



December 18, 2018

Ms. Steffany Powell Coker
Public Service Commission of Wisconsin
P.O. Box 7854
Madison, WI 53707-7854

Re: Application of Wisconsin Electric Power Company, as an Electric Public Utility, for Approval to Implement a Solar Now Pilot Tariff and a Dedicated Renewable Energy Resource Pilot Tariff 6630-TE-102

Dear Ms. Powell Coker,

We appreciate the opportunity to provide comments on Wisconsin Electric's (WEPCO) proposed Pilot Renewable Energy Programs and the Staff Memorandum filed on Monday, December 10, 2018.

Notwithstanding our specific concerns regarding Wisconsin Electric's Solar Now proposal, we are encouraged to see another Wisconsin electric provider proposing to serve customers with more renewable energy options. It is clear from these proposals that renewable energy, particularly local sources of solar, have become an affordable and desirable element within an electric provider's resource mix.

Part 1: Solar Now Pilot:

RENEW Wisconsin supports expansion of renewable energy in Wisconsin, however this pilot must be reviewed in a broader context, as it is not the only solution or option to expand on-site renewable energy for customers. The rooftop solar marketplace today is a very competitive environment with multiple companies serving different types of customers with unique needs and attributes. RENEW believes that all customers who desire to obtain renewable energy for their premises should have options to:

- own a generating system dedicated for their own usage;
- finance a generating system dedicated for their own usage
- lease a generating system dedicated for their own usage; and/or
- select a utility-provided service that best fits their needs and capabilities.

We are very concerned about the competitive advantage that a vertically integrated monopoly provider brings with it, namely control over a customer-generator's access to the grid. We are aware of two instances in the past year where WEPCO denied requests by nonprofit customers to interconnect their financed solar systems dedicated for their own usage.

We are concerned that WEPCO is restricting the ability of customers to pursue leasing/financing models, against prior guidance issued by the Commission's Chief Legal Counsel that distributed generation systems should be interconnected regardless of ownership.

Please see the attached letters:

1) "Re: Third Party Ownership of Distributed Generation," page 2, *"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."*)

Yet:

2) WEPCO Denial to City of Milwaukee / Eagle Point Solar: *"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."*

We understand that the resolution of third party ownership or leasing is not going to occur in this docket, yet the Commission must understand that absent the clarity of all legal options for pursuing solar, the proposed Solar Now program risks overreach of a monopoly utility into the domain of a competitive service.

Solar Industry Members & Customer Perspectives

We have solar industry members who anticipate benefitting from the work of installing up to 35 megawatts of distributed solar throughout Wisconsin Electric territory who support this pilot.

However, we have solar industry companies and members of our organization who believe their solar installation or consultancy business will be put in direct competition with Wisconsin Electric in this pilot. Some members do not feel it fair to compete against a monopoly player in what is today a competitive environment. These members are also concerned that should this Solar Now program be approved, other regulated monopolies will follow suit with similar programs. The Commission should take these concerns seriously.

From a customer perspective, we understand some customers may have characteristics such as large open roof space, little access to financing or cash flow, modest electrical usage and demand, or other characteristics for which Solar Now's roof leasing option could be a sensible way to add solar to the distribution grid.

Because of the many interrelated variables and WEPCO's past actions regarding third party ownership, the Commission must balance the public interest, competitive interests in the rooftop solar market, and the proposed expansion of a regulated monopoly into this space. These interrelated variables lead to our recommendations.

Solar Now Recommendations & Needed Safeguards

Should the Commission choose to approve the Solar Now program, it must make changes to the proposed tariff and place critically important safeguards on the program. Our recommendations are as follows:

1. Amend the final sentence of Page 1 of the Solar Now Tariff to replace "all rights to renewable energy attributes would remain with the Company" with "all rights to renewable energy attributes will be assigned to the participating host customers" or language with the similar meaning. It is our understanding WEPCO will be proposing a change like this in its comments, but we have not seen that change as of this filing, and thus cannot comment on their specific proposed change.
2. WEPCO must have a "bright line" prohibition against marketing this program to any customer who is pursuing their own customer-owned solar photovoltaic project and has already filed a request to interconnect a distributed generation system with WEPCO.

WEPCO cannot be allowed "poach" customers away from the competitive marketplace of solar installation for use in this program. Our members in the solar industry spend considerable time and expense acquiring these customers and conducting significant work to prepare interconnection applications. To have WEPCO poach these customers for use in their program, and take work away from these private businesses, would be anti-competitive.

Therefore, WEPCO must market this program to customers not currently pursuing a distributed generation interconnection to install solar PV.

3. To ensure suggestions 2 is implemented, WEPCO should be required to provide quarterly reports – which can be confidential if needed – documenting the distributed generation interconnection applications received and dates received, and the Solar Now marketing efforts to customers and the dates of those marketing efforts, to ensure that the company is not abusing its position as the monopoly utility which is also responsible for distributed generation interconnection.
4. The Commission needs to resolve the question of whether there are third-party ownership or leasing models and contracts that are legal in Wisconsin. The market for rooftop solar and distributed generation is currently a private and competitive market. If this program is available from the incumbent utility, we believe customers should also have legal options to be provided with similar solar services from competitive third-party providers.

5. The Company, Commission, and interested parties should have ample transparency and opportunity to learn from this Pilot. WEPCO should file reports, at least annually, documenting at least:
 - a. Number of customers marketed to
 - b. Each customer in the program
 - c. Size of each solar PV array
 - d. Date of installation
 - e. Solar production by month
 - f. Distribution system benefits provided the PV system
 - g. Information regarding specific feeder capacity limits impacted by program installations
 - h. Avoided system reinforcements or capital improvements due to program installations
 - i. System capacity benefits provided by the PV system
 - j. And other relevant data that would give the Commission the information needed to ascertain whether the pilot is successful and whether it should be expanded if the initial 35 megawatts of solar is fulfilled.

6. The limitation of a customer's lease payment based on "the customer's firm demand at the time the service agreement is entered into" should be eliminated. There is no discernible correlation between the customer's electricity usage profile and the size of the customer's roof or property available for hosting solar. The customer's demand is entirely irrelevant to the value of the solar project hosted by the customer. We support the 2.25 megawatt (AC) cap.

7. The Commission should explore whether WEPCO can run this pilot using shareholder funds instead of ratepayer funds. WEPCO's holding company, WEC, is investing in wind farms in Nebraska and Illinois. There may be a way to structure this pilot similarly.

Part 2: Dedicated Renewable Energy Resource Pilot:

RENEW Wisconsin supports this Dedicated Renewable Energy Resource Pilot Program. This pilot will provide a pathway for Wisconsin Electric to address its capacity need at no cost to nonparticipating ratepayers. Absent a pilot like this, Wisconsin Electric would need to purchase capacity, either through a rate-based utility solar or natural gas plant, demand response program, or market capacity purchases, incurring costs that would be passed to all customers.

Instead, this pilot will allow self-selecting subscribers, who want access to renewable energy, to actually benefit all other customers by absorbing the full cost of a solar resource addition.

We also strongly support Wisconsin Electric's position that this pilot will include new, Wisconsin-based renewable energy resources.

We know that corporations, institutions, and local governments across Wisconsin and the country want access to renewable energy contracts and programs such as this program would offer. In fact, here is a list of corporations who are signatories to either the "Corporate Renewable Energy Buyers Principles" or the "Renewable Energy 100" which have operations in Wisconsin Electric territory:

Corporate Signatories to "Renewable Energy Buyers Principles" or other Renewable Energy Commitments with operations in We Energies Service Territory

Research conducted for RENEW Wisconsin by Chris Deisinger, Syntropy Energy

Company	WE Location	Buyers Principles	Additional Corporate Commitments
MANUFACTURING / PRODUCTION			
Iron Mountain	Milwaukee	Yes	Carbon Disclosure Project
Amazon	Kenosha, Sussex	Yes	"Loosely" Pledged 100% RE; 4 wind farms (IN, NC, OH, TX), solar farm (VA)
Avery Dennison	Menominee Falls, Neenah	Yes	
Becton-Dickinson	Franklin	Yes	50% RE by 2020
Berry	Milwaukee, Pewaukee	Yes	Carbon Disclosure Project
Kellogg	Menominee Falls	Yes	RE100; 50% "low carbon" by 2020
Kimberly Clark	Neenah, Menasha	Yes	245 MW of OK/TX wind, meets 1/3 of US operations.
Lockheed Martin / Derco	Milwaukee	Yes	
Mars	Kenosha	Yes	RE100; Renewable Thermal Collaborative; TX wind RECs
Nestle	Burlington, Wauwatosa	Yes	"Zero environmental impacts" by 2030.
PepsiCo	Milwaukee, New Berlin, Pleasant Prairie	Yes	"As renewable as possible" - solar and landfill gas
-- Frito Lay	West Bend	Yes	
Royal DSM	Germantown, Waukesha		RE100, Carbon Disclosure Project; 50% purchased electricity from RE by 2025; Reached 40% on a 2017 deal with NextEra
Sealed Air	Watertown	Yes	25% reduced GHG by 2020
vf (owns North Face)	Greenville	Yes	RE100 by 2025
SC Johnson	Racine, Sturtevant		33% RE by 2016; WI operations are "net energy neutral"
<i>(Continued below)</i>			

Company	WE Location	Buyers Principles	Additional Corporate Commitments
HOTELS			
Hilton (Hilton Garden Inn, Doubletree, Hampton Inn & Suites, Embassy Suites, Home2Suites, Homewood Suites)	Milwaukee x6; Kimberly, Oconomowoc, Brookfield x3, Neenah, Pleasant Prairie, Racine, Burlington, Grafton, Kenosha, West Allis, West Bend, Waukesha, Wauwatosa	Yes	
Marriott-Starwood (Sheraton, Aloft, Courtyard, Fairfield, Residence Inn, Others)	Milwaukee x7, Appleton x2, Brookfield x4, Brown Deer, Glendale x2, Oak Creek, Racine x2, Waukesha x2, Wauwatosa	Yes	Reduce GHG "per hotel room" 30% by 2020
RETAIL			
Amazon (Whole Foods)	Milwaukee, Wauwatosa	Yes	
IKEA	Oak Creek	Yes	
REI	Milwaukee	Yes	100% Green Power Commitment, met through self-generation, long term RE contracts through utilities, RECs if necessary
Target	18 Stores	Yes	100% RE; 500 buildings with rooftop solar (most of these do)
vf (owns North Face)	Brookfield, Pleasant Prairie	Yes	RE100 by 2025
Walmart	27 Stores	Yes	RE100; 50% RE by 2025; Carbon Disclosure Project
Gap (Gap, Athleta, Banana Republic, Old Navy)	16 total stores, most in malls	Yes	Carbon Disclosure Project; 50% GHG reduction by 2020
H&M	3 stores in malls	Yes	100% RE
McDonalds	Approximately 80 stores	Yes	
Starbucks	Approximately 70 stores	Yes	

Critically important to these customers being willing to participate in this pilot are two things:

- 1) An overall risk / reward balance that is commensurate with the cost and sustainability goals they are seeking to achieve
- 2) The opportunity to access renewable energy at cost-parity over a long-term contract, or at as minimal of a cost differential as can be achieved.

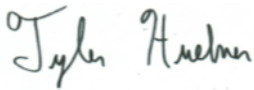
These two goals lead to RENEW's position that Wisconsin Electric's proposal that the "Cost of New Entry" or CONE value be used for the "long term capacity credit" when Wisconsin Electric has an unfilled capacity need. We do not support Commission Staff's suggestion of a different capacity value.

DRER Recommendations:

- We support **Alternative 2: Approve the proposed DRER program with modifications.**
- RENEW Wisconsin supports the "CONE" value for capacity payments when WEPCO has a demonstrated shortfall of capacity
- RENEW Wisconsin supports a locked-in capacity value at the time a contract is signed with a customer, to ensure predictability in the benefits and costs to the participating customers. This is consistent with WEPCO's response in 1-ELPC-WEC-9.
- The modification we support **to strike the final sentence under Conditions of Delivery item 6, "Under no circumstances will multiple customers be allowed to aggregate eligible accounts under a single service agreement application."** We can foresee scenarios where such aggregation may be of benefit to the customer and Company and in the public interest.

Thank you for your consideration of our views and positions on these matters.

Sincerely,



Tyler Huebner
Executive Director
RENEW Wisconsin
214 N. Hamilton St. Ste 300
Madison, WI 53703



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
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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



We Energies
231 W. Michigan Street
Milwaukee, WI 53203
www.we-energies.com

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

Richard A. Heinemann, Esq.
November 29, 2018
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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



We Energies
231 W. Michigan Street
Milwaukee, WI 53203
www.we-energies.com

October 26, 2018

Delivered Via Electronic Mail

Ms. Elizabeth Hittman
Sustainability Program Coordinator
200 E. Wells Street, Room 603
Milwaukee, WI 53202

Re: City of Milwaukee Interconnection Applications

Dear Ms. Hittman:

Wisconsin Electric Power Company (Wisconsin Electric) has completed its review of your applications to interconnect seven distributed generation facilities as part of your ReFresh plan to replace fossil fuel energy use with cleaner renewable resources at your facilities. Unfortunately, Wisconsin Electric cannot legally grant the applications because the proposed purchase power agreement between the City and a solar developer is not authorized under Wisconsin law.

Nonetheless, Wisconsin Electric values our relationship with City of Milwaukee. We would like to offer the City the opportunity to participate in a pilot program that would allow the City to achieve its policy objectives by hosting the same solar projects identified by the City within the confines of Wisconsin law. This program would deliver additional benefits to the City in the form of long term revenue for hosting solar facilities at your six preferred sites and avoid spending general purpose revenues to advance your solar projects.

Interconnection Request

We have determined that the interconnection applications are not complete because they have not been submitted by the proper applicant. The rules of the Public Service Commission of Wisconsin (PSCW) relating to interconnection are found in Wis. Admin. Code § 119.02(2). That administrative rule requires that the interconnection applicant be “*the legally responsible person applying to a public utility to interconnect a DG facility to the public utility’s distribution system.*”

According to the materials the City recently provided to us, the developer will hold an 80% ownership share in the facilities and will be 100% responsible for the construction, installation, operation and maintenance of the facilities. The proposed solar service agreement between the City and the developer also makes clear that the developer will be the actual owner responsible for ensuring that the facilities meet the PSCW’s requirements for design, safety, certification and testing.

Although the agreement states that the City would hold a 20% ownership share of the facilities, the City will have no other indicia of ownership. Furthermore, the agreement provides that the developer 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 an energy service fee for all capacity and energy produced that will vary by the facilities’ actual output through an annual true-up adjustment.

Ms. Elizabeth Hittman
October 26, 2018
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This arrangement constitutes a purchase power agreement where the third party developer is acting as the public utility by selling electricity directly to the City. Because Wisconsin Electric already provides electric service to you, the developer cannot act as the public utility in this circumstance and extend such service to you. Such an arrangement is not authorized under Wisconsin law.

For these reasons, Wisconsin Electric cannot legally interconnect the proposed distributed generation facilities.

Solar Now Program

Although we cannot legally grant these interconnection applications, we believe we have a practical solution that would enable you to meet your policy objectives.

We would invite the City to participate in our proposed Solar Now Pilot program. Once approved by the PSCW, the Solar Now program will allow our customers to host solar generation on their rooftops or vacant land and, in exchange, receive a monthly lease payment. We believe the facilities you identified in your RFP issued last May would fit nicely into this pilot. Attached is a copy of our request for approval of our pilot program, which we submitted to the PSCW on October 12th.

We believe that having these facilities rolled into our proposed Solar Now program would offer several advantages for the City. First, we estimate the City would save over \$300,000 up front by eliminating the need for the funding contemplated by the developer. Second, the City would avoid a long-term obligation under the Solar Services Contract to pay almost \$3.5 million in nominal dollars over the term of the Contract in exchange for potential—and uncertain—savings on energy costs. Instead, we estimate the City would receive lease payments of approximately \$45,000 per year for the life of the lease at the six proposed locations.

Combined with our active collaboration with the City for the last several months by working with you on larger scale solar projects under our other proposed pilot program (the Designated Renewable Energy Resource Pilot (“DRER Pilot”) also filed on October 12th), we believe that the Solar Now tariff is a far better approach to meeting your renewable energy goals. We look forward to discussing the Solar Now tariff with you, and also to continuing our discussions on the City's participation in utility-scale solar generation under the DRER Pilot.

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

Sincerely,



Theodore T. Eidukas
Vice President
State Regulatory Affairs

Enclosure
cc: Tom Miller and Erick Shambarger