

SERVICE DATE
Mar 06, 2020

PSC REF#: 385279

Public Service Commission of Wisconsin
RECEIVED: 03/06/2020 3:25:01 PM

PUBLIC SERVICE COMMISSION OF WISCONSIN

Joint Application of Madison Gas and Electric Company and Wisconsin Electric Power Company for Approval to Acquire Ownership Interests in the Badger Hollow II Solar Electric Generating Facility

5-BS-234

FINAL DECISION

This is the Final Decision in the joint application filed by Madison Gas and Electric Company (MGE) and Wisconsin Electric Power Company (WEPCO) (together, applicants) for approval to acquire ownership of 150 megawatts (MW) (50 MW by MGE and 100 MW by WEPCO) of solar photovoltaic (PV) generating capacity and the remaining rights in the associated generation tie line¹ (Badger Hollow II) from developer Badger Hollow Solar Farm LLC, (Badger Hollow) an affiliate of Invenergy, LLC (Invenergy), at a cost of approximately \$194.9 million, plus allowance for funds used during construction (AFUDC).

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

Introduction

On August 1, 2019, MGE and WEPCO filed a joint application under Wis. Stat. § 196.49 for approval to acquire ownership of 150 MW (50 MW by MGE and 100 MW by WEPCO) of PV generating capacity and the remaining rights in the associated Badger Hollow II generation tie line² to be developed by Badger Hollow. The applicants propose to acquire and construct Badger

¹ On December 13, 2019, American Transmission Company LLC (ATC) and Wisconsin Public Service Corporation (WPSC) filed an application with the Commission for the approval of a multi-party agreement for the interconnection of Badger Hollow generation facility to ATC's transmission system. ([PSC REF:# 380708.](#))

² On December 13, 2019, ATC and WPSC filed an application with the Commission for the approval of a multi-party agreement for the interconnection of Badger Hollow generation facility to ATC's transmission system. ([PSC REF:# 380708.](#))

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Hollow II at a total cost of approximately \$194.9 million, or \$1,299/kilowatt (calculated without AFUDC). This price includes the capital cost of the solar facilities, transmission tie-in equipment, and owners' costs (including land agreements, transmission interconnection rights, and permits).

[\(PSC REF#: 373357.\)](#)

Badger Hollow II will be located in the towns of Montfort and Cobb in Iowa County.

Badger Hollow II is the second phase of the solar generation facility Badger Hollow (approved in docket 9697-CE-100) that has a total nameplate capacity of 300 MW, and Badger Hollow II constitutes 150 MW of the total capacity. Under the acquisition MGE will acquire 50 MW and WEPCO will acquire 100 MW of Badger Hollow II. This arrangement is similar to the authorization granted by the Commission in docket 5-BS-228 on April 18, 2019, where the Commission authorized MGE and WPSC to acquire ownership of 300 MW (100 MW by MGE and 200 MW by WPSC) of solar PV generating capacity from Badger Hollow and Two Creeks Solar, LLC (Two Creeks), at a cost of approximately \$389.7 million, excluding AFUDC. [\(PSC REF#: 343600, PSC REF#: 364436.\)](#) As described above, MGE and WEPCO seek to acquire the remaining 150 MW of capacity under Badger Hollow II.

On September 12, 2019, the Commission issued a Notice of Investigation in this docket. [\(PSC REF#: 375661.\)](#) On October 4, 2019, the Administrative Law Judge granted requests to intervene from RENEW Wisconsin (RENEW), Wisconsin Industrial Energy Group, and the Wisconsin Laborers' District Council. On January 29, 2020, the Commission posted a Commission staff memorandum for comment by parties and the public. [\(PSC REF#: 383006.\)](#) Comments were received.

The City of Milwaukee, the City of Madison, and RENEW all submitted letters in support of the application. In the comments received from the Wisconsin Laborers' District Council, it asked for two conditions to be included in this Order:

1. The joint applicants will publicly report on a quarterly basis the number of full-time employees, and hours worked by Wisconsin residents and out-of-state workers during the construction of the Badger Hollow II project.

2. The joint applicants will publicly report on a quarterly basis efforts made by them, Invenergy, and Invenergy's construction contractors to recruit Wisconsin residents to fill employment opportunities created by the construction of the Badger Hollow II project.

Citizens Utility Board of Wisconsin (CUB) provided comments in which CUB did not object to Commission approval of the application but recommended that in future resource acquisition dockets that the inclusion of resource modeling from the Electric Generation Expansion Analysis System (EGEAS), or a comparable model, be required. In addition, CUB supported the conditions proposed in the Commission staff memorandum and proposed the following additional condition:

Should the scope, design, or location of the project change significantly, or if it is discovered or identified that the project cost, including *force majeure* costs, may exceed the estimated cost, the applicants shall promptly notify the Commission as soon as it becomes aware of the possible changes or cost increase. ([PSC REF#: 383521.](#))

The applicants also submitted comments, seeking clarification to the first condition in the memorandum to clarify AFUDC treatment to explicitly authorize AFUDC treatment on 100 percent of Construction Work in Progress (CWIP), similar to Order Condition 7 in docket 5-BS-228 and asking for the same condition in this Final Decision. The applicants also proposed to reject

Commission staff's recommendation for order condition 1 that the applicants' total acquisition cost be capped at \$207.6 million including AFUDC, and proposed the following condition:

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 (O&M) costs, and revenues associated with the projects. The estimated total acquisition cost is \$194.9 million (excluding AFUDC). Should the applicants discover or identify that the total acquisition cost, including *force majeure* costs, may exceed the estimated cost by more than 10 percent, the applicants shall promptly notify the Commission as soon as they become aware of the possible cost increase. The applicants may include costs associated with AFUDC on 100 percent of the CWIP balance during construction because the applicants may take ownership of the solar facilities prior to or during construction. The applicants may not earn a current return on CWIP for any costs associated with the project.

The applicants also proposed the third sentence of Commission staff's proposed condition 2 state, "Further, within 60 days of the effective date of the transfer, the applicants shall file with the Commission the final closing purchase price." ([PSC REF#: 383522.](#))

The Commission considered this matter at its open meeting of February 20, 2020.

Findings of Fact

1. MGE and WEPCO are public utilities as defined in Wis. Stat. § 196.01(5)(a) and provide electric service in Wisconsin.
2. Badger Hollow will be a solar PV 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.
3. The breakdown of the capacity acquired by each of the applicants for Badger Hollow II is: MGE will acquire 50 MW and WEPCO will acquire 100 MW. MGE previously

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applied for and was granted authority to purchase 50 MW and WPSC purchased 100 MW of the Badger Hollow I facility in docket 5-BS-228.

4. The applicants propose to acquire Badger Hollow II under agreements with each developer at a total cost of approximately \$194.9 million plus AFUDC, or \$1,299/kilowatt (calculated without AFUDC). 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.

5. WEPCO has a need for capacity which supports its acquisition of 100 MW of solar capacity. MGE will need new capacity and this acquisition would remain part of its least-cost capacity options, which supports its acquisition of 50 MW of solar capacity.

6. The applicants' acquisition of the Badger Hollow II is consistent with the energy priorities laws under Wis. Stat. §§ 1.12 and 196.025.

7. 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.

8. 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.

9. To the extent applicable, the proposed acquisition complies with Wis. Stat. § 196.49(4) because the use of brownfields was previously determined in dockets 9697-CE-100 and 9697-CE-101 not to be practicable for construction of Badger Hollow.

10. 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.

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

12. 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 Badger Hollow II, 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 Badger Hollow II 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 (EIS) nor an environmental assessment (EA) is necessary.

Opinion

MGE and WEPCO are public utilities as defined in Wis. Stat. § 196.01(5)(a) and provide electric service to approximately six hundred thousand customers in Wisconsin. Badger Hollow

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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; under the terms of this agreement MGE will acquire 50 MW and WEPCO 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-101.³

Standard for Approval

The applicants seek approval under Wis. Stat. § 196.49 for a Certificate of Authority (CA). Wisconsin 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 the acquisition if it appears that it 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

³ The Commission takes official notice of the evidence received in dockets 9697-CE-100 and 9697-CE-101 pursuant to Wis. Stat. § 227.45(2).

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utility waives 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 Badger Hollow II. Wis. Admin. Code § PSC 112.05(1)(a).

The record in this matter does not indicate that the proposed acquisitions would substantially impair the efficiency of the service of MGE or WEPCO. The record indicates there is consensus on the need for additional generation capacity for both MGE and WEPCO. MGE has a capacity need, due to previously announced retirements of legacy assets and expiring purchased power agreements. Likewise, WEPCO has a capacity need due to the retirements of the Presque Isle Power and Pleasant Prairie generation facilities. For MGE, the proposed 50 MW purchase would satisfy its current forecast need and for WEPCO, the 100 MW purchase, even at a 70 percent capacity accreditation from Midcontinent Independent System Operator, Inc. (MISO), would satisfy only a small portion of its capacity need in the near future.

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 question of quantity has been addressed as both applicants show a capacity need in the near future. The remaining question of value 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 of service.

Applicants' Needs, Alternatives, and Economic Analysis

Madison Gas and Electric Company

In the application, MGE stated the main drivers for the proposed project are a forecasted capacity need, cost-effectiveness, and risk mitigation from potential future environmental standards. MGE used EGEAS modeling to evaluate the acquisition of Badger Hollow II over a range of possible futures. Additionally, MGE used the PROMOD model to forecast annual locational marginal price (LMP) differentials and then used those results as inputs into its EGEAS modeling. In response to Commission staff's data request 1.1, MGE provided this EGEAS and PROMOD modeling analysis for review. ([PSC REF#: 374783](#)).

Madison Gas and Electric Company's Modeling Efforts

MGE developed three different futures for their EGEAS analysis namely, the business-as-usual or reference future, carbon constrained future, and a carbon constrained future with higher gas and LMP prices. MGE's EGEAS scenarios analyzed its least-cost plan as optimized by EGEAS in these said futures. In addition to the scenario analysis, MGE studied eight sensitivities in EGEAS. These sensitivities included screening of new coal based planning alternative, screening of new nuclear based planning alternative, screening of new biomass based planning alternative, and screening of the Riverside option.⁴ For all the above said scenarios and sensitivities, MGE assumed solar resources receiving a capacity accreditation of 50 percent in the MISO market. MGE also performed other EGEAS sensitivities assuming solar resources receiving 40 percent, 30 percent, 20 percent, and 70 percent capacity accreditation in the MISO

⁴ The Riverside option is the option for MGE to participate in joint ownership of the Riverside Energy Center Expansion facility now being constructed by WPL.

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market. Its analysis assumes the solar investment tax credit received by Badger Hollow II to be 30 percent, since the construction of the Badger Hollow II was scheduled to begin in 2019.

MGE also performed PROMOD analysis for the years 2022, 2024, and 2027 to obtain LMP differentials between the proposed Badger Hollow II site and the MGE load zone. These differentials obtained from PROMOD were then extrapolated for the intermediate years and used as an input to MGE's EGEAS analysis.

Commission Review of Madison Gas and Electric Company's Modeling Efforts

The Commission has reviewed the modeling analysis provided by MGE and finds that MGE demonstrated that the Badger Hollow II project is part of the least-cost plan for meeting MGE's future electric power supply needs as optimized by EGEAS. When the Riverside option is available as an additional planning alternative in EGEAS, the proposed solar acquisition would still remain part of the least-cost plan as optimized by EGEAS. The Riverside option and solar resources at as low as 20 percent capacity accreditation from MISO would still remain a part of the least-cost plan for MGE to meet its capacity needs.

Therefore, the Commission finds that the acquisition by MGE is reasonable and in the public interest based on the proportion of the projected cost to the value of the additional capacity.

Wisconsin Electric Power Company

WEPCO, as part of the joint application, stated that Badger Hollow II is a cost-effective solution to address their capacity and energy needs and a clean source of electric generation with zero fuel costs. WEPCO further stated that, in conjunction with the retirement of older generating units and the expiration of power purchase arrangements, acquiring and constructing Badger Hollow II would have little impact on customers' bills.

Wisconsin Electric Power Company's Modeling Efforts

In the application, WEPCO primarily used financial spreadsheets to analyze and compare various generation alternatives to meet its forecasted capacity needs. In response to Commission staff's data requests 1.2 and 1.3, WEPCO provided its PROMOD analysis and provided EGEAS modeling analysis for various scenarios and sensitivities to support the proposed project. ([PSC REF#: 374762](#), [PSC REF#: 378420](#).)

WEPCO provided several general forms of spreadsheet analyses with its application. WEPCO provided a financial analysis of the proposed transaction, which provided the net present value of the revenue requirement (NPVRR) for the Badger Hollow II project. As part of this calculation, WEPCO included estimated savings of the net present value of the foregone fuel costs resulting from the project. Additionally, WEPCO also provided a series of cost analyses to compare various alternative generation resource scenarios to meet its future needs at the lowest cost. Finally, WEPCO included two additional financial sensitivities to its base case scenario. One sensitivity tested the effects of a future charge on carbon dioxide emissions (carbon tax) and the second sensitivity assessed the project cost impact of an increase to the renewable energy credit (RECs) program.

Commission staff also requested and WEPCO provided PROMOD and EGEAS modeling runs that were not part of the original application. WEPCO provided six PROMOD runs and nine EGEAS modeling runs to Commission staff for validation.

Commission Review of Wisconsin Electric Power Company's Modeling Efforts and Financial Analysis

The Commission has reviewed the modeling analysis provided by WEPCO and was able to validate the results. The Commission finds that WEPCO submitted sufficient information to

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show a need for capacity, and that the proposed Badger Hollow II project will contribute towards partially satisfying this need in a reasonable efficient manner.

WEPCO utilized four possible technologies for its current/low gas price (base case) future scenario of \$2.68/British thermal units (Btu) which included a 100 MW reciprocating internal combustion engine (RICE), the proposed project, the Riverside option, and a generic 100 MW of natural gas-fired combined-cycle unit (NGCC) as alternatives. For the high natural gas price scenario (assumed at the beginning natural gas price of \$4.18/Btu), WEPCO only compared costs between the proposed project and 100 MW of Riverside. WEPCO provided an additional scenario where it compared the proposed project to a 100 MW NGCC with similar O&M to that of the Port Washington Generating Station.

Each of the scenarios resulted in the proposed project being the least-cost option by varying degrees, based on the scenario's assumptions. Based on this analysis, Badger Hollow II is \$29 million less expensive than the option to purchase a part of Riverside unit, \$53 million less expensive than a 100 MW generic NGCC alternative, and \$77 million less expensive than a RICE alternative in the current gas scenario or base case. This cost advantage represents the difference between the forecasted NPVRR to acquire and operate Badger Hollow II, and the NPVRR associated with instead meeting capacity needs by purchasing an NGCC or RICE alternative.

Commission staff reviewed WEPCO's financial analysis, developed additional data requests, and reviewed the reasonableness of the assumptions. WEPCO used PROMOD to estimate unit capacity factors and energy outputs, which it used as inputs in its calculations for financial analysis of generation alternatives. In addition, WEPCO submitted EGEAS modeling. Commission staff was able to validate the results of WEPCO's PROMOD and EGEAS modeling analysis. While Commission staff identified certain aspects of WEPCO's financial analysis that

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merited attention from the Commission as discussed below, WEPCO addressed these items and it ultimately did not significantly alter the strength of the evidence supporting WEPCO's acquisition of Badger Hollow II.

Commission staff's memorandum questioned the appropriateness of the cost used by WEPCO to compare a 100 MW NGCC alternative to the project, stating that the cost was not comparable because it was based on the value of CONE for a 702 MW unit. WEPCO responded in its comments by explaining that the cost was actually the overnight capital cost⁵ for a 100 MW portion of a generic 700 MW NGCC unit. WEPCO's response confirms that the inclusion of a 100 MW share of a generic NGCC in the generation alternatives scenario was an appropriate alternative. As such, this generation alternative has the directly comparable cost to a 100 MW share of Wisconsin Power and Light Company's (WP&L) Riverside project. ([PSC REF#: 383522.](#)) WEPCO also confirmed that there is an option agreement, allowing WP&L to assign the Riverside option to WEPCO with WP&L's consent. ([PSC REF#: 381414.](#)) Therefore, this alternative represents a viable option for WEPCO.

Commission staff's memorandum also suggested that combustion turbine (CT) technology might be a practical alternative for WEPCO as compared to the acquisition. While WEPCO did not include combustion turbine (CT) technology as a generation option in its financial analysis, WEPCO included RICE technology as a comparable natural gas alternative for purposes of comparison. WEPCO stated that it considered RICE technology as a more likely and practical natural gas-fired alternative because of its modular sizing and more efficient operation cost in a

⁵ In simple terms, overnight capital cost is the estimated cost of building a generation resource as if it was built overnight.

low sales growth environment. The record does not indicate that CT or RICE technology is superior for purposes of comparison to the proposed acquisition.

The Commission finds that WEPCO provided a sufficient range of generation resources that could meet WEPCO's future needs identified in the application, and encapsulate the majority of the variability in costs between competing technologies, that the carbon tax and RECs sensitivities are reasonable, and as such, resulted in the proposed project being the least-cost option by varying degrees under each scenario studied.

In its comments CUB recommended the Commission consider requiring that in future resource acquisition dockets that the inclusion of resource modeling results from EGEAS, or a comparable modeling product, be required. CUB stated it continues to believe that the use of generation or resource expansion modeling software such as (but not limited to) EGEAS, should be considered best practice. The Commission declines to include CUB's proposed condition on the basis that such a condition is unnecessary. Such a condition is overly prescriptive and could limit the flexibility of both the Commission and future applicants from determining the depth and nature of analysis required for any given project. The Commission always retains the option to deny an application if the applicants have not provided sufficient evidence to support the proposed acquisition. The Commission finds that requiring certain modeling be included for all future resource acquisitions is overly prescriptive and unnecessary.

While the record indicates there are disagreements on how well the EGEAS model represents WEPCO's system, the Commission recognizes that the benefit of using multiple approaches and modeling tools is that each can provide information on different aspects of the proposed project or acquisition. The record supports WEPCO's analysis that under current conditions WEPCO's acquisition of Badger Hollow II would not disproportionately increase

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costs compared to the value of the acquisition to WEPCO and its customers. While the future cannot be predicated with certainty, the Commission concludes the record demonstrates that WEPCO has a need for capacity, and that the proposed Badger Hollow II project will contribute towards partially satisfying this need in an efficient manner.

Acquisition Price

As discussed above, the applicants requested approval to purchase Badger Hollow II for \$194.9 million plus AFUDC. The applicants' request was inclusive of the capital cost of Badger Hollow II, transmission tie-in equipment, and owners' costs. The acquisition has two components—an asset purchase agreement (APA) and an engineering, procurement, and construction (EPC) agreement. The APA has a fixed price that the applicants will pay for a defined set of assets, including land agreements, transmission interconnection rights, and permits. The EPC sets a fixed price for a defined scope of work. The applicants further stated that the total cost of the acquisition including AFUDC is approximately \$207.6 million. The applicants also sought approval to acquire Badger Hollow II at a cost of up to 110 percent of this amount.

The proposed transaction in this docket is of the same nature as that proposed in docket 5-BS-228, and the Commission finds it reasonable to deny the applicants' request for authorization to acquire the Badger Hollow II at a cost of up to 110 percent of the proposed acquisition cost, and include a condition capping the acquisition price. In docket 5-BS-228, the Commission denied the applicants request to acquire the solar facilities at 110 percent of the proposed acquisition costs and included a condition governing the recoverability of applicants' acquisition costs to ensure that any construction cost overruns are not borne by the ratepayers. The Commission reasoned that:

[t]he 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.

([PSC REF#: 364436](#) at 16.) The same reasons support denying the request approval to purchase Badger Hollow II at 110 percent of the proposed acquisition cost and capping the amount of costs the applicants may recover for this acquisition, although with a modification.

The Commission recognizes that while the proposed acquisition is for an asset with a fixed cost and for a defined scope of work, there may be *force majeure* events that occur that drive up the cost of the project and are outside the control of the owner. Therefore, the Commission finds it reasonable to cap recoverability of costs at \$194.9 million plus AFUDC, allowing however that applicants may request in a future rate case recovery of acquisition costs in excess of \$194.9 million plus AFUDC in the event that acquisition costs increase as a result of a *force majeure* event. The Commission further finds that that applicants must provide notice to the Commission within 30 days of learning of any such *force majeure* event(s), and that the costs attributable to *force majeure* events may increase the cost basis for calculation of AFUDC at the Commission's discretion. As it did in 5-BS-228, the Commission also finds it appropriate that the applicants may not earn a current return on construction work in progress (CWIP) for any costs associated with Badger Hollow II.

Transfer of the Certificates of Public Convenience and Necessity

In this docket, similar to docket 5-BS-228, the Commission is being asked to consider the transfer of CPCNs issued to wholesale merchants to regulated utilities. The applicants have stated that the acquisition of Badger Hollow II includes the transfer of the CPCN rights from the

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wholesale merchant developers to the applicants. The Commission, relying on *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), included conditions in docket 5-BS-228 binding the applicants to the commitments made by the developers in their applications, and to limit the authority transferred to the applicants to only those rights afforded the developers at the time of the Commission's issuance of each CPCN, including limits on use of eminent domain. The Commission also prohibited the applicants from proceeding with any substantial change in scope, design, size, or location of the projects except as provided in the CPCNs. ([PSC REF#: 364436](#), Order Conditions 9-11.) In support, the Commission stated that the conditions would ensure that the applicants, who were regulated utilities that may possess rights and authority beyond that available to a non-regulated wholesale merchant, would only be able to exercise those rights the Commission authorized the wholesale merchants to exercise in the CPCNs.

The CPCN rights the applicants are seeking to acquire in this docket are the remaining rights of the CPCNs granted in dockets 9697-CE-100 and 9697-CE-101⁶ that were not transferred in docket 5-BS-228 in order to construct Badger Hollow II. Accordingly, the Commission finds it reasonable to include the same conditions in this docket as those included in docket 5-BS-228, specifically Order Conditions 9 through 11, in order to be consistent with the rights and limitations applicable to the construction of Badger Hollow I. Inclusion of these conditions, addresses CUB's proposed condition requiring that the applicants notify the Commission of any substantial changes in size, scope, location, or cost within 60 days.

⁶ It is anticipated that as in docket 5-BS-228, ownership of the transmission tie line itself will be transferred to a transmission line utility.

Acquisition Agreements

The acquisition of the proposed Badger Hollow II is the second transfer of solar facilities at this location. Accordingly, as it did when it authorized the first transfer in docket 5-BS-228, the Commission finds it reasonable to include order conditions that 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 applicants and developers for operation of the facilities, and confirmation of the final terms of the acquisition. The applicants also consented to inclusion in this docket of the reporting and disclosure requirements set forth in Order Conditions 2 through 6 and Condition 8 of the Commission's Final Decision in docket 5-BS-228.

Public Interest Considerations

Based upon the economic analysis demonstrating the customer benefits of the transaction and the other considerations discussed above, the Commission may find the transaction reasonable and in the public interest. The Commission finds that the applicants have demonstrated that the purchase of Badger Hollow II 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 record in this matter demonstrates that the purchase of Badger Hollow II would neither substantially impair the efficiency of the applicants' service, nor provide facilities unreasonably in excess of the applicants' probable future requirements. Further, the Commission's consideration, and potentially the inclusion, of the conditions identified in this memorandum and that were included in docket 5-BS-228 and were applied to Badger Hollow I

further supports a Commission finding that the proposed transaction is in the public interest. As such, the Commission finds that the proposed purchase is consistent with the public interest.

The Commission also declines to include the conditions recommended by intervenor Wisconsin Laborers' District Council (Council). The Council proposed that the Commission require that the applicants publicly report on a quarterly basis the number of full-time employees, and hours worked by Wisconsin residents and out-of-state workers during the construction of the Badger Hollow II project, and efforts made by the applicants' construction contractors to recruit Wisconsin residents to fill employment opportunities created by the construction of the Badger Hollow II project. While the Commission has broad authority to attach to the issuance of its certificate such terms and conditions as will ensure that the project meets the requirements of Wis. Stat. § 196.49, the Commission finds that the Council has failed to demonstrate the need for these conditions in this docket and such concerns raised by the Council are potentially more aptly raised and addressed in the underlying construction dockets.

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 Badger Hollow II by MGE and WEPCO. 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. Commission staff found support for the applicants' assertion that both applicants

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need additional capacity, nor did Commission staff find any evidence in the record that shows energy conservation or efficiency would meet the applicants' stated capacity needs.

Environmental Impacts

This is a Type III action under Wis. Admin. Code § PSC 4.10(3). No unusual circumstances suggesting the likelihood of significant environmental effects on the human environment have come to the Commission's attention. Preparation of an EIS 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 Badger Hollow II were already evaluated in the CPCN dockets through their respective EAs and the findings incorporated into this docket, the Commission finds that the proposed acquisitions comply with Wis. Stat. § 1.11 and Wis. Admin. 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 it 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 authorizing Badger Hollow I and II 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 remaining 150 MW (50 MW by MGE and 100 MW by WEPCO) of solar photovoltaic generating capacity to be developed by Badger Hollow, an affiliate of Invenergy, LLC, (Badger Hollow II) at a cost of approximately \$194.9 plus 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 WEPCO shall submit to the Commission the proposed accounting entries to record the acquisition of the solar electric generation and transmission tie line facilities.
3. The applicants shall provide copies of agreements between the applicants and the developers as they become available for informational purposes.
4. The 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. If the applicants do not proceed to closing or enter into any arrangement with another party regarding ownership or operation of the projected projects, they shall provide prior notice to the Commission. Further, within 60 days of the effective date of the transfer, the applicants shall file with the Commission the final closing purchase price, which is not to exceed \$194.9 million plus AFUDC.
5. The Commission, consistent with its past practice, shall review in a future rate case the recoverability of costs associated with the acquisition, O&M costs, and revenues associated with the projects; provided, however, that in no event shall the recoverability of the

acquisition costs exceed \$194.9 million plus AFUDC, and provided, however, that the applicants may include costs associated with AFUDC because the applicants may take ownership of the project prior to construction, and provided that the calculation of AFUDC shall not be based on a cost greater than \$194.9 million. The applicants may not earn a current return on CWIP for any costs associated with Badger Hollow II. Notwithstanding the foregoing, the applicants may request in a future rate case recovery of acquisition costs in excess of \$194.9 million plus AFUDC in the event that acquisition costs increase as a result of *force majeure* event (provided, however, that the applicants have provided notice to the Commission within 30 days learning of any such *force majeure* event(s).) Costs attributable to *force majeure* events may increase the cost basis for calculation of AFUDC at the Commission's discretion. This exception does not bind the Commission to any specific treatment or recoverability of acquisition costs in any future rate case proceeding.

6. 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 projects;
- f. The date that the projects are placed in service; and

g. The final, as built cost of the project.

7. The 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 9697-CE-100 and 9697-CE-101. The assignment of the CPCNs 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 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.

8. All commitments made by the applicants in their 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 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.

9. The 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 9697-CE-100 and 9697-CE-101.

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

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

Docket 5-BS-234

12. Jurisdiction is retained.

Dated at Madison, Wisconsin, the 6th day of March, 2020.

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

SPC:JLH:jlt:DL:01716947

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.⁷ The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013

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

APPENDIX A

PUBLIC SERVICE COMMISSION OF WISCONSIN

(Not a party but must be served per Wis. Stat. § 227.53)
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Docket 5-BS-234

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