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Public Service Commission of Wisconsin
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PUBLIC SERVICE COMMISSION OF WISCONSIN

Application for Intervenor Compensation filed by Clean Wisconsin, Inc.
to Participate in Docket 9698-CE-100

1-IC-522

ORDER

This is the Order approving the award of intervenor compensation (IC) to Clean Wisconsin to participate in the proceeding in docket 9698-CE-100. Clean Wisconsin is a party in that proceeding. On May 13, 2019, Clean Wisconsin filed a timely application seeking IC in the amount of \$105,880 to participate in docket 9698-CE-100. ([PSC REF#: 366765.](#)) The Commission discussed this request at its open meeting of June 12, 2019.

Background

On January 8, 2019, South Shore Energy, LLC and Dairyland Power Cooperative (together, Applicants) filed an application with the Public Service Commission of Wisconsin (Commission) for a Certificate of Public Convenience and Necessity (CPCN) for the Nemadji Trail Energy Center combined-cycle electric generation project (NTEC). NTEC would be constructed and operated as a wholesale merchant plant as defined by Wis. Stat. § 196.491(1)(w)1.

The Commission is currently reviewing the CPCN application in docket 9698-CE-100 and issued a Notice of Proceeding on April 11, 2019. On April 15, 2019, Clean Wisconsin filed a request to intervene. ([PSC REF#: 364205.](#)) On May 8, 2019, the Commission issued a Notice of Prehearing Conference for May 29, 2019. ([PSC REF#: 366238.](#)) On May 8, 2019, the Administrative Law Judge granted Clean Wisconsin's request to intervene. ([PSC REF#: 366168.](#))

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As stated in the Commission's Notice of Proceeding, requests for intervenor compensation (IC) are to be made as soon as practicable. ([PSC REF#: 363873.](#)) On May 13, 2019, Clean Wisconsin filed a request for IC totaling \$105,880. ([PSC REF#: 366765.](#)) Clean Wisconsin proposes to evaluate the potential environmental impacts of constructing and operating NTEC and assess the Applicants' plans for avoiding and mitigating adverse impacts. To do so, Clean Wisconsin plans to use their in-house experts, as well as the expert services of Hey and Associates.

On May 24, 2019, Applicants filed objections to Clean Wisconsin's request for intervenor compensation. ([PSC REF#: 367690.](#)) Clean Wisconsin filed a response to Applicants' objections on June 3, 2019. ([PSC REF#: 368395.](#))

Clean Wisconsin's Application

Clean Wisconsin is a 501(c)3 organization that advocates for clean air, water, and energy. Clean Wisconsin has over 2,000 members and supporters and a staff of 18 individuals, and was created on Earth day 1970 as Wisconsin's Environmental Decade. Clean Wisconsin has participated in numerous rate, construction, and other proceedings before the Commission since its inception.

Clean Wisconsin stated that 175 of its members who live and work in Douglas County would be affected by the environmental impacts of the proposed project. Clean Wisconsin further stated that its participation in docket 9698-CE-100 would ensure that the environmental protection interests of its members and the general public are adequately represented.

Clean Wisconsin stated that internal resources are insufficient to fund the amount of expert and in-house staff time that would be needed to develop the issues, conduct research and

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discovery, prepare testimony, participate in hearings, and brief the issues. Clean Wisconsin explained that its annual budget is derived from a combination of foundation grants, membership donations and individual gifts. According to Clean Wisconsin, the foundation funds are a majority of its revenue and are restricted to specific activities and goals. While it has funds to participate in planning dockets at the Commission, Clean Wisconsin stated that it does not have funds for participation in construction dockets. Accordingly, since Clean Wisconsin's budget does not contemplate or allow for the significant amount of expert and in-house staff time required to participate in contested cases, it argued that the lack of IC to compensate its staff for participation would create a significant financial hardship to the organization.

Clean Wisconsin's Work Plan

Clean Wisconsin plans to use Hey and Associates, Inc., for the analysis of the NTEC project, legal services of Pines Bach, and Clean Wisconsin staff. Hey and Associates, Inc., staff include a senior ecologist/principal at \$190 per hour, a senior project scientist at \$160 per hour and a GIS specialist at \$85 per hour. Clean Wisconsin proposes to use the legal services of Pines Bach at \$250 per hour. A summary of Clean Wisconsin's workplan is included below:

Hey and Associates, Inc			
	Rate per hour	Hours	Cost
Pre-hearing Task			
Review application and relevant third-party documents; identify data gaps and significant environmental issues.	\$190/160/85	16/32/24	\$10,200
Field reconnaissance of proposed sites; Geographic Information System (GIS) impact analysis; preliminary assessment of major concern areas; digital resources support; initial GIS assessment of other available real estate parcels in project area.	190/160/85	40/32/32	15,440
Review draft EIS; prepare discovery questions; prepare testimony and supporting exhibits.	190/160/85	32/40/24	14,400
Project meetings with counsel.	190	24	4,560
Hearing Tasks			
Preparation for and attendance of technical hearing.	190	16	3,040
Post-hearing Tasks			
Review record and assist in preparation of briefing.	190/160	16/8	4,320
Reimbursables			
Travel, lodging, printing, etc.			1,000
Total			\$53,080¹

¹ Clean Wisconsin requests \$53,080 for the services of Hey and Associates, Inc., but the numbers in this table total \$52,960.

Pines Bach Attorneys		
	Hours	Cost at \$250 per hour
Pre-hearing Tasks		
Review applications, filings; conduct relevant legal research.	20	\$5,000
Consultation with witnesses, clients regarding issue development, discovery requests and responses.	12	3,000
Prepare initial and supplemental data requests and responses; review, analyze data request responses and documents; address confidentiality matters; address discovery disputes as they arise.	25	6,250
Review draft environmental impact statement.	10	2,500
Coordinate preparation of direct and rebuttal expert testimony; consultation with witnesses.	25	6,250
Review direct and rebuttal testimony filed by other parties.	15	3,750
Hearing Tasks		
Attend and participate in hearing (2 attorneys), assuming two 8-hour days.	32	8,000
Post-hearing Tasks		
Draft initial brief; review case record and transcript, consult with witnesses.	25	6,250
Review opposing parties' briefs; draft reply brief.	20	5,000
Draft Clean Wisconsin entries for decision matrix.	2	500
Review other post-hearing filings.	2	500
Expenses		
Photocopying.		50
Hearing expenses (travel, postage, exhibits, etc.).		50
Total		\$47,100

Clean Wisconsin Staff		
	Hours	Cost at \$95 per hour
Pre-hearing Tasks		
Review applications, filings.	20	\$1,900
Consultation regarding issue development, discovery requests and responses.	5	475
Consult with witness and counsel regarding preparation of direct and rebuttal expert testimony.	10	950
Review direct and rebuttal testimony filed by other parties, consult with counsel and expert witness.	5	475
Hearing Tasks		
Attend and participate in hearing.	8	760
Post-hearing Tasks		
Review initial brief; review case record and transcript; consult with counsel.	5	475
Review party briefs; consult with counsel.	5	475
Review final staff memo.	2	190
Total		\$5,700

[\(PSC REF#: 366765.\)](#)

Conclusions of Law

1. The Commission has jurisdiction and discretion under Wis. Stat. §§ 196.02(1), 196.31, 196.395, and other provisions of Wis. Stat. ch. 196 and Wis. Admin. Code ch. PSC 3 to make the determinations in this order.

2. The Commission has authority in Wis. Stat. §§ 196.31, 196.395 and Wis. Admin. Code ch. PSC 3 to impose the conditions on disbursements of award funds set forth in this Order and the Award Agreement.

3. Clean Wisconsin meets the eligibility requirements of Wis. Stat. § 196.31 and Wis. Admin. Code § PSC 3.02.

Opinion

Eligibility for Compensation

Wisconsin Stat. § 196.31(1) provides that the Commission shall provide IC to any non-utility participant in a proceeding if the Commission finds that either (a) “the participation is necessary to provide for the record an adequate presentation of a significant position in which the participant has a substantial interest, and that an adequate presentation would not occur without a grant of compensation;” or (b) the “participation has provided a significant contribution to the record and has caused a significant financial hardship to the participant.”

Pursuant to Wis. Admin. Code § PSC 3.02, to be eligible to receive compensation a person must be all of the following:

- (a) A customer of the utility which is the subject of the proceeding; or someone who may be materially affected by the outcome of the proceeding.
- (b) Someone for whom full intervention in the proceeding would cause significant financial hardship without compensation from the Commission.
- (c) Someone who represents an interest material to the proceeding, which but for award of compensation would not be adequately represented, taking into consideration the information that will be presented by Commission staff and other persons who have indicated they will be presenting information in the proceeding.
- (d) Someone whose interest must be represented for a fair determination in the proceeding, taking into consideration the information that will be presented by Commission staff and other persons who have indicated they will be presenting information in the proceeding.
- (e) Someone who has been granted full party status and who will participate in the proceeding as a full party.

Under Wis. Admin. Code § PSC 3.04(2), compensable expenses include:

- (a) Attorney fees.
- (b) Expert witness fees.
- (c) Cost of clerical services.
- (d) Preparation of studies, displays, and exhibits.
- (e) Travel and subsistence costs.
- (f) Other costs associated with the intervention and actually incurred.

The Commission finds that Clean Wisconsin meets the eligibility requirements of Wis. Stat. § 196.31 and Wis. Admin. Code § PSC 3.02. Clean Wisconsin's participation, as an advocate for its members who live in the proposed project area, is necessary to provide for the record an adequate presentation of a significant position in which it and its members have a substantial interest. Given that a majority of Clean Wisconsin's funding comes from foundation funds that are restricted to specific activities and goals, the Commission concludes that an adequate presentation would not occur without a grant of compensation. While the Commission finds Clean Wisconsin is eligible to receive IC, the Commission concludes, for the reasons discussed below, that a reduced award is necessary and appropriate.

Evaluation

Wisconsin Admin. Code § 3.02(2) requires that the Commission consider, in making the award determination, the information that may be presented by Commission staff and by other persons who indicated they will be presenting information in the proceeding. While Commission staff may present information about the potential impacts of the project, Clean Wisconsin will present a unique perspective and will advocate its position on behalf of its members. However, the Commission finds that Clean Wisconsin's proposed work relating to field reconnaissance of proposed sites and GIS related tasks is not necessary in order to provide for the record an adequate presentation of any significant position in which Clean Wisconsin has a substantial

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interest, and further finds that an adequate presentation would occur without granting Clean Wisconsin compensation to conduct those activities. In addition, the Commission finds that providing \$35,000 for outside legal counsel, rather than the \$47,100 requested, will enable Clean Wisconsin to provide an adequate presentation for the record in this proceeding.

Award

Pursuant to the conditions of this Order and consistent with the terms and conditions set forth in Wis. Admin. Code ch. PSC 3, the Commission finds that Clean Wisconsin satisfies the eligibility requirements of awards IC to Clean Wisconsin for participation in docket 9698-CE-100 in the total amount of \$78,220.00 as follows: funding for Hey and Associates, Inc. in the amount of \$37,520 to exclude funds associated with completion of field reconnaissance of proposed sites and GIS related tasks; to the law firm of Pines Bach in the amount of \$35,000; and to Clean WI staff for \$5,700.

Order

1. The IC award to Clean Wisconsin in the amount of \$78,220.00 is authorized.
2. Clean Wisconsin shall accept the IC award by entering into an Award Agreement prepared by Commission staff. The award referred to herein is not final until Clean Wisconsin completes and signs the Award Agreement, and the Commission's duly designated representative signs and delivers the executed Award Agreement to Clean Wisconsin.
3. The award approved by this Order is for the specific purposes described in the IC application, except that the purposes of completing field reconnaissance and conducting GIS-related tasks are excluded from the award approved by this Order. Clean Wisconsin shall

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use the award funds for only those services set forth in the application and in accordance with the workplans and budgets included therein, as modified by this Order.

4. The award may be rescinded by the Commission at any time. Payment may be denied and is subject to refund if Clean Wisconsin does not provide the representation of interest for which its application was approved.

5. Clean Wisconsin may file a request with the Commission for supplementary compensation if, for a valid reason, it underestimated the costs of participation or if additional funds would substantially improve Clean Wisconsin's ability to contribute to the proceeding.

6. Jurisdiction is retained.

Commissioner Nowak dissents.

Dated at Madison, Wisconsin, the 8th day of July, 2019

By the Commission:

A handwritten signature in black ink that reads "Steffany Powell Coker". The signature is written in a cursive style with a large initial 'S'.

Steffany Powell Coker
Secretary to the Commission

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