

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Appeal of Denial of Application for Interconnection,
Request for Contested Case Hearing, and Petition for
Declaratory Ruling of Eagle Point Solar, LLC and
Eagle Point Energy 6, LLC

Docket No. 9300-DR-104

MOTION TO COMPEL DISCOVERY RESPONSES FROM EAGLE POINT

Pursuant to Wis. Stat. §§ 804.08, 804.09, and 804.12, Wis. Admin. Code §§ PSC 2.23 and 2.24, and §§ IV.C. and IV.E.1.e. of the Prehearing Conference Memorandum (PSC REF#: 395226), Respondent Wisconsin Electric Power Company (“Wisconsin Electric”) moves to compel Petitioners Eagle Point Solar, LLC (“Eagle Point Solar”) and Eagle Point Energy 6, LLC (“Eagle Point Energy”) (collectively “Eagle Point”) to comply with their discovery obligations and respond to proper discovery requests. Specifically, Wisconsin Electric moves to compel responses to its First Set of Discovery Requests to Eagle Point (“Requests,” attached as Exhibit A), the bulk of which Eagle Point Solar categorically refused to respond to, and Eagle Point Energy failed to respond to *at all*. See Eagle Point’s Objections and Responses to Wisconsin Electric’s First Set of Discovery Requests to Eagle Point (PSC REF #: 395863) (“Responses”).

INTRODUCTION

Wisconsin Electric’s Requests seek information relevant to the issue the Commission must decide in this docket, as defined by the Administrative Law Judge’s Prehearing Conference Memorandum (PSC REF #: 395226): Whether Wisconsin Electric lawfully denied interconnection to Eagle Point pursuant to Wis. Admin. Code ch. PSC 119. As examples, Wisconsin Electric asked whether Eagle Point’s proposed facilities had changed, and why it would be necessary to interconnect the facilities if “excess electricity will not be pushed out onto

the grid.” Both questions are relevant to whether the Commission should order Wisconsin Electric to interconnect with Eagle Point’s facilities. Notably, neither these requests nor the others that are the subject of this motion have anything to do with the “public utility” question that the ALJ ruled is outside the scope of this proceeding.¹ But Eagle Point Solar refused to respond these requests, claiming that even information about the *facilities* it demands to be interconnected is irrelevant and “beyond the scope of inquiry” in this docket. Eagle Point—including both Eagle Point Solar and Eagle Point Energy—must comply with their discovery obligations and respond.

BACKGROUND

This docket originally involved seven interconnection requests by Eagle Point Energy.² On one hand, Eagle Point claims none of the facilities have changed. On the other hand, in the same response, Eagle Point admits it no longer seeks interconnection for three of the sites:

1-WE-INT-1e.: For each of the City Sites ... Has the System changed in any way from its description in the interconnection request?

Response: No. However, Eagle Point no longer seeks interconnection at the following sites: Central Library, Center St. Library, and Tippecanoe Library.³

According to public reporting, these sites were energized on June 12, 2019⁴—a fact Eagle Point does not admit directly.⁵ Public records also indicate that the contract between Eagle

¹ Wisconsin Electric’s interlocutory appeal of that ruling (PSC REF #: 395662) is pending before the Commission. In the meantime, Wisconsin Electric is adhering to that decision and deliberately tailored its limited discovery requests to issues *other than* the public utility question.

² Appeal of Denial of Application for Interconnection, Request for Contested Case Hearing, and Petition for Declaratory Ruling (March 6, 2019) (PSC REF#: 360787) (“Petition”), ¶ 7; *see also* Petition Exs. B (PSC REF#: 360791, 360792, 360793, 360794, 360795, 360796, 360798) (Interconnection Applications for each site).

³ Resp. to Req. 1-WE-INT-1e, Responses at 3

⁴ *See* “Solar panels installed at 3 Milwaukee Public Library locations,” Fox 6 Milwaukee (June 12, 2019) *available at* <https://www.fox6now.com/news/solar-panels-installed-at-3-milwaukee-public-library-locations>.

Point and the City of Milwaukee has been revised.⁶ If it is being asked to order interconnection, the Commission ought to question whether interconnection is still necessary.

The status of Eagle Point’s facilities is plainly within the scope of this proceeding, and the details go directly to whether Wisconsin Electric should be required to interconnect with Eagle Point under Wis. Admin. Code ch. 119.

CERTIFICATION OF ATTEMPT TO CONFER

Contrary to Section IV.E.I.d.1. of the ALJ’s Prehearing Conference Memorandum, Eagle Point did not notify Wisconsin Electric of its intent to answer nearly all of the Requests solely by objection. Instead, it simply filed its objections in the docket along with its limited responses.⁷ As a result, Wisconsin Electric was deprived of the usual opportunity to confer with Eagle Point before formal objections were served.

Nevertheless, as required by Wis. Admin. Code § 2.24(2), undersigned counsel for Wisconsin Electric did attempt to meet and confer with counsel for Eagle Point in an effort to resolve this dispute without Commission action. That effort was unsuccessful.

LEGAL STANDARD

Wisconsin Electric is entitled to “discovery regarding any nonprivileged matter that is relevant to any party’s *claim or defense*[.]” Wis. Stat. § 804.01(2)(a)⁸ (emphasis added). The Wisconsin Supreme Court has explained that “discovery is designed to formulate, define and

⁵ Resp. to Req. 1-WE-INT-1a, Responses at 3.

⁶ City of Milwaukee, Common Council, *Substitute resolution relating to solar facility installations at City-owned buildings*, Res. No. 181537 (February 11, 2019) (directing the City Attorney to draft and execute new legal agreements with Eagle Point).

⁷ Insofar as the ALJ expects strict compliance with the procedures set forth in the Prehearing Conference Memorandum, Eagle Point’s failure to comply with those procedures may be deemed a waiver of its objections.

⁸ Although Wis. Stat. § 804.01(2)(a) was revised effective April 2018, the revisions were primarily to conform the Wisconsin statute to Rule 26(b)(1) of the Federal Rules of Civil Procedure. Wis. Leg. Council, Act Memo, 2017 Wis. Act 235, at 3 (Apr. 11, 2018) *available at*: <https://docs.legis.wisconsin.gov/2017/proposals/ab773> (“The Act creates a general scope provision governing discovery, which aligns closely with the federal rules of Civil Procedure.”)

narrow the issues to be tried, increase the chances for settlement, and give each party opportunity to fully inform himself of the facts of the case and the evidence which may come out at trial.”

State ex rel. Dudek v. Circuit Court for Milwaukee Cty., 34 Wis. 2d 559, 576, 150 N.W.2d 387 (1967); *see also Crawford ex rel. Goodyear v. Care Concepts, Inc.*, 2001 WI 45, ¶ 14, 243 Wis. 2d 119, 625 N.W.2d 876 (“broad discovery rules encourage thorough investigation by the parties and foster the ‘revelation of the objective truth.’”) (quoting *Dudek*). For this motion, “an evasive or incomplete answer is to be treated as a failure to answer.” Wis. Stat. § 804.12(1)(b).

REQUESTS AND RESPONSES

Wisconsin Electric’s Requests consist of only three interrogatories and a single request for production—each of which targets the specifics of Eagle Point’s proposed facilities and none of which implicate the “public utility” issue. The first interrogatory simply seeks basic information about each proposed system, such as:

- a. Has the System been energized without connection to Wisconsin Electric’s distribution system?
- b. Is the System currently under construction?
- c. What is the actual or planned size (in kilowatts) of the System?
- d. Is interconnection to WEPCO’s distribution system still necessary?
- e. Has the System changed in any way from its description in the interconnection requests?
- f. Is Eagle Point still requesting interconnection of the System?

Although these questions are straightforward, and are plainly relevant to whether Eagle Point still has a claim before the Commission, Eagle Point either refused to answer or provided evasive and incomplete responses. For instance, the only request Eagle Point answered directly was d.—“Yes,” interconnection for *all seven* sites is necessary, even though Eagle Point contradicts its own response by admitting “Eagle Point no longer seeks interconnection” at three

of the seven sites. Responses, at 3. Eagle Point must answer these questions in full for all seven of the sites.

Wisconsin Electric's second interrogatory is also plainly relevant to the claims and defenses in this proceeding—it quotes from statements in Eagle Point's petition, and asks Eagle Point to explain the obvious contradictions. For example, Eagle Point states in its petition that its systems “will be installed behind the City's point of common coupling with the electric grid” and “[n]either Eagle Point nor the City will sell any electricity generated by the solar PV systems to any third party, including WEPCO[.]” Petition ¶¶ 11-12. Wisconsin Electric simply asked Eagle Point to clarify the meaning of these statements. Discovery on Eagle Point's *affirmative claims* is obviously within the scope of discovery—Eagle Point must answer this interrogatory in full, too.

The third interrogatory similarly targets Eagle Point's claims, and simply seeks an explanation for the July 18, 2018 amendment to Eagle Point's contract with the City. Eagle Point submitted both the original contract and the amendment in support of its petition (PSC REF#: 360788, 360789), so Wisconsin Electric is clearly entitled to this discovery.

Finally, Wisconsin Electric's single request for production seeks any *other* contracts between Eagle Point and the City—again, simply testing Eagle Point's claims in this docket, including its assertion that “this petition relates solely to a single transaction (the Solar Services Agreement with the City) governing specific generating assets (the limited number of solar PV systems at the specified City Sites)—and it does not involve hypothetical transactions with an unknown number or nature of future users of the generating assets.” Petition ¶ 58 (internal quotation marks omitted). Wisconsin Electric is entitled to test the truth of that assertion.

Eagle Point Solar refused to respond to nearly every one of Wisconsin Electric's requests, arguing they were “irrelevant and beyond the scope of inquiry in this docket as articulated by the

Commission and the ALJ.” Responses, at 3-5. Eagle Point Solar’s objections are absurd—they amount to the remarkable assertion that Eagle Point can demand Commission intervention and an order requiring interconnection without even explaining why interconnection is needed.⁹

But at least Eagle Point Solar bothered to respond at all. Eagle Point Energy—the entity that actually requested interconnection—failed to respond to any of Wisconsin Electric’s discovery. Responses, at 1 (responding solely on behalf of Eagle Point Solar). Because Eagle Point Energy failed to respond, violating Section IV.E.1.d. of the Prehearing Conference Memorandum, it waived *any* objections and should be ordered to respond in full immediately.

ARGUMENT

Wisconsin Electric’s discovery requests and this motion are straightforward. Wisconsin Electric’s three interrogatories and single request for production seek discovery specific to Eagle Point Energy’s interconnection requests, and the claims Eagle Point made in their petition—which are already part of the record in this docket. Eagle Point cannot evade its discovery obligations by mischaracterizing Wisconsin Electric’s defenses and ignoring its own Petition and subsequent actions. They must be compelled to respond to ensure a fair hearing and an adequate record for the Commission’s deliberations.

I. EAGLE POINT’S CRABBED POSITION ON RELEVANCE IS WRONG—ON THE FACTS AND THE LAW.

Eagle Point’s relevancy position is flat wrong. It proceeds from the premise, reiterated in every objection, that the only question subject to discovery in this docket is “whether Wisconsin Electric’s sole basis for denying interconnection—its belief that Eagle Point is a public utility—

⁹ Eagle Point does not attempt to link its boilerplate general objections to its response in any way, *see* Responses at 1–2, *and compare id.* at 3–6, so they should be disregarded. In any event, it is obvious Wisconsin Electric’s limited discovery would not be overly burdensome or disproportionate to respond to.

is a lawful reason to deny interconnection under chapter 119.” Responses at 3, 4, 5, 6. This premise is false on two levels.

First, although Wisconsin Electric’s primary defense is that Eagle Point would be acting as a public utility by effectuating its agreement to *sell electricity* to the City, Wisconsin Electric has not conceded any defenses in this proceeding. *See* Req. for Interloc. Rev. (PSC REF#: 395662) at 1; *see also* Resp. to Pet. (PSC REF#: 362157) at 5-6. For example, Wisconsin Electric’s response clearly raised the issue of whether Eagle Point has suffered any harm. Resp. to Pet., at 2.¹⁰ So Eagle Point is simply wrong to characterize the public utility question as Wisconsin Electric’s “sole basis for denying interconnection.”

Second, even if Eagle Point were correct on the first point, that still would not define the outer bounds of relevance for discovery purposes. Eagle Point’s narrow focus on Wisconsin Electric’s *defenses* entirely ignores Wisconsin Electric’s entitlement to discovery on Eagle Point’s *claims*. As discussed above, all of Wisconsin Electric’s discovery requests target claims Eagle Point has made in this proceeding. As the Wisconsin Supreme Court has said, “discovery is designed to formulate, define and narrow the issues to be tried,” *Dudek* at 576, so clearly Wisconsin Electric is entitled to investigate whether Eagle Point’s representations to the Commission are still true. As it happens, they’re not; based on the one question it did answer, we now know for the first time that Eagle Point no longer seeks interconnection for three of the

¹⁰ Indeed, nothing in the Commission’s rules or the scheduling order governing this case required Wisconsin Electric to state all of its defenses—so there could be no waiver of defenses. The Commission’s procedural rules do not even *require* Wisconsin Electric to enter a formal answer to Eagle Point’s Petition. Wis. Admin. Code § PSC 2.07(4) (“Any person *may* file a response ...”) (emphasis added). And even in civil litigation (whose rules have not been adopted by the Commission) defenses are not irretrievably waived if not included in an initial responsive pleading. *See Country Club Inc. v. Estates Sanitary Dist.*, 2019 WI 43, ¶ 51, 386 Wis.2d 425, 926 N.W.2d 184 (affirmative defenses may be added by amendment “any time” after responding). Even if Wisconsin Electric was *required* to plead all of its defenses (it wasn’t), it would be able to assert them at any time during this proceeding if justice required.

seven sites—and may not need it for the others. Eagle Point cannot evade discovery on these points by recasting the issue in its preferred terms.

The ALJ has previously recognized the breadth of relevance for the purposes of discovery. For instance, in Wisconsin Electric’s last rate case, Docket 5-UR-109, the ALJ granted broad discovery to an intervenor, even though the “intended use of the disputed discovery breaches the bounds of the rate making process.” Order Granting Mot. to Compel, at 3 (Aug. 12, 2019) (PSC REF#: 5-UR-109). The ALJ determined that Wisconsin authority “require[d] treating discovery and admissibility as separate, and distinguish relevance in broader terms as applied to discovery than when applied to admissibility.” *Id.* at 3. Furthermore, “to what extent [the] disputed discovery [is] useful to assist the Commission” could not “reasonably [be] decide[d] in the abstract upon a motion to compel.” *Id.* at 4-5. Wisconsin Electric did not agree with that decision, but if that is the standard, it should apply equally to Eagle Point.

II. EAGLE POINT SOLAR’S ANSWERS WERE EVASIVE, AND EAGLE POINT ENERGY FAILED TO ANSWER AT ALL.

Eagle Point Solar’s evasive responses constitute a failure to respond to discovery, just the same as Eagle Point Energy’s complete *failure* to respond. Under Wis. Stat. § 804.12(1)(b), an evasive or incomplete response should be treated as a failure to respond to discovery. Failing to provide complete responses can be grounds for dismissal or other sanctions. *Selmer Co. v. Rinn*, 2010 WI App 106, ¶¶ 35–38, 328 Wis.2d 263, 789 N.W.2d 621; *see also Wis. Cmty. Bank v. Alta Constr., Inc.*, 2009 WI App 141, 321 Wis.2d 476 (upholding dismissal for incomplete and inaccurate responses). Both Eagle Point entities would be subject to sanctions in civil litigation. At a minimum, they should be ordered to completely and accurately respond to Wisconsin Electric’s discovery, and should be placed on notice that failure to do so may threaten their ability to receive the relief they seek.

CONCLUSION

Wisconsin Electric is entitled to both test Eagle Point's claims, and seek discovery related to *all* of its defenses, subject to the scope of the proceeding as currently and hereafter articulated. Eagle Point Solar and Eagle Point Energy must therefore answer all of Wisconsin Electric's discovery in full. A fair hearing requires nothing less.

Respectfully submitted this 1st day of September, 2020.

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EXHIBIT A

**Wisconsin Electric's First Set of Discovery to Eagle Point
Dated August 18, 2020**

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Appeal of Denial of Application for Interconnection, Request for
Contested Case Hearing, and Petition for Declaratory Ruling of
Eagle Point Solar, LLC and Eagle Point Energy 6, LLC

Docket 9300-DR-104

**WISCONSIN ELECTRIC'S FIRST SET OF DISCOVERY REQUESTS
TO EAGLE POINT**

To: Eagle Point (via email)
c/o Eric M. McLeod
Joseph S. Diedrich
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Pursuant to Wis. Stat. §§ 804.08, and 804.09, Wis. Admin. Code § PSC 2.24(1), and the Prehearing Conference Memorandum § IV.E.1. (PSC REF#: 395225), Respondent Wisconsin Electric Power Company (“WEPCO”), by its attorneys, Quarles & Brady LLP, requests that Applicants Eagle Point Solar, LLC and Eagle Point Energy 6, LLC (collectively “Eagle Point”), answer the following discovery requests in writing within 21 days from the date of service hereof:

DEFINITIONS

1. “You,” “Your,” “Yourself,” or “Eagle Point” means the above-named Applicants Eagle Point Solar, LLC and Eagle Point Energy 6, LLC, and anyone acting on their behalf.
2. “WEPCO” means the above-named Respondent Wisconsin Electric Power Company.
3. “City” means the City of Milwaukee, Wisconsin, a Wisconsin municipal corporation.
4. “Solar Services Agreement” or “Agreement” means the Solar Services Agreement between Eagle Point and the City in 2018.
5. “City Sites” means the seven sites for which Eagle Point has applied for interconnection, as listed in its Complaint.
6. “System” means the solar energy generation system, including metering equipment as described in the Agreement.

7. The connectives “and” and “or” shall be construed either conjunctively or disjunctively in these Interrogatories and these instructions to bring within the scope of these Interrogatories any information that might otherwise be construed to be outside of its scope.
8. “Any” and “all” shall each be construed as “any and all.”

INSTRUCTIONS

1. If an objection is made to any interrogatory or document request, state with specificity all grounds for the objection.
2. Whenever appropriate in these discovery requests, the singular and plural forms of words shall be interpreted interchangeably so as to bring within the scope of these requests any matter that might otherwise be construed to be outside of their scope.
3. In answering these discovery requests, You are required to furnish all information that is available to You or subject to Your reasonable inquiry, including information in the possession of Your employees, attorneys, consultants, accountants, advisors, agents, or other Persons directly or indirectly employed by, or associated with, You or Your attorneys, and anyone else otherwise subject to Your control. All Documents that respond, in whole or in part, to any portion of the production requests below shall be produced in their entirety, including all attachments and enclosures.
4. All Documents produced pursuant to these requests are to be produced in the form, order, and manner in which they are maintained in the files from which they are produced.
5. You are to respond to each and every request, and no response is to be left blank.
6. If any Document called for herein has been lost or destroyed, You are to describe the content of the Document, the location of any copies of the Document, the date the Document was lost or destroyed, the reason the Document was lost or destroyed, and the name of the Person who ordered or authorized the destruction.
7. If You contend that any requested Document or information is privileged or protected from disclosure for any reason, Your response shall state the following with respect to each such item: (1) the privilege asserted and the particular basis for asserting the privilege; (2) the author(s) and date of the Document; (3) the addressee(s) and Persons to whom copies of the Document were delivered; (4) the identity of all other Persons who have seen the Document or have knowledge of the information; and (5) the nature and general subject matter of the Document or information.
8. If, in answering any of these requests, any ambiguity arises in construing either the request or a definition or instruction relevant to the discovery request, You are to identify the matter deemed ambiguous and set forth the construction chosen or used in responding to the request.

INTERROGATORIES

1-WE-INT-1

For each of the City Sites represented by the seven interconnection requests that Eagle Point submitted to WEPCO, please provide the following information:

- a. Has the System been energized without connection to WEPCO's distribution system?
- b. Is the System currently under construction?
- c. What is the actual or planned size (in kilowatts) of the System?
- d. Is interconnection to WEPCO's distribution system still necessary?
- e. Has the System changed in any way from its description in the interconnection request?
- f. Is Eagle Point still requesting interconnection of the System?

1-WE-INT-2

Eagle Point alleges that its systems "will be installed behind the City's point of common coupling with the electric grid," and that "no WEPCO distribution lines or other WEPCO facilities or equipment will be used to transport electricity generated by the solar PV systems to the City Sites." Petition ¶ 11(b)-(c). Likewise, "[n]either Eagle Point nor the City will sell any electricity generated by the solar PV systems to any third party, including WEPCO," and "excess electricity will not be pushed out onto the grid." *Id.* ¶¶ 12-13.

- a. In light of these claims, explain why it is necessary for the Systems to be interconnected with WEPCO's distribution system.
- b. In light of these claims, explain how Eagle Point is harmed by WEPCO's decision not to connect the Systems.
- c. Explain how Eagle Point's equipment would be installed behind the City's point of common coupling if, under the Solar Services Agreement, You interconnected Your equipment with WEPCO's distribution system.
- d. Explain why, under the Agreement, You seek to interconnect Your equipment with WEPCO's distribution system.
- e. With respect to the Agreement, if You were permitted to interconnect with WEPCO's distribution system, explain how You would transport electricity to the City Sites without using WEPCO's distribution lines, facilities, or equipment.
- f. With respect to the Agreement, if You were permitted to interconnect with WEPCO's distribution system, explain how You would prevent any electricity from flowing to WEPCO's system.

1-WE-INT-3

Explain why Eagle Point and the City entered into the July 18, 2018 amendment to the Solar Services Agreement.

REQUEST FOR PRODUCTION

1-WE-RFP-1

Produce any contracts between Eagle Point and the City of Milwaukee, including any amendments or updates to the Solar Services Agreement submitted in this docket at PSC ERF #: 360788.

August 18, 2020

Bradley D. Jackson
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Joe Wilson
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EXHIBIT B

**Resolution of the Public Works Committee
of the Milwaukee Common Council
Dated February 13, 2019**



Legislation Details (With Text)

File #: 181537 **Version:** 1
Type: Resolution **Status:** In Council-Adoption
File created: 1/14/2019 **In control:** PUBLIC WORKS COMMITTEE
On agenda: **Final action:**
Effective date:

Title: Substitute resolution relating to solar facility installations at City-owned buildings.

Sponsors: ALD. KOVAC, ALD. BAUMAN, ALD. JOHNSON

Indexes:

Attachments: 1. Budget Letter, 2. Urban Milwaukee article, 3. We Energies letter, 4. Solar Now and DRER Tariff Pilot Overview, 5. 1-22 letter from EPS.pdf, 6. Yale public perceptions on climate change- Milwaukee County.pdf, 7. Milwaukee leaders have choice words for utility in solar standoff _ Energy News Network, 8. solar email2, 9. solar email, 10. 1-9 letter from WE to Mayor Barrett, 11. solar email3

Date	Ver.	Action By	Action	Result	Tally
1/14/2019	0	COMMON COUNCIL	ASSIGNED TO		
1/23/2019	0	PUBLIC WORKS COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	5:0
2/13/2019	1	PUBLIC WORKS COMMITTEE			

181537
SUBSTITUTE 1
091066, 131035, 131576, 170337, 171843, 180457
ALD. KOVAC, ALD. BAUMAN, AND ALD. JOHNSON

Substitute resolution relating to solar facility installations at City-owned buildings. This resolution authorizes the Department of Administration to enter into a conventional construction agreement with Eagle Point Solar to build up to 210 kilowatts (KW) of solar systems on three library facilities: Central Library, Center Street Library, and Tippecanoe Library. Under the agreement, the City would own 100% of the solar systems and use an existing capital appropriation from the Better Buildings Challenge capital account and Focus on Energy rebates to fund the construction.

Whereas, On December 22, 2009, the Common Council adopted File Number 091066, supporting the "25 x 25" goal, which called for generating 25 percent of the City's electricity from renewable resources by 2025; and

Whereas, On December 17, 2013, the Common Council adopted File Number 131035, approving and directing implementation of the City's sustainability plan, ReFresh Milwaukee; and

Whereas, The City's sustainability plan calls on the City to reduce energy use 20% by 2020 and increase use of renewable energy to 25% by 2025; and

Whereas, On April 2, 2014, the Common Council adopted File Number 131576, directing the Department of Administration-Office of Environmental Sustainability and the Department of Public Works to create an energy independence plan that will, among other things, reduce reliance on fossil

fuels for the supply of electricity, natural gas and heat to operate City facilities and infrastructure; and

Whereas, On June 20, 2017, the Common Council adopted File Number 170337, expressing the City's support for the Paris Climate Accord; and

Whereas, The City has made a commitment to take action to reduce climate pollution in alignment with the City's energy efficiency and renewable energy goals, and continues to support the principles of the Paris Climate Accord; and

Whereas, On April 17, 2018, the Common Council adopted File Number 171843, directing the Department of Administration-Environmental Collaboration Office to accept \$211,882 of incentive funding from the Focus on Energy program and work with a participant investor and solar installer to design, supply, install, commission, maintain and finance 1.1 megawatt (MW) of solar photovoltaic (PV) panels on six City-owned buildings; and

Whereas, The Department of Administration issued Request for Proposal #15921 to identify the most financially advantageous proposal from qualified solar installers and participant investors for the solar PV panels project; and

Whereas, On July 31, 2018, the Common Council adopted File Number 180457, authorizing the Department of Administration-Environmental Collaboration Office to enter into a Solar Services Agreement with Eagle Point Solar to design, supply, install, commission, maintain, finance, and co-own 1.1 MW of solar PV panels on six City-owned buildings; and

Whereas, The City executed a contract with Eagle Point Solar; and

Whereas, Under the agreement, Eagle Point Solar has already procured and delivered solar panels specifically designed for installation on these City buildings, and the solar equipment is currently in storage in a City of Milwaukee facility; and

Whereas, We Energies denied Eagle Point Solar's application to interconnect the system to the grid, citing We Energies' belief that Eagle Point Solar is acting as a public utility; and

Whereas, The dispute over the denial of the interconnection requests is ongoing and has indefinitely delayed construction of the project; and

Whereas, In December, 2018, We Energies received Wisconsin Public Services Commission approval to offer customers solar energy through two new tariffs, referred to as Solar Now and the Dedicated Renewable Energy Resource; and

Whereas, The City will carefully review and consider using We Energies' offer to provide 2 MW of solar PV panels through We Energies' Solar Now pilot tariff and additional renewable energy under the Dedicated Renewable Energy Resource pilot tariff for future energy projects to help the City further advance its clean energy goals; and

Whereas, The City asserts its interest in having a diversified portfolio of clean energy options and demonstrating immediate action on climate change; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the Department of Administration-

Environmental Collaboration Office is authorized to use existing appropriations under the Better Buildings Challenge capital account, and approximately \$45,000 in incentives from the Statewide Focus on Energy program, to enter into a conventional construction agreement with Eagle Point Solar at a total project cost up to \$419,000, to build up to 210 KW of solar PV panels on three library facilities: Central Library, Center Street Library, and Tippecanoe Library; and, be it

Further Resolved, That the City of Milwaukee will maintain 100 percent ownership of these solar facilities on these three library buildings immediately upon construction completion and project commissioning; and, be it

Further Resolved, That the City Attorney's Office is authorized to draft and execute the appropriate legal agreements for this contract.

Environmental Collaboration Office
LRB 173450-2
Erick Shambarger/Aaron Michelson
2/11/2019