

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

Joint Application of Madison Gas and Electric Company and Wisconsin  
Public Service Corporation for Approval to Acquire Ownership Interests  
in Solar Electric Generating Facilities

5-BS-228

**FINAL DECISION**

This is the Final Decision in the joint application filed by Wisconsin Public Service Corporation (WPSC) and Madison Gas and Electric Company (MGE) (collectively, applicants) for approval to acquire ownership of 300 megawatts (MW) (200 MW by WPSC and 100 MW by MGE) of solar photovoltaic generating capacity and an associated generation tie line to be developed by Two Creeks Solar, LLC, (Two Creeks) an affiliate of NextEra Energy, Inc. and Badger Hollow Solar Farm LLC, (Badger Hollow) an affiliate of Invenergy, LLC, (collectively, Solar Facilities) at a cost of approximately \$389.7 million, excluding allowance for funds used during construction (AFUDC).

The application is GRANTED, subject to the conditions in this Final Decision.

**Introduction**

On May 31, 2018, WPSC and MGE filed an application under Wis. Stat. § 196.49 to acquire ownership of the Solar Facilities. ([PSC REF#: 343600.](#)) Two Creeks will be located in the town of Two Creeks and the city of Two Rivers in Manitowoc and Kewaunee Counties near the Point Beach Nuclear Power Plant (Point Beach). The solar generation facility will have a total nameplate capacity of up to 150 MW, of which MGE will acquire 50 MW and WPSC will

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acquire 100 MW. Two Creeks solar generation facility and its associated generation tie line was authorized by the Commission in dockets 9696-CE-100<sup>1</sup> and 9696-CE-101.<sup>2</sup>

Badger Hollow will be located in southwestern Wisconsin in Iowa County, near the villages of Montfort and Cobb. The solar generation facility will have a total nameplate capacity of up to 300 MW, of which MGE will acquire 50 MW and WPSC will acquire 100 MW. Badger Hollow solar generation facility and its associated generation tie line was authorized by the Commission in dockets 9697-CE-100<sup>3</sup> and 9697-CE-101.<sup>4</sup>

On October 12, 2018, the Commission issued a Notice of Proceeding in this docket. ([PSC REF#: 351577.](#)) On October 25, 2018, the Administrative Law Judge granted requests to intervene from Citizens Utility Board of Wisconsin (CUB), Wisconsin Industrial Energy Group (WIEG), Sierra Club, and RENEW Wisconsin. ([PSC REF#: 352201.](#)) On November 7, 2018, the Administrative Law Judge granted a request to intervene from American Transmission Company LLC (ATC). ([PSC REF#: 352805.](#)) On December 4, 2018, the Administrative Law Judge granted requests to intervene from Richard and Patricia Jenkins, Alan and Marcia Jewell, and Wade Wendhausen (collectively, Jewell Jenkins Intervenors, or JJI), and Brenda and Casey Kite (the Kites). ([PSC REF#: 354427.](#))

On December 11, 2018, the Commission issued a Notice of Hearing in this docket. ([PSC REF#: 355028.](#)) Public and technical hearings were held on January 18, 2019. On

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<sup>1</sup> Application for a Certificate of Public Convenience and Necessity of Two Creeks Solar, LLC to Construct a Solar Electric Generation Facility, to be Located in Manitowoc and Kewaunee Counties, Wisconsin, 2019.

<sup>2</sup> Application for a Certificate of Public Convenience and Necessity of Two Creeks Solar, LLC to Construct an Electric Tie Line to Connect a Solar Electric Generation Facility to the Existing Transmission System, to be Located in Manitowoc and Kewaunee Counties, Wisconsin, 2019.

<sup>3</sup> Application for a Certificate of Public Convenience and Necessity of Badger Hollow Solar Farm, LLC to Construct a Solar Electric Generation Facility, to be Located in Iowa County, Wisconsin, 2019.

<sup>4</sup> Application for a Certificate of Public Convenience and Necessity of Badger Hollow Solar Farm, LLC to Construct an Electric Tie Line to Connect a Solar Electric Generation Facility to the Existing Transmission System, to be Located in Iowa County, Wisconsin, 2019.

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February 13, 2019, the Commission issued a second Notice of Hearing to allow the parties in this proceeding to present oral arguments and to respond to questions presented by one or more Commissioners. ([PSC REF#: 359536.](#)) Oral arguments were held on March 6, 2019.

The Commission considered this matter at its open meeting of April 11, 2019.

### **Findings of Fact**

1. MGE and WPSC are public utilities as defined in Wis. Stat. § 196.01(5)(a) and provide electric service in Wisconsin.
2. Two Creeks will be a solar photovoltaic electric generation facility with a nameplate capacity of up to 150 MW and an associated generation tie line located in the town of Two Creeks and the city of Two Rivers in Manitowoc and Kewaunee Counties near Point Beach.
3. Badger Hollow will be a solar photovoltaic electric generation facility with a nameplate capacity of up to 300 MW and an associated generation tie line located in southwestern Wisconsin in Iowa County, near the villages of Montfort and Cobb.
4. The breakdown of the capacity acquired by each of the applicants is: WPSC, 200 MW (100 MW from Badger Hollow and 100 MW from Two Creeks); and, MGE, 100 MW (50 MW from Badger Hollow and 50 MW from Two Creeks).
5. The applicants propose to acquire the Solar Facilities under agreements with each developer at a total cost of approximately \$389.7 million (excluding AFUDC), or \$1,299/kilowatt. This price includes the capital cost of the solar facilities, transmission tie-in equipment and owners' costs. The acquisition price is reasonable based on comparison to the cost of meeting the applicants' capacity and energy needs through market purchases or alternative generating technologies.

6. As the result of planned retirement of aging and relatively inefficient coal-fired generating units WPSC will need 150 MW of capacity beginning in 2020. Based on its accredited capacity value, this supports WPSC's acquisition of 200 MW of solar capacity. MGE will need over 80 MW of new capacity by 2022 due to previously announced retirements of legacy assets and expiration of Purchase Power Agreements (PPA). This supports MGE's acquisition of 100 MW of solar capacity.

7. The applicants' acquisition of the Solar Facilities is consistent with the energy priorities laws under Wis. Stat. §§ 1.12 and 196.025.

8. The acquisition is not expected to affect any historic properties under Wis. Stat. § 44.40, or any threatened or endangered species under Wis. Stat. § 29.604.

9. The approval of the purchase is a Type III action under Wis. Admin. Code § PSC 4.10(2) and is unlikely to have a significant impact on the human environment as defined by Wis. Stat. § 1.11.

10. To the extent applicable, the proposed acquisition complies with Wis. Stat. § 196.49(4) because the use of brownfields was previously determined in dockets 9696-CE-100 and 9697-CE-100 not to be practicable for construction of the Solar Facilities.

11. The purchase will not substantially impact the efficiency of each applicant's service, provide facilities unreasonably in excess of each applicant's probable future requirements, or add to each applicant's cost of service without proportionally increasing the value or available quantity of service.

12. The acquisition satisfies the reasonable needs of the public for an adequate supply of electric energy.

13. The acquisition, as amended by the conditions prescribed by the Commission, is reasonable and in the public interest after considering alternative sources of supply, engineering, economic, safety, reliability, and environmental factors.

### **Conclusions of Law**

1. The Commission has authority under Wis. Stat. §196.49 and Wis. Admin. Code chs. PSC 2 and 112 to issue this Final Decision authorizing the applicants' acquisition of the Solar Facilities, subject to the conditions stated in this Final Decision.

2. The Commission may impose any term, condition, or requirement necessary to protect the public interest pursuant to Wis. Stat. §§ 196.02, 196.395, and 196.49.

3. The acquisition is consistent with the public interest.

4. The proposed acquisition of the Solar Facilities complies with the Energy Priorities Law as required under Wis. Stat. § 1.12 and 196.025(1).

5. This is a Type III action under Wis. Admin. Code § PSC 4.10(2); therefore, the preparation of neither an environmental impact statement nor an environmental assessment is necessary.

### **Opinion**

MGE and WPSC are public utilities as defined in Wis. Stat. § 196.01(5)(a) and provide electric service to approximately six hundred thousand customers in Wisconsin. Two Creeks will be located in the town of Two Creeks and the city of Two Rivers in Manitowoc and Kewaunee Counties near Point Beach. The solar generation facility will have a total nameplate capacity of 150 MW, of which MGE will acquire 50 MW and WPSC will acquire 100 MW.

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Two Creeks and its associated generation tie line was authorized by the Commission in dockets 9696-CE-100 and 9696-CE-101.

Badger Hollow will be located in southwestern Wisconsin in Iowa County, near the villages of Montfort and Cobb. The solar generation facility will have a total nameplate capacity of up to 300 MW, of which MGE will acquire 50 MW and WPSC will acquire 100 MW. Badger Hollow and its associated generation tie line was authorized by the Commission in dockets 9697-CE-100 and 9697-CE-101.<sup>5</sup>

### **Standard for Approval**

The applicants seek approval under Wis. Stat. § 196.49 for a Certificate of Authority (CA).

Wis. Stat. § 196.49(2) states:

[n]o public utility may begin the construction, installation or operation of any new plant, equipment, property or facility, nor the construction or installation of any extension, improvement or addition to its existing plant, equipment, property, apparatus or facilities unless the public utility has complied with any applicable rule or order of the commission.

The Commission may require by rule or special order that no addition to a plant “may proceed until the Commission has certified that public convenience and necessity require the project.”

Wis. Stat. § 196.49(3). The Commission may refuse to certify a project if it appears that the completion of the project will do any of the following:

1. Substantially impair the efficiency of the service of the public utility.
2. Provide facilities unreasonably in excess of the probable future requirements.
3. When placed in operation, add to the cost of service without proportionately increasing the value or available quantity of service unless the public utility waives

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<sup>5</sup> The Commission takes official notice of the evidence received in dockets 9696-CE-100, 9696-CE-101, 9697-CE-100, and 9697-CE-101 pursuant to Wis. Stat. § 227.45(2).

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consideration by the commission, in the fixation of rates, of such consequent increase of cost of service.

Wis. Stat. § 196.49(3)(b). Electric utilities must obtain Commission authorization to place in service a generating plant or unit whose costs exceed the threshold established in Wis. Admin. Code § PSC 112.05(3), such as the proposed Solar Facilities. Wis. Admin. Code § PSC 112.05(1)(a),

Questions have arisen in the testimony and briefs relating generally to the appropriateness of the structure and bifurcation of the solar facility construction approval dockets and this docket. CUB raised concerns that the bifurcated nature of the process limits the scope of review of both the Certificate of Public Convenience and Necessity (CPCN) applications and the CA application. CUB asserted that if the applicants had applied for the underlying CPCNs, questions such as engineering, economics, need, and alternatives could have been considered alongside the questions of siting. ([PSC REF#: 358104.](#)) In their brief, the Kites asserted that if the applicants have control over the construction of the solar facilities, then the acquisition and the CPCN proceedings should have been reviewed and considered under one docket. ([PSC REF#: 358595.](#)) In its reply brief, JJI agreed with the Kites' position that the construction and acquisition of the solar facilities should have been reviewed under one docket. ([PSC REF#: 359103.](#))

Alternatively, the applicants contend that the proposed acquisition in this case is no different than if the applicants had proposed to acquire the solar facilities after they became operational: in both cases, the developers would need to obtain CPCNs for construction, and the applicants would acquire the facilities under the CA process. The applicants also asserted that any factors not considered in the CPCN applications by the wholesale merchants such as need or alternatives are being fully addressed contemporaneously under the CA proceeding.

The Commission finds that under the specific circumstances presented here, the proposed acquisition was appropriately considered under the CA standard. The Commission's review of these dockets has resulted in a record of evidence that addresses all of the required statutory criteria under Wis. Stat. § 196.49 (the CA statute) and Wis. Stat. § 196.491 (the CPCN statute). While need and alternatives were not addressed in the merchant CPCN dockets because the law precluded such an analysis, need, alternatives, and other economic and ratepayer protections were addressed in this docket. The environmental and other site specific standards were considered in detail in the CPCN dockets, and the Environmental Assessment was incorporated into this record. While all of the required criteria were examined in different dockets, the Commission's review here between all of the dockets was comprehensive and holistic and reviewed contemporaneously.

Further, the Wisconsin Supreme Court has already concluded that the CPCN statute does not automatically apply any time Wisconsin utilities seek Commission approval to add large electric generation facilities to their generation fleets. The Court provided an analysis of when the CA Statute applies and when the CPCN Statute applies to applications for the construction of large electric generating facilities when it considered the Commission's use of the CA process to approve out-of-state generation facilities constructed and owned by a public utility. *Wisconsin Indus. Energy Grp., Inc. v. Pub. Serv. Comm'n*, 2012 WI 89, ¶ 60, 342 Wis. 2d 576, 610, 819 N.W.2d 240, 257. The Court recognized that the Commission had a thorough and mandatory procedure under which it analyzed applications to construct electric generating facilities under the CA Statute. *WIEG* at ¶ 32. The Court also recognized that the primary purpose of the CPCN statute is to require a more thorough review of local site-specific factors, and not primarily analyzing ratepayer impacts. *Id* at 49. The Court noted its view that the Commission has

essentially bound itself under the CA statute to consider the same information under the CA statute as the legislature required the agency to consider under the CPCN statute. *Id.*, fn. 15. Therefore, the Court's analysis supports the Commission's use of the CA statute to review the addition of new generation to Wisconsin utilities' fleet when site-specific factors are not at issue.

As described above, the Commission's review of the proposed Solar Facilities in the CPCN dockets assessed all relevant site-specific factors required for approving construction of the Solar Facilities, and the CA process used here assessed all the relevant need, alternatives, and ratepayer impacts that would otherwise have been assessed in the CPCN dockets if the applicants had not been wholesale merchants. As the Wisconsin Supreme Court recognized in *WIEG*, the CPCN process is a procedural siting law for large electric generating facilities. In this docket, it is the purchase of such facilities that is before the Commission. Therefore, the analysis of need, alternatives, and ratepayer impacts are the relevant inquiries in this docket, and the CA statute provides for ample review of whether the acquisition of the Solar Facilities by the applicants is in the public interest considering these factors.

While certain intervening parties complained about the Commission's bifurcated procedures, none have identified what legal criteria have not been examined in the dockets or identified what procedural rights have been denied any party. As discussed above, all relevant statutory criteria in Wis. Stat. §§ 196.49 and 196.491 have been reviewed in the dockets. All interested parties have had a full and fair opportunity to participate in all of the dockets. As required, hearings were held in the project areas as required by the CPCN statute. Although not required by the CA statute, a hearing was also held. Both the CPCN construction and the acquisition dockets were treated as contested cases and, as such, all of the provisions of Wisconsin's Administrative Procedures Act applicable to contested cases applied. The schedules

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in the proceedings and preparation of the administrative records all occurred in a coordinated manner. The Commission reviewed and made decisions in these dockets contemporaneously. As a result, the Commission has, contrary to unsupported assertions critical of the Commission's process, reviewed these proposed construction and acquisition proceedings in a holistic and comprehensive manner.

### **Acquisition of Two Creeks Solar Facility and a Portion of Badger-Hollow Solar Facility**

The Solar Facilities mark the first utility-scale solar photovoltaic projects in Wisconsin and present an opportunity to take advantage of cost-effective and zero-emissions solutions to meet the applicants' capacity needs. The applicants cited a number of benefits resulting from their acquisition of the Solar Facilities. The applicants stated the Solar Facilities will provide energy to MGE and WPSC customers with no fuel costs. The applicants also provided an economic analysis showing that acquiring the Solar Facilities will have little impact on customer bills.

The applicants stated that acquiring the Solar Facilities now will allow the utilities and their customers to take advantage of solar photovoltaic (PV) technology as the price curve is flattening. The applicants stated that when compared to alternative generation sources, the Solar Facilities will save customers money over the 30-year economic life of the assets. The applicants stated their analysis demonstrates that acquiring the solar facilities presents the least cost alternative when compared to securing needed capacity and energy from generating technologies that use other fuel sources.

The applicants do not believe wind is an appropriate generation resource for meeting their capacity needs. The applicant noted that while the capacity factor for solar PV generation in Wisconsin is lower than wind, its accredited capacity for solar for the purposes of meeting

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peak load (approximately 70 percent of nameplate capacity) is much higher compared to the accredited capacity for wind (approximately 15 percent of nameplate capacity), which reflects its higher value to customers. The applicants stated that this is because peak production from solar PV generation strongly corresponds with peak demand in Wisconsin.

The applicants also contended that ownership of the Solar Facilities is more beneficial than entering into a PPA with a solar developer. The applicants stated that a PPA would deprive utility customers of several important benefits of utility ownership such as the benefit from avoided future site development costs; the benefit from a hedge against rising energy costs due to increasing fuel costs; and, the advantage of future technology improvements in solar and possible future storage technology.

### **Applicants' Needs, Alternatives, and Economic Analysis**

The Commission may refuse to issue a CA in this docket if the Commission finds the acquisition will result in any of the three factors listed in Wis. Stat. § 196.49(3)(b). The record in this matter does not indicate that the proposed acquisitions would substantially impair the efficiency of the service of MGE or WPSC. The record indicates there is consensus on the need for additional generation capacity for both WPSC and MGE. WPSC showed, and Commission staff confirmed, the need for 150 MW of capacity beginning in 2020. Based on their accredited capacity value (roughly 70 percent of 200 MW), the proposed acquisitions will approximate WPSC's anticipated capacity needs. Likewise, MGE will need over 80 MW of new capacity by 2022 due to previously announced retirements of legacy assets and expiring PPAs. This supports MGE's acquisition of 100 MW of solar capacity.

The remaining issue for the Commission to address is whether the acquisitions will add to the cost of service without increasing the value or quantity of service. The applicants' acquisition of the Solar Facilities will increase the quantity of service, adding a total of 300 MW to generating capacity fleets of WPSC and MGE. The remaining question revolves around the economics of the acquisitions and whether the acquisitions will increase the cost of service and, if so, whether the potential cost increase is proportional to the increased value or quantity of service.

### **Madison Gas and Electric**

MGE used the Electric Generation Expansion Analysis System (EGEAS) model to evaluate the acquisition of the Solar Facilities over a range possible futures. Additionally, MGE used PROMOD to forecast annual locational marginal price differentials and used those results as inputs into its EGEAS modeling.

MGE stated that the key observations and conclusions based on the results of its analysis showed that the Badger Hollow and Two Creeks Solar projects are part of the least cost plan for meeting MGE's future electric power supply needs as optimized by EGEAS. MGE stated that this is true: 1) with or without future carbon constraints; 2) across a range of natural gas and market energy prices; 3) across a range of assumed capacity factors for new solar alternatives including the Badger Hollow and Two Creeks Solar projects; 4) whether the project qualifies for 30 percent or a lower 26 percent investment tax credit (ITC) treatment; and, 5) regardless of whether MGE later chooses to exercise its option to purchase a portion of the Riverside Energy

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Center expansion, which was authorized by the Commission in docket 6680-CE-176 (Riverside).<sup>6</sup>

Commission staff reviewed the modeling and economic analysis submitted by MGE as part of the application in this docket. In addition to the modeling originally submitted by MGE, Commission staff requested that MGE model additional scenarios that involved the solar facilities receiving less capacity credit from Midcontinent Independent System Operator, Inc. (MISO) and different capacity factors. ([PSC REF#: 348505.](#)) The EGEAS modeling performed by MGE in response to Commission staff's requests show that the proposed solar projects remain part of a least cost plan as optimized by EGEAS even at lower capacity credit and capacity factors. The results of these additional sensitivities show that the proposed solar acquisitions would remain part of the least cost plan as optimized by EGEAS for meeting MGE's future capacity need. When Riverside units are available as an additional planning alternative in EGEAS, the proposed solar units would still remain the part of least cost plan as optimized by EGEAS.

Based on this analysis, the Commission finds that the acquisition by MGE is reasonable and in the public interest.

#### **Wisconsin Public Service Corporation**

WPSC stated that it used PROMOD to forecast hourly locational marginal prices (LMP) at the solar project locations. WPSC stated that it also used results from PROMOD, including solar project LMPs, generation, and resulting energy revenues, as the starting point for its financial

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<sup>6</sup> *Application of Wisconsin Power and Light Company for a Certificate of Public Convenience and Necessity to Build an Approximately 650 Megawatt Natural Gas-Fueled Power Plant at its Riverside Energy Center Facility in the Town of Beloit, Rock County, Wisconsin, 2016.*

analysis of the proposed acquisitions. WPSC stated that its analysis demonstrates that the proposed project is the lowest cost option for its customers to meet its projected capacity need, when compared to other technologies. Based on this analysis, the Solar Facilities are \$50 million less expensive than a natural gas combined cycle (NGCC) alternative and \$124 million less expensive than a reciprocating internal combustion engine (RICE) alternative. This cost advantage represents the difference between the forecasted net present value revenue requirement (PVRR) to acquire and operate the solar facilities and the PVRR associated with instead meeting capacity needs by purchasing an NGCC or RICE alternative. WPSC further stated that the proposed acquisition is less risky than acquiring capacity and energy from the market.

WPSC stated that a review of the estimated annual costs for each technology in 2021 and 2031 demonstrates the relatively low cost of solar PV generation as compared to other technologies.

	<b>Solar</b>	<b>NGCC</b>	<b>RICE</b>
2021 all in annual cost <sup>7</sup>	\$29.73 million	\$54.88 million	\$49.68 million
2031 all in annual cost	\$7.52 million	\$36.82 million	\$27.17 million

Commission staff reviewed the modeling and economic analysis by WPSC as part of its application in this docket. Commission staff’s analysis of need and economics in electric generation dockets typically includes PROMOD and EGEAS modeling, and a financial spreadsheet analysis. While WPSC did not provide Commission staff with EGEAS modeling, Commission staff still rigorously analyzed and tested the information it was provided by WPSC and was able to provide a supplemental range of alternatives and futures to assist in the

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<sup>7</sup> Annual cost estimates include depreciation, return on, avoided capacity costs, fuel costs, operations and maintenance costs (fixed, variable, pipeline costs) and investment tax credit (ITC)/production tax credit (PTC) amortization.

Commission's analysis. This included developing an additional alternative based off WPSC's option to participate in the Riverside Energy Center to compare to the proposed acquisitions.

Based on this analysis, the Commission finds that the acquisition by WPSC is reasonable and in the public interest. The record supports WPSC's analysis that under current conditions WPSC's acquisition of the Solar Facilities would not disproportionately increase costs compared to the value of the acquisition to WPSC and its customers. While the future cannot be predicated with certainty, the Commission concludes for the reasons set forth in the record that the applicants' modeling assumptions were reasonable. Further, WPSC identified a number of contractual and other factors mitigating the impact of any changes in the economics of the acquisitions. These risks, as compared to WPSC's undisputed need for additional generating capacity and the benefits of renewable energy generation sources with relatively fixed costs over the long term, are not so certain or significant as to outweigh the benefits of the proposed acquisition by the applicants.

CUB was the only intervenor to provide additional technical assessment of the economics of the proposed acquisitions. CUB generally agreed with Commission staff's assessment of the applicants' economic modeling and analysis. CUB also expressed concern that sensitivities such as capacity accreditation and avoided energy costs could affect the applicants' base case assumptions and could cause net rate increases over the life of the solar facilities. On balance, however, the Commission found the applicants' testimony concerning MISO's solar capacity accreditation methodology, short term capacity auction values for the value of the capacity to be provided by the Solar Facilities and avoided energy costs to be more persuasive.

CUB proposed a condition implementing a risk-sharing mechanism to protect ratepayers from significant increases in the cost of the acquisition and a condition authorizing a 105 percent

cost overage margin. The Commission declines to include CUB's proposed conditions because the Commission can evaluate the recoverability of costs for the acquisitions in the applicants' future rate cases, and the Commission has developed its own condition governing the recoverability of applicants' acquisition costs that will ensure that any construction cost overruns are not borne by the ratepayers.

### **Acquisition Price**

The Commission, consistent with its past practice, shall review in a future rate case the recoverability of costs associated with the acquisition, operation and maintenance costs, and revenues associated with the applicants' purchase of the Solar Facilities. Each of the applicants stated it will reflect its portion of the acquisition price in its rate base. As discussed above, the applicants requested approval to purchase the Solar Facilities for \$389,700,000. The applicants' request was inclusive of the capital cost of the Solar Facilities, transmission tie-in equipment, and owners' costs. The applicants further stated that the total cost of the acquisition including AFUDC is approximately \$405,100,000. The applicants also sought approval to acquire the Solar Facilities at a cost of up to 110 percent of this amount.

The Commission denies the applicants' request for authorization to acquire the Solar Facilities at a cost of up to 110 percent of the proposed acquisition cost. The economics of the acquisition were evaluated based on the assumption that the price of the Solar Facilities was a fixed cost. Allowance for cost overruns of up to 110 percent would essentially be authorizing the applicants to strike a different deal than that evaluated by the Commission. However, the Commission will allow the applicants to include costs associated with AFUDC as the applicants may take ownership of the facilities prior to construction. Accordingly, the Commission finds it

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reasonable to include a condition prohibiting recoverability of acquisition costs that exceed \$389,700,000 (excluding AFUDC). Further, the calculation of AFUDC shall not be based on a cost greater than \$389,700,000. The Commission further finds that the applicants may not earn a current return on construction work in progress (CWIP) for any costs associated with the project.

### **Transfer of the CPCNs**

While the timing of this application to acquire the Solar Facilities before construction is unique and a case of first impression for the Commission, the approval of a wholesale merchant CPCN with knowledge that ownership of the facility will transfer to a regulated utility is not. In *Application of Power Ventures Group, LLC, for a Certificate of Public Convenience and Necessity to Construct a Large Electric Generating Facility in Sheboygan County*, No. 05-CE-131 (Wis. PSC 2004), the Commission included conditions binding any new owner of the proposed electric generation plant to the terms and conditions of the Commission's order citing protection of ratepayer interests. In this docket, the Commission is similarly considering the transfer of CPCN's issued to wholesale merchants to regulated utilities. The applicants have stated that the acquisition of the Solar Facilities includes the transfer of the CPCN rights from the wholesale merchant developers to the applicants.

Because the rights granted under each CPCN were only those applicable to the developers and the applications submitted by those entities, the Commission finds it reasonable to include conditions requiring the applicants be bound by all commitments made by the developers in their applications, and to limit the authority granted under each CPCN to only those rights afforded the developers at the time of the Commission's issuance of each CPCN. These conditions include limitations on the use of eminent domain. The Commission also finds

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it reasonable to prohibit applicants from proceeding with any substantial change in scope, design, size, or location of the projects except as provided in the final decisions in the CPCN dockets.

Inclusion of such conditions is not new. Such conditions will ensure that any ambiguity between the rights and authority granted in the CPCNs to the wholesale merchants will remain constant despite ownership by public utilities that may possess rights and authority beyond that available to a non-regulated wholesale merchant.

### **Acquisition Agreements**

The acquisition of the proposed Solar Facilities is the first of its kind in Wisconsin. Accordingly, the Commission finds it reasonable to require, for informational purposes only, the applicants to provide copies of the executed agreements between the applicants and developers. The Commission's ability to have access to the terms of these agreements will provide clarity on the timelines for transfer and operation, the division of responsibility between the utilities and developers for operation of the facilities, and confirmation of the final terms of the acquisitions. The applicants shall also notify the Commission of the effective date of the purchase of the projects within 30 days of the effective date of the transfer. If applicants do not proceed to closing or enter into any arrangement with another party regarding ownership or operation of the projected projects, applicants shall provide prior notice to the Commission. Further, within 60 days of the effective date of the transfer, applicants shall file with the Commission the final closing purchase price, which is not to exceed \$389.7 million (exclusive of AFUDC). To the extent applicants proceed to closing prior to completion of construction of the projects, applicants shall file with the Commission quarterly process reports that include the information described in the conditions in this Order.

### **Public Interest Considerations**

Based upon the economic analysis demonstrating the customer benefits of the transaction and the other considerations discussed above, the Commission approves the transaction. The Commission finds that the purchase of the Solar Facilities will not add to the applicants' cost of service without proportionately increasing the value or available quantity of service. In addition, the Commission concludes that the purchase of the Solar Facilities would neither substantially impair the efficiency of the applicants' service nor provide facilities unreasonably in excess of the applicants' probable future requirements. As such, the Commission finds the proposed purchase is consistent with the public interest.

### **Energy Priorities Law**

Wisconsin Stat. § 196.025 provides that “[t]o the extent cost-effective, technically feasible and environmental sound, the Commission shall implement the priorities under s. 1.12(4) in making all energy-related decisions.” The proposed transaction is the acquisition of Solar Facilities by MGE and WPSC. No circumstances exist that would lead a decision-maker to conclude that any of the higher energy priorities listed in Wis. Stat. §§ 1.12 and 196.025, would be applicable or provide a cost-effective alternative to the proposed acquisition. There is no dispute that both applicants need additional capacity, nor any evidence in the record that energy conservation or efficiency would meet the stated capacity needs of the applicants.

### **Environmental Impacts**

This is a Type III action under Wis. Admin. Code § PSC 4.10(3). No unusual circumstances suggesting the likelihood of a significant environmental effects on the human environment have come to the Commission's attention. Preparation of an environmental impact

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statement under Wis. Stat. § 1.11 is not required. The proposed ownership transfer is not expected to affect any historic properties under Wis. Stat. § 44.40, or any threatened or endangered species under Wis. Stat. § 29.604. As the environmental impacts of the proposed Solar Facilities were contemporaneously evaluated in the CPCN dockets through their respective environmental assessments (EA) and the findings incorporated into this docket, there is no merit to JJI's assertion that the Commission's review does not comply with WEPA requirements. The Commission finds that the proposed acquisitions comply with Wis. Stat. § 1.11 and Wis. Adm. Code Ch. PSC 4.

### **Use of Brownfields**

When considering issuing a CA for the construction of electric generating equipment and associated facilities, the Commission may only grant a CA if determines that brownfields were used to the extent practicable. Wis. Stat. § 196.49(4). As the application under consideration in this docket is an application to approve the purchase of electric generating equipment, this requirement is potentially inapplicable. Regardless, the underlying CPCN dockets conducted concurrently authorizing the Solar Facilities included such an analysis as part of the EAs. No party introduced any evidence contrary to this finding. The Commission finds that the use of brownfields was not practicable.

### **Certificate**

The Commission certifies that the applicants are authorized to acquire ownership of 300 MW (200 MW by WPSC and 100 MW by MGE) of solar photovoltaic generating capacity to be developed by Two Creeks an affiliate of NextEra Energy, Inc. and Badger Hollow an affiliate of Invenergy, LLC, (collectively the solar facilities) at a cost of approximately \$389.7 million, excluding AFUDC, as described in the application and as modified by this Final Decision.

**Order**

1. The proposed acquisitions, as described in the application and as modified by this Final Decision, are authorized, subject to conditions.

2. After completion of the proposed acquisition, MGE and WPSC shall submit to the Commission the proposed accounting entries to record the acquisition of the solar electric generation and transmission tie line facilities.

3. Applicants shall provide copies of agreements between the applicants and the developers as they become available for informational purposes.

4. Applicants shall inform the Commission of the effective date of the purchase of the projects within 30 days of the effective date of the transfer.

5. If applicants do not proceed to closing or enter into any arrangement with another party regarding ownership or operation of the projected projects, it shall provide prior notice to the Commission.

6. Within 60 days of the effective date of the transfer, applicants shall file with the Commission the final closing purchase price, which is not to exceed \$389.7 million (excluding AFUDC).

7. The Commission, consistent with its past practice, shall review in a future rate case the recoverability of costs associated with the acquisition, operation and maintenance costs, and revenues associated with the projects; provided however, that in no event shall the recoverability of the acquisition costs exceed \$389,700,000 (excluding AFUDC), and provided however applicants may include costs associated with AFUDC because the applicants may take ownership of the Solar Facilities prior to construction, and provided that the calculation of

AFUDC shall not be based on a cost greater than \$389,700,000. The applicants may not earn a current return on CWIP for any costs associated with the project.

8. To the extent the applicants proceed to closing prior to completion of construction of the projects, the applicants shall file with the Commission quarterly process reports that include the following:

- a. The date that construction commences;
- b. Major construction and environmental milestones, including permits obtained, by agency, subject, and date;
- c. Summaries of the status of construction, the anticipated in-service date, and the overall percent of physical completion;
- d. Actual project costs to-date;
- e. Once a year, a revised total cost estimate for the project; and
- f. The date that the projects are placed in service.
- g. The final, as-built cost of the project.

9. Applicants shall be bound by all commitments made by developers in their applications, subsequent filings, and the provisions of the Commission's Final Decision in dockets 9696-CE-100, 9696-CE-101, 9697-CE-100, and 9697-CE-101. The assignment of the Certificates of Public Convenience and Necessity for the projects does not confer additional rights to the applicants than what was afforded to the developers at the time of the application and as specified in the Final Decisions in dockets 9696-CE-100, 9696-CE-101, 9697-CE-100, and 9697-CE-101. Notwithstanding Wis. Stat. §§ 32.02 and 32.03(5)(a), such transfer shall not confer any right to use eminent domain.

10. All commitments made by the applicants in its application, subsequent filings, and the provisions of this Final Decision shall apply to the applicants, any agents, contractors, successors, assigns, corporate affiliates and any future owners or operators of the project. To the extent the applicants transfer any ownership or operational interest in the project, in whole or in part, to a third-party, including but not limited to ATC, such transfer does not confer either additional rights or obligations upon that third-party than what is afforded to the original developers of the projects specified in the Final Decisions in dockets 9696-CE-100, 9696-CE-101, 9697-CE-100, and 9697-CE-101. If the successor, assign, or future owner or operator of the project is a public utility and notwithstanding Wis. Stat. §§ 32.02 and 32.03(5)(a), such transfer shall not confer any right to use eminent domain.

11. Applicants may not proceed with any substantial changes in scope, design, size or location of the approved projects except as provided for in the Final Decisions in dockets 9696-CE-100, 9696-CE-101, 9696-CE-100, and 9697-CE-101.

12. The proposed acquisitions are consistent with the public interest.

13. This Final Decision shall be effective one day after the date of service.

14. Jurisdiction is retained.

Dated at Madison, Wisconsin, this 18<sup>th</sup> day of April, 2019.

By the Commission:

A handwritten signature in black ink, appearing to read 'SPC' followed by a flourish and the initials 'br'.

Steffany Powell Coker  
Secretary to the Commission

SPC:JAK:jar:jlt:DL: 01673911

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN  
4822 Madison Yards 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 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.<sup>8</sup> 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

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<sup>8</sup> See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

**APPENDIX A**

**CONTACT LIST FOR SERVICE BY PARTIES**

**ADMINISTRATIVE SUPPORT**

MADISON GAS AND ELECTRIC COMPANY  
PO BOX 1231  
MADISON WI 53701-1231  
USA  
MGE@MGE.COM

**AMERICAN TRANSMISSION COMPANY**

PATRISHA A SMITH  
W234 N2000 RIDGEVIEW PARKWAY COURT  
WAUKESHA WI 53188  
USA  
PSMITH@ATCLLC.COM

**AMERICAN TRANSMISSION COMPANY**

TOM MALANOWSKI  
W234 N2000 RIDGEVIEW PARKWAY COURT  
WAUKESHA WI 53188  
USA  
TMALANOWSKI@ATCLLC.COM

**CASEY AND BRENDA KITE**

ST MARIE BOLL LLC  
10 EAST DOTY STREET STE 617  
MADISON WI 53703  
USA  
DST@STMARIEBOLL.COM

**CASEY AND BRENDA KITE**

ST MARIE BOLL LLC  
10 EAST DOTY STREET STE 617  
MADISON WI 53703  
USA  
JCB@STMARIEBOLL.COM

**CITIZENS UTILITY BOARD**

COREY SINGLETARY  
6401 ODANA ROAD STE 24  
MADISON WI 53719  
USA  
SINGLETARY@WISCUB.ORG

Docket 5-BS-228

**CITIZENS UTILITY BOARD**

KATE HANSON  
6401 ODANA ROAD STE 24  
MADISON WI 53719  
USA  
HANSON@WISCUB.ORG

**CITIZENS UTILITY BOARD**

KURT RUNZLER  
6401 ODANA ROAD STE 24  
MADISON WI 53719  
USA  
RUNZLER@CUBWI.ORG

**CITIZENS UTILITY BOARD**

THOMAS CONTENT  
6401 ODANA ROAD STE 24  
MADISON WI 53719  
USA  
CONTENT@WISCUB.ORG

**JEWELL JINKINS INTERVENORS**

LEGALECTRIC  
1110 WEST AVENUE  
RED WING MN 55066  
USA  
OVERLAND@LEGALECTRIC.ORG

**MADISON GAS AND ELECTRIC COMPANY**

SCOTT R SMITH  
P.O. BOX 1231  
MADISON WI 53701  
USA  
SSMITH@MGE.COM

**MADISON GAS AND ELECTRIC COMPANY**

STAFFORD ROSEBAUM LLC  
222 WEST WASHINGTON AVENUE STE 900  
MADISON WI 53701  
USA  
BKLEINMAIER@STAFFORDLAW.COM

Docket 5-BS-228

**PUBLIC SERVICE COMMISSION OF WISCONSIN**  
AJINKYA ROHANKAR  
4822 MADISON YARDS WAY PO BOX 7854  
MADISON WI 53707  
USA  
AJINKYA.ROHANKAR@WISCONSIN.GOV

**PUBLIC SERVICE COMMISSION OF WISCONSIN**  
DREW JELINSKI  
4822 MADISON YARDS WAY PO BOX 7854  
MADISON WI 53707  
USA  
DREW2.JELINSKI@WISCONSIN.GOV

**PUBLIC SERVICE COMMISSION OF WISCONSIN**  
JEFF KITSEMBEL  
4822 MADISON YARDS WAY PO BOX 7854  
MADISON WI 53707  
USA  
JEFF.KITSEMBEL@WISCONSIN.GOV

**PUBLIC SERVICE COMMISSION OF WISCONSIN**  
MARK RUSZKIEWICZ  
4822 MADISON YARDS WAY PO BOX 7854  
MADISON WI 53707  
USA  
MARK2.RUSZKIEWICZ@WISCONSIN.GOV

**PUBLIC SERVICE COMMISSION OF WISCONSIN**  
PAUL RAHN  
4822 MADISON YARDS WAY PO BOX 7854  
MADISON WI 53707  
USA  
PAUL.RAHN@WISCONSIN.GOV

**REGULATORY AFFAIRS**  
WISCONSIN PUBLIC SERVICE CORPORATION  
231 W. MICHIGAN STREET - P321  
MILWAUKEE WI 53233  
USA  
PSCWNOTIFICATION@INTEGRYSGROUP.COM

Docket 5-BS-228

**RENEW WISCONSIN**  
MICHAEL VICKERMAN  
222 S HAMILTON STREET  
MADISON WI 53703  
USA  
MVICKERMAN@RENEWWISCONSIN.ORG

**SIERRA CLUB**  
GREG WANNIER  
2101 WEBSTER ST STE 1300  
OAKLAND CA 94612  
USA  
GREG.WANNIER@SIERRACLUB.ORG

**WISCONSIN INDUSTRIAL ENERGY GROUP**  
HEINZEN LAW SC  
2 EAST MIFFLIN STREET STE 402  
MADISON WI 53703  
USA  
STEVE.HEINZEN@HEINZENLAW.COM

**WISCONSIN INDUSTRIAL ENERGY GROUP**  
KM ENERGY CONSULTING INC  
961 NORTH LOST WOODS ROAD  
OCONOMOWOC WI 53066  
USA  
KMAINI@VISI.COM

**WISCONSIN INDUSTRIAL ENERGY GROUP**  
TODD STUART  
10 EAST DOTY STREET STE 800  
MADISON WI 53703  
USA  
TSTUART@WIEG.ORG

**WISCONSIN PUBLIC SERVICE CORPORATION**  
QUARLES AND BRADY  
33 EAST MAIN STREET STE 900  
MADISON WI 53703  
USA  
BRAD.JACKSON@QUARLES.COM

Docket 5-BS-228

**WISCONSIN PUBLIC SERVICE CORPORATION**  
THEODORE EIDUKAS  
231 WEST MICHIGAN  
MILWAUKEE WI 53203  
USA  
THEODORE.EIDUKAS@WECENERGYGROUP.COM