

**FILED
02-25-2021
Circuit Court
Portage County
2021CV000041**

For Official Use:

STATE OF WISCONSIN CIRCUIT COURT PORTAGE COUNTY

MIDWEST RENEWABLE ENERGY
ASSOCIATION,
7558 Deer Road
Custer, WI 54423,

Petitioner-Plaintiff,

v.

Case Code: 30701

Declaratory Judgment

PUBLIC SERVICE COMMISSION OF
WISCONSIN, and Commissioners
REBECCA CAMERON VALCQ,
ELLEN NOWAK, and TYLER
HUEBNER,
Hill Farms State Office Building
North Tower, 6th Floor
4822 Madison Yards Way
Madison, WI 53705

Respondents-Defendants.

**PETITION AND COMPLAINT FOR DECLARATORY JUDGMENT AND
INJUNCTION**

Plaintiff-Petitioner, Midwest Renewable Energy Association (“MREA”), on behalf of itself and its members, states as follows.

INTRODUCTION

1. This is an action for declaratory and injunctive relief pursuant to Wis. Stat. §§ 227.40, 806.04, and 813.01 to determine certain actions by the Public Service

Commission of Wisconsin (“Commission”) to be invalid, unlawful, and beyond the limits of its statutory authority.

2. The Wisconsin Legislature delegated broad power to the Commission to regulate monopoly utilities. However, the Wisconsin Legislature never authorized the Commission to regulate private choices by Wisconsin families and businesses about whether and when to consume power or any aspect of competitive enterprise by non-utility businesses. Such a delegation would be constitutionally as well as politically suspect.

3. However well intentioned, the Commission occasionally oversteps its authority. When it does so, it violates Wisconsin law and infringes on Wisconsinites’ freedom to run their businesses, control their own energy use, and utilize non-utility alternative clean energy. This case involves two such oversteps.

4. First, the Commission, through its staff, issued guidance documents that incorrectly assert broad jurisdiction over privately owned solar panels located on customers’ roofs and connected behind the utility meter to provide a partial alternative to buying electricity from the utility. Those guidance documents incorrectly assert that private solar generation financed through a mechanism called “third-party financing” constitutes a “public utility” subject to regulation (and effective prohibition). However, Wisconsin law is clear that solar equipment serving a single host customer through an individual contract between a solar panel provider

and the host customer is not the type of monopoly public utility service that the Commission is authorized to regulate.

5. As a direct result of the guidance documents, many solar companies deem the risk that the Commission will attempt to interfere with their business too high. As a result, private clean energy generation in Wisconsin lags other states that do not threaten to extinguish third party financed solar by regulating private solar as if it were a monopoly public utility.

6. Second, the Commission is unlawfully prohibiting households and private businesses from reducing their electricity consumption during peak hours in exchange for compensation through wholesale power markets. While federal law allows states to preclude participation in wholesale power markets through state law, the Wisconsin Legislature has never done so and never authorized the Commission to do so. In fact, the Commission has no authority to prohibit electricity consumers from reducing their usage; it cannot prohibit them from doing so through a federal wholesale market.

7. The Commission's order prohibiting customers from reducing their power consumption as part of a federal wholesale power market exceeded the Commission's authority. Moreover, even if the agency had statutory authority to issue such an order, it failed to undergo the required formal rulemaking process required for such decisions.

8. This Court should invalidate these unlawful actions, reestablish the limits of the Commission's authority, and enjoin the agency from interfering with

choices that the Legislature left to individual families and businesses and to free market competition.

PARTIES

9. Petitioner-Plaintiff Midwest Renewable Energy Association is a non-stock corporation and a registered 501(c)(3) non-profit organization that promotes renewable energy, energy efficiency and sustainable living through education and demonstration. MREA works with its partners around the Midwest to expand renewable energy adoption through innovative programs, renewable energy training, and educational events.

10. MREA supports a number of programs, including its Solar Corps and Solar on Schools programs. The Solar Corps is a workforce development program that connects aspiring solar professionals with real work experience and opportunity and that connects technical and community colleges with solar contractors to establish career pathways for students. The Solar on Schools program provides assistance and incentives to K-12 schools to install solar photovoltaics (“PV”) to offset their utility bills and provide clean energy for their educational programs.

11. As part of a pilot program funded by the Wisconsin-based Couillard Solar Foundation, MREA intends to install at least three separate 20 kilowatt (“kW”) solar PV systems on Milwaukee-area public schools and related institutions and to enter into power purchase agreements (“PPA”) for the electricity generated by those systems. MREA will provide the upfront cost and labor to install solar PV generation, maintain the systems, and bill the host customer monthly for the amount of electricity the system produced that month. The solar PV will offset some, but not all of the host

school or institution's electricity usage, and the school or institution will continue to purchase the balance of its electricity from the local public utility.

12. MREA is currently working with Walnut Way Conservation Corps to provide solar training to residents in and around the Lindsay Heights neighborhood where North Division High School is located. The pilot project will provide real-world training experience as part of this partnership. MREA fundraising is supporting 20 full scholarships for training that will qualify participants to earn entry level certificates and credentials in the solar industry, at least 5 of which will be in Milwaukee.

13. The Milwaukee-area pilot projects are an initial step towards offering more PPAs as part of MREA's Solar on Schools and Solar Corps program to provide clean, lower cost, solar power as well as workforce development training for clean energy jobs. The revenues from PPAs will repay MREA's cost of installing the solar PV systems at the host schools and institutions which will be recycled into a revolving revenue stream to continue and expand the Solar Corps scholarships by directly funding scholarships and solar projects for other not-for-profit entities otherwise unable to access the credit and tax incentives to own solar generating systems.

14. MREA has not yet advanced its pilot program due to Commission guidance documents asserting that third-party financing arrangements, such as the PPAs that MREA hopes to pursue through the Milwaukee-area pilot projects, constitute prohibited public utility service.

15. Additionally, the utility serving the Milwaukee region often denies necessary interconnections for solar generation based on the Commission guidance documents at issue. For example, the utility refused to interconnect solar generation intended for the City of Milwaukee, based, at least in part, on the illegal guidance documents at issue in this case, which forced the solar developer and City to spend years litigating their right to interconnect solar at significant financial cost. In fact, the same utility recently told the press that if Wisconsinites want solar panels, they are required to lease them directly from the monopoly utility company. MREA seeks to avoid threat of regulation by the Commission and intransigence from the utility through an order from this Court invalidating the Commission's erroneous guidance documents, declaring that third party solar financing is not public utility service, and enjoining the agency from attempting to regulate MREA as a public utility.

16. MREA also challenges an unlawful 2009 order from the Commission that precludes MREA from participating in another promising clean energy opportunity called "demand response aggregation."

17. Demand response aggregation allows energy users to reduce their consumption during peak periods. Doing so lowers wholesale energy prices for all customers and rewards participating customers for that shared benefit by providing incentives through wholesale markets.

18. MREA owns and operates a number of distributed energy resources at its demonstration site, educational facility and headquarters in Custer, Wisconsin. Those resources include solar and wind generation, electric vehicle charging, and

battery energy storage. MREA seeks to utilize its distributed resources, and further control its energy use, either alone or with other customers, through a third-party demand response aggregation service. Doing so would not only provide revenue to MREA, but also provide a public service by reducing energy costs for all customers across the region.

19. However, an illegal 2009 Commission order prevents MREA from participating in federal wholesale markets through demand response aggregation.

20. MREA also brings this case on behalf of its members who are individuals, businesses, and non-profits. The Commission's illegal guidance documents and 2009 order either preclude or make it more expensive for MREA members to buy and sell renewable energy generating systems and to receive incentives for reducing energy use through demand response aggregation. The illegal 2009 order also results in higher electricity prices for MREA and its members.

21. Respondent-Defendant Public Service Commission is an agency of the State of Wisconsin, established by Wis. Stat. § 15.79, and is authorized to regulate various activities of public utilities in Wisconsin.

22. Defendants-Respondents Rebecca Cameron Valcq, Ellen Nowak, and Tyler Huebner are the current Commissioners. The Commissioners are named in their official capacity, except to the extent that they are exercising or threatening to

exercise authority not provided by law, in which case they are acting *ultra vires* and therefore in their individual capacity.

Jurisdiction and Venue

23. This Court has jurisdiction over the claims in this case pursuant to Wis. Stat. §§ 227.40, 806.04, and 813.01.

24. Venue is appropriate in Portage County Circuit Court for each of MREA's claims pursuant to Wis. Stat. §§ 227.40(1) and 801.50(3)(a) and (b) because MREA is a resident of and has a principal place of business in Portage County and because it designates Portage County.

Background and History of Utility Regulation in Wisconsin

25. Electricity was historically provided by vertical monopolies that generated electricity with increasingly large power plants and sent it in one direction down a series of wires ultimately to consumers whose usage was largely inflexible.

26. The high cost of entry—building large plants power plants and transmission lines—and the reality that only one set of power lines could feasibly be located along or under public streets, inevitably led to utility service defaulting to “natural monopolies.” Of course, electricity also became essential to a modern economy and society.

27. Because electric utility companies were natural monopolies and provided a necessary service, governments compelled universal service and controlled rates. At first, regulation was through common law. Courts imposed and

enforced duties of universal service and limited prices for a specific category of quasi-public businesses that courts deemed “affected with a public interest” or “impressed with a public interest.” *City of Madison v. Madison Gas and Electric Company*, 129 Wis. 249, 108 N.W. 65, 68 (1906) (quoting *Munn v. Illinois*, 94 U.S. 113); *Shepard v. Milwaukee Gas Light Co.*, 6 Wis. 526, 539 (1857); see also *N. States Power Co. v. National Gas Co.*, 2000 WI App 30 ¶ 13, 232 Wis.2d 541, 548, 606 N.W.2d 613; *Commonwealth Tel. Co. v. Carley*, 192 Wis. 464, 213 N.W. 469, 471 (1927) (“The right to regulate and control a public utility exists because such utility affects the public interests.”); *Schumacher v. Railroad Commission*, 185 Wis. 303, 201 N.W. 241 (1924).

28. Ultimately, most states created statewide administrative agencies to regulate quasi-public businesses like railroads and public utilities. In 1907, the Wisconsin Legislature authorized the Railroad Commission to grant exclusive monopoly status, impose uniform accounting and service standards, and set rates for every “public utility.” Laws of 1907, ch. 449 §§ 1797m-1–1797m-108; see also *Weyauwega Tel. Co. v. Pub. Serv. Comm’n*, 14 Wis.2d 536, 545, 111 N.W.2d 559 (1961); *Wis. Traction, Light, Heat and Power v. Menasha*, 157 Wis. 1, 8, 145 N.W. 231 (1914); Crow, *Legislative control of Public Utilities in Wisconsin*, 18 Marq. L. Rev. 80, 81–85 (1933). The Railroad Commission later became the Public Service Commission. Laws of 1931, ch. 183.

29. From the beginning, the Legislature limited the Commission’s jurisdiction and authority to regulating only “public utilities,” which it defined to

include only those quasi-public entities that “have always been under a legal duty to furnish reasonably adequate service at reasonable rates and without discrimination” under common law. *N. States Power Co.*, 2000 WI App 30 ¶ 13 (the public utility law codifies common law obligations of those entities that “have always been under a legal duty to furnish reasonably adequate service at reasonable rates and without discrimination to all who are entitled to apply for service.”) (quoting *Krom v. Antigo Gas Co.*, 154 Wis. 528, 533, 140 N.W. 41, 44 (1913)); *Chippewa Power Co. v. Railroad Comm’n*, 188 Wis. 246, 251–53, 205 N.W. 900 (1925) (holding that the legislature only had authority to regulate businesses that the courts recognized to be “clothed with a public interest” in common law) (quoting *Charles Wolff Packing Co. v. Ct. of Indust. Rel.* of Kansas, 262 U.S. 522); *Schumacher*, 185 Wis. 303 (the definition of a “public utility” only includes entities “impressed with a public use” under common law).

30. Thus, consistent with the scope of common law regulation of quasi-public entities, Wisconsin courts have always narrowly interpreted the statutory definition of “public utility” to cover only businesses operating under exclusive franchises, with virtual monopolies, and exercising the right of eminent domain. *Chippewa Power Co.*, 188 Wis. at 251–53. In fact, the Wisconsin Supreme Court held that any broader interpretation of “public utility”—and, therefore, of the Commission’s authority—would be “revolutionary” and unconstitutional. *Id.*; see also *U.S. Steel Corp. v. No. Ind. Pub. Serv. Co.*, 486 N.E.2d 1082, 1084–85 (Ind. Ct. App. 1985) (a business that does not dedicate its property to public use and not

under a common law duty to serve all who apply is not impressed with a public interest and not a public utility; an attempt to define it as a public utility would violate the Fourteenth Amendment).

31. Accordingly, Wisconsin caselaw going back at least 110 years rejects attempts to assert authority over private businesses that provide service to a “defined, privileged and limited group” through private contracts, rather than broadly and indiscriminately to the community at large, even when the services at issue are typically provided by public utilities. *City of Sun Prairie v. Pub. Serv. Comm’n*, 37 Wis. 96, 101, 154 N.W.2d 360 (1967) (“to the public” does not include a “defined, privileged and limited group” even when more than 1000 tenants across a more than 15 apartment buildings); *City of Milwaukee v. Pub. Serv. Comm’n*, 241 Wis. 249, 5 N.W.2d 800 (1942) (providing service to defined customers through exclusive contracts is “precisely what it was necessary for it to do to prevent it from becoming a public utility”); *Union Power Co. v. City of Oconto Falls*, 221 Wis. 457, 460–61 (1936) (a company providing power only pursuant to a contract and unwilling or unable to sell to “any member of the public” who shows up and demands power is not a public utility); *Ford Hydro-Electric Co. v. Town of Aurora*, 206 Wis. 489, 240 N.W. 418, 420–21 (1932) (“The question is whether the plant is built and operated to furnish power to the public *generally*.” (emphasis added)); *Cawker v. Meyer*, 147 Wis. 320, 133 N.W.2d 157 (1911) (merely providing light, heat or power to others is insufficient to constitute a “public utility”); *see also Wis. Gas & Elec. Co. v. Railroad Comm’n of Wis.*, 198 Wis. 13, 222 N.W. 783 (1929)

(providing electricity to only a discrete set of persons who constructed their own lines to the city is not public utility service).

Third Party Financing of Distributed Renewable Generation

32. Electricity consumers no longer have to rely on large monopoly utilities for all of their electricity. Solar PV is a technology that turns free sunlight into electricity in modular increments of three-foot by five-foot panels installed at individual homes and businesses. Installing solar PV allows families and businesses to offset what they might have otherwise purchased from the utility. In addition, customers are increasingly installing batteries to use more of their solar generated electricity as well as to ride through increasingly prevalent utility power outages.

33. However, while the sunlight used by solar panels is free and reduced utility charges eventually offset the cost of solar generating equipment, the initial upfront cost of installing solar PV equipment still deters some families, businesses, churches, and schools from utilizing free sunlight with solar panels. Additionally, certain incentives for solar are provided only through income tax credits and deductions. People and entities that do not have federal income tax liability—including some low-income families and most schools, churches, and municipalities—cannot take advantage of those incentives.

34. Fortunately, there are solutions that allow many more customers to afford customer-sited solar. Leases and PPAs utilize capital from a third-party

financier to fund the up-front cost of solar PV at the host customer's property and to utilize the tax incentives.

35. Under a lease, the customer pays off the cost of the equipment at a fixed monthly price. Under a PPA, the customer pays off the cost of the system proportionate to the electricity received from the solar equipment. Under either option, a unique set of solar panels and associated equipment is designed specifically for the host customer's roof and usage patterns. The customer and third-party financing entity sign a contract specifying the size, capacity, and other attributes of the particular solar equipment, where the equipment will be located on the customer's property, pricing, insurance, and other terms. The solar equipment is then installed at the host customer's property and dedicated exclusively to the host customer who utilizes all of the electricity generated.

36. These financing arrangements are collectively known as "third-party financing" and are used by more than forty percent of solar customers nationally. An important attribute of third-party financing is the ability for entities who do not pay federal income tax to utilize tax incentives that commonly constitute a third or more of the total cost of installing solar panels. Therefore, the ability to finance through third parties is often critical for non-profits, schools, churches, villages, sewer districts, and low-income families without sufficient tax liability to obtain cost-effective solar generation.

37. In fact, the State of Wisconsin, itself, has utilized third party financing to obtain solar energy through contracts between the State of Wisconsin

Department of Administration and third-party financing entities. Through such contracts, the State can benefit from federal tax credits passed through the third party that the State could not otherwise receive.

Public Service Commission Guidance Documents Incorrectly Assert that Third Party Financed Solar Constitutes A “Public Utility”

38. Guidance documents from the Commission assert that third party financed solar constitutes a “public utility” under Wis. Stat. § 196.01(5) and is therefore effectively prohibited by Wisconsin law.

39. On February 8, 2012, the Commission, through a Division Administrator, issued a letter addressed to Wisconsin Assembly Representative Gary Tauchen, discussing the scope of the Commission’s authority and third-party solar financing. A copy of that Guidance Document is attached as Exhibit 1 (“Tauchen Letter”).

40. The Tauchen Letter claims that every “entity that owns or operates electric equipment to provide electricity to consumers at retail” is a public utility and that a typical third-party solar financing arrangement “would meet Wisconsin’s statutory definition of a public utility” because the financing entity “would own or operate equipment that produces heat, light, or power” and the financing entity’s “business plan would be to deliver the heat, light, or power to retail customers.”

41. On April 3, 2014, the Commission, through its Chief Legal Counsel, issued a letter to Gregory Bollom of Madison Gas and Electric Company. A copy of the letter is attached as Exhibit 2 (“Bollom Letter”). The Bollom Letter refers to the Tauchen Letter as reflecting “Commission staff’s view” that third-party solar

financing would “generally” fall within the definition of a “public utility” in Wis. Stat. § 196.01(5) and therefore requires a certificate of authority from the Commission to conduct public utility business.

42. Wisconsin utilities rely on the Tauchen Letter and Bollom Letter in their advocacy and interactions with customers. In 2014, the Wisconsin Electric Power Company proposed to revise its service tariffs to exclude customers who participate in third party financed solar from utility service based, at least in part, on the letters. The same utility subsequently refused to connect third-party financed systems contracted by the City of Milwaukee in 2018, contending that third-party financing constitutes a “public utility” and “Wisconsin law prohibits a public utility from serving a customer already being served by another public utility.” It also threatened to deny interconnection to at least one other customer since 2018 based on similar legal contentions.

43. The Commission has regularly rejected requests that they repudiate the letters and more formally interpret the definition of a “public utility” applied to third party financed solar through orders.

44. In a 2014 rate case order, the Commission refused to determine whether third-party financed solar constitutes a “public utility” under Wis. Stat. § 196.01(5) and insisted that such statutory interpretation “is more appropriately within the purview of the Wisconsin Legislature.” Between 2017 and 2019, the Commission refused three additional requests for clarification about whether a

third-party financed solar arrangement constitutes a “public utility” under Wis. Stat. § 196.01(5).

45. The Commission’s repeated refusal to interpret and apply existing law other than through the Tauchen and Bollom Letters leaves the letters as the only ostensible agency interpretations available to the public.

The Public Service Commission Prohibits Certain Private Energy Use Decisions By Individual Consumers

46. The Commission also undermined clean energy business opportunity in Wisconsin by unlawfully prohibiting electricity consumers from reducing their electricity usage as part of federal electricity market programs.

47. The Commission can only exercise authority expressly provided by the Legislature. While the Commission was once believed to exercise not only powers expressly provided, but also those “necessarily implied” by statute, *State v. Wis. Bell, Inc.*, 211 Wis. 2d 751, 754, 566 N.W.2d 496 (Ct. App. 1997) (citing *Wis. Power & Light Co. v. PSC*, 181 Wis. 2d 385, 392, 511 N.W.2d 291, 293 (1994)), the Legislature has since restricted all agencies to exercising only so much authority as the Legislature explicitly provides. Wis. Stat. §§ 227.10(2m) (prohibiting agencies from enforcing any standard or requirement not “explicitly required or explicitly permitted by statute or by a rule...”), 227.11(2) (limiting rulemaking authority to that “explicitly conferred on the agency by the legislature...”); *Wis. Legislature v. Palm*, 2020 WI 42 ¶ 51, 391 Wis. 2d 497, 942 N.W.2d 900 (recognizing that 2011 WI Act 21 prohibits finding implied power and, instead, requires “explicit authority”).

48. The Commission has no statutory authority to regulate private energy use decisions by individual customers or to prohibit “aggregators of retail customers” from coordinating those choices.

49. The Commission issued an unlawful order in 2009 purporting to regulate—in fact, to outright prohibit—choices by individual customers and aggregators of retail customers about whether, when, and how much electricity to use.

50. Electricity sales and regulation generally consists of two levels: wholesale and retail. Wholesale consists of electricity that is subsequently resold before it is consumed. Retail is the sale of electricity to the ultimate consumer. Wholesale sales in interstate commerce (and practices that affect those sales) are regulated by the Federal Energy Regulatory Commission (“FERC”), while the sale of electricity at retail is generally left to states. 16 U.S.C. §§ 824(b), 824d(a), 824e(a).

51. Unlike the Commission in Wisconsin’s practice of setting rates based on utilities’ costs plus a “return” on deployed capital, FERC has generally moved to setting wholesale rates through competitive markets run and managed by independent non-profit entities called regional transmission operators (“RTOs”) and independent system operators (“ISOs”). The RTO/ISO covering Wisconsin is the Midcontinent Independent System Operator (“MISO”).

52. The price of the electricity sold in the wholesale market is a function of supply and demand. Simply stated, electricity generators bid to sell power into the

market and Load Serving Entities (retail utilities who then resell the power to end-use customers) submit requests to purchase power. The RTO/ISO stacks the offers to sell by price, plus adjustments for transmission constraints, and fills all of the Load Serving Entities' requests to purchase power. The point in the bid stack at which all requests for power are met is known as the "locational marginal price," which is paid by all buyers to all sellers in the market.

53. A decrease in usage has the same impact on price as a similarly sized increase in power generation. If consumers are willing to reduce electricity usage at a lower price than the next available power plant is willing to accept to produce more electricity, paying the consumer to reduce use lowers the marginal price paid by all wholesale customers. This concept is known as "demand response" or "DR." *FERC v. Elec. Power Supply Ass'n*, 136 S. Ct. 760, 767 (2016) (demand response allows wholesale market operators to pay consumers for commitments not to use power at certain times, where electricity consumption reductions result in lower market prices and more reliability than paying for production of electricity).

54. Through the Energy Policy Act of 2005, Congress confirmed that it is the "policy of the United States" to encourage demand response. In 2008, FERC responded with Order 719, which allows electricity customers to bid demand response into the wholesale market. *Wholesale Competition in Regions with Organized Electric Markets*, Order 719, 125 FERC ¶ 61,071, P 1 (Oct. 17, 2008) ("Order 719"), 73 Fed. Reg. 64100. Specifically, FERC determined that permitting individual customers and businesses that aggregate of pools of customers

(“aggregators of retail customers” or “ARCs”) to participate in the wholesale market through demand response “increases competition, helps reduce prices to consumers and enhances reliability.” Order 719 at P 154. It also encourages more renewable energy generation by making demand for electricity more flexible and therefore better able to adjust to and meet the variable output of resources like wind and solar.

55. FERC’s Order 719 also provides an “opt in” requirement and a “state law exception” or “opt-out,” depending on the size of the utility providing service to retail customers. Order 719 at P 155. An RTO/ISO must accept demand response bids from customers of utilities that sell more than 4 million megawatt-hours unless state law prohibits those bids (i.e., “opts out”). *Id.* at PP 51, 60; 18 C.F.R. § 35.28(g)(1)(iii).

56. Accordingly, MISO’s tariff provides:

Where the relevant utility distributed more than four million MWh in the prior fiscal year, an [aggregator of demand response] must certify that the laws, regulations, or order(s) of the [state regulatory authority] do not preclude the retail customer from participating directly in the Transmission Provider’s Energy and Operating Reserve Markets... The [aggregator] may also state whether the [state authority] specifically permits such participation by the retail customer.

MISO Tariff Provision 38.6(iii)(1)(a), https://docs.misoenergy.org/legalcontent/Module_C_-_Energy_and_Operating_Reserve_Markets.pdf.

57. Notably, FERC’s Order 719 did not expand the authority of state commissions beyond whatever authority exists in state law. Nor could it. State commissions are created by state law and derive their powers only from state law. Only state legislatures can expand the scope of state commission power.

58. As FERC explained, Order 719 does not make a determination of whether demand response participation in wholesale markets is either allowed or prohibited by existing state laws. Order 719 at *14. Instead, FERC merely avoided preempting any state laws prohibiting demand response participation in wholesale markets, to the extent such laws exist.

59. In 2011, FERC issued a new final rule, Order 745, which expands upon Order 719 and increases incentives for demand response in federally regulated wholesale markets. The Supreme Court upheld Order 745 in 2016. *Elec. Power Supply Ass'n*, 136 S. Ct. 760.

60. More recently, FERC's Order 2222 requires RTOs to allow distributed energy resources—which includes demand response as well as other resources like rooftop solar and batteries located at individual homes and businesses—to participate in wholesale markets. However, Order 2222 incorporates Order 719's "state law exception" and provides that if a state prohibits demand response through state law, that prohibition will continue to bar participation of demand response in federal wholesale markets. *Participation of Distributed Energy Resource Aggregations in Markets Operated by RTOs and ISOs*, Order 2222, 172 FERC ¶ 61,247, at PP 59, 145 (Sept. 17, 2020).

61. No Wisconsin statute or administrative rule prohibits utility customers from participating in wholesale markets through demand response. Therefore, Wisconsinites receiving electricity from utilities selling more than 4 million megawatt hours per year should be able to participate in federal electricity markets

through demand response. In contrast, for example, Arkansas statutes expressly prohibit demand response unless the Arkansas Public Service Commission makes an explicit determination that it is in the public interest. Arkansas Code §§ 23-18-1003, 1004.

62. Despite lacking any legal authority to do so, the Commission issued an order on October 14, 2009, purporting to ban electric utility customers from participating in demand response in wholesale markets except through regulated utilities (“Prohibition Order”). According to the Prohibition Order, the Commission “temporarily prohibits the operation of Aggregators of Retail Customers (ARCs) in Wisconsin...” and “prohibit[s] the transfer of demand response load reductions to MISO markets directly by retail customers or by third-party ARCs...” A copy of the Prohibition Order is attached as Exhibit 3.

63. The Prohibition Order does not regulate the rates or charges imposed by public utilities, nor the conditions for service provided by public utilities. Nor does it prohibit public utilities from participating in wholesale markets through demand response. Instead, the Prohibition Order purports to directly prohibit individual electricity consumers (individually or through third-party aggregators) from reducing their energy consumption when participating in wholesale markets.¹

¹ If the Commission had instead imposed the Prohibition Order as a condition of receiving utility service, rather than a direct regulation of non-utilities, it would have still exceeded the Commission’s authority to regulate “a measurement, regulation, practice, act or service to be furnished, imposed, observed and followed,” because that authority is limited to regulating the service provided by public utilities, not to regulate all aspects of private life and business by conditioning utility service on policies the Commission prefers. Moreover, imposing any limitations on receiving utility service— i.e., “which purports to curtail the

Notably, electricity consumers remain free to reduce their electricity usage just as much, at any time, and for any other reason. They just cannot transfer that load reduction to the MISO market other than through the incumbent monopoly utility.

64. While the Prohibition Order recognized that FERC's rule "requires a state commission to affirmatively 'opt-out' if it determines that ARCs are prohibited *under state law*," the order contained no analysis of Wisconsin law. As noted above, Wisconsin law does not contain such prohibition (emphasis added).

Count 1: Declaratory Judgment That The Tauchen and Bollom Letters Are Invalid Agency Guidance Pursuant to Wis. Stat. § 227.40.

65. The Tauchen and Bollom Letters purport to interpret and apply the definition of "public utility" in Wis. Stat. § 196.01(5) to include typical third-party financed renewable energy generation that is designed and installed at the home or building of a specific customer, provides electricity solely to that host customer, and is governed by a customer-specific contract.

66. Each of the letters is a "formal or official document or communication issued by an agency" that "[e]xplains the agency's implementation of a statute or rule enforced or administered by the agency" and/or "[p]rovides guidance or advice with respect to how the agency is likely to apply a statute or rule enforced or administered by the agency" that is "likely to apply to a class of persons similarly affected." Therefore, each letter constitutes a "guidance document" within the

obligation or undertaking of service of the public utility"—required a class 1 contested case hearing, which was not conducted prior to the Prohibition Order. Wis. Stat. § 196.20(1).

meaning of Wis. Stat. § 227.01(3m). The letters are not exempt by any of the provisions of § 227.01(3m)(b)1.-9. Therefore, the validity of the letters is subject to this Court's determination pursuant to Wis. Stat. § 227.40(1), as amended by 2017 Wisconsin Act 369 ("Act 369").

67. The letters are guidance documents even though authored by agency employees, rather than the Commissioners, themselves. The Wisconsin Supreme Court's decision in *Serv. Employees Int'l Union, Local 1 v. Vos* invalidated Wis. Stat. § 227.112(6), as created by section 38 of Act 369, and upheld the lower court's injunction prohibiting enforcement of that provision, which would have required signature by the agency head or secretary attesting that a guidance document meets certain procedural and substantive requirements. 2020 WI 67 ¶¶ 88, 91, 107–108. Moreover, that provision would not have applied to the Tauchen and Bollom Letters anyway, since both preceded Act 369. *See* Wis. Stat. § 227.112(7). Therefore, no law requires an agency head to sign or issue a document to constitute an agency guidance document. In fact, most guidance documents issued by Wisconsin agencies are authored and issued by employees, rather than directly by the agency head. Nor is there any indication that the Commission employees who signed and issued the Tauchen and Bollom Letters were acting outside of their official capacity and the authority delegated to them by the Commission.

68. The Tauchen and Bollom Letters are invalid.

69. First, the letters misread Wis. Stat. § 196.01(5)(a) as turning on whether a particular entity's business purpose is to produce power to or for the

public. The statute does not turn on the owning entity's purpose. Instead, it turns on the purpose of a particular plant or equipment and whether that plant or equipment provides power to the public.

70. The statute strings together two prepositional phrases—“[1] for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly [2] to or for the public.” The object of that compound preposition is the “plant or equipment,” not the *owner* of that equipment. *Ford Hydro-Electric Co. v. Town of Aurora*, 206 Wis. 489, 240 N.W. 418 at 420–21 (“The question is whether *the plant* is built and operated to furnish power to the public generally.” (emphasis added)); *Cawker*, 147 Wis. at 324–25 (“The use to which *the plant, equipment, or some portion thereof is put must be for the public*, in order to constitute it a public utility” (emphasis added)). Thus, a public utility is defined by the intended purpose of a plant or equipment, not the purpose of the plant's owner. As long as no “plant or equipment” provides power to “the public,” there is no public utility.

71. Typical third party financed solar never involves a power plant or equipment that provides power to more than one customer. Each customer receives solar power from a discrete power plant and equipment used to provide electricity only to that customer. A third-party financing entity may own many individual solar power plants but each one is dedicated to an individual customer and installed at that individual customer's property. There is never a solar power plant or equipment providing power to more than one customer, so never “to or for the

public.” Thus, third party financed solar never constitutes a “public utility” under Wis. Stat. § 196.01(5)(a).

72. Second, the letters appear to refer to “electric equipment” in the plural and aggregate, rather than singular tense as the statute provides. Based on the statute’s text, a separate determination of whether a plant or equipment provides power to the public is made for each discrete plant or equipment, not for all plants and equipment collectively. That is why the Wisconsin Supreme in *City of Milwaukee* held that a city, while providing water through its aggregate plants and equipment to the public, was still not a “public utility” as to specific discrete customers served through private contracts. 241 Wis. 249; *see also Wis. Gas & Elec. Co.*, 198 Wis. 13. It is also why the Commission does not treat steam sales from a cogeneration plant in Rothschild owned by Wisconsin Electric Power Company as a public utility subject to rate regulation, despite the same company owning other plants and equipment providing public utility steam service in Milwaukee. *See Application of Wisconsin Electric Power Company for Authority to Build and Operate a 50 MW, Biomass-Fired, Cogeneration Facility in the Village of Rothschild, Marathon County, Wisconsin*, Final Decision, Docket No. 6630-CE-305, at 18 (WI PSC May 12, 2011) (unlike the utility’s Valley Power Plant in Milwaukee, the steam output of the Rothschild plant is not subject to Commission jurisdiction). Because the statute does not aggregate separate individual plants and equipment for purposes of defining a public utility, the Commission correctly did not aggregate Wisconsin Electric Power Company’s Rothschild plant and equipment with the

company's plants and equipment in Milwaukee and impose ongoing rate regulation for steam from the Rothschild plant.

73. Third, even if Wis. Stat. § 196.01(5) defined a public utility by intent of the owner, or aggregated all plants and equipment owned by the same business before determining whether it serves “the public,” the guidance documents still err because the nature of third-party financing involves individualized contracts with specific customers, rather than indiscriminate and undifferentiated service to a whole community that characterizes service “to the public” under established caselaw.

74. For each of these reasons, the Tauchen and Bollom Letters are invalid. The Court should declare the letters invalid agency guidance.

Count 2: Declaration and Injunction Prohibiting the Public Service Commission From Exercising Jurisdiction Over or Attempting to Regulate Non-Utility, Third Party Financed Distributed Energy Resources.

75. The Commission lacks jurisdiction over third-party financed distributed energy resources located at individual customer's homes, schools, businesses, churches, and government buildings.

76. With a few explicit and narrow exceptions not applicable here, the Commission's jurisdiction is limited to regulating “public utilities” as defined in Wis. Stat. § 196.01(5).²

² Wis. Stat. §§ 196.02(1) (“The commission has jurisdiction to supervise and regulate every public utility in this state...”), .02(2)–(6) (additional authority over public utilities), .03. (authorizing the Commission to investigate and set rates for public utilities), 196.66 (providing liability for “any public utility,” officer, or agent that violates a duty imposed by statute or order). The Commission has narrow and limited authority over anyone other than a “public utility” is explicitly provided. *See e.g.*, Wis. Stat. §§ 196.04 (requiring

77. The Commissioners cannot assert jurisdiction over, and cannot attempt to regulate, third party financed solar and other distributed energy resources that connect a discrete power plant or equipment to a single customer through an individualized contract with that customer because those entities are not “public utilities.”

78. Regardless of whether the Tauchen and Bollom Letters are guidance documents and reviewable under Wis. Stat. § 227.40, the Court is authorized by Wis. Stat. §§ 806.04 and 813.01 to declare that a third-party financed distributed energy resource like rooftop solar panels and associated electronic equipment and wiring, located on the property of a single customer, and which provides power solely to that single host customer, does not constitute a public utility pursuant to Wis. Stat. § 196.01(5)(a), and to enjoin the Commission from attempting to exert jurisdiction over or regulate third-party financed solar and other distributed energy resources.

provision of access to facilities of any person owning transmission equipment, not limited to public utilities), 196.201 (requiring access to conduits owned by providers of private telecommunications), 196.491(3) (requiring every person to obtain a certificate to build a large generating facility), 196.495(1m) (prohibiting duplication of electric service by cooperative associations in addition to public utilities).

Count 3: Declaratory Judgement that the 2009 Prohibition Order is an Unlawful Rule that Exceeds The Commission's Authority and Was Adopted Without Compliance With Mandatory Rulemaking Procedures Pursuant to Wis. Stat. § 227.40.

79. The Commission may only exercise those powers expressly provided to it and, even then, it must exercise them “in the manner prescribed” by the Legislature. *Friends of the Earth v. Pub. Serv. Comm'n*, 78 Wis. 2d 388, 400, 254 N.W.2d 299, 303 (1977).

80. The Commission must promulgate each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administrative of that statute through rulemaking. Wis. Stat. § 227.10(1).

81. The Commission is also prohibited from implementing or enforcing any “standard, requirement, or threshold... unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with” chapter 227. Wis. Stat. § 227.10(2m).

82. The rulemaking requirement “exists precisely to ensure that... controlling, subjective judgment asserted by... unelected official[s], [are] not imposed in Wisconsin.” *Palm*, 2020 WI 42 ¶ 28. In fact, the obligation to undertake rulemaking is necessary to ensure delegations of broad authority are constitutional. *Palm*, 2020 WI 42 ¶ 35.

83. An agency order or other decision constitutes a rule if it is “(1) a regulation, standard, statement of policy or general order; (2) of general application; (3) having the effect of law; (4) issued by an agency; (5) to implement, interpret or

make specific legislation enforced or administered by such agency as to govern the interpretation or procedure of such agency.” *Palm*, 2020 WI 42 ¶ 22, *quoting Citizens for Sensible Zoning v. Dep’t of Nat. Res., Columbia Cty.*, 90 Wis. 2d 804, 814, 280 N.W.2d 702 (1979).

84. The Prohibition Order is a “regulation, standard, statement of policy or general order” that prohibits millions of Wisconsinites and any non-utility business doing business in, or who would otherwise do business in Wisconsin, from participating in federally run electricity markets through demand response.

85. The Prohibition Order is of general application because it applies to millions of customers of at least four large electric utilities, as well as all potential third party ARCs, which is a class described in general terms and new members can be added to the class. *Palm*, 2020 WI 42 ¶¶ 21–22, *citing Citizens for Sensible Zoning*, 90 Wis. 2d at 816.

86. The Prohibition Order also has the effect of law because it bars Wisconsin utility customers and third-party demand response aggregators from participating in markets otherwise open to them. In fact, the Prohibition Order was intended to meet the provision of 18 C.F.R. § 35.28(g)(1)(iii) precluding demand response aggregation “where the relevant electric retail regulatory authority prohibits such customers’ demand response to be bid into organized markets.” Order 719 P 155. Thus, to serve its intended purpose of satisfying 18 C.F.R. § 35.28(g)’s criteria for precluding demand response in federal markets, the Prohibition Order must necessarily have the effect of law.

87. The Prohibition Order purports to implement, interpret or make specific legislation enforced or administered by the Commission. The order includes a string of statutes generally related to utility regulation that purportedly authorize the order. While none of those statutes actually provides lawful authority for the Order, the Commission intended to issue the Order pursuant to one or more of those statutes.

88. The Prohibition Order exceeds the Commission's authority. The Legislature has not delegated any authority to the Commission to regulate individual customers' choices of whether, when, and how much electricity to consume. The Commission had no authority to prohibit customers from reducing their electricity usage for any reason, including for purposes of participating in a federally regulated wholesale market. Nor did it have authority to prohibit third-party aggregators or ARCs from organizing and assisting electricity consumers in doing so.

89. Moreover, in order to explicitly require customers to participate in demand response markets only through regulated utilities, the Commission imposed a "standard, requirement, or threshold"—i.e., that an entity must constitute a Commission-regulated utility to participate in federal wholesale markets—that is not "explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with" Chapter 227. Wis. Stat. § 227.10(2m).

90. The Commission also did not promulgate the Prohibition Order according to statutory rulemaking procedures applicable at the time. For example,

it did not conduct the required impact analyses, publish the required statement of scope, provide the required notice and opportunity for public comment, submit the rule to the Department of Administration or Legislature for review and approval, or publish the rule in the Administrative Register. Wis. Stat. §§ 227.114–227.26 (2009).

91. The Prohibition Order does not meet any of the exceptions to rulemaking in Wis. Stat. § 227.01(13). It was neither issued following a contested case nor directed to specifically named parties. It also does not fix or approve rates, prices, or charges by a public utility.

92. This Court is authorized to declare the Prohibition Order “invalid if it finds that it... exceeds the statutory authority of the agency or was promulgated or adopted without compliance with statutory rule-making or adoption procedures.” Wis. Stat. § 227.40(4)(a). The Prohibition Order is invalid for both reasons: it exceeds the Commission’s authority and was not promulgated in compliance with the statutory rulemaking or adoption procedures.

Claim 4: Declaration That the Prohibition Order Exceeds The Commission’s Authority and Injunction Prohibiting Enforcement and Requiring Notice to MISO.

93. No statute or duly promulgated rule provides the requirement that an entity constitute a regulated public utility to participate in federal wholesale markets through demand response. Despite the Prohibition Order citing to fifteen statute sections, none provides authority to “prohibit the transfer of demand response load reductions to MISO markets directly by retail customers or third-party ARCs” as the Prohibition Order purports to do. Nor does any rule

promulgated according to Wis. Stat. ch. 227 provide such authority. Therefore, the Prohibition Order exceeds the Commission's authority. Wis. Stat. § 227.10(2m).

94. Even if the Prohibition Order were not reviewable under Wis. Stat. § 227.40, the Court has authority pursuant to Wis. Stat. §§ 806.04 and 813.01 to declare that the Prohibition Order is unlawful and exceeds the Commission's authority and to enjoin the Commission from enforcing the Prohibition Order and requiring it to notify the public and MISO that Wisconsin law does not preclude participation of ARCs in the wholesale market within the meaning of MISO Tariff Provision 38.6.

Request for Relief

Plaintiff-Petitioner MREA therefore respectfully requests that the Court issue an Order:

1. Invalidating the Tauchen Letter and Bollom Letter as agency guidance that conflicts with applicable law.
2. Declaring that third-party financed distributed energy resources that provide power to a single customer from each discrete plant or equipment and pursuant to an individual contract does not constitute a "public utility" pursuant to Wis. Stat. § 196.01(5).
3. Enjoining the Commission from asserting or exercising authority over third party financed distributed energy resources.

4. Invalidating the Prohibition Order as an unlawful rule that exceeds the Commission's authority and that was adopted without compliance with statutory rulemaking procedures.

5. Declaring that the Commission has no authority to regulate customer participation in federally regulated wholesale markets through demand response and/or demand response aggregation.

6. Enjoining the Commission from asserting or exercising authority over electricity customers' and third-party aggregators' participation in wholesale markets through demand response activities and requiring the Commission to notify MISO accordingly.

7. Providing such other relief as authorized by law and which the Court determines to be just and appropriate.

Dated this 24th day of February 2021.

Midwest Renewable Energy Association by:

EARTHJUSTICE

Electronically signed by David C. Bender

David C. Bender

State Bar No. 1046102

Staff Attorney, Clean Energy

Earthjustice

3916 Nakoma Road

Madison, WI 53711

(202) 667-4500

dbender@earthjustice.org

FILED
02-25-2021
Circuit Court
Portage County
2021CV000041

EXHIBIT 1 — Tauchen Letter

C J



Public Service Commission of Wisconsin

Phil Montgomery, Chairperson
Eric Callisto, Commissioner
Ellen Nowak, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

February 8, 2012

Honorable Gary Tauchen
State Capitol
P.O. Box 8953
Madison, WI 53708-8953

COPY

Re: Renewable Energy Development in Wisconsin

Dear Representative Tauchen:

Thank you for your letter, which the Public Service Commission received on January 9, 2012, asking questions about cost-effective renewable energy development in Wisconsin. Your letter stated that you are interested in promoting third-party power purchase agreements (PPA) that involve property owners, a third-party owner or operator of renewable energy systems, and may also involve electric utilities. You asked the Commission for information about the legality of third-party PPAs under current Wisconsin law and their potential effectiveness and appropriateness in Wisconsin. You have offered us some references to statutes, rules, and Public Utility Commission decisions from other states that may be relevant.

This letter responds to your concerns. It provides basic information about public utility law in Wisconsin, about how current law affects third-party PPAs for renewable electricity production, and about how our law could be changed to allow this kind of PPA. This letter will also address the other states that you mentioned in your letter.

Current law in Wisconsin

In Wisconsin, electric public utilities are highly-regulated monopolies. When the Commission grants an electric utility a "service territory," the utility acquires the sole right to provide electric service at retail in that area. In exchange, the electric utility must charge rates that the Commission has approved and is subject to extensive regulation by the Commission.

State law prescribes what constitutes a public utility. Under the statutory definition, almost any entity constitutes a public utility if it owns, operates, manages, or controls "any part of a plant or equipment, within the state, for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for the public." Wis. Stat. § 196.01(5)(a). This law's coverage is very broad. In general, an entity that owns or operates electric equipment to provide electricity to consumers at retail is an electric utility. Every electric utility is subject to the public utility laws, rules, and Commission orders.

How does this law affect renewable energy and third-party PPAs in Wisconsin? Let's discuss some typical situations. Suppose a Solar Company wants to generate and sell renewable energy

Representative Gary Tauchen
Page 2

to companies and private homeowners in Wisconsin. The Solar Company intends to install solar photovoltaic panels on the rooftops of these companies or homes throughout Wisconsin, and it will own and operate the panels. The Solar Company will sell the electricity it generates directly to the Rooftop Owner; if it produces excess power, it will seek to sell that power to the local electric utility. Or, in a similar situation, suppose a Biogas Company wants to do business with local farmers across Wisconsin. The Biogas Company will install and maintain an anaerobic digester, converting manure to a biogas that it burns to create electricity, and it will deliver the electricity to the farmer. If the generator fueled by the biogas produces enough electricity, the Biogas Company will seek a contract to sell excess electricity to the local electric utility. The Solar Company would write a third-party PPA with the Rooftop Owner, or the Biogas Company would write a third-party PPA with the farmer, explaining the details of the transaction and setting the retail price for purchasing the renewable electricity.

This kind of third-party PPA would allow the customer to have a renewable electricity generator on the premises without necessarily requiring the customer to make a large capital investment in the facilities, and typically without making the customer responsible for operation and maintenance of the generator. Your primary question relates to the sale or provision of electricity to a customer through such a third-party PPA. A secondary question relates to how the local utility company would treat any excess electricity generated in such a situation.

Under the arrangements described above, both the Solar Company and the Biogas Company would meet Wisconsin's statutory definition of a public utility. They would own or operate equipment that produces heat, light, or power. Their business plan would be to deliver the heat, light, or power to retail customers. The Wisconsin Supreme Court has held that providing heat, light, or power to only a few neighbors, as an incident to some other commercial operation, is not a public utility service. See *City of Sun Prairie v. PSC*, 37 Wis. 2d 96, 99-100 (1967) and *Cawker v. Meyer*, 147 Wis. 320, 324-25 (1911), where the Court explained what service "to or for the public" means under the statutory definition of a public utility. However, the business models of the Solar Company and the Biogas Company would not meet the exemption of *Sun Prairie* or *Cawker* because the Solar and Biogas Companies are providing heat, light, or power to customers in general and because their purpose is to produce heat, light, or power. As a result, state law would define them as regulated public utilities.

Under these hypothetical circumstances, the Solar Company and the Biogas Company could not do business in Wisconsin without first receiving a certificate of authority from the Commission to operate as public utilities. These companies would need to create service territories, carved out of the existing service territories of other electric utilities. Both the Solar Company and the Biogas Company would then be subject to the Commission's regulatory authority.

One exemption from Wisconsin's public utilities law is the situation where someone provides utility service to himself or herself. A business, for example, could own and operate its own photovoltaic panels or its own methane digester and generator, solely to produce electricity that it consumes. This is known as "self-generation." Anyone who produces renewable energy only

Representative Gary Tauchen
Page 3

for personal use is a self-generator, not a public utility. Another exemption from the public utilities law is where an electric utility customer, for instance the owner or farmer himself, owns an electric generator and uses the facility not just for self-generation, but also to sell excess power back to the electric utility. This is known as “customer-owned generation.” Because all the electric sales of a customer-owned generator are wholesale transactions with the local utility, not retail transactions with any other customers or third party PPAs, these sales are exempt from the statutory definition of public utility service. Neither a self-generator nor a customer-owned generator is a public utility under Wisconsin law, and neither is subject to public utility regulation.

The Commission regularly receives informal requests to examine the legality or practicality of using third-party PPAs as a business model in Wisconsin. Because the precise details of each situation always vary, the answer for a particular situation will depend heavily on the facts presented to the Commission. The Commission’s formal opinions to date are very case-specific, as each opinion is decided upon whether a certain third-party PPA or similar arrangement meets the definition of a public utility.

Laws of other states

We have reviewed the laws and regulations of the seven states that you highlighted in your letter. The regulatory framework of each state is unique. Some of these states, such as Illinois, have deregulated their utilities. Any deregulated or partially deregulated state has an entirely different public utility structure than Wisconsin, but unfortunately we were unable to easily identify the extent to which the seven states you mentioned have deregulated their public utilities. For this and other reasons explained below, our examination of the laws and regulations from the other states did not always help us consider options for Wisconsin.

Regardless of uncertainty about the level of deregulation in other states, we looked at each state’s laws and regulations to identify any new ideas that might have value. You specifically identified some recent laws, rules, and orders from Michigan, Illinois, California, Colorado, Massachusetts, New York, and North Carolina.

The North Carolina citation includes that state’s definition of “public utility,” and it does not include any specific exemptions that relate to renewable resources or third-party PPAs.

The New York citation you provided includes a reference to an exemption to its state definition of “electric corporation” for certain facilities:

[W]here electricity is generated by the producer solely from one or more co-generation, small hydro or alternate energy production facilities or distributed solely from one or more of such facilities *to users located at or near a project site.*

Representative Gary Tauchen

Page 4

New York Pub. Serv. Law ch. 48, § 2-13 (emphasis added). “Alternative energy production facility” includes various types of generators, including solar, wind and other sources typically considered “renewable,” with a generating capacity of up to 80 megawatts. *Id.* at § 2-2-b. The exemption for any electricity distributed “to users located at or near a project site” is unclear.

Two states with particularly relevant information are Colorado and California. In 2009, Colorado established a statutory exemption to the definition of a “public utility.” Colorado law now declares:

The supply of electricity or heat to a consumer of the electricity or heat from solar generating equipment located on the site of the consumer’s property, which equipment is owned or operated by an entity other than the consumer, shall not subject the owner or operator of the on-site solar generating equipment to regulation as a public utility if the solar generating equipment is sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the consumer at that site.

Colo. St. § 40-1-103(2)(c). This exemption in Colorado applies to all continuous property owned or leased by the applicable consumer, without regard to interruptions in continuity due to easements, public thoroughfares, or rights of way. *Id.*

In addition to this public utility exemption, you cited a set of Colorado statutes and rules mostly about that state’s Renewable Energy Standard. The Colorado rules not only permit but promote sales from on-site solar generation to local electric utilities. They specify that Colorado electric utilities, to comply with their Renewable Portfolio Standards, must purchase at least 2 percent of their renewable energy from on-site solar systems. Colo. Rule § 3654(d). The utilities are required to organize competitive solicitations for the purchase of renewable energy from these solar systems, at least twice per year, and they also establish “standard rebate offers” of \$2/watt for some kinds of on-site solar systems. Colo. Rule §§ 3655(f) and 3658. To qualify for a standard rebate offer, the applicant must meet a variety of requirements specifying completion dates, size, warranty for service, and maintenance. Colo. Rule § 3658(c).

Unlike Colorado, Wisconsin does not set a “standard rebate offer” that all utilities would be required to offer solar generators in general, nor does it offer anything targeted toward third-party systems. Some financial incentives are available for customer-owned solar installations through Focus on Energy, but systems owned by third parties would not qualify for funding through Focus on Energy.

Finally, we looked at the requirements in California. California has partially deregulated its public utilities. Its requirements describe several relevant exempt categories of third-party electric providers that are not subject to the public utility laws. California law promotes, and directly regulates, third-party solar PPAs for renewable generation.

Representative Gary Tauchen
Page 5

Subject to certain conditions, California law creates several statutory exemptions to the definition of “electrical corporation” that are relevant here. It exempts:

[A] corporation or person . . . producing power from other than a conventional power source for the generation of electricity solely for any one or more of the following purposes:

- (1) Its own use or the use of its tenants.
- (2) The use of or sale to not more than two other corporations or persons solely for use on the real property on which the electricity is generated or on real property immediately adjacent thereto

Cal. Pub. Util. Code § 218(b).

California law also includes specific biodigester and solar exemptions. One exemption concerns “employing digester gas technology for the generation of electricity” for one’s own use, the use of not more than two tenants, or the use of or sale to not more than two other corporations or persons solely for use on the property where the electricity is generated. Cal. Pub. Util. Code § 218(d). The solar exemption is for an “independent solar energy producer.” Cal. Pub. Util. Code § 218(e). Under California law, an independent solar energy producer is:

[A] corporation or person employing one or more solar energy systems for the generation of electricity for any one or more of the following purposes:

- (1) Its own use or the use of its tenants.
- (2) The use of, or sale to, not more than two other entities or persons per generation system solely for use on the real property on which the electricity is generated, or on real property immediately adjacent thereto.

Cal. Pub. Util. Code § 2868(b).

An independent solar energy producer can sell renewable energy directly to residential property owners while the producer retains ownership of the solar panels, or the producer can lease solar panels to the property owner. Cal. Pub. Util. Code § 2869(a)(1). Because California’s exemption limits sales to not more than two other entities, the practical effect is that third-party providers need to set up new independent business units for each system they install.¹

Some of the California statutes you cite promote and regulate third-party PPAs by specifying some terms of the relationship between an independent solar energy producer and its residential customers. They allow the producer to set its own price for the sale of energy or the lease of facilities, through a long-term contract. These contracts are not tariffed rates and they are not subject to approval by the California Public Utility Commission. California law also imposes certain requirements upon these contracts, such as specifying that the producer must provide the

¹ Solar PV Project Financing: Regulatory and Legislative Challenges for Third-Party PPA System Owners, p. 8. Available at <http://www.nrel.gov/docs/fy10osti/46723.pdf>.

Representative Gary Tauchen

Page 6

customer with plain language statements of the pricing terms and of the parties' various responsibilities. Cal. Pub. Util. Code § 2869(a)(1)(B) and (C). The producer must also prepare a "Notice of an Independent Solar Energy Producer Contract," which is recorded against the title to the residential property as a means of notifying any potential future buyer of the home that such a contract exists. Cal. Pub. Util. Code § 2869(b) and (c).

In short, California's public utility laws allow entities like a Solar Company or a Biogas Company to exist and to sell renewable energy at retail to their customers, without becoming public utilities. For Wisconsin to follow a similar path, it would first need to create a statutory exemption to the definition of public utility. Additionally, California law sets standards for third-party PPAs between independent solar energy producers and their residential customers. This is something Wisconsin could do through statute or rule, but it would be a secondary step that must follow the creation of a statutory exemption to Wisconsin's definition of public utility.

Most of the other requirements from the seven states you listed deal with net metering and interconnection of independent power facilities. Net metering can occur when someone who is an electric utility customer owns an electric generating facility, which is used for self-generation and for customer-owned generation. "Net metering" is a term that often refers to a situation where, under certain conditions, the electric utility buys power from the customer at the same tariffed rate that the utility sells its own electric power to the customer. Interconnection rules govern what an independent owner of an electric generating unit must do in order to connect to the local utility's electric system. Because the Commission already approves net metering tariffs for electric utilities and already has extensive interconnection rules, these are not new concepts for the state of Wisconsin. They also do not directly relate to third-party PPAs, though whether third-party PPAs are allowed to net meter is a secondary issue that the Commission could address if Wisconsin law is amended to generally permit some category of third-party PPA arrangements. Generators using a third-party PPA arrangement would be subject to Wisconsin's existing interconnection rules.

Potential changes to Wisconsin public utility law

As explained above, a third-party PPA between a Solar Company and a Rooftop Owner or between a Biogas Company and a farmer, for the retail sale of electricity, likely would violate state law because the Solar Company or the Biogas Company cannot operate without a certificate of authority from the Commission. The business models of these companies make them public utilities.

Depending on the particular facts presented to the Commission, an individual third-party PPA may be permissible under Wisconsin law. But I understand you to be interested in creating a new *category* of third-party PPAs for renewable energy that would be exempt from the definition of public utility. Such an exempt category could give customers more options for receiving renewable energy and it could encourage the use of renewable energy.

Representative Gary Tauchen
Page 7

To create this categorical exemption, a change in Wisconsin statutes is needed. If the state Legislature decides to create a categorical exemption, it could be either broad or narrow in scope. Such an exemption could include a variety of renewable energy technologies or it could be limited to a specific energy technology, such as biodigesters or photovoltaic panels. Another significant element of a categorical exemption would be to identify the maximum allowable size of an exempt renewable generator. For example, a third-party PPA could be limited to not exceed the customer's actual load. This would be a narrow, conservative statutory exemption. A broader exemption could cover a larger renewable facility by permitting the facility to sell any additional renewable energy (beyond the amount the customer uses) at wholesale via PPA to the local electric utility, at the utility's applicable tariffed buyback rate.

Below is one example of a statutory amendment that would create a narrow exemption to Wisconsin's definition of public utility:

SECTION 1. 196.01 (5) (b) 7. of the statutes is created to read:

196.01 (5) (b) 7. A person who meets all of the following requirements:

- a. The only electric generating equipment the person owns, operates, manages, or controls is equipment that uses noncombustible renewable energy resources and is located on the premises of members of the public.
- b. The person sells all the power generated by the equipment to the members of the public on whose premises the equipment is located.

Wisconsin Stat. § 196.01(5)(b) is a list of entities that are not public utilities, and this statutory change would add one more exemption to the list. It would apply to a company that owns or operates renewable resource facilities and furnishes electricity at retail to the public, if the company meets specific requirements. The only electric generating equipment that the company could own, operate, manage, or control must be equipment that uses renewable resources; the equipment must be located on the premises of members of the public; and the company must sell all the power that its equipment generates to those members of the public. This is an example of a categorical exemption covering several renewable energy technologies that produce electricity but limiting the size of an exempt facility so it cannot exceed the customer's load.

Note that this exemption only covers "noncombustible" renewable energy. It would not include biodigesters, because electric generation using biodigesters requires combustion of the digester gas. To broaden this exemption so it includes biodigesters, subd. 7.a. would need to be rewritten by striking out the word "noncombustible."

To broaden this categorical exemption further so it allows the company to sell any excess power to the local utility, subd. 7.b. could be rewritten in this manner:

- b. The person sells all the power generated by the equipment either at retail to the members of the public on whose premises the equipment is located, or at wholesale to a public utility.

Representative Gary Tauchen
Page 8

An exemption to the definition of “public utility” needs to be crafted carefully so it does not unwittingly deregulate too much of the utility industry. In this example, we drafted subd. 7.a. so that existing public utilities remain subject to Commission regulation.

I hope this discussion answers your questions about the use of third-party PPAs to encourage renewable energy production, the relevance of other states’ laws, restrictions in Wisconsin’s current public utility law, and how to amend state law to permit third-party PPAs for renewable energy. You may be interested to read “*Solar PV Project Financing: Regulatory and Legislative Challenges for Third-Party PPA System Owners*,” a 2010 technical report from the National Renewable Energy Lab, which discusses a few other states’ treatment of third-party PPAs. See NREL/TP-6A2-46723, which is available at:

<http://www.nrel.gov/docs/fy10osti/46723.pdf>

If you have other questions please feel free to contact Deborah Erwin, the Commission’s Renewable Energy Specialist at (608) 266-3905, or David Ludwig, Deputy General Counsel at (608) 266-5621.

Sincerely,



Robert D. Norcross
Administrator
Gas and Energy Division
(608) 266-0699

RDN:DAL:jlt:L:\letters\VIPs\2012\Tauchen.docx

FILED
02-25-2021
Circuit Court
Portage County
2021CV000041

EXHIBIT 2 — Bollom Letter



Public Service Commission of Wisconsin

Phil Montgomery, Chairperson
Eric Callisto, Commissioner
Ellen Nowak, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

April 3, 2014

Via Electronic Mail

Mr. Gregory A. Bollom, Asst. Vice President - Energy Planning
Madison Gas and Electric Company
P.O. Box 1231
Madison, WI 53701-1231

Re: Third Party Ownership of Distributed Generation

Dear Mr. Bollom:

Thank you for your letter requesting information on the Commission's interpretation of Wisconsin law as it relates to distributed generation ownership and interconnection. You requested guidance on when a third-party owner of a distributed generation facility meets the legal definition of a "public utility" and therefore must receive a certificate of authority under Wis. Stat. § 19.49(1) to provide utility service. Your letter also inquired as to what constitutes ownership for the purposes of those statutes. Finally, you requested guidance on what your company's role and obligations are when reviewing a distributed generation application form for such a facility.

As you note in your letter, Commission staff previously provided information on these topics to State Representative Gary Tauchen in 2012. Because your company is aware of and has reviewed that letter, I will not restate its contents entirely here. That letter remains an accurate description of Commission staff's view of the law, and we are unaware of further development of the law, whether legislative or judicial, since that letter was written. Please note that this letter and the letter to Representative Tauchen reflect the views of Commission staff, but are not formal statements of Commission policy and will not be considered precedential should the full Commission open a docket on these subjects.

In short, it remains Commission staff's view of the law that a third-party who owns plant or equipment for the purposes of providing electricity to the public is a "public utility" as defined by Wis. Stat. § 196.01(5) and would require a certificate of authority from the Commission to conduct public utility business. As noted in the 2012 letter, this definition will generally include third parties who own distributed generation and sell electricity or a product or service directly related to the production of electricity to the hosting landowner/customer.

However, whether any particular business arrangement will result in the third party meeting the definition of public utility depends upon the facts of that particular arrangement. Though it is not possible for Commission staff to provide an exhaustive list of circumstances and/or arrangements that will or will not create a public utility, in general, a distributed generation

Mr. Gregory A. Bollom, Asst. Vice President - Energy Planning

Page 2

April 3, 2014

facility most likely cannot be shielded from the statutory provisions defining a public utility by contract. For example, it is unclear based upon the current development of the law whether joint, temporary ownership of a facility by a third party with a customer would be considered holding public utility service out "to the public." Without specific facts and/or further development of the law, Commission staff is unable to provide more specific guidance than was offered to Representative Tauchen. Ultimately, any determination whether a particular distributed generation facility is, under the law, a public utility would be made on the operational facts of the facility and not an interpretation presented by the parties regarding the relationship or underlying contract.

With regard to your final question, the ownership of a distributed generation resource is irrelevant to a utility's obligations under Wis. Admin. Code ch. 119. The Commission's rules do not allow an incumbent utility to refuse to connect a distributed generation resource because the utility knows or has reason to believe the customer may not own the resource. In other words, Wisconsin Admin. Code ch. PSC 119 applies to *all* distributed generation up to 15 megawatts. The rules clearly define distributed generation without limiting that definition to customer owned generation.

In the event an interested party believes a distributed generation owner is acting as a public utility under Wisconsin law, I recommend seeking a formal Commission determination pursuant to Wis. Stat. §§ 196.26, 227.41, and/or Wis. Admin. Code § PSC 2.07, as may be applicable, depending upon the specific nature of the complaint and the identity of the complainant(s).

If you have any other questions, please feel free to me.

Sincerely,

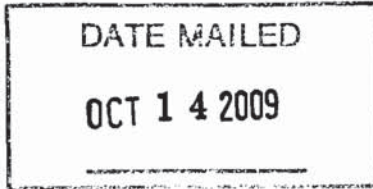


Cynthia E. Smith
Chief Legal Counsel

RDN:JWC:cmk:DL:00898622

FILED
02-25-2021
Circuit Court
Portage County
2021CV000041

EXHIBIT 3 — Prohibition Order



BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation to Develop and Analyze Alternative Electric and Natural
Gas Rate Design and Load Management Options which have the
Potential to Reduce Emissions of Greenhouse Gases

5-UI-116

**ORDER TEMPORARILY PROHIBITING OPERATION OF
AGGREGATORS OF RETAIL CUSTOMERS**

This Order temporarily prohibits the operation of Aggregators of Retail Customers (ARCs) in Wisconsin in order to prevent potential unlawful discrimination and to permit the Commission additional time to gather more information regarding ARCs, ARC compensation and the tariff provisions of the Midwest Independent Transmission System Operator, Inc. (MISO). Temporarily prohibiting ARCs will provide the Commission with an opportunity to analyze the financial implications that ARCs may have for Wisconsin ratepayers and electric utilities and to investigate the effects that ARCs may have on utility-sponsored demand response programs and utility planning.

In Orders 719 and 719-A,¹ the Federal Energy Regulatory Commission (FERC) ordered Regional Transmission Organizations (RTOs), including MISO, to amend their market rules to allow ARCs to bid demand response resources from retail customers directly into the RTOs' wholesale energy and ancillary services markets. FERC found that allowing ARCs to participate in wholesale markets would reduce barriers to demand response, expand the development of

¹ Final Rule, *Wholesale Competition in Regions with Organized Electric Markets*, Docket Nos. RM07-19-000 and AD07-7-000, 125 FERC ¶ 61,071 (2008) (Order 719) and Order on Rehearing, 128 FERC ¶ 61,059 (2009) (Order 719-A).

Docket 5-UI-116

demand response resources and increase competition, thereby reducing prices and enhancing reliability.

Pertinent to the present consideration is the final rule adopted by FERC, which provides as follows:

Aggregation of retail customers. Each Commission-approved independent system operator and regional transmission organization must accept bids from an aggregator of retail customers that aggregates the demand response of: (1) the customers of utilities that distributed more than 4 million megawatt-hours in the previous fiscal year, and (2) the customers of utilities that distributed 4 million megawatt-hours or less in the previous fiscal year, where the relevant electric retail regulatory authority permits such customers' demand response to be bid into organized markets by an aggregator of retail customers. *An independent system operator or regional transmission organization must not accept bids from an aggregator of retail customers that aggregates the demand response of: (1) the customers of utilities that distributed more than 4 million megawatt-hours in the previous fiscal year, where the relevant electric retail regulatory authority prohibits such customers' demand response to be bid into organized markets by an aggregator of retail customers, or (2) the customers of utilities that distributed 4 million megawatt-hours or less in the previous fiscal year, unless the relevant electric retail regulatory authority permits such customers' demand response to be bid into organized markets by an aggregator of retail customers.*

18 C.F.R. § 35.28(g)(1)(iii) (emphasis added).

For electric utilities that distribute more than 4 million megawatt-hours (MWh) per year, the rule requires a state commission to affirmatively “opt-out” if it determines that ARCs are prohibited under state law. There are four Wisconsin public utilities that distribute more than 4 million MWh per year. These are Northern States Power Company-Wisconsin (NSPW), Wisconsin Power and Light Company (WP&L), Wisconsin Electric Power Company (WEPCO), and Wisconsin Public Service Corporation (WPSC).

Following the issuance of Order 719 and subsequent activities by the MISO to implement its provisions, the Commission issued an Amended Notice of Investigation and Request for Comments, dated April 2, 2009, seeking comments about possible ARC operations in Wisconsin.

Docket 5-UI-116

Several comments from utilities and customers were received.² The Commission discussed this matter at its open meetings of September 17 and 25, 2009.

ARCs are a new concept with respect to Wisconsin utility law as they arise from the regulation of wholesale electric markets by FERC. ARCs operate by arbitraging between retail rates, where prices are based on average costs and tend to be relatively stable, and wholesale markets, where prices are based on marginal costs and tend to be more volatile. Customers take their contract right to receive retail electric service, which is an option right, and transfer and assign it to an ARC. This option to purchase electric energy then becomes part of the ARC's demand response bid in the RTO energy market or ancillary services market. Essentially, retail customers sell to ARCs their option right to purchase electricity at an average cost that exists because of state regulation. ARCs then resell this option in the wholesale market.

ARCs could bring both advantages and disadvantages to Wisconsin retail customers and electric utilities. As to potential benefits, ARCs may encourage the implementation of innovative demand response technologies and bring economies of scale to demand response programs. For retail customers that take service at multiple locations from more than a single electric utility, ARCs may also provide them an opportunity to consolidate their demand response activities with a single vendor.

However, the Commission's preliminary investigation reveals that customers selling load reductions through ARCs, or acting as ARCs themselves, have the potential for securing electricity at net lower rates than the rates authorized by the Commission. Utilities could also be

² Comments were received from the following: Wisconsin Industrial Energy Group, Inc., and Wisconsin Paper Council (initial and supplemental joint comments); Madison Gas and Electric Company, WEPCO, WP&L, WPSC, and WPPI Energy (joint comments); Municipal Electric Utilities of Wisconsin; NSPW; Citizens' Utility Board, Clean Wisconsin and RENEW Wisconsin (joint comments); and Customers First! Coalition.

Docket 5-UI-116

left with the legal responsibility and the associated costs of providing adequate generating capacity for customers which are reselling such capacity into the wholesale market through an ARC. Such outcomes could impose additional costs on other ratepayers and could be discriminatory. Wis. Stat. §§ 196.22, 196.60(1), and 196.60(3).

FERC has not yet approved the MISO tariffs which will regulate the activities of ARCs within the MISO region. Moreover, it appears that additional information would be useful to long-term Commission consideration of ARCs and their proper role, if any, in Wisconsin energy needs. Further investigation is warranted about the effective utilization of demand response options in retail and wholesale markets that will provide benefits to all Wisconsin consumers.

In light of the foregoing considerations, the Commission concludes that it is appropriate to prohibit the transfer of demand response load reductions to MISO markets directly by retail customers or by third-party ARCs of the four Wisconsin electric utilities which distribute more than 4 million MWh per year. 18 C.F.R. § 35.28(g)(1)(iii).

This Order is issued pursuant to the Commission's jurisdiction under Wis. Stat. §§ 196.02(1), 196.03(1), 196.19, 196.20, 196.22, 196.26, 196.28, 196.37(2), 196.39, 196.395, 196.40, 196.44(1), 196.60(1) and (3), 196.604, 227.01(13)(c), and other provisions of Wis. Stat. ch. 196 and 227 as may be pertinent.

It Is Ordered:

1. This Order shall be effective the day after the date of mailing and shall continue in effect until rescinded, in whole or in part, by further Commission order.
2. As a condition on the provision of electric service, demand response load reductions of retail customers of the four Wisconsin electric utilities which distribute more than

Docket 5-UI-116

4 million MWh per year (named above) are prohibited from being transferred to MISO markets directly by retail customers or by third-party ARCs.

3. Jurisdiction is retained.

Dated at Madison, Wisconsin, October 9, 2009

By the Commission:



Sandra J. Paske
Secretary to the Commission

SJP:MSV:JEF:mem:g:\order\pending\5-UI-116 Temp. Order.doc

See attached Notice of Rights

Docket 5-UI-116

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.³ 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

³ See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

Docket 5-UI-116

APPENDIX A
(CONTESTED)

In order to comply with Wis. Stat. § 227.47, the following parties who appeared before the agency are considered parties for purposes of review under Wis. Stat. § 227.53.

Public Service Commission of Wisconsin
(Not a party but must be served)
610 N. Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

CITIZENS UTILITY BOARD,
CLEAN WISCONSIN and
RENEW WISCONSIN
Curt F. Pawlisch
Kira E. Loehr
Cullen Weston Pines & Bach LLP
122 West Washington Avenue, Suite 900
Madison, WI 53703

ENERGY CENTER OF WISCONSIN
Susan E. Stratton
Steve Kihm
455 Science Drive, Suite 200
Madison, WI 53711

MADISON GAS AND ELECTRIC COMPANY
Daniel P. Gustafson
Stafford Rosenbaum LLP
PO Box 1784
Madison, WI 53701-1784

MUNICIPAL ELECTRIC UTILITIES OF WISCONSIN
Anita T. Gallucci
Rhonda R. Hazen
Boardman Law Firm LLP
PO Box 927
Madison, WI 53701-0927

Docket 5-UI-116

WE ENERGIES

Rebecca Valcq
333 West Everett Street, A292
Milwaukee, WI 53203

WISCONSIN INDUSTRIAL ENERGY GROUP

Steven A. Heinzen
Godfrey & Kahn, S.C.
PO Box 2719
Madison, WI 53701-2719

WISCONSIN PAPER COUNCIL

Earl J. Gustafson
PO Box 718
Neenah, WI 54957-0718

WISCONSIN POWER AND LIGHT COMPANY

Michael S. Greiveldinger
Scott R. Smith
4902 North Biltmore Lane
Madison, WI 53718

WISCONSIN PUBLIC POWER INC.

Paul G. Kent
Anderson & Kent, S.C.
1 North Pinckney Street, Suite 200
Madison, WI 53703

WISCONSIN PUBLIC SERVICE CORPORATION

Bradley D. Jackson
Brian H. Potts
Foley & Lardner LLP
150 East Gilman Street
Madison, WI 53703

Dennis Dums
Citizens Utility Board
16 North Carroll Street, Suite 530
Madison, WI 53703

Docket 5-UI-116

Katie Nekola
Clean Wisconsin
122 State Street, Suite 200
Madison, WI 53703-4333

John Krueger, Kristine A. Euclide, and Angela A. James
Madison Gas and Electric Company
PO Box 1231
Madison, WI 53701-1231

David J. Benforado
Municipal Electric Utilities of Wisconsin
725 Lois Drive
Sun Prairie, WI 53590

Michael Vickerman
RENEW Wisconsin
222 South Hamilton Street
Madison, WI 53703

T. R. McNeer
We Energies
231 West Michigan Street, P321
Milwaukee, WI 53203

Todd Stuart
Wisconsin Industrial Energy Group, Inc.
10 East Doty Street, Suite 800
Madison, WI 53703

Kavita Maini
KM Energy Consulting LLC
961 North Lost Woods Road
Oconomowoc, WI 53066

Mike Stuart
Wisconsin Public Power Inc.
1425 Corporate Center Drive
Sun Prairie, WI 53590-9109

Dennis M. Derricks
Wisconsin Public Service Corporation
700 North Adams Street
Green Bay, WI 54307