



BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application by Wisconsin Electric Power Company for Approval of a
Contract for Electric Service with Charter Steel under the provisions of
Wis. Stat. § 196.192

6630-GF-132

FINAL DECISION

Introduction

On February 18, 2010, Wisconsin Electric Power Company (WEPCO) filed an application with the Commission for approval of an Individual Customer Electric Service Contract (Proposed Contract) with Charter Steel (Charter) under the terms of Wis. Stat. § 196.192 for the provision of electric service to Charter's integrated steel melting and hot rolling mill located in Saukville, Wisconsin. The application is approved, subject to conditions. This Final Decision also addresses a related procedural motion.

The Proposed Contract

Charter takes service under WEPCO's Cp-FN rate schedule which allows large commercial and industrial customers to combine a base level of firm service with interruptible service. The Proposed Contract adds a third layer to the Cp-FN rate schedule's firm and non-firm prices. The third pricing tier, locational marginal pricing (LMP) plus 20 percent, would be applicable to incremental energy use that exceeds historical monthly usage levels during the 12-month period from November 2008 to October 2009.

The price for incremental energy consumed in the third pricing tier would be the weighted average of the hourly Day Ahead LMPs during the hours that Charter's consumption

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exceeds the historical levels, plus 20 percent. The incremental energy purchased by Charter under the proposed contract would be subject to curtailment on the same basis as non-firm energy purchased under the Cp-FN rate schedule.

In addition to the LMP pricing mechanism for incremental energy, the Proposed Contract provides that Cp-FN non-firm demand charges would not be assessed to loads which exceed Charter's maximum historical monthly on-peak loads. In order to ensure that WEPCO retains the margins on energy sales that it currently receives on energy sales and demand charges from the Cp-FN rate schedule, LMP plus 20 percent pricing without demand charges would only be applicable in any month if total energy used in that month exceeds the historical monthly amounts.

The Proposed Contract terminates on December 31, 2011.

Findings of Fact

1. WEPCO is an investor-owned "electric public utility" as defined in Wis. Stat. § 196.192(1), whose purpose is the generation, distribution and sale of electric energy.
2. Charter Steel receives retail electric service from WEPCO under the provisions of Rate Schedule Cp-FN for Charter's melt shop and hot rolling mill located in Saukville, Wisconsin.
3. On February 18, 2010, WEPCO filed an application with the Commission requesting approval of a proposed Individual Customer Electric Service Contract (Proposed Contract) under the terms of Wis. Stat. § 196.192.
4. The Proposed Contract, as modified, will allow Charter to receive market benefits for its purchases of electric energy.

5. Charter will take market risks for its purchases of electric energy under the terms of the Proposed Contract, as modified.

6. The use of the accounting treatment required in this Final Decision will ensure that other customers will not be harmed by the Proposed Contract.

7. The use of the accounting treatment required in this Final Decision will ensure that WEPCO shareholders will not be harmed by the Proposed Contract.

8. It is reasonable for the effective date of the Proposed Contract to be May 1, 2010.

Conclusions of Law

The Commission has the authority to issue this Final Decision under Wis. Stat. § 196.192.

Opinion

Wisconsin Stat. § 196.192, which was enacted as part of 1999 Wisconsin Act 9, required investor-owned electric utilities to file with the Commission “market-based pricing options and options for individual contracts that allow a retail customer, through service from its existing public utility, to receive market benefits and take market risks for the customer’s purchases of capacity or energy.” The statute requires the Commission to approve such market-based pricing options and individual contracts if “the commission determines that the rate will not harm shareholders of the investor-owned electric public utility or customers who are not subject to the rate.” Wis. Stat. § 196.192(3)(a).

In simple terms, the statute provides that the Commission shall approve an individual contract if the Commission determines that the contract meets four standards:

1. The customer must receive market benefits.

2. The customer must take market risks.
3. Utility shareholders must not be harmed.
4. Utility customers that are not subject to the contract must not be harmed.

Current LMPs in the Midwest Independent Transmission System Operator (MISO) WEPCO South Load Zone are significantly below the non-firm energy charges in the Cp-FN rate schedule. Even with the 20 percent adder, the Proposed Contract will provide Charter with the opportunity to purchase incremental energy at prices that are lower than the prices in the Cp-FN rate schedule. The Commission finds that Charter will receive market benefits from the Proposed Contract.

The statute does not provide direction to the Commission concerning the balance between market benefits received by the customer and the market risks the customer must take. However, the Proposed Contract includes a cancellation provision that allows Charter to avoid the risk that it will incur higher charges under the Proposed Contract than it would under the Cp-FN rate schedule. Item 7 of Paragraph 6. of the proposed agreement reads (in part):

7. The Customer shall have the right to cancel this Contract before the end of the Term, without penalty, upon thirty (30) days written notice to the Company. Once cancelled, the Customer cannot return to service under this Contract. If such written notice of cancellation under this Paragraph is received by the Company at least 15 days prior to the next bill date, then Rate Schedule Cp-FN rates, terms and conditions of delivery will be applied to all load on the pending bill, retroactive to the first day of the then-current billing period.

This cancellation provision essentially is a hold harmless clause. If its costs of energy under the proposed contract exceed the costs it would incur under the Cp-FN rate schedule, Charter could terminate the contract and return to the status quo of taking all of its service under the Cp-FN rate schedule. The Commission finds that this cancellation provision does not result in an appropriate balance between market benefits and market risk.

An acceptable balance between market benefits and market risk would be achieved if the cancellation provision were to be modified such that Charter could not cancel until the Proposed Contract has been in effect for at least one year and the provision which allows retroactive billing under the Cp-FN rate schedule to the first day of the month during which Charter exercises its right to cancel is eliminated.

Other ratepayers would be not harmed by the Proposed Contract if they do not pay higher rates as a result. Utility shareholders will not be harmed if the Proposed Contract does not diminish WEPCO's net income or expose the utility to greater risk. The determination of actual or potential harm to utility shareholders and other utility customers is more problematic because the incremental revenues to WEPCO from the Proposed Contract will accrue during 2010 and 2011. It is clear that other utility ratepayers will not be harmed during the term of the Proposed Contract. However, due to a one-year lag in the way that incremental transmission costs and gross receipts taxes are billed, transmission costs and taxes which result from Charter's incremental usage under the Proposed Contract during 2011 will not be billed to WEPCO until 2012. Therefore, there could be a mismatch in the timing of the periods during which the revenues from Charter's incremental usage will accrue (2010 and 2011) and costs will accrue (2010, 2011, and 2012).

It is expected that WEPCO will file a rate case application in 2011. This application will be based on costs WEPCO projects to incur in 2012, with adjusted rates scheduled to take effect in 2012.

In order to prevent other ratepayers from being charged additional costs in 2012 that result from the Proposed Contract, it will be necessary to defer a portion of the incremental

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revenues that would normally accrue to shareholders in 2011 until 2012. The amount of deferred revenue should be limited to the amount of anticipated costs associated with Charter's incremental usage. This deferred revenue shall be used to offset incremental costs billed to WEPCO in 2012 that are the result of Charter's incremental usage in 2011. With this modification, WEPCO's other ratepayers will not be responsible for these incremental 2012 costs.

WEPCO will also incur additional costs to purchase energy for Charter's incremental purchases under the Proposed Contract. Under normal accounting treatment, these costs would appear as purchased power costs under the fuel rules. Because these incremental costs would already be recovered from Charter under the Proposed Contract, it is necessary to prescribe alternative accounting to prevent double counting of these costs. WEPCO is directed to subtract the purchased power costs of the incremental energy sold to Charter and the associated kilowatt-hour billing units from its fuel rules calculations.

With the modifications described in this Final Decision, the Proposed Contract satisfies the requirement of Wis. Stat. § 196.192 and may be approved.

Item 6 of Paragraph 6. of the Proposed Contract provides that it becomes effective on March 1, 2010, or on the effective date specified by the Commission. It is reasonable for the Proposed Contract, as modified, to be effective on May 1, 2010.

Request to Intervene of the Citizens' Utility Board

On March 18, 2010, the Citizens' Utility Board (CUB) filed a Request to Intervene and Notice of Appearance in this docket. CUB based its request on Wis. Admin. Code § PSC 2.21. The first three subsections of this rule define intervention as follows, with emphasis added:

PSC 2.21 (1) INTERVENTION BY RIGHT. A person whose substantial interests may be affected by the commission's action or inaction **in a proceeding** shall be admitted as an intervenor.

(2) PERMISSIVE INTERVENTION. A person not satisfying the criteria of sub. (1) may nevertheless intervene **in a proceeding or docket** if the person's participation likely will promote the proper disposition of the issues to be determined in the proceeding or docket and if the person's participation will not impede the timely completion of the proceeding or docket.

(3) PROCEDURE. A person requesting intervention in a proceeding shall **file a request no later than 60 days after the issuance of the notice of proceeding, or within a different time set by the administrative law judge at the final prehearing conference.** A person requesting intervention in a docket shall file a request no later than 60 days after the opening of the docket, or within a different time set by the commission at the time it opens the docket.

Under these rules, intervention must occur in a Commission “proceeding” or a Commission “docket.”

Wisconsin Admin. Code § PSC 2.02(13) defines “proceeding” to mean “a contested case or other docket that includes a hearing,” while Wis. Admin. Code § PSC 2.02(7) defines “docket” to mean “an investigation, proceeding, or other matter opened by a vote of the commission.” Another Commission rule further describes how the Commission opens a docket. Wisconsin Admin. Code § PSC 2.09(1) explains, “A docket is opened when the commission issues a notice of investigation, a notice of proceeding, or such other notice sufficient to identify the basis and nature of the docket. A notice is issued when the secretary of the commission signs it.”

Because the Commission has not yet officially voted to issue a notice for this matter, the Commission’s review of the Proposed Contract is neither a proceeding nor a docket. Although the Commission’s Records Management Unit has assigned a docket number for tracking purposes, the rules for intervention in Wis. Admin. Code § PSC 2.21 do not apply until the Commission votes to open a docket.

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As a result, CUB's Request to Intervene does not meet the standards for intervention under Wis. Admin. Code § PSC 2.21. However, any interested person can file comments in an informal Commission action, without intervening. CUB filed comments on the Proposed Contract with the Commission on April 6, 2010. Although the Commission denies CUB's intervention, it accepts and has considered CUB's comments.

Commission Azar abstains with respect to the intervention issue.

Order

1. The application is approved, subject to the modifications as described in the Opinion section of this Final Decision.
2. WEPCO shall file a revised contract consistent with this Final Decision within ten business days after the effective date of this Final Decision.
3. The effective date of this Final Decision is the day after the date of mailing.
4. The request for intervention is denied.

Dated at Madison, Wisconsin, April 30, 2010

By the Commission:



Sandra J. Paske
Secretary to the Commission

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See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN
610 North Whitney Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of mailing of this decision, as provided in Wis. Stat. § 227.49. The mailing date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of mailing of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of mailing of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission mailed its original decision.¹ The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: December 17, 2008

¹ See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.