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Public Service Commission of Wisconsin
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BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Wisconsin Power and Light Company for a Certificate of Authority to Acquire, Construct, Own, and Operate Six Solar Electric Generation Facilities, Known as the North Rock, Grant County, Crawfish River, Onion River, Richland County, and Wood County Projects, to be Located in Rock County, Grant County, Jefferson County, Sheboygan County, Richland County, and Wood County, Wisconsin	Docket No. 6680-CE-182
Application for Approval of Affiliated Interest Agreements Related to Wisconsin Power and Light Company's Ownership and Operation of Solar Projects	Docket No. 6680-AE-120

REPLY BRIEF OF WISCONSIN POWER AND LIGHT COMPANY

INTRODUCTION

WPL explained at length in its initial brief why the Solar Projects are needed, in the public interest, and should be approved.[1] No other party to this proceeding opposed WPL's Application. In fact, CUB was the only other party to file a brief. Although WPL and CUB differ on whether the Commission should impose certain conditions (as discussed below), both parties agree that the Commission should approve the Application.

The Grant County Intervenors (GCI) and Robert and Ellen Hudovernik (the Hudoverniks) filed non-party briefs, which are devoted almost entirely to siting-related concerns for the Grant County and Onion River solar projects, respectively. The Commission need not address those issues in this case. The Grant County and Onion River solar projects are the subject of separate CPCN proceedings before the Commission. GCI and the Hudoverniks are parties to those proceedings, and each proceeding contains a more developed record on the issues that GCI and the Hudoverniks are raising here. The Commission can and should defer resolution of those issues to each project's respective CPCN proceeding. If and when the Commission approves those projects and WPL acquires them, WPL will be bound by the Commission's decisions and whatever conditions it imposes on the development of those projects.

In short, the uncontested record in this case demonstrates that the Solar Projects comply with all applicable legal criteria and will deliver substantial economic, reliability, and environmental benefits to customers over the next 30 years. Therefore, the Commission should approve the Application.

[1] Unless otherwise indicated, capitalized defined terms used in this reply brief have the same meaning as they do in WPL's initial brief.

ARGUMENT

I. The Commission should defer any decision regarding cost recovery for the Solar Projects to a future rate case, which is consistent with Wisconsin law and longstanding Commission precedent.

WPL appreciates CUB's support for the Application and acknowledgement of the robust, transparent, and collaborative nature the Blueprint resource planning process. (*See* CUB Initial Br., at 3–4) WPL also agrees with CUB that recovery of and on the undepreciated balance of the coal-fired generating units WPL intends to retire pursuant to the Blueprint is not an issue the Commission can or should address in this proceeding. (*Id.* at 3) The sole question before the Commission is whether the Solar Projects comply with the applicable standards under Wis. Stat. §§ 1.11, 1.12, 29.604, 44.40, 196.025, 196.49, 196.52, 196.795 and Wis. Admin. Code chs. 4 and 112. (*See* PSC REF#: 401616) Whether and to what extent the Commission will permit WPL to recover costs associated with its retiring coal-fired generating units is an issue the Commission can resolve in future rate proceedings.

For similar reasons, the Commission should decline to adopt CUB and Commission staff's recommendation to cap the Solar Project costs that WPL can recover through rates. (CUB Initial Br., at 4–5) First, no party to this proceeding raised concerns about the overall cost of the Solar Projects. In fact, the Commission recently authorized several other Wisconsin public utilities to acquire utility-scale solar facilities at a cost that is comparable to (and in fact, slightly higher than) the cost of the Solar Projects.[2] (Direct-CUB-Singletary-6) Moreover, WPL has a track record of constructing major generation projects on-time and at or under budget. (*See* Surrebuttal-WPL-

[2] *Compare In Re Joint Application of Wis. Pub. Serv. Co. and Madison Gas and Electric Co.*, Docket No. 05-BS-228, *Final Decision*, at 5 (April 18, 2019) (PSC REF: 364436) [hereinafter, "*Badger Hollow I*"] (total cost of Badger Hollow and Two Creeks solar projects estimated at approximately $1,299/kW, excluding AFUDC) *with* Ex.-WPL-Application-r: Application-8, Table (total cost of Solar Projects estimated at $1,277/kW, on average across all six projects, excluding AFUDC).

Lipari-r-3) Given this record, the cost of the Solar Projects is reasonable and there is no reason to impose a cost cap.

Second, and as CUB correctly acknowledges, construction cases (such as this one) and rate cases are discrete steps in the regulatory process. (CUB Initial Br., at 5) In a typical construction docket, the Commission authorizes a public utility to construct a project at a certain cost.[3] If the project ends up costing more than what the Commission authorized, the Commission can evaluate whether those cost overruns should be included in rates in a subsequent rate proceeding.[4] For these reasons, the Commission has historically required WPL to notify it if the cost of a project will exceed the authorized cost by more than a certain percentage (e.g., five or ten percent). (*See* WPL Initial Br., at 29, FN.29),

However, the Commission *has not* historically used construction dockets to cap the costs that public utilities can recover through rates in subsequent rate proceedings.[5] The prudence of a utility's investment must be determined *at the time it is made*, and prudency is a factor that the Commission considers *when setting the utility's rates*—not when authorizing the construction of a particular project.[6] In fact, absent "satisfactory proof to the contrary," the Commission and the courts presume that a utility's investment is prudent.[7] Capping ratepayer recovery of project costs in a construction docket would improperly presume the imprudence of utility expenditures that have yet to even occur.[8] In other words, the proposed cost cap would implicitly and prematurely

[3] *See, e.g.*, *In Re Wis. Power and Light Co.*, Docket No. 6680-CE-176, *Final Decision*, at 30 (May 6, 2016) (PSC REF#: 285783) [hereinafter, "*West Riverside CPCN*"].
[4] *West Riverside*, at 25–26.
[5] *Id.*
[6] *See, e.g.*, *Waukesha Gas & Elec. Co. v. Railroad Comm'n of Wis.*, 194 N.W. 846, 854 (1923); *Wis. Pub. Serv. Corp. v. Pub. Serv. Comm'n of Wis.*, 156 Wis. 2d 611, 616, 457 N.W.2d 502 (Ct. App. 1990).
[7] *Waukesha Gas & Elec. Co.*, 194 N.W. at 855.
[8] *West Riverside CPCN*, at 25.

prejudge the prudency of costs WPL incurs to develop the Solar Projects, which is ultimately a matter the Commission should defer to a future rate case.

This is not to say that the Commission can never address ratemaking issues in a construction docket. There is a statutory process by which a public utility applying for a CA or CPCN can request that the Commission determine, in advance, the ratemaking parameters that will apply to its investment in a generation project.[9] As part of its request, the utility can specify (among other things) the economic life of the project; the proposed rate of return for the project; and what project costs the utility can recover in rates.[10] If the Commission issues an order adopting the proposed ratemaking principles and the utility accepts the order, then "in all future rate-making proceedings . . . the order shall be binding on the commission in its treatment of the recovery of the capital costs of the facility that is subject to the order . . . ."[11]

So, there are cases in which the Commission can establish advance ratemaking parameters for utility investments. This is just not one of them. Although well-intentioned, CUB and Commission staff's cost cap recommendation would essentially impose a form of advanced ratemaking on WPL's investment in the Solar Projects. But WPL has not applied for advance ratemaking parameters. Absent such a request, imposing a cost cap on the Solar Projects is both inconsistent with Commission precedent and the presumption of prudence that applies to utility investments. For these reasons, the Commission should reject CUB and staff's recommended cost cap and defer any decision regarding cost recovery for the Solar Projects to a future rate case.

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[9] *See generally* Wis. Stat. § 196.371.
[10] *Id.* § 196.371(2).
[11] *Id.* § 196.371(3)(b).

II. The Commission should adopt WPL's proposed cost collar notification requirement.

As discussed above, the Commission has historically required WPL to provide notice if the cost of one of its approved projects will exceed the Commission-authorized cost by more than five or ten percent. WPL has agreed to a similar notification requirement here. (*See* WPL Initial Br., at 27–29) CUB proposes that the Commission "tighten[] the notification threshold to an amount equal to the Commission's authorized capital construction cost . . . ." (CUB Initial Br., at 5–6) In other words, CUB suggests that the Commission dispense with the ten percent cost collar altogether and require WPL to provide notice if there is *any* increase in costs above the authorized cost.

WPL does not believe that such a condition is appropriate or necessary. First, and as discussed, WPL's proposed cost collar is consistent with Commission decisions in prior WPL construction dockets. Second, when issuing CAs or CPCNs, the Commission typically requires utilities to provide quarterly progress reports, which include information regarding project construction status actual costs incurred to-date.[12] Assuming the Commission approves the Application and takes the same approach here, these quarterly construction reports will provide include up-to-date information regarding project costs, which renders a more restrictive notification requirement unnecessary. Finally, the cost of the Solar Projects is reasonable and consistent with similar projects the Commission has recently approved. (*See supra*, Section I) Given these facts, there is no need for the Commission to impose a cost collar notification requirement that is more stringent than what it has imposed in WPL's other construction dockets.

III. The Commission should not condition issuance of a CA on tax equity financing.

WPL intends to finance a portion (35 to 45 percent) of the Solar Project costs through a tax equity partnership, which will reduce their cost to customers by approximately $280 million on a

[12] *See, e.g.*, *West Riverside CPCN*, at 31–32.

nominal basis (or $127 million on a net PVRR basis), relative to traditional utility ownership. (*See* WPL Initial Br., at 18–21) To capture these customer benefits, CUB recommends that the Commission "explicitly condition its approval on, or otherwise require, the execution of agreements related to the tax equity financing that are consistent with or substantially in the form of what [WPL] has [] represented by the company in this proceeding." (CUB Initial Br., at 6–7)

Based on preliminary discussions with potential tax equity partners, WPL is confident that it will be able to enter into a tax equity partnership for the Solar Projects on reasonable, market-based terms that are consistent with what it has presented in this proceeding. (*See* Direct-WPL-Gresens-cr-12 to 13; Rebuttal-WPL-Gresens-3 to 4) However, it is not appropriate or necessary for the Commission to condition issuance of this CA on WPL obtaining tax equity financing for the Solar Projects. As CUB acknowledges, a tax equity investor will not commit financing for the Solar Projects until six to 12 months prior to COD. (CUB Initial Br., at 6) But by that point, construction on the Solar Projects must be well underway to ensure that they qualify for the full value of the ITC. (Rebuttal-WPL-Gresens-3 to 4)

In this sense, CUB's proposed order condition would put WPL in a "catch-22" situation. Typically, a CA authorizes a public utility to commence construction on the project that is the subject of its application.[13] But conditioning the CA for the Solar Projects on WPL obtaining tax equity financing would effectively require WPL to defer construction until it obtains a commitment from a tax equity investor. This would make it *more difficult* for WPL to obtain financing, since (as noted) tax equity investors generally do not contribute capital to a project until (at the earliest) a year before COD. More importantly, WPL needs to start construction on these projects *now* so they are placed in-service before the end of 2023 and qualify for the full value of the ITC—which

[13] *See, e.g.*, Wis. Stat. § 196.49(3)(b); Wis. Admin. Code § PSC 112.05(1).

is the whole reason an investor would provide financing in the first place. (Rebuttal-WPL-Gresens-4) Finally, changes in market conditions or federal tax laws could simplify financing mechanisms for the Solar Projects, while generating customer benefits that are comparable to those associated with tax equity financing. Conditioning issuance of the CA on WPL obtaining tax equity financing would prohibit WPL from pursuing these potential, beneficial alternatives. (*Id.*)

WPL agrees with CUB that utilizing tax equity financing for the Solar Projects will deliver substantial customer benefits, relative to a situation in which WPL owned and operated the Solar Projects through traditional utility ownership. (*Id.*) However, conditioning issuance of the CA on WPL obtaining tax equity financing for the Solar Projects is not an appropriate or effective means of ensuring those benefits accrue to customers. If there are concerns that WPL did not deliver ratepayer benefits consistent with those provided by the tax equity financing structure represented in this proceeding, the Commission can address those issues in a subsequent rate case.

IV. The Commission can and should consider siting-related concerns for the Grant County and Onion River Projects in their respective CPCN dockets.

Nearly three months after the deadline for intervention and about a week before the technical hearing in this case, GCI and the Hudoverniks moved to intervene in this proceeding. (*See* PSC REF#: 404360, 405001) The Administrative Law Judge (ALJ) denied the requests to intervene but permitted GCI and the Hudoverniks to file non-party briefs. (Hearing Tr. 6:23–8:9)

Both non-party briefs are devoted almost entirely to siting-related concerns for the Grant County and Onion River solar projects, which the Commission is examining in separate CPCN dockets.[14] GCI and the Hudoverniks are either parties to or have filed public comments in those dockets. In this case, GCI argues that the Commission should impose order conditions on the Grant County project regarding (among other things) setbacks, PVHI, vegetation management, avian

[14] *See* Docket No. 9696-CE-100 (Grant County), 9805-CE-100 (Onion River).

impacts, stray voltage, and post-construction sound testing.[15] (GCI Br., at 2–8) WPL has agreed to some of these conditions for the Sub-100 MW Projects, (*see* Rebuttal-WPL-Lipari-1 to 4; Rebuttal-WPL-Skalitzky-2 to 5), and the Commission is already evaluating whether such conditions are appropriate for the Grant County solar project in the Grant County CPCN docket. For their part, the Hudoverniks oppose the Onion River solar project and repeatedly refer to testimony and/or comments that they filed in the Onion River CPCN proceeding. (*See, e.g.*, Hudovernik Br. at 2–6) The parties to the Onion River CPCN proceeding have developed a record on the issues the Hudoverniks have raised. It is therefore appropriate for the Commission to address and resolve those issues in the Onion River CPCN proceeding.

In short, both non-party briefs raise issues regarding the Grant County and Onion River solar projects that can be addressed in each project's respective CPCN proceedings. If and when the Commission approves those projects and WPL acquires them, WPL will be bound by the Commission's decision regarding these issues and whatever conditions it imposes upon the CPCN for each project.

CONCLUSION

For the foregoing reasons and those stated in its initial brief, WPL respectfully requests that the Commission issue an order approving the Application.

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[15] GCI also asserts that WPL has filed an application for a CPCN with the Commission and that the Commission must decide whether the Application complies with the CPCN statute. (GCI Br., at 1–2) This is, of course, incorrect: WPL applied for a *CA* from the Commission, and the issue before the Commission is whether the Application complies with (among other things) the statutory criteria in the CA statute. (*See* WPL Initial Br., at 8–9; PSC REF#: 401616)

Respectfully submitted this 15th day of March, 2021,

/s/ Lissa R. Koop

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