

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)
WABASH VALLEY POWER ASSOCIATION INC.,)
for a power supply cost recovery reconciliation) Case No. U-13564-R
proceeding for the 12-month period ended)
December 31, 2003.)
_____)

At the February 9, 2006 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Laura Chappelle, Commissioner
Hon. Monica Martinez, Commissioner

ORDER

On March 31, 2004, Wabash Valley Power Association Inc. (Wabash), filed an application for reconciliation of its power supply cost recovery (PSCR) revenues and expenses for the 12-month period ended December 31, 2003. Midwest Energy Cooperative intervened in the proceeding. The Commission Staff (Staff) also participated.

On June 29, 2004, the Federal Energy Regulatory Commission (FERC) issued an order in Docket Nos. ER04-789-000 and ER04-802-000, which authorized Wabash to charge its 27 member-cooperatives for services pursuant to FERC-approved tariffs commencing July 1, 2004. Prior to that time, Wabash was a borrower under the Rural Utilities Service (RUS) loan program. On June 30, 2004, Wabash paid off the balance of its RUS loan. Because Wabash was

no longer a borrower under the RUS loan program, jurisdiction for ratemaking was transferred to the FERC.

On August 10, 2004, Wabash filed a request to have its 2003 PSCR reconciliation proceeding dismissed. On August 17, 2004, the Staff opposed the request. According to the Staff, although Wabash was now regulated by the FERC, that agency's rate regulation of Wabash was only prospective in nature. Because the reconciliation proceeding involved reconciliation of Wabash's 2003 PSCR expenses and revenues, the Staff argued that the reconciliation must be completed under 1982 PA 304; MCL 460.6j *et seq.*

On August 18, 2004, Administrative Law Judge Barbara A. Stump (ALJ) rejected Wabash's request to dismiss the proceeding on grounds that the reconciliation related to past power supply costs from 2003.

On August 31, 2004, Wabash filed an application for leave to appeal the ALJ's ruling. On December 2, 2004, the Commission issued an opinion and order denying Wabash's application. Subsequently, Wabash appealed to the Ingham County Circuit Court (Circuit Court) and filed a motion requesting that the reconciliation proceedings be stayed. The Circuit Court granted Wabash's motion and the Commission filed an appeal with the Court of Appeals. In *Wabash Valley Power Ass'n v Public Service Comm*, unpublished opinion per curiam of the Court of Appeals, decided December 15, 2005 (Docket No. 260773), the Court of Appeals determined that the FERC had exclusive jurisdiction over the rates, terms, and conditions of wholesale electric service and transmission in interstate commerce provided by Wabash, including any existing contracts that addressed the 2003 reconciliation. The Court of Appeals further found that the Circuit Court did not abuse its discretion in staying the reconciliation proceedings.

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. The docket in this case should be closed.

THEREFORE, IT IS ORDERED that the docket in Case No. U-13564-R is closed.

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

Chairman

(S E A L)

/s/ Laura Chappelle

Commissioner

/s/ Monica Martinez

Commissioner

By its action of February 9, 2006.

/s/ Mary Jo Kunkle

Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of February 9, 2006.

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Case No. U-13564-R

Suggested Minute:

“Adopt and issue order dated February 9, 2006 closing the docket in this matter, as set forth in the order.”