

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Joint Application of Wisconsin Electric Power)
Company and Wisconsin Gas LLC, both d/b/a) Docket No. 5-UR-107
We Energies, for Authority to Adjust Electric,)
Natural Gas, and Steam Rates)

**MOTION OF ENVIRONMENTAL LAW & POLICY CENTER, RENEW WISCONSIN,
AND THE ALLIANCE FOR SOLAR CHOICE FOR ORDER TO INITIATE AN
INVESTIGATION INTO THE PUBLIC COMMENTS OF CONSUMER ENERGY
ALLIANCE**

Robert Kelter
Environmental Law & Policy Center
222 S. Hamilton, Ste. 14
Madison, WI 53703
608-204-9735
rkelter@elpc.org

*Attorney for Environmental Law &
Policy Center and RENEW Wisconsin*

Tim Lindl
Keyes, Fox & Wiedman LLP
436 14th Street, Suite 1305
Oakland, CA 94612
510-314-8385
tlindl@kfwlaw.com

Attorney for The Alliance for Solar Choice

Dated: October 29, 2014

**MOTION FOR ORDER TO INITIATE AN INVESTIGATION INTO THE PUBLIC
COMMENTS OF CONSUMER ENERGY ALLIANCE**

INTRODUCTION

Environmental Law & Policy Center (“ELPC”), RENEW Wisconsin (“RENEW”), and The Alliance for Solar Choice (“TASC”) request the Commission exercise its statutory powers to investigate public comments submitted by Consumer Energy Alliance (“CEA”), a Houston based group made up of hundreds of corporate members.¹ Under Wisconsin Statute sections 196.02(7) and 196.28, the Commission has authority to initiate and investigate any matter that falls within its jurisdiction, including public comments submitted in one of its proceedings. Wis. Stat. § 196.02(7); Wis. Stat. § 196.28. Pursuant to Rule PSC 2.23, ELPC, RENEW and TASC submit this motion for the Commission to issue an order to initiate an investigation. Wis. Admin. Code § PSC 2.23.

CEA’s proffered comments include the oral statements of Ryan Scott, the group’s director for state affairs, and a public comment letter signed by David Holt, President of CEA, who provides no address. Mr. Holt’s letter claims to represent “2500 comments from Wisconsin electricity users.”² However, new information has come to light, which raises questions about the validity of the signatures. Because the comments fall within the Commission’s jurisdiction, the Commission has the authority to investigate the veracity of the statements made and should determine if there was any misconduct by the commenter, CEA.

¹ Tr. Vol. 4, p. 44, Ins. 1-4; Attachment A, p. 1.

² CEA Public Comments, PSC REF # 222041.

ARGUMENT

1. The Commission Should Investigate CEA's Statements, Because They Do Not Meet the Commission's Requirements for Public Comments.

In its Notice of Hearing (“Notice”), the Commission stated “a person may testify in this proceeding without becoming a party and without attorney representation.”³ The Notice provided several avenues by which a person could submit such comments and described certain requirements. Web and mail comments were required “to be received no later than Tuesday, October 7, 2014.”⁴ Parties testifying orally were permitted to do so at the October 8th Public Comment Hearing.⁵ The Notice further stated, “a person shall limit a public comment to non-technical personal knowledge or personal opinion,”⁶ and “[o]nly one comment may be submitted per person during a comment period.”⁷ The Commission further granted parties the right to object to the receipt of a public comment and warned that the Commission may reject a comment that does not comply with its requirements.⁸ Many of these same requirements are also explained on the Commission’s website regarding public comments in general.⁹

On October 8, 2014 at the Public Hearing, Mr. Scott proffered his oral comment in which he offered to deliver “2500 public comments” in favor of WEPCO’s new charges for customer owned generation.¹⁰ Mr. Scott then submitted a public comment letter signed by David Holt, President of CEA. In the letter Mr. Holt requests that the Commission “accept the enclosed

³ Notice of Hearing, PSC REF # 214601, p. 2.

⁴ Notice of Hearing, PSC REF # 214601, p. 2.

⁵ Notice of Hearing, PSC REF # 214601, p. 2.

⁶ Notice of Hearing, PSC REF # 214601, p. 2.

⁷ Notice of Hearing, PSC REF # 214601, p. 2.

⁸ Notice of Hearing, PSC REF # 214601, p. 2.

⁹ Requirements for Public Comments, *Available at*,

<http://psc.wi.gov/apps40/dockets/refers/Requirements%20for%20Public%20Comments.pdf>

¹⁰ Tr. Vol. 4, p. 43, Ins. 8-9.

2,500 comments from Wisconsin electricity users.”¹¹ CEA submitted the same comment letter from Mr. Holt, with the same “2,500 comments from Wisconsin electricity users,” in the parallel Madison Gas & Electric rate case docket 3270-UR-120.¹²

Mr. Holt’s letter states that these Wisconsin electricity users “believe every energy consumer should pay a fair share for maintaining the electrical grid. The petitioners believe changing the current rule will ensure that all ratepayers are treated fairly and electricity bills remain affordable.”¹³ Mr. Holt further asserts that “[i]n an effort to conserve energy and paper, we have attached a list of the petition signers to this letter.”¹⁴ Mr. Holt was not present at the Public Comment Hearing.

The Administrative Law Judge questioned Mr. Scott as to the methods by which the 2500 names were collected and whether or not there was evidence of the actual signatures and the petition.¹⁵ In response, Mr. Scott provided a CD, which he claimed provided the electronic signatures of the 2500 individuals and the “petition.”¹⁶ However upon further questioning by the ALJ, it became clear that some of the signatures were gathered through a telephone poll, with no electronic or actual signatures provided.¹⁷ Mr. Scott stated under oath at the October 8th hearing that, “all these signatures and comments I am presenting are in support of the same statement and position.”¹⁸

Since the public hearing, new evidence has arisen that raises questions regarding Mr. Holt’s letter, Mr. Scott’s testimony, and whether CEA actually gathered signatures from the

¹¹ CEA Public Comments, PSC REF # 222041.

¹² CEA Public Comments, PSC REF # 222052.

¹³ CEA Public Comments, PSC REF # 222041.

¹⁴ CEA Public Comments, PSC REF # 222041.

¹⁵ Tr. Vol. 4, p. 45, ln. 18 and p. 48, ln. 18.

¹⁶ Tr. Vol. 4, p. 46, lns. 19-22.

¹⁷ Tr. Vol. 4, p. 48, lns. 4-6.

¹⁸ Tr. Vol. 4, p. 43, lns. 19-21.

customers named. On October 21, 2014, The Capital Times, a Madison based newspaper, published an article (Attachment A to this Motion), which indicated that CEA was “misrepresenting the wishes of some Madison Gas & Electric and We Energies customers.”¹⁹ The article cites to at least three customers who state they do not support WEPCO’s proposed rate changes despite the fact that their name is on CEA’s list of supporters.²⁰

The article also quotes one of CEA’s top advisors, lobbyist Michael Whatley, who says “[w]e talk to folks and ask them if they would like us to send a letter on their behalf . . . if they answer in the affirmative, we go ahead and do that.”²¹ Nevertheless the article notes, “there is little doubt some of those contacted by CEA were not sure of what they were agreeing to or the complexity of the issues involved.”²² The Capital Times article addresses some of the ALJ’s questions and further calls into question the veracity of CEA’s proffered comments.

The issues raised by this letter and petition were submitted in the course of a contested case proceeding at the Commission, and, therefore, clearly fall within the Commission’s investigatory powers. Until the Commission completes this investigation and determines the authenticity of the comments, we respectfully ask that the Commission not consider CEA’s public comments.

ELPC, RENEW Wisconsin, and TASC respectfully move that the Commission issue an order to initiate an investigation into whether the 2500 customers listed are indeed Wisconsin utility customers who actually support the statements in Mr. Holt’s letter. The investigation should also include how and why CEA contacted these individuals and if CEA has had any contact with the parties in the ongoing proceeding, including WEPCO.

¹⁹ Attachment A, p. 1.

²⁰ Attachment A.

²¹ Attachment A, p. 2.

CONCLUSION

For the foregoing reasons, the Commission should initiate an investigation into the source and validity of CEA's public comments, and they should not be considered part of the record until an investigation is complete and the petition is considered authenticated.

Dated this 29th day of October, 2014.

Respectfully submitted,



Robert Kelter
Environmental Law & Policy Center
222 S. Hamilton Street, Suite 14
Madison, Wisconsin 53703
(608) 204-9735
rkelter@elpc.org

*Attorney for Environmental Law &
Policy Center and RENEW Wisconsin*



Tim Lindl
Keyes, Fox & Wiedman LLP
436 14th Street, Suite 1305
Oakland, CA 94612
(510) 314-8385
tlindl@kfwlaw.com

Attorney for The Alliance for Solar Choice

Attachment A

October 21, 2014

Did Houston energy group dupe MGE customers to back rate changes?

By Mike Ivey

A fossil fuel industry group backing changes to Wisconsin's electric rate structure is misrepresenting the wishes of some Madison Gas & Electric and We Energies customers in [a legal filing with state regulators](#).

The [Houston-based Consumer Energy Alliance](#) on Oct. 7 sent the state Public Service Commission a petition with names of 2,500 electric customers statewide, claiming those consumers "believe changing the current rule will ensure that all ratepayers are treated fairly and electricity bills remain affordable."

But it's unclear how many of those customers actually support the proposed changes, which would [raise fixed costs](#) for residential ratepayers.

For example, Mary Frawley, who lives on Madison's near west side, is listed on the petition as supporting the changes. But she told The Capital Times she strongly opposes the MGE plan, which would hike her monthly service fees from \$10 to \$19 starting next year.

Frawley says she recalls speaking on the phone with someone from the Consumer Energy Alliance. She then agreed to let the group use her name, assuming they were against the MGE proposal.

"I thought they were opposed to it ... but I guess I was mixed up," she said.

The Consumer Energy Alliance filed the same list of 2,500 names to the PSC in the We Energies rate case. The Milwaukee area utility is also proposing to raise its monthly fixed charges for residential customers — a move clean energy advocates say removes the incentives to use less electricity, much of it generated in Wisconsin by burning coal or natural gas.

Elizabeth Westlund, a We Energies customer from Kenosha, says she got a call some months ago about electric charges but never signed a petition. Westlund is opposed to “anything that will raise my bill,” she said in an interview. “If they are saying I support We Energies, they are just wrong,” she said. “And I want my name taken off that list.”

CEA has not previously filed comments with the state Public Service Commission, according to PSC spokesman Nathan Conrad.

But the group is [well-known in the energy world](#) for its political connections in Washington.

One of its top advisors is lobbyist [Michael Whatley](#), who served as senior policy advisor on George W. Bush’s first presidential campaign and transition team. Whatley was later appointed chief of staff to former U.S. Sen. Elizabeth Dole, a former cabinet secretary and the wife of Bob Dole.

[Peter Taglia](#), a former staffer with Clean Wisconsin now running his own energy consulting business, says CEA specializes in crafting public relations campaigns designed to appear as grassroots support. Advocates often refer to those efforts as “astroturfing” or “[greenwashing](#).”

“If this is true, it undercuts the legitimacy of the PSC process,” Taglia said. “It’s clear these out-of-state coal companies know they benefit from higher fixed fees on seniors, renters and low energy users.”

Whatley said his firm is simply working to ensure that electric rates are fair to all ratepayers. He said the growth of solar energy is leaving fewer customers paying the costs of maintaining the “electric grid” — the power plants, poles and wires that keep power flowing to homes and businesses 24-7.

“We believe that rates need to be fair for all ratepayers and have been very clear about that,” he said.

Whatley denies that any residential customers contacted by CEA were misled about the group’s intentions or duped into allowing their names to be submitted to the PSC.

“We talk to folks and then ask if they would like us to send a letter in on their behalf,” he says. “If they answer in the affirmative, we go ahead and do that.”

Still, there is little doubt some of those contacted by CEA were not sure of what they were agreeing to or the complexity of the issues involved.

Tom Frutiger of Madison is listed on the petition and claims he doesn't remember even speaking with anyone from CEA, although he admits his memory has been failing him since suffering a stroke.

Asked if he supports the MGE changes, Frutiger said, "Hell no."

"What I'd like to see is less fossil (fuel) burning," he said. "They should put some fans in the middle of the lake and generate electricity that way."

CEA has been the focus of several investigative stories on the public relations and lobbying industry as it relates to the oil and gas industry. One piece co-published by [Salon.com](#) and [The Tyee](#) tells how the group was heavily involved in fighting tougher carbon laws and thwarting development of renewable energy.

"Oil industry power players, including BP, Chevron, ExxonMobil, Marathon, Shell and Norway's Statoil are among the CEA's key financial backers, and many of these companies also happen to have deep ties to the Alberta tar sands," writes reporter Geoff Dembicki.

MGE officials say they had seen the comments filed by CEA but were not involved in the PSC filing or any telephone polling that would have created a list of supporters.

"We are not involved with this group," MGE spokesman Steve Kraus said.

CEA does not maintain an office in Wisconsin but it [counts Wisconsin Manufacturers & Commerce](#) among its members.

Electric utilities in Wisconsin and in other states are struggling with how to cover the fixed costs of operating and maintaining electric systems amid the increase in solar power usage and energy conservation. They want to dramatically hike the monthly service fees for most customers while reducing charges for the amount of electricity consumed.

Critics contend the changes will discourage customers from using less electricity and are simply a way for utilities to maintain profits and protect their investment in plants that burn coal or natural gas.

Last year, the state's largest electric utility We Energies was granted a 20 percent increase in fixed charges by the PSC and is now proposing a 75 percent jump in its fixed charge to \$16 a month.

MGE had initially talked about raising the monthly customer charge to nearly \$50 by 2016 and potentially \$70 by 2017. It has since [backed off that timetable](#) and now proposes raising the fee to \$19 in 2015 and holding off on future hikes pending negotiations with the Citizens Utility Board and other customer groups.

Whatley says CEA is taking an interest in Wisconsin because it is one of the first states where changes in electric billing are going before regulators. It has also lobbied in Arizona, which had [passed a fee](#) on solar installations.

“We don’t want to end up with a system where the only way your rates aren’t going to go up is if you install rooftop solar,” said Whatley.

Right now, solar power accounts for just a fraction of the energy produced in Wisconsin.

Of the 141,000 customers of MGE, just 320 have commercial grade solar installations, according to figures from the [Environmental Law and Policy Center in Chicago](#). We Energies has an even lower percentage of solar customers, with 580 out of a customer base of nearly one million.

“This isn’t about protecting customers from solar; it’s about protecting the interests of utility shareholders,” said [Rob Kelter](#), a senior attorney with the center.

Available online at: http://host.madison.com/news/local/writers/mike_ivey/did-houston-energy-group-dupe-mge-customers-to-back-rate/article_2eea8630-589c-11e4-b320-4f43315671a6.html