



We Energies
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November 29, 2018

Richard A. Heinemann, Esq.
Boardman & Clark LLP
1 South Pinckney Street, Suite 410
Madison, WI 53703

Re: Interconnection Requests

Dear Mr. Heinemann:

Wisconsin Electric Power Company (“Wisconsin Electric”) has now completed its review of your client's applications to interconnect seven distributed generation facilities, three of which were submitted on October 29, 2018, and the remaining four on November 5, 2018, at various locations in the City of Milwaukee, as well as Amendment No. 1 to the Solar Services Agreement (“Agreement”) between Eagle Point Energy-6 LLC (“Eagle Point”) and the City of Milwaukee (“City”), which was submitted on November 12, 2018. Wisconsin Electric cannot legally grant the applications because the amended Agreement constitutes an arrangement to sell electricity at retail to an existing customer of Wisconsin Electric contrary to Wisconsin law.

The parties' amendment of the Agreement required Wisconsin Electric to evaluate whether the changes made would lead to a different conclusion than that provided in Wisconsin Electric's letter to the City dated October 26, 2018. Based on this evaluation, Wisconsin Electric has concluded that the amended arrangement between Eagle Point and the City would violate Wisconsin law. Under the amended Agreement, the proposed solar electric generation systems would be 80% owned by Eagle Point and 20% owned by the City. Eagle Point would be 100% responsible for the construction, installation, operation and maintenance of the facilities. Eagle Point would be responsible for ensuring that the facilities meet the PSCW's requirements for design, safety, certification and testing. Furthermore, the Agreement provides that Eagle Point will deliver to the City all of the capacity and energy produced by the proposed distributed generation facilities. In exchange, the City will pay the developer a fixed fee for all capacity and energy produced.

In our meeting on November 7, 2018, you acknowledged that the amended Agreement is specifically structured as a sale of electricity at retail from Eagle Point to the City. The terms of the Agreement also make this clear. For example, paragraph 18.10 states:

The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease financing contract and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed to be a service contract *for the sale to Customer of energy produced at an alternative energy facility.* (emphasis added)

It appears that Eagle Point and the City have structured the amended arrangement to remain a service contract within the meaning of section 7701(e) of the Internal Revenue Code of 1986, as amended. In


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particular, the amended Agreement purports to be an agreement to sell power from Alternative Energy Facilities, the facilities are to be operated by the service provider, and the service recipient will not bear any significant financial burden if the facilities fail to produce electric energy, except for reasons that are beyond the service provider's control.

Because Wisconsin Electric already provides retail electric service to the City, Wisconsin law prohibits Eagle Point from doing so. Accordingly, granting Eagle Point's interconnection requests would further an unlawful arrangement. There is no requirement under Wisconsin law that Wisconsin Electric interconnect the facilities owned by a third party who intends to provide electric service to a retail customer already served by Wisconsin Electric.

Please contact me at (414) 221-4737 if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Theodore T. Eidukas".

Theodore T. Eidukas
Vice President
State Regulatory Affairs

cc: Ms. Mary Jo Pullen