PSC REF#:482125

PUBLIC REDACTED

Public Service Commission of Wisconsin
RECEIVED: 10/13/2023 1:24:45 PM

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Joint Application of Wisconsin Electric Power Company and Wisconsin Gas LLC for Authority to Adjust Electric, Natural Gas Rates and Steam Rates	Docket No. 5-UR-110

INITIAL REOPENER BRIEF OF APPLICANTS WISCONSIN ELECTRIC POWER COMPANY AND WISCONSIN GAS LLC

As the Commission recognized last year,[1] Wisconsin Electric[2] continues to invest in renewable resources to meet its goal of providing affordable, reliable, and clean energy to its customers. In Test Year 2024, several of Wisconsin Electric's generation investments will have entered service, including Badger Hollow II, Paris Solar, Darien Solar, Weston RICE, West Riverside, and several smaller distribution-connected solar projects.[3] These investments are already lowering fuel costs for Wisconsin Electric's customers. Further, Applicants' investment in proven LNG technology is also on track to achieve commercial operation and begin providing needed reliability and capacity this winter.[4]

The Commission explicitly limited the scope of this proceeding to "address[ing] the revenue requirements associated with recovering new capital investments that will achieve commercial operation in 2023 and 2024, as well as to address[ing] reduced O&M expenses from future coal plant retirements" and the costs of the LNG Facilities.[5]

1 *See Final Decision*, Docket 5-UR-110 (PSC REF#: 455451) (Dec. 29, 2022) ("Final Decision") at 2.
2 Applicant Wisconsin Electric Power Company ("Wisconsin Electric") (along with Application Wisconsin Gas LLC, "Applicants").
3 Direct-WEPCO WG-Stasik-5; Ex.-WEPCO WG-Stasik-10 (change orders for Badger Hollow II and Paris).
4 The liquefied natural gas ("LNG") Facilities in Ixonia and Bluff Creek (together, the "LNG Facilities").
5 *Final Decision*, at 79, Order Points 34, 35.

Even at this early stage, the result of Wisconsin Electric's investments in its Generation Reshaping Plan ("GRP") has been to lower rates for Wisconsin Electric's customers from what they otherwise would have been. Despite historic inflation and supply chain difficulties, Wisconsin Electric's Test Year 2024 electric revenue requirement, including fuel, is forecast to be only 2.6% higher than current rates.[6] More than two thirds of Wisconsin Electric's proposed base rate increase is offset by savings in fuel as renewable generation projects replace legacy coal-fired plants, such as the Oak Creek Power Plant ("OCPP"). As more of the GRP projects reach commercial operation, Wisconsin Electric expects additional future savings for customers.

Very little remains in dispute in this docket. Applicants appreciate Commission Staff's thorough audit and analysis. Following its audit, Staff proposed only two adjustments to Wisconsin Electric's base rate revenue requirement, which are discussed below.[7] Wisconsin Electric agrees with Staff's proposals to authorize deferral accounting related to federal tax policy, and for Paris Solar beginning on January 1, 2024.[8] Commission Staff also conducted a thorough audit of Wisconsin Electric's Test Year 2024 fuel cost plan and nearly all of Staff's adjustments are acceptable to Wisconsin Electric.[9] And, other than Staff raising the possibility of an adjustment related to O&M expenses, there is no dispute about the revenue requirement necessary for Applicant's LNG Facilities.[10]

Commission Staff, CUB,[11] and WIEG[12] each made proposals related to OCPP that are outside the scope of this limited reopener. Specifically, Staff took issue with Wisconsin

---

6 Direct-WEPCO WG-Stasik-10 (original request); *id.* at 11 (table breaking down fuel plan changes); Direct-WEPCO WG-Stasik-s-3 (Weston RICE inventory); Ex.-PSC-Mylotta-1 (agreed adjustments 2-4, 7, 8).

7 Direct-PSC-Probst-7.

8 Direct-PSC-Probst-10; Rebuttal-WEPCO WG-Stasik-4; Rebuttal-PSC-Probst-1-2; Surrebuttal-WEPCO WG-Stasik-2-3. As discussed below, deferral accounting should not apply for Badger Hollow II.

9 Direct-PSC-Mylotta-1-3; Rebuttal-WEPCO WG-Gerlikowski-3.

10 Direct-PSC-Probst-4-5.

11 Intervenor Citizens Utility Board ("CUB").

12 Intervenor Wisconsin Industrial Energy Group ("WIEG").

Electric's historic and forecasted maintenance spending—according to Mr. Ritsema it was too little, but according to Ms. Probst it is now too much. CUB and WIEG also argue for alternative ratemaking approaches for recovering the cost of OCPP before the plant is even retired. These proposals lack merit and are outside the scope of this limited reopener.

As directed by the Commission in its Final Order, Wisconsin Electric provided additional information related to its Storm Hardening Plan and agrees to provide additional yearly reports as requested by Commission Staff.[13] Finally, CUB's and WIEG's remaining issues are beyond the scope of this proceeding, but Applicants will briefly address their revenue allocation and energy burden testimony.

I. APPLICANTS' REVENUE REQUIREMENTS FOR ELECTRIC AND NATURAL GAS AND WISCONSIN ELECTRIC'S FUEL COST PLAN ARE REASONABLE.

Wisconsin Electric's incremental revenue requirement of $45 million (1.3%) reflects prudent investments in a clean energy future—investments that are already bearing fruit for customers through, all else being equal, lower fuel costs. No party disputes Wisconsin Electric's base rate revenue requirement or suggests any adjustments, although in rebuttal and surrebuttal testimony Ms. Probst suggested further adjusting maintenance expenses for OCPP.[14] Commission Staff formally proposed just two adjustments in their direct testimony: one related to cost increases for the Badger Hollow II solar farm that were disclosed to the Commission in June 2022, and a second concerning Wisconsin Electric's purchase of another 100 Megawatts of capacity in WPL's West Riverside natural gas power plant. The Commission should not accept either adjustment.

---

[13] Rebuttal-WEPCO WG-Pecha-1-2.

[14] Applicants address the testimony related to OCPP, including suggestions to revise O&M costs from Commission Staff, in Section II.

The only other remaining disputed issues that are squarely within the Commission-authorized scope for this docket relate to Wisconsin Electric's fuel cost plan and whether it should reflect the additional purchase of West Riverside pending approval by the Commission,[15] and the performance of West Riverside projected by its operator, WPL. The short answer on both is 'yes.' As discussed below, the Commission should be consistent across dockets and approve adjustments that reflect what is likely to occur in Test Year 2024: Wisconsin Electric will close on the purchase of West Riverside, and WPL's current forecast of the plant's equivalent forced outage rate ("EFOR") is likely to be more accurate than estimates from 2015, before construction of the plant had even begun.

A. Wisconsin Electric's base rate electric revenue requirement is reasonable and largely undisputed—the only two adjustments Commission Staff raised during its audit should not be accepted by the Commission.

Wisconsin Electric's requested incremental base rate electric revenue requirement of $45 million (1.3%) is precisely what the Commission ordered in this reopener: a reflection of Wisconsin Electric's ongoing investments in renewable energy beginning to provide significant benefits to customers. As Mr. Stasik testified, Wisconsin Electric's renewable investments, including several smaller distribution-connected solar projects, are anticipated to provide significant benefits to customers during 2024.[16] The table on the next page shows how the incremental revenue requirement is significantly offset by reduced fuel costs, and Wisconsin Electric's agreed-upon adjustments to its fuel cost plan further reduce rates for customers.[17]

---

15 Wisconsin Electric, its sister utility, Wisconsin Public Service Corporation ("WPSC"), and non-party Wisconsin Power & Light Company ("WPL") filed an application for approval of the second purchase of West Riverside on September 22, 2023 in docket 5-BS-273.

16 Direct-WEPCO WG-Stasik-5 (summarizing in-service dates for generation assets in this proceeding); *see also* Rebuttal-WEPCO WG-Stasik-12 (addressing September 5, 2023 *force majeure* notices and delay of Paris).

17 Direct-WEPCO WG-Stasik-10 (original table); *id.* at 11 (table breaking down fuel plan changes); Direct-WEPCO WG-Stasik-s-3 (updates for Weston RICE inventory); Ex.-PSC-Mylotta-1 (adjustments 2-4, 7, 8).

	Wisconsin Electric
Base Rate Increase ($)	$45.0 million
Base Rate Increase (%)	1.3%
Fuel Savings due to GRP	($31.8 million)
[redacted]	[redacted]
Other	$3.0 million
Agreed Upon Fuel Adjustments	$3.5 million
Total Increase, with Fuel ($)	$89.8 million
Total Increase, with Fuel (%)	2.6%

The Commission should also not accept Commission Staff's two proposed adjustments to the base rate revenue requirement.[18] First, the initial cost overruns related to the Badger Hollow II solar project that will enter service by the end of 2023 were first provided to the Commission in June of 2022, and Commission Staff has not identified any evidence of imprudence or explained why they have been unable to review the cost overruns in the intervening sixteen months.[19] Wisconsin Electric's investment in Badger Hollow II is entitled to the presumption of prudence and absent any evidence of imprudence these costs should be included in the revenue requirement.[20] Second, Wisconsin Electric, WPSC, and WPL have now applied for authority to close on the second purchase of West Riverside, and all three entities intend to close the transaction in Test Year 2024.[21] Wisconsin Electric recognizes that the Commission has in the past removed the purchase from the revenue requirement until the transaction has been formally approved. However, the situation is different in this case because the Commission has now

18 Direct-PSC-Probst-6-7.

19 Rebuttal-WEPCO WG-Stasik-3-4; Ex.-WEPCO WG-Stasik-6 (June 22, 2022 notice and change orders); *compare* Direct-PSC-Probst-7 (not identifying any imprudence by Wisconsin Electric or any reason why Commission Staff had not reviewed the information provided by Wisconsin Electric).

20 The more recent additional cost overruns related to Badger Hollow II and Paris are not at issue in this docket. Rebuttal-WEPCO WG-Stasik-13-14. Wisconsin Electric submitted its *force majeure* notices and change orders to the Commission on September 5, 2023, Ex.-WEPCO WG-Stasik-10, and will address the additional costs in its Test Year 2025 rate case.

21 Rebuttal-WEPCO WG-Stasik-4-5.

approved Wisconsin Electric's first purchase after a robust review, so—as WPL testifies as well—it would be appropriate to include the second virtually identical purchase in rates now.[22]

Wisconsin Electric has agreed to Staff's proposed deferral accounting for the benefit of customers. First, Wisconsin Electric agrees with Ms. Probst's proposal to defer costs and benefits related to the Infrastructure Investment Jobs Act of 2021.[23] Second, Wisconsin Electric agrees it would be appropriate to order deferral accounting, beginning January 1, 2024, of the incremental Test Year 2024 revenue requirement related to Paris Solar until the facility achieves commercial operation.[24] Because Paris Solar may not be in service for all of 2024 as a result of factors outside its control, deferral accounting strikes a reasonable balance between Wisconsin Electric's risk in investing in the facility and the interests of Wisconsin Electric's customers.[25]

Finally, on behalf of CUB, Mr. Callon claimed that Wisconsin Electric's distribution-connected solar projects were relatively expensive compared to other recent solar projects.[26] But as Mr. Stasik testified, Wisconsin Electric's costs for distribution-connected solar facilities are in line with recent experience, and at their forecast costs[27] they provide net economic benefits for customers even without including the net reliability benefits provided to Wisconsin Electric's customers.[28] In his surrebuttal testimony, Mr. Callon conceded that as a package Wisconsin

---

22 Rebuttal-WEPCO WG-Gerlikowski-4; Ex.-WEPCO WG-Gerlikowski-3 at Rebuttal-WPL-Behling-2-3.

23 Direct-PSC-Probst-7; Rebuttal-WEPCO WG-Stasik-4.

24 Rebuttal-PSC-Probst-1-2; Surrebuttal-WEPCO WG-Stasik-2-3. Wisconsin Electric does not believe it would be appropriate to order deferral accounting in 2024 for the Badger Hollow II project, because that project has a guaranteed in-service date in December 2023. Surrebuttal-WEPCO WG-Stasik-3; Ex.-WEPCO WG-Stasik-10. Ms. Probst's suggestion that the Commission consider deferral accounting for costs in 2023, *see* Sur-surrebuttal-PSC-Probst-1-2, is an invitation for the Commission to engage in retroactive ratemaking. While Wisconsin Electric had proposed escrow accounting for Paris as opposed to deferral, the Company does not object to Ms. Probst's preference for deferral accounting.

25 Surrebuttal-WEPCO WG-Stasik-3; *see also* Ex.-WEPCO WG-Stasik-10 (*force majeure* notices detailing factors outside Wisconsin Electric's control).

26 Rebuttal-CUB-Callon-2-4.

27 As Mr. Stasik testified at the hearing, the fixed priced contracts and commercial structure of these projects mean these costs are unlikely to change. Hr'g Tr. at 64:19–65:9.

28 Rebuttal-WEPCO WG-Stasik-6-13.

Electric's distribution-connected solar projects provide net economic benefit to customers, and did not recommend any specific disallowances from the Company's revenue requirement.[29]

B. The base rate revenue requirement for the LNG Facilities should include the cost of *operating* those facilities in 2024.

Last year, the Commission recognized that Applicants' investments in the LNG Facilities would begin to provide benefits to customers this winter and authorized a "limited natural gas reopener for 2024 to address additional revenue requirements" related to the operation of the facilities in 2024.[30] As Mr. Stasik testified, Wisconsin Electric's Bluff Creek LNG facility is expected to enter service in December 2023, and Wisconsin Gas's Ixonia facility will follow in February 2024.[31] These investments result in a $23.9 million, or 4.5%, increase to base rates for Wisconsin Electric gas customers, and a $22.2 million, or 2.9%, increase to base rates for Wisconsin Gas.[32] Neither Staff nor any party objects to including the capital cost of these facilities in the Applicants' revenue requirements.

Commission Staff reduced Applicants' natural gas revenue requirements by removing O&M expenses Wisconsin Electric and Wisconsin Gas will incur to operate the LNG Facilities next year.[33] Ms. Probst left for the Commission the question of whether the Final Decision was intended to include O&M expenses for these facilities, but it clearly did.[34] The Commission's decision specifically refers to the LNG Facilities "achieving commercial operation,"[35] and *operation* requires *operational* expenses.[36] Allowing recovery of O&M expenses for the LNG

---

29 Surrebuttal-CUB-Callon-2-3. Mr. Callon also conceded that even on an individual basis all but one of the Company's 11 distribution-connected projects provide net benefits to customers. *Id.*
30 *Final Decision*, at 79, Order Point 35.
31 Direct-WEPCO WG-Stasik-9.
32 *Id.* at 9-10.
33 Direct-PSC-Probst-4-5.
34 *Id.* at 5.
35 *Final Decision*, at 2, 11, 50, 79.
36 Rebuttal-WEPCO WG-Stasik-14.

Facilities is clearly contemplated by the language of the Commission's order allowing for "additional revenue requirement associated with … a [LNG] facility."[37] This language is particular significant when compared to the language the Commission chose for other facilities in the immediately previous ordering paragraph, which states that the reopener is "to address the revenue requirements associated with *recovering new capital investments*."[38] There is no principled basis for the Commission to allow the capital cost of the LNG Facilities, but disallow the costs of operating them in light of the Commission's specific order point language, especially when no party, or Commission Staff, questions that the LNG Facilities will be used and useful in the provision of utility service in 2024.

C. Wisconsin Electric's fuel cost plan should reflect its second purchase of capacity at West Riverside and the current EFOR for West Riverside projected by the operator, WPL.

Commission Staff thoroughly reviewed Wisconsin Electric's 2024 fuel cost plan and proposed eight adjustments.[39] Wisconsin Electric agreed to all but two of these adjustments.[40] The only two adjustments that remain in dispute relate to the West Riverside power plant.[41] The Commission should issue consistent decisions across all three pending rate cases for Wisconsin Electric, WPSC, and WPL.

With respect to Wisconsin Electric's second purchase of capacity at West Riverside, Wisconsin Electric acknowledges that removing the purchase from the fuel forecast until the

---

[37] *Final Decision*, at 79, Order Point 35; *see also Order to Reopen a Proceeding*, Docket 5-UR-110 (PSC REF#: 469503) (June 1, 2023) at 3 ("The Commission also reopens this docket under Wis. Stat. § 196.39 to consider adjustments to the applicants' natural gas rates to address the additional revenue requirements associated with *a new facility being in service for a full year* and a [LNG] facility that will *achieve commercial operation* during 2024." (emphasis added)).

[38] *Final Decision*, at 79, Order Point 34 (emphasis added).

[39] Direct-PSC-Mylotta-1-3; Ex.-PSC-Mylotta-1.

[40] Rebuttal-WEPCO WG-Gerlikowski-3, 6 (agreeing to five of the eight adjustments and providing additional information related to coal-blending at the Elm Road Generating Station ("ERGS")); Surrebuttal-PSC-Mylotta-2 (agreeing with Wisconsin Electric's estimated of coal-blending at ERGS after reviewing additional information).

[41] Rebuttal-WEPCO WG-Gerlikowski-4-6; Surrebuttal-WEPCO WG-Mylotta-1-2.

acquisition is approved would be consistent with the Commission's prior ratemaking decisions (as it would be for Wisconsin Electric's base rate revenue requirement). But, as discussed above, the Commission has already approved Wisconsin Electric's first purchase after a robust review, so it would be appropriate to include the second purchase in rates now.[42]

Whether or not the second purchase of West Riverside is included in the fuel cost plan, WPL's forecast of the plant's EFOR should be reflected in the fuel case, as opposed to the eight-year-old forecast that Staff witness Mr. Mylotta used at first (although he appeared to back away from that position in his surrebuttal testimony).[43] As WPL explained, it would be inappropriate to assume West Riverside will experience the indicative EFOR rates referenced in WPL's application back in 2015, because that forecast outage rate was simply the value "prescribed by [MISO] for use in resource adequacy" at that time and does not account for actual performance of the plant.[44] WPL's own current forecast is more appropriate and likely more accurate.

II. COMMISSION STAFF, CUB, AND WIEG HAVE RAISED THREE ISSUES RELATED TO OCPP, NONE OF WHICH ARE APPROPRIATE FOR CONSIDERATION IN THIS LIMITED REOPENER, AND ALL OF WHICH LACK MERIT.

Commission Staff, CUB, and WIEG have raised three issues related to OCPP: (1) increased congestion costs allegedly related to [redacted] operation of the plant; (2) further reductions in maintenance costs supposedly based on historic expenses; and (3) alternative ratemaking proposals that are premature until the plant fully retires. The Commission's ordered scope for discussion of OCPP was limited: Wisconsin Electric was to "address reduced O&M expense from future coal plant retirements" and "include the analysis of alternative recovery

42 Rebuttal-WEPCO WG-Gerlikowski-4; Ex.-WEPCO WG-Gerlikowski-3 at Rebuttal-WPL-Behling-2-3.

43 Rebuttal-WEPCO WG-Gerlikowski-5-6; *compare* Surrebuttal-PSC-Mylotta-2 (testifying that "the Commission may wish to consider applying the West Riverside outage rate consistently to [WPL's] 2024 Fuel Cost plan[.]").

44 *Id.* at 5; Ex.-WEPCO WG-Gerlikowski-3 at Rebuttal-WPL-Behling-3-4, 6.

scenarios for OCPP."[45] Wisconsin Electric has addressed the O&M cost issue by reducing its revenue requirement to reflect $8.1 million of O&M savings due to the retirement of OCPP units 5 and 6 in the summer of 2024. However, the plant will not fully retire until December 2025 and will continue to require O&M spending through that period.[46] As for recovery of the undepreciated book value of the plant, Wisconsin Electric agrees it is appropriate for the Commission to begin to collect information on alternatives for recovering the cost of OCPP upon its retirement, but the Commission should not depart from ordinary ratemaking principles in this limited reopener.

A. Commission Staff's testimony about congestion costs is flawed and does not support adjustments to Wisconsin Electric's fuel cost plan.

On behalf of Commission Staff, Mr. Ritsema submitted direct testimony analyzing energy and congestion costs under different assumptions related to OCPP, hypothesizing that the plant's [redacted] might drive up congestion costs. At the time, Mr. Ritsema estimated that this could increase Wisconsin Electric's fuel cost by as much as $31 million in 2024.[47] As Mr. Gerlikowski explained on behalf of Wisconsin Electric, Mr. Ritsema's analysis was flawed, because "it is impossible to calculate how much of [the] increase [in congestion pricing] is because of Wisconsin Electric's operation of OCPP, and it would be incorrect to attribute the entire increase in the relevant load zone … to the operation of generating facilities at OCPP."[48] Mr. Ritsema does not dispute Mr. Gerlikowski's testimony that it is difficult to forecast congestion costs and that investment in transmission is a primary

---

45 Final Decision, at 79.
46 Direct-WEPCO WG-Stasik-12.
47 Direct-PSC-Ritsema; Surrebuttal-PSC-Ritsema.
48 Rebuttal-WEPCO WG-Gerlikowski-7-8. Mr. Gerlikowski's rebuttal testimony contains a lengthy discussion of the various flaws in Mr. Ritsema's testimony, including (1) using unrealistic assumptions for operation of the plant; (2) assuming greater-than-available coal supplies; (3) out-of-date performance metrics; and (4) generally overstating the effect of congestion, which will remain rare no matter how OCPP is operated. *Id.* at 1-17.

indicator of future congestion.[49] Nor does Mr. Ritsema dispute that his analysis is based on a fuel run that includes far more CO_2 emissions than in the Staff-audited fuel run.[50]

At the hearing Mr. Ritsema withdrew the recommendations he made in his direct testimony.[51] He made clear that Staff is *not* advocating for a change to Wisconsin Electric's fuel costs based on his congestion analysis, so the issue is now moot.[52] Thus, the Commission should not make any adjustments to Wisconsin Electric's revenue requirement or fuel costs based on Mr. Ritsema's testimony.

B. Commission Staff's testimony about maintenance expenses at OCPP does not support an adjustment to Wisconsin Electric's revenue requirement.

Commission Staff's direct testimony in this limited reopener accepted Wisconsin Electric's $8.1 million reduction in O&M expenses for OCPP after units 5 & 6 retire in May 2024.[53] Mr. Ritsema's direct testimony discussed Wisconsin Electric's historic maintenance expenses related to OCPP in the context of his analysis of congestion costs, by attempting to tie Wisconsin Electric's reduced expenditures at OCPP after the Company announced its retirement to the [redacted] operation of OCPP in 2024.[54] But Mr. Ritsema's direct testimony did not suggest the Commission should reduce Wisconsin Electric's revenue requirement further. To the contrary, Mr. Ritsema testified that Wisconsin Electric "should have properly maintained the [OCPP] units until such time as [Wisconsin Electric] could 'comfortably' retire the units[.]"[55] As

---

49 *Id.* at 8; *compare* Surrebuttal-PSC-Ritsema (not disputing Mr. Gerlikowski's testimony).

50 Direct-PSC-Ritsema-9-10; Rebuttal-WEPCO Gerlikowski-12-13, 16; Surrebuttal-PSC-Ritsema (not disputing Mr. Gerlikowski's testimony).

51 Hr'g Tr. at 127:1-8 (clarifying that "Staff's proposed 2024 monitored fuel costs are reflected in the direct testimony and exhibit of Commission Witness Klaus Mylotta.").

52 *Id.*

53 Direct-PSC-Probst-6-7 (only identifying two adjustments to Wisconsin Electric's electric revenue requirement); Direct-WEPCO WG-Stasik-9 (identifying the savings from retiring OCPP Units 5 & 6); Ex.-WEPCO WG-Stasik-1, Sch. 2 (identifying an $8.1 million reduction to OCPP O&M expense).

54 Direct-PSC-Ritsema-1, 5-8 (discussing Wisconsin Electric's past expenditures and whether they contributed to the [redacted] operation of OCPP in 2024).

55 Direct-PSC-Ritsema-12.

explained above, Mr. Ritsema's testimony about congestion pricing is flawed, and he has now clarified that Staff does not seek additional adjustments to Wisconsin Electric's fuel costs.[56]

Mr. Ritsema's analysis of Wisconsin Electric's expenditures on maintenance at OCPP is also flawed. To be sure, Wisconsin Electric has reduced its investment of capital and O&M dollars in the plant since its retirement date was moved up from 2029 (or later) to the 2024-2025 timeframe. As Mr. Hoops, the Company's Vice President of Generation, explained, "Mr. Ritsema omits important contextual information about when investment decisions were made relative to [Wisconsin Electric's] rate case and its retirement decisions."[57] After Wisconsin Electric made the decision to retire OCPP—the oldest coal-powered units in its generation fleet—earlier than originally planned, "Wisconsin Electric reevaluated its capital and O&M spending, concluding that it would be imprudent and wasteful to continue to spend O&M and make capital investments at a rate that would keep the plant operating for at least five to six years longer than necessary."[58] Wisconsin Electric has always been fully transparent with the Commission about its expenses related to OCPP and its future plans for retirement.[59]

Although Commission Staff did not otherwise raise questions about maintenance spending at OCPP in their direct testimony, in her rebuttal testimony Ms. Probst suggested that the Commission consider further reducing maintenance expenses for OCPP in Test Year 2024.[60] In its direct testimony, Wisconsin Electric reduced the maintenance spending at OCPP for 2024 from $28.3 million as authorized in the Final Decision to $20.2 million, with the $8.1 million

---

56 Hr'g Tr. at 127:1-8 (Mr. Ritsema clarifying he does not seek an adjustment to fuel costs).
57 Rebuttal-WEPCO WG-Hoops-3.
58 Rebuttal-WEPCO WG-Hoops-8.
59 *Id.* at 3-8 (laying out the timeline of Wisconsin Electric's investment decisions); *see also* Direct-WEPCO WG-Stasik-9 (identifying reduced O&M expense after retirement of units 5 & 6 as a significant decrease in costs); Ex.-WEPCO WG-Stasik-1, Sch. 2 (listing an $8.1 million reduction in O&M expense at OCPP).
60 Rebuttal-PSC-Probst-3-4.

decline representing the anticipated savings from retiring units 5 & 6 by June, 2024.[61] This adjustment was made in response to the Final Decision's requirement that the Company "address reduced O&M expense from future coal plant retirements."[62] Ms. Probst's rebuttal and sur-surrebuttal testimony suggested that a *further* reduction of $4.1 million might be appropriate based on a "budget-to-actual maintenance adjustment" (*i.e.*, ostensibly based on the historic maintenance spending trend for the plant).[63]

There are several problems with Ms. Probst's proposal. First, Ms. Probst did not support her analysis with record evidence[64] and it has never been clear where she derives the 56.92% she references in her testimony.[65] Wisconsin Electric still does not know what this percentage means, or how it would apply to the already-reduced O&M expenses for OCPP. However, it is clear that Ms. Probst's adjustment is *not* a direct estimate of Wisconsin Electric's expenses in the test year, because actual maintenance expense at OCPP averaged $22 million in the last three full years and Ms. Probst proposes to reduce it to approximately $16.1 million—nearly 30% *lower* than the three-year average.[66]

Second, Wisconsin Electric's overall maintenance expenses—including for OCPP—are outside the scope of this limited reopener. As Mr. Stasik notes in his surrebuttal testimony, the Commission's order "did not authorize revisiting O&M expenses, other than for plants that will

61 Direct-WEPCO WG-Stasik-6; Ex.-WEPCO WG-Stasik-1, Sch. 2; Surrebuttal-WEPCO WG-Stasik-3-5.

62 Final Decision, at 79; Surrebuttal-WEPCO WG-Stasik-3-4.

63 Rebuttal-PSC-Probst-3-4; Sur-surrebuttal-PSC-Probst-2.

64 *See* Rebuttal-PSC-Probst-3-4 (not offering either Mr. Zgonc's exhibit or the "budget-to-actual adjustment" for the record).

65 Rebuttal-PSC-Probst-3 (refencing Direct-PSC-Ritsema-5); *id.* at 4 (using a 56.92% of "authorized spending" for her adjustment); *compare* Direct-PSC-Ritsema-5 (not deriving any percentage, much less 56.92%); *see also* Surrebuttal-WEPCO WG-Stasik-5 (noting Wisconsin Electric could not fully evaluate Ms. Probst's adjustment, because she did not provide any workpapers or support for her analysis).

66 Surrebuttal-WEPCO WG-Stasik-3-4 (comparing an additional $12 reduction to the three-year average); Sur-surrebuttal-PSC-Probst-2 (noting her proposed adjustment includes the $8.1 million reduction identified in Mr. Stasik's direct testimony).

retire in 2024"—like OCPP units 5 & 6.[67] As Mr. Stasik testified in his direct testimony, the Company has abided by this limitation: Wisconsin Electric's request in this reopener significantly *understates* its revenue requirement, because it does not include O&M for plants that will be operational in 2024—such as Weston RICE, Badger Hollow II, Darien Solar, and the smaller distribution-connected solar projects.[68]

Finally, it would be inappropriate for the Commission to adjust maintenance expense for OCPP in isolation. Wisconsin Electric has continued to face higher operating costs across its business due to inflation and has appropriately directed its O&M spending where it is most needed to manage its operations reliably and safely.[69] A full audit might show lower O&M expenses for OCPP, but such an audit would also show several other expenses incurred at Wisconsin Electric's other generating facilities would be higher.[70] Ms. Probst's approach also invites the Commission to engage in a form of retroactive ratemaking, by seeking to reduce rates in a future test year for a single issue in isolation based on an after-the-fact review of past expenditures. This approach is contrary to the Commission's rulings that utilities must make their own business decisions about how to manage their operations between rate cases.[71] Accepting Ms. Probst's approach would also invite utilities to seek rate increases when they have to spend *more* maintenance dollars for a particular unit between rate cases, a result the Commission likely does not want. The better approach is to conclude Ms. Probst's proposal is outside the scope of this limited reopener and evaluate O&M holistically for Test Year 2025.

---

67 Surrebuttal-WEPCO WG-Stasik-4; *see also Final Decision*, at 79, Order Point 34.
68 Direct-WEPCO WG-Stasik-6-7.
69 Surrebuttal-WEPCO WG-Staisik-4-5.
70 *Id.* at 5.
71 *See*, *e.g.*, *Final Decision*, Docket 6630-AF-100 (PSC REF#: 343910) (June 6, 2018) (declining to open a docket related to "a business decision made by [Wisconsin Electric] which does not require prior Commission approval" that was made in between rate cases).

The Commission should not accept Ms. Probst's invitation to depart from the Commission-ordered scope of this limited reopener—particularly based on untested and undisclosed analysis—and should not reduce O&M expense at OCPP further than the $8.1 million everyone agrees is a reasonable estimate of the reduction for retirement of units 5 & 6.

C. OCPP will not retire fully until December 2025, so proposals from CUB and WIEG for the Commission to adopt alternative ratemaking for the plant in this docket are premature.

As the Commission requested in the Final Decision last year, Wisconsin Electric analyzed alternative approaches to the future recovery of the undepreciated plant at OCPP after retirement.[72] Wisconsin Electric's analysis appropriately assumes any alternative approach would begin on January 1, 2026, after OCPP and its environmental controls are fully retired.[73] Although the Commission's decision did not authorize reconsidering Wisconsin Electric's revenue requirement related to undepreciated plant at OCPP,[74] CUB and WIEG used Wisconsin Electric's analysis as a jumping off point for recommendations ranging from no recovery of undepreciated plant,[75] to threatening a reduction in Wisconsin Electric's return on equity to compel Wisconsin Electric to securitize *all* undepreciated plant at OCPP.[76]

The testimony from CUB's and WIEG's witnesses misses the mark for several reasons. First, the Commission's decision to reopen this docket did not authorize a review of Wisconsin Electric's plant-in-service, or the revenue requirement associated with plants that will continue to operate in 2024, like OCPP.[77] Consistent with the Commission's decision, Commission Staff's audit does not address (let alone recommend) changes in Wisconsin Electric's revenue

72 *Final Decision*, at 79, Order Point 34; Direct-WEPCO WG-Stasik-12-15.
73 Direct-WEPCO WG-Stasik-12.
74 *Final Decision*, at 79, Order Point 34 (only authorizing consideration of "reduced O&M expense from future coal plant retirements").
75 *See* Direct-CUB-Singletary-17-18.
76 *See* Direct-WIEG-Kollen-10-11.
77 *Final Decision*, at 79, Order Point 34 (only authorizing reduction of O&M for retired plant).

requirement associated with the future retirement of OCPP.[78] Second, the Commission has repeatedly emphasized that it adheres to the prudent investment standard,[79] and there is no question that Wisconsin Electric's investments in OCPP were prudent when they were made. CUB and WIEG advance no legitimate reason to deny recovery of Wisconsin Electric's prudent investments in OCPP. Third, WIEG's suggestion that the Commission should threaten Wisconsin Electric's ROE to force securitization is plainly out of bounds. The Commission is not permitted to indirectly achieve what it cannot do directly.[80] The Commission should not give credence to these arguments from CUB and WIEG.

In the final analysis, the testimony related to the undepreciated portion of OCPP is interesting and may present options for consideration at the appropriate time—but ultimately recovery of undepreciated plant at OCPP is a question for later.

III. WISCONSIN ELECTRIC'S STORM HARDENING PROGRAM IS A PRUDENT RESPONSE TO AGING DISTRIBUTION INFRASTRUCTURE.

In the initial Test Year 2023 rate case, Wisconsin Electric witness Mr. Pecha discussed the Company's Storm Hardening Program—a plan to improve the reliability and resiliency of the Company's distribution system and protect it from the impacts of severe storms.[81] Mr. Pecha explained that the Program is a series of individual projects that the Company plans to implement over ten years (2023-2032) involving undergrounding, sectionalizing, and automating various portions of the distribution system.[82] Because the individual projects are below the cost

---

[78] Direct-PSC-Probst-4; Ex.-PSC-Probst-1, Sch. 1.

[79] *See*, *e.g.*, *Final Decision*, Docket 6680-CE-176 (PSC REF#: 285783) (May 6, 2016) at 25 ("Both the Commission and the court in Wisconsin have adhered with reasonable fidelity to what is now termed the prudent investment theory, that is, that the utility is entitled to earn a reasonable return upon the amount which has been prudently invested in the enterprise." (*quoting Waukesha Gas & Elec. Co.*, 181 Wis. 281, 194 N.W. 846, 854 (1923)).

[80] *Wisconsin Pro. Police Ass'n/L. Enf't Emp. Rels. Div. v. Dane Cnty.*, 149 Wis. 2d 699, 712, 439 N.W.2d 625, 630 (Ct. App. 1989) (an agency may not accomplish indirectly what it cannot accomplish directly).

[81] *See Final Decision* at 46-47 (describing the program); Direct-WEPCO WG-Pecha-1-2.

[82] Direct-WEPCO WG-Pecha-3.

threshold in Wis. Stat. § 196.49(5g)(ar), Wisconsin Electric did not seek a Certificate of Approval ("CA") for the entire Program; rather it sought to include its projected 2023 investment ($38 million) in rates.

Based on Mr. Pecha's testimony, the Commission explained that Wisconsin Electric "identified that the overall project is comprised of multiple smaller individual projects that will not require separate Commission approval" and found it reasonable to include the 2023 capital expenditures in revenue requirement.[83] The Commission directed Wisconsin Electric to provide additional details about the Program and a report on all funding opportunities in this limited reopener.[84] Wisconsin Electric has done both. Further, contrary to what some parties to this proceeding may have thought, the Commission has not approved recovery for the Storm Hardening Program beyond those costs included in the Test Year 2023 revenue requirement and approved by the Commission last year.[85] Nor does Wisconsin Electric seek recovery of additional costs related to the program in this limited reopener.

Mr. Pecha explained why the projects are necessary, what each aspect of the Program (undergrounding, sectionalizing, and automating) will do, how the Company selects projects to complete, what work the Company has done, and what funding opportunities the Company has pursued and is pursuing.[86] All of this testimony reinforced that the Storm Hardening Program will help Wisconsin Electric prevent and mitigate storm-related outages—to the benefit of its customers. It also showed that Wisconsin Electric has sought funding from grant programs, but has not been successful in gaining outside funding.[87]

---

83 *Final Decision*, at 47.

84 *Id.*

85 *Final Decision*, at 47 (approving inclusion of $38 million in capital expenditures in Test Year 2023 revenue requirement).

86 Direct-WEPCO WG-Pecha-1-12; Rebuttal-WEPCO WG-Pecha-1-6; Hr'g Tr. 12:7–24:10, 31:25–32:24.

87 Direct-WEPCO WG-Pecha-10-12.

There is no reason to prevent the Program from proceeding. The Commission's order simply asked Wisconsin Electric for more information on the Program. As Commission Staff witness Ms. Probst testified, the individual projects are below the statutory cost threshold and therefore do not need a CA.[88] And no party in this limited reopener has provided a basis to reject any aspect of the Program.

Commission Staff testified that the Commission may wish to consider requiring annual reports to allow the Commission to monitor the effectiveness of the Program—similar to the reports Wisconsin Public Service Corporation provided for its System Modernization and Reliability Project.[89] Wisconsin Electric stated that it did not object to providing these reports.[90] CUB witness Mr. Callon recommended that the Commission reject the Program, but he did not provide a legal basis to do so. Mr. Callon primarily asked for more details on how individual projects are selected.[91] Wisconsin Electric provided these details in response to his testimony and in response to data requests from Commission Staff.[92] Mr. Callon also recommended that Wisconsin Electric consider how different customers value reliability when selecting projects. But as Mr. Pecha explained, Wisconsin Electric cannot develop or execute projects or charge customers different amounts based on customers' subjective willingness to pay.[93]

The Storm Hardening Program is a prudent response to aging distribution infrastructure and the increased frequency of extreme weather events. Wisconsin Electric is not opposed to providing additional information about the program and will continue to find opportunities to increase reliability and resiliency of the distribution system to benefit its customers.

---

88 Direct-PSC-Probst-11.
89 *Id.*
90 Rebuttal-WEPCO WG-Pecha-1-2.
91 Direct-CUB-Callon-10-17.
92 Rebuttal-WEPCO WG-Pecha-2-5.
93 *Id.* at 5-6.

IV. TESTIMONY FROM CUB AND WIEG ABOUT REVENUE ALLOCATION AND ENERGY BURDEN IS OUTSIDE THE SCOPE OF THIS LIMITED REOPENER.

CUB and WIEG renew their disagreement about cost of service models and revenue allocation—but thankfully more limited than last year in Applicants' full rate case.[94] These discussions are outside the scope of this limited reopener and no one contends rates would be materially different if a full cost of service study had been performed.[95]

CUB's testimony about energy burden[96] is similarly outside the scope of this proceeding. Further, the Commission implemented the current utility reporting requirements for energy burden just last year. Any changes to the Commission's current reporting requirements should be addressed in a statewide proceeding.[97]

CONCLUSION

Wisconsin Electric's investments in renewable energy are beginning to reduce rates for customers and, because of fuel cost savings related to renewable energy, substantially offset base rate increases in this proceeding. Similarly, Applicants' investments in proven LNG technology are poised to provide substantial benefits to customers this winter. Finally, Wisconsin Electric's additional purchase of West Riverside should be reflected in the revenue requirements of Wisconsin Electric, WPSC, and WPL, because the Commission has already reviewed and approved Wisconsin Electric's initial purchase. These components of the Applicants' revenue requirement and fuel cost plan are reasonable and should be approved.

On the other side of the balance, Commission Staff, CUB, and WIEG have raised questions about OCPP ranging from maintenance costs (raised late and not carried through to

---

[94] *See generally* Direct-CUB-Singletary; Rebuttal-CUB-Singletary; Direct-WIEG-Baudino; Direct-WIEG-Bauer.

[95] Direct-PSC-Meulemans-3-4; Rebuttal-WEPCO WG-Stasik-18-20; Direct-CUB-Singletary-7-8 (not identifying any material difference in rates that would result from a full COSS in this proceeding).

[96] Direct-CUB-Callon-4-10; Rebuttal-CUB-Callon-1-6.

[97] Rebuttal-WEPCO WG-Stasik-13.

revenue allocation and rates) to premature proposals for future ratemaking treatment of undepreciated plant. All of these proposals are outside the scope of this limited reopener and should not be accepted by the Commission.

Respectfully submitted this 13th day of October, 2023.

Catherine Phillips
State Bar No. 1025503

Electronically signed by
Catherine Phillips

WEC Energy Group Inc.
231 West Michigan Street
Milwaukee, WI 53203
Attorney for Applicants

Bradley D. Jackson
State Bar No. 1005468
Joe Wilson
State Bar No. 1052468
James E. Goldschmidt
State Bar No. 1090060
Patrick J. Proctor-Brown
State Bar No. 1091326
Lauren N. Zenk
State Bar No. 1115872

Electronically signed by
Bradley D. Jackson

QUARLES & BRADY LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202
Attorneys for Applicants