



Public Service Commission of Wisconsin

Lon Roberts, Chairperson
Mike Huebsch, Commissioner
Rich Zipperer, Commissioner

4822 Madison Yards Way
P.O. Box 7854
Madison, WI 53707-7854

November 6, 2018

Via Electronic Mail

Theodore Eidukas, Vice President – State Regulatory Affairs
Wisconsin Electric Power Company
PO Box 2046
Milwaukee, WI 53201-2046
(Theodore.Eidukas@wecenergygroup.com)

Erick Shambarger
Environmental Sustainability Director
200 E. Wells Street, Room 603
Milwaukee, WI 53202
(eshamb@milwaukee.gov)

Re: City of Milwaukee – Solar Installations and Interconnection
Request

Dear Messrs. Eidukas and Shambarger:

I am in receipt of various communications from you or others on your behalf in connection with solar installations the City of Milwaukee (City) is pursuing on several City buildings. I have also received a copy of a letter dated October 26, 2018, wherein Wisconsin Electric Power Company (WEPCO) denied the City's interconnection request for approximately 1 MW of solar generation facilities. I am also aware that the City has received a grant from Focus on Energy for certain aspects of its proposed solar projects.

Based upon the review of your communications, I am aware that there may be a dispute between the City and WEPCO relating to the ownership structure of the distributed generation resources proposed by the projects and the interconnection of these resources by WEPCO. While I appreciate receiving the information you have provided to date, please be advised that such informal communications will not initiate formal Commission proceedings.

I understand from WEPCO that it is meeting with the City and the parties are attempting to resolve this matter. To the extent no resolution is reached and should you wish for the Commission to take any action, the appropriate process for dealing with concerns that a distributed generation owner is acting as a public utility under Wisconsin law or whether such a resource has been unlawfully denied interconnection, is to seek a formal Commission determination pursuant to Wis. Stat. § 227.41 and/or Wis. Admin. Code § PSC 2.07.

Messrs. Eidukas and Shambarger
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As the Commission has noted on several occasions, whether a third-party ownership situation violates Wisconsin law is intensely factual and requires a case-by-case determination. *Application of Wis. Elec. Power Co. for Authority to Transfer Milwaukee Cnty. Power Plant and Related Steam Distribution Assets to Wis. Regional Medical Ctr. Thermal Serv., Inc., Located in the City of Wauwatosa, Milwaukee Cnty, Wis.*, Docket No. 6630-BS-101, 2016 WL 233574, at *5 (Wis. PSC Jan. 15, 2016) (*MRMC*) (“[W]hether an entity is a public utility providing service to or for the public under Wis. Stat. § 196.01(5) is highly fact dependent and must be made on a case-by-case basis only after a review of all the relevant factors. There is no single criteria for determining whether an entity is a public utility.”). It is the Commission that possesses the authority to make these determinations.

Please continue to keep me informed as the discussions progress. Finally, please note that because the projects are not operational, it is my understanding that grant funds have not been released. In light of the pending dispute, I have directed Focus to hold processing the grant award until further information is received from WEPCO and the City. The Focus grant might be implicated depending upon the nature of any resolution reached.

Should you have any questions, please feel free to contact me.

Sincerely,

Cynthia E. Smith
Chief Legal Counsel

CS:DL: 01657089

cc: Tom Miller, Esq. – City of Milwaukee (TMiller@milwaukee.gov)
Catherine Phillips, Esq. – Wisconsin Electric Power Company (Catherin.Phillips@we-energies.com)