee. The PPA permits Dominion to satisfy WPS Corp from the KNPP, or other accredited source of replacement power, ensuring a reliable supply of power to WPS Corp and its customers. Dominion will have a limited opportunity to sell KNPP output to parties other than WPS Corp in excess of the contractual "Capacity Amount," defined in the PPA to be 545 megawatts as adjusted for the pending KNPP capacity "uprate" project. Dominion may also sell WPS Corp's share of KNPP output to third parties only if (i) Dominion completes a scheduled maintenance outage prior to the scheduled completion date, in which case the sale would be restricted to the interval between the completion

and scheduled completion dates, (ii) if WPS Corp is in default under its PPA due to nonpayment, or (iii) WPS Corp declares a force majeure event.

Moreover, Dominion intends to obtain a determination of exempt wholesale generator status from the Federal Energy Regulatory Commission. WPS Corp is asking the Commission for an “eligible facility” determination to facilitate Dominion’s request for determination of exempt wholesale generator status. WPS Corp represents that the sale and designation of the KNPP as an eligible facility pursuant to Section 32(c) of PUHCA benefits customers and is in the public interest by (i) reducing the regulatory and economic risks associated with WPS Corp’s continued ownership of 59% of the KNPP, while retaining the benefits of the KNPP’s low cost zero emission baseload output via the PPA; (ii) allowing a more timely application of the value of WPS Corp’s non-qualified decommissioning trust funds to the benefit of its customers; and (iii) increasing the likelihood that KNPP output will be available after the current NRC license expires. WPS Corp further represents that allowing KNPP to become an eligible facility will not violate Michigan law.

Subsequent to the prehearing conference, the parties engaged in settlement discussions and entered into a settlement agreement resolving all of the issues in this proceeding. In the settlement agreement, attached as Exhibit A, the parties agree. The Attorney General submitted a statement of non-objection to the settlement. That contingent upon the approval of the sale of the KNPP by the Public Service Commission of Wisconsin (WPSC) in Docket No. 05-EI-136 and upon closing of the sale to Dominion: (i) the capacity charges in excess of six months associated with the PPA between WPS Corp and Dominion should be approved pursuant to Sec. 6j(13)(b) of Act 304; (ii) that upon the onset of the PPA, WPS Corp will not seek to recover the PPA capacity charges through the power supply cost recovery (PSCR) clause until after there is an adjustment in WPS Corp’s electric base rates to reflect the removal of its share of the costs of the KNPP from WPS

Corp's cost of service, although WPS Corp will, effective with the onset of the PPA, recover all other charges resulting from the PPA, as uplifted by gross receipts license fees, through the PSCR clause; and (iii) WPS Corp's nonqualified decommissioning funds will be released from dedication to the future decommissioning of the KNPP and will be applied to the benefit of customers as approved by all regulatory bodies with jurisdiction. The Michigan jurisdictional portion of WPS Corp's non-qualified decommissioning trust fund will be refunded to WPS Corp's Michigan electric customers as a credit to the WPS Corp PSCR and amortized over five years beginning with the first business month after the closing of the KNPP sale, but in no case earlier than the January 2005 business month. The parties further agree that contingent upon the WPSC's approval of the sale that (i) all gains resulting from the sale and transaction and transition costs incurred by WPS Corp in achieving the KNPP sale will be deferred for accounting purposes only to the extent that the transaction results in a net benefit to Michigan customers as determined in WPS Corp's next to-be-filed Michigan electric general rate case and then only until new rates become effective as established in WPS Corp's next to-be-filed Michigan electric general rate case; and (ii) WPS Corp will continue to depreciate all assets transferred to Dominion until the closing date of the sale of the KNPP. Finally, the parties unconditionally agree that the Commission pursuant to Section 32(c) of PUHCA should make specific determinations that allowing the KNPP to be an eligible facility (i) will benefit customers, (ii) is in the public interest, and (iii) does not violate Michigan law.

Discussion

After a review of the settlement agreement, the Commission finds it is reasonable and in the public interest and should be approved.

Section 32(c) of PUHCA provides that if a rate or charge in connection with any facility was in effect under the laws of any state on October 24, 1992, in order for the facility to be considered an eligible facility, the state commission having jurisdiction over the rate must make specific determinations that allowing the facility to be an eligible facility (1) will benefit customers, (2) is in the public interest, and (3) does not violate state law. Regarding the final determination, the Commission is unaware of any requirement of Michigan law that would be violated by designating the KNPP as an eligible facility. Moreover, the Commission has determined that the proposed sale of the KNPP and designation as an eligible facility will benefit Michigan customers and is in the public interest in (i) the reduction of the regulatory and economic risks associated with WPS Corp's continued ownership of 59% of the KNPP, while retaining the benefits of the KNPP's low cost zero emission baseload output via the PPA; (ii) the more timely application of the value of WPS Corp's non-qualified decommissioning trust funds of WPS Corp's Michigan customers; and (iii) the increased likelihood that KNPP output will be available after the current NRC license expires.

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.; 15 USC 79z-5a; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.
- b. The settlement agreement is reasonable and in the public interest and should be approved.
- c. Allowing the KNPP to be an eligible facility will benefit customers, is in the public interest, and does not violate Michigan law.

THEREFORE, IT IS ORDERED that:

A. The settlement agreement, attached as Exhibit A, is approved.

B. The request of Wisconsin Public Service Corporation for specific determinations regarding Section 32(c) of the Public Utility Holding Company Act is granted. Allowing the Kewaunee Nuclear Power Plant to be an eligible facility will benefit customers, is in the public interest, and does not violate Michigan law.

C. In accordance with the terms of the settlement agreement, the capacity charges associated with the purchase power agreement between Wisconsin Public Service Corporation and Dominion Energy Kewaunee, Inc., are approved pursuant to Section 6j(13)(b) of 1982 PA 304. Wisconsin Public Service Corporation will not seek to recover these capacity charges through its power supply cost recovery clause until after there is an adjustment in Wisconsin Public Service Corporation's electric base rates to reflect the removal of its share of the costs of the Kewaunee Nuclear Power Plant from cost of service. Effective with the onset of the purchase power agreement, Wisconsin Public Service Corporation will, however, recover all other charges associated with the purchase power agreement through the power supply cost recovery clause.

D. In accordance with the terms of the settlement agreement, Wisconsin Public Service Corporation may defer for accounting purposes all gains resulting from the sale and transaction and transition costs incurred in achieving the sale to the extent that the transaction results in a net benefit to Michigan customers.

E. In accordance with the terms of the settlement agreement, Wisconsin Public Service Corporation's non-qualified decommissioning fund will be released from dedication to the future decommissioning of the Kewaunee Nuclear Power Plant and will be applied to the benefit of customers as approved by all regulatory bodies with jurisdiction. Wisconsin Public Service

Corporation will refund to its Michigan electric customers the Michigan jurisdictional portion of its non-qualified decommissioning funds pursuant to a credit to its power supply cost recovery clause amortized over five years beginning with the first business month after the closing of the sale, but in no case earlier than the January 2005 business month.

F. Wisconsin Public Service Corporation will continue to depreciate all assets transferred to Dominion Energy Kewaunee, Inc., until the closing date of the sale of the Kewaunee Nuclear Power Plant.

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 August 10, 2004.

/s/ Mary Jo Kunkle

Its Executive Secretary

Corporation will refund to its Michigan electric customers the Michigan jurisdictional portion of its non-qualified decommissioning funds pursuant to a credit to its power supply cost recovery clause amortized over five years beginning with the first business month after the closing of the sale, but in no case earlier than the January 2005 business month.

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_____)

Case No. U-14040

Suggested Minute:

“Adopt and issue order dated August 10, 2004 approving the settlement agreement arising out of Wisconsin Public Service Corporation and Wisconsin Power and Light Company’s sale of the Kewaunee Nuclear Power Plant, as set forth in the order.”