

SERVICE DATE
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Public Service Commission of Wisconsin
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PUBLIC SERVICE COMMISSION OF WISCONSIN

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

FINAL DECISION

This is the Final Decision in the application of Wisconsin Electric Power Company (WEPCO) for approval to implement two new renewable energy pilot programs. The first, Solar Now, is a photovoltaic (PV) solar hosting program for commercial and industrial customers. The second, Dedicated Renewable Energy Resource (DRER), is a renewable energy rider for large commercial and industrial customers.

WEPCO's request for approval of two new pilot programs is GRANTED, subject to conditions.

Introduction

On October 12, 2018, Wisconsin Electric Power Company (WEPCO) filed an application for two new pilot programs. ([PSC REF#: 351616](#).) The first pilot program is a solar hosting program for commercial and industrial customers, and the second pilot program is a renewable energy rider for large commercial and industrial customers. The Commission issued a Notice of Investigation in this docket on November 1, 2018. ([PSC REF#: 352570](#).) Citizens Utility Board of Wisconsin (CUB), RENEW Wisconsin (RENEW), and Wisconsin Industrial Energy Group all requested and were granted intervention in this docket. ([PSC REF#: 352753](#), [PSC REF#: 353053](#), [PSC REF#: 353386](#), and [PSC REF#: 353837](#).) Additionally, the Environmental Law and Policy Center (ELPC) and Vote Solar requested to intervene out of time on December 7,

Docket 6630-TE-102

2018. ([PSC REF#: 354922](#).) No objections to the intervention request of ELPC and Vote Solar were received.¹ No hearing in this docket was required by law. On December 10, 2018, the Commission provided a memorandum to the parties and those requesting party status for comment. ([PSC REF#: 355006](#).) Public comments were also accepted on the Commission's website. Thus, all interested persons were afforded an opportunity to be heard through submission of comments on the memorandum. RENEW, WEPCO, CUB, and ELPC and Vote Solar submitted party comments in response to the memorandum. ([PSC REF#: 355682](#), [PSC REF#: 355687](#), [PSC REF#: 355689](#), [PSC REF#: 355707](#).) Comments were also received from various business and governmental organizations.² Many comments were also received from individual members of the public. The Commission considered this matter at its open meeting of December 20, 2018.

Findings of Fact

Solar Now

1. WEPCO filed a request for authority to implement the Solar Now pilot program on October 12, 2018.
2. It is reasonable to authorize WEPCO's Solar Now pilot program and associated tariff, with conditions.
3. It is reasonable to accept WEPCO's modifications to its original Solar Now pilot tariff, as outlined in WEPCO's comments. ([PSC REF#: 355687](#).)

¹ The Commission's Notice of Investigation permits existing parties 5 days in which to respond to these requests.

² See, e.g., City of Milwaukee ([PSC REF#: 355674](#)), Milwaukee Area Technical College ([PSC REF#: 355584](#)), Senator Devin LeMahieu ([PSC REF#: 355694](#)), Representative Mike Kuglitsch ([PSC REF#: 355688](#)), ATI Forged Products ([PSC REF#: 355539](#)), WEPCO Customer Support Letters ([PSC REF#: 355687](#), Ex. A).

4. It is reasonable to require WEPCO to file updated reports with the Commission with Solar Now information pertaining to the amount of energy produced by each PV array, the hourly production curves for each PV array by month, and the number of participating customers.

5. It is reasonable to approve deferral accounting treatment related to the Solar Now pilot program, with conditions.

6. It is reasonable to not have carrying costs associated with the Solar Now deferral.

7. It is reasonable to require WEPCO to provide further information and documentation regarding the costs and benefits to ratepayers of its Solar Now pilot program to aid the Commission in its decision making regarding the recoverability of the deferral in a future rate case.

8. It is reasonable to limit the Solar Now deferral to capital costs associated with executed lease agreements.

9. With the conditions and modifications described in this Final Decision, WEPCO's proposed Solar Now pilot program is reasonable and in the public interest.

DRER

10. WEPCO filed a request for authority to implement the DRER pilot program on October 12, 2018.

11. It is reasonable to authorize WEPCO's DRER pilot program and associated tariff.

12. It is reasonable to accept WEPCO's modifications to its original DRER tariff, as outlined in WEPCO's comments. ([PSC REF#: 355687.](#))

13. With the modifications described in this Final Decision, WEPCO's proposed DRER pilot program is reasonable and in the public interest.

Conclusions of Law

1. WEPCO is an electric public utility under Wis. Stat. § 196.01(5).
2. The Commission has authority under Wis. Stat. §§ 196.02, 196.025, 196.03, 196.19, 196.20, and 196.37 to authorize WEPCO to implement the Solar Now and DRER pilot programs in accordance with this Final Decision, and to determine that the rates and rules in the tariffs are reasonable and just as a matter of law.
3. The Commission may impose any term, condition, or requirement necessary to protect the public interest pursuant to Wis. Stat. §§ 196.02 and 196.395.
4. No hearing under Wis. Stat. §§ 196.20(1) or (2m) was required in this matter as the Solar Now and DRER pilot programs, as conditioned by this Final Decision, do not curtail the obligation or undertaking of WEPCO, or constitute an increase in rates to consumers.

Opinion

Solar Now

Solar Now is a program offering for WEPCO's commercial and industrial customers who wish to host solar PV arrays on their property. The arrays will be owned and operated by WEPCO, with all energy delivered to WEPCO's distribution system. Effectively, the program will create, if fully subscribed, a 35 megawatt (MW) distributed solar generator in WEPCO's generation fleet. The program is open to all commercial and industrial customers, but 10 MW will be reserved for government and non-profit customers. No individual hosted array will be greater than 2.25 MW. WEPCO will set the lease payments to participating customers at the cost of new entry (CONE), as determined by Midcontinent Independent System Operator, Inc. (MISO). This CONE value would be set upon signing the contract and would remain the same

Docket 6630-TE-102

throughout the term of the contract. The actual amount paid to customers would be the CONE price, times the size of the hosted array, times the MISO-accredited capacity value for solar PV resources.

As part of the calculation outlined above, the solar PV system would receive a capacity accreditation for 50 percent of its nameplate capacity in the first year. After that, the capacity is set based on the performance of the array on a rolling 3-year average. There is potential for the accredited capacity value for a solar PV system to change within the MISO market. As such, participating customers will need to take this into consideration when determining if the lease payment will be sufficient compensation in future years. Additionally, WEPCO modified its original proposal to allow the participating customers to also purchase the Renewable Energy Certificates (REC) generated by the facility that the customer hosts, as an adjustment to the lease payment, based on the fair market value of the solar RECs.

Since the various arrays would be owned and operated by WEPCO, the assets would be recorded as regular generation assets. The lease payments to hosting customers would be recorded in Account 550, Rents for Other Power Generation, as an ongoing expense. Commission staff estimates the avoided cost of both these components to be \$49.96/megawatt-hour (MWh) in the first year. The long-term avoided cost would increase, depending on the inflation rates used for fuel and transmission costs, to the benefit of WEPCO's customers. Using WEPCO's assumptions and including transmission benefits, the projected lifetime energy cost of the system is \$50.70/MWh.

CUB, ELPC, and Vote Solar submitted comments stating their belief that the Solar Now program is not the most cost-effective approach to achieve the program goals, and that the

Commission should provide additional holistic review of the program and make a determination that a Certificate of Authority may be needed. RENEW, ELPC, and Vote Solar, along with many of the public comments, expressed concern with Solar Now impeding customer options in the private market. The Commission appreciates the comments and notes the concerns raised; however, upon review of the record, the Commission finds it reasonable to approve the Solar Now pilot program, as modified by WEPCO in its comments and as conditioned by this Final Decision.

The Commission is unpersuaded by the review process concerns raised by CUB, ELPC, and Vote Solar. As a threshold matter, the Commission observes that no Commission authorization was likely required for the Solar Now program pilot.³ As noted previously, Solar Now is a standard lease arrangement between WEPCO and property owners in its service territory. The proposed tariff is unique in that it does not provide for any service to customers or contain rules governing the provision of service. WEPCO does not need Commission approval to enter into lease agreements for siting of facilities under current Wisconsin statute or administrative code requirements. Utilities enter into similar arrangements without Commission review or approval. For example, wind developers and utilities enter into lease agreements with property owners for hosting wind turbines without having a leasing tariff or receiving prior Commission authorization.

Further, contrary to CUB's suggestion, construction authorization under Wis. Stat. § 196.49 is also not required. Because each individual project is a separate, stand-alone installation that is capped at 2.25 MW, the projected cost of each project is below the dollar threshold at which WEPCO would need prior authorization. While the pilot program has a cap

³ While Commission authorization of Solar Now was not required, the Commission applauds WEPCO for nonetheless bringing this novel pilot before the Commission for review and approval.

Docket 6630-TE-102

of 35 MW, there is no guarantee that this cap will be met as it is a voluntary program that will depend solely upon customer interest and participation. This kind of program is distinguishable from a meter replacement project cited by CUB where each meter is to be replaced as part of the program over a period of years.

As to ELPC and Vote Solar's concerns that the Commission's review should have been conducted as a contested case proceeding, the Commission notes that it routinely reviews and approves renewable energy tariff proposals outside of a contested rate case proceeding.⁴ The Commission's review process here, which included solicitation of written comments, afforded ample opportunity for interested persons to be heard and helped inform the Commission's decision making. Additionally, the imposition of reporting conditions, as will be discussed below in response to many of the comments received, as well as the on-going opportunity to review the results of this pilot in subsequent rate case proceedings, will provide additional opportunities for review to ensure the pilot is in the public interest. Further, it is important to note that approval of this pilot and granting of the deferral as discussed below does not bind the Commission to any specific treatment (i.e. recovery) for costs related to the program in any future proceeding involving rates or other matters before the Commission.

Several commenters were critical of the terms of the proposed lease and asked the Commission to either modify the terms or impose additional restrictions on Solar Now relating to marketing of the pilot. WEPCO, responding to comments critical of the design relating to RECs,

⁴ See, .e.g, *2015 Miscellaneous Tariff Filings*, docket 4220-TE-101; *Application of Northern States Power Company-Wisconsin, as an Electric Public Utility, for Approval to Implement a Green Tariff Program*, docket 4220-TE-102; *2015 Miscellaneous Tariff Filings – Application of Madison Gas and Electric Company to Implement a Community Solar Pilot Project*, docket 3270-TE-101; and *Application of Madison Gas and Electric Company for Authority to Offer a Renewable Energy Rider*, docket 3270-TE-102.

Docket 6630-TE-102

has proposed changes to that component which the Commission finds are reasonable. The Commission declines to make further modifications to the program at this time. Solar Now is a voluntary pilot program. If customers are dissatisfied with the offering, they need not sign up for it. The Commission finds that Solar Now is a reasonable way for WEPCO to assist its customers that would like to participate in renewable energy programs.

Finally, with regard to the numerous comments received critical of Solar Now because of the belief that it impedes customer options in the private market, the Commission observes that the vast majority of comments received relate to an issue that is not before it in this docket. The tariffs before the Commission in this docket simply provide additional renewable options for customers, and approval does not preclude other arrangements or other program designs. To the extent individuals or organizations want the Commission to examine some other arrangement—such as private, third-party leasing options—the Commission has been clear. It is a matter for the Legislature and barring legislative action, the process to address such concerns (including concerns about alleged violations of the interconnection rules), is through the Commission’s complaint resolution process.⁵ The Commission is also not persuaded by the asserted concerns relating to competition, as it provides more options for renewable generation, not less. If the assertion that the program will result in higher costs for participating customers is correct, then free market competitors will have an advantage, not a disadvantage.

⁵ See, e.g., *Applicability of Wis. Stat. § 196.01(5)(a) to Third Party Financing of Distributed Energy Resource Systems in Wisconsin*, docket 9300-DR-102; *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 6630-BS-101.

Reporting Requirements for Solar Now

In its comments on Commission staff's memorandum, CUB and others proposed reporting requirements for the Solar Now program pertaining to customer participation and individual solar PV energy production. WEPCO has agreed to the reporting requirements proposed by CUB. ([PSC REF#: 355966.](#)) Accordingly, the Commission finds it reasonable for WEPCO to report, in a format and frequency to be determined by Commission staff and WEPCO but at least annually, the following minimum information: 1) the amount of energy produced by each PV array; 2) the hourly production curves for each PV array; and 3) the number of participating customers.

Deferral Accounting

WEPCO requested to defer the cost of the installed solar systems and the lease payments made to participating customers as part of this pilot program between the date that the pilot program is approved and the implementation of WEPCO's base rate changes, as approved by the Commission in WEPCO's next rate case proceeding. WEPCO requested no carrying costs in this request.

There are several criteria that the Commission uses to evaluate a request for deferral account treatment for a utility expenditure: 1) whether the cost is outside of the utility's control; 2) whether the cost is unusual and infrequently occurring; 3) whether the amount, if recognized in the year of expenditure, would cause the utility serious financial harm or significantly distort the current year's income; and 4) whether the immediate recognition of the expenditure would have a significant impact on ratepayers.

WEPCO offered justification for its deferral request under SOP 94-01, specifically addressing each of the aforementioned criteria. ([PSC REF#: 352461](#).) WEPCO stated the amount was outside of the control of the utility because the Solar Now Pilot was developed in response to WEPCO's customers' demand for Wisconsin-based renewable energy. Next, in response to costs being unusual and infrequently occurring, WEPCO maintained that the cost is unusual and infrequently occurring because this is a pilot project and has not been done before in Wisconsin. In response to the potential for serious financial harm to the utility, WEPCO estimated that the first year revenue requirement associated with the program to be \$9,300,000; not allowing deferral of these costs, according to WEPCO, would result in a reduction in earnings. Finally, regarding ratepayer impacts, WEPCO stated that the immediate recognition of expenditures would not cause a significant impact to ratepayers because the deferral is balanced with the potential "to learn how distributed generation could be used as a cost effective way to maintain or enhance reliable and cost effective delivery of electricity" to customers.

In response to WEPCO's deferral request, Commission staff suggested two additional conditions for Commission consideration. The first is that the authorization be for accounting purposes only and that it not bind the Commission to any specific treatment (i.e. recovery) for this item in any future proceeding involving rates or other matters before the Commission. The second is that WEPCO be required to provide further information and documentation regarding the costs and benefits to ratepayers of its Solar Now program. Such information would then aid the Commission in its decision making regarding the recoverability of the deferral in a future rate case.

CUB and WEPCO each submitted comments in response to the proposed deferral of Solar Now costs. CUB did not support WEPCO's request for deferral accounting treatment on

grounds that such a deferral is not appropriate, as the request does not align with the previously discussed evaluation criteria. However, CUB did offer its support, in the event that the Commission did grant WEPCO's deferral request, for Commission staff's recommendation to require WEPCO to provide further information on program costs and benefits. WEPCO also submitted comments supporting Commission staff's proposed conditions.

Upon review of the entirety of the record as it pertains to the deferral of Solar Now costs, the Commission finds it reasonable to approve deferral accounting treatment with the two conditions proposed by Commission staff, and to not include carrying costs as part of the deferral. The Commission also finds it reasonable to include an additional condition limiting the deferral to capital costs associated with signed leases. Such a condition is intended to ensure that an inventory of solar facilities, without a signed lease attached to them, will not be eligible for deferral consideration. Rather, facilities with capital costs and a signed lease may be considered for deferral, which would then be addressed in a future rate case.

Dedicated Renewable Energy Resource

The DRER program will allow WEPCO to contract with large commercial and industrial customers and build specific renewable resources to serve its individual customer loads. While this DRER proposal is different from WEPCO's current renewable program offerings, it is similar to other utility programs, and in line with the industry trend of designing renewable programs to meet a growing demand for dedicated renewable resources that meet specific corporate sustainability goals.

WEPCO's DRER program can be described as a "Virtual Purchase Power Agreement" (PPA), in which WEPCO, as a generator, contracts with a customer to negotiate a financial

arrangement to pay for a specific resource without physically delivering the power to the customer. WEPCO will work with the customer to understand what type of renewable resource or resources fit within the customer's goals. Most likely the resource will be a solar PV system or wind resource, but it could also include biomass or another type of renewable resource if the customer so desires. WEPCO will limit the location of these dedicated resources to American Transmission Company LLC's transmission system within Wisconsin, or WEPCO's own distribution system, if the resource is small enough to be distribution interconnected. Within this initial pilot offering, WEPCO will limit the total amount of resources it will dedicate to this program to be no more than 150 MW, per the cumulative nameplate capacity rating of the resources.

Unlike other renewable energy riders, under which the utility and customer negotiate a fixed monthly adder, the DRER contract structure is designed to require the customer to pay for the entire capital, financial, and operations and maintenance costs of the resource as a separate bill item. For tax purposes, non-profit and government customers will receive a per-kilowatt-hour charge, and other customers will pay via a fixed monthly charge.

Participating customers will also receive credits on their bills that represent the market value of the designated resource. WEPCO will make energy payments to the customer, based on energy production and MISO energy market prices. WEPCO will also make capacity payments to the customer, based on the \$/MW monetary value described in the contract. Before the contract is signed, WEPCO will determine if a resource will be defined as either a "long-term planning resource" or a "short-term planning resource." If WEPCO has a capacity need during the upcoming MISO planning period, the resource will be designated as a "long-term planning resource" and receive capacity payments based on the MISO-determined CONE. If WEPCO

Docket 6630-TE-102

does not have a capacity need, the resource will be initially designated as a “short-term planning resource” and receive capacity payments based on the most recent results from MISO’s annual capacity market known as the Planning Resource Auction. Additionally, any resource initially designated as “short term” would be put on a “long-term capacity resource wait list” and its status could change if WEPCO has a capacity need in the future.

In order to prevent the customer from oversizing the designated resource above the customer’s energy needs, WEPCO will cap the energy and capacity payments based on the customer’s hourly load and monthly demand profile as it compares to the generator’s hourly energy production and peak capacity value. As noted in its comments to the Commission staff memorandum, WEPCO modified its original proposal, and will allow a participating customer to receive all the RECs generated by the facility regardless of the customer’s hourly load profile.

Contract terms and conditions are outlined in the tariff proposal, and are designed to hold all other customers and shareholders indifferent to the transaction, and harmless in the case of customer default. Any final DRER contract must be filed and approved by the Commission pursuant to Wis. Stat. § 196.192.

Party and public comments were generally supportive of the DRER program as proposed.⁶ CUB and RENEW supported WEPCO’s proposal, but were in favor of broader definitions of customer aggregation. WEPCO’s proposal allows a customer with multiple WEPCO accounts (for example commercial retailers) to aggregate its loads as one program participant. CUB and RENEW requested that further aggregations be included to allow

⁶ ELPC and Vote Solar raised the same process concerns previously discussed in connection with Solar Now and an additional specific concern with regard to the customer credit under the DRER program. WEPCO’s modification relating to the RECs addresses this concern.

Docket 6630-TE-102

non-affiliated government and non-profit customers to aggregate their loads respectively as well. The Commission accepts WEPCO's proposal for allowable customer aggregations under DRER without the modifications suggested by CUB and RENEW. Allowing a customer with multiple accounts to aggregate but precluding aggregation among different customers is consistent with the Commission's decision approving a similar tariff offering of Madison Gas and Electric Company in docket 3270-TE-102.

In sum and upon review of the record, the Commission finds it reasonable to approve the DRER program as filed, with WEPCO's modifications accepted. As with Solar Now, this pilot provides an additional option for customers seeking renewable energy options.

Order

1. WEPCO's Solar Now and DRER pilot programs and associated tariffs, as modified and conditioned by this Final Decision, are approved.
2. WEPCO shall file the Solar Now tariff with the Commission under Amendment Number 773, file the DRER tariff with the Commission under Amendment Number 774, and make the tariffs available to the public pursuant to Wis. Stat. § 196.19 and Wis. Admin. Code § PSC 113.0501(1).
3. WEPCO shall report, in a format and frequency to be determined by Commission staff and WEPCO but at least annually, the following minimum information relating to the implementation of Solar Now: 1) the amount of energy produced by each PV array; 2) the hourly production curves for each PV array; and 3) the number of participating customers.
4. WEPCO may use deferral accounting treatment related to the Solar Now program, with conditions.

5. WEPCO shall not have carrying costs associated with the deferral of the Solar Now program costs.

6. The authorization for deferral accounting treatment for Solar Now is for accounting purposes only and does not bind the Commission to any specific treatment (i.e. recovery) for this item in any future proceeding involving rates or other matters before the Commission.

7. WEPCO shall provide further information and documentation regarding the costs and benefits to ratepayers of its Solar Now program to aid the Commission in its decision making regarding the recoverability of the deferral in a future rate case or settlement.

8. WEPCO shall limit the deferral for Solar Now to capital costs associated with executed lease agreements.

9. The DRER sets the framework under which future contracts will be reviewed by the Commission pursuant to Wis. Stat. § 196.192. Any future DRER contract will require Commission approval prior to a customer taking service under the DRER tariff.

10. This Final Decision takes effect one day after the date of service.

11. Jurisdiction is retained.

Dated at Madison, Wisconsin, this 28th day of December, 2018.

By the Commission:

A handwritten signature in black ink, appearing to read 'Coker', followed by the word 'bar' written in a similar cursive style.

Steffany Powell Coker
Secretary to the Commission

SPC:jar:jlt:DL: 01660478

See attached Notice of Rights

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**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 the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service 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 the date of service 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 the date of service 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 serves its original decision.⁷ 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: March 27, 2013

⁷ See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.