

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application of Wisconsin Power and Light Company for a Certificate of Authority to Construct and Operate the Riverside Enhancement Project, Consisting of Seven Reciprocating Internal Combustion Engines Capable of Generating up to 17.5 MW total, at its Riverside Energy Center Facility in the Town of Beloit, Rock County, Wisconsin

Docket No. 6680-CE-187

COMMENTS OF COMMUNITY INTERVENORS

Pursuant to Wis. Stat. Ch. 227, Wis. Admin. Code § 2.21, and the November 8, 2024 Order on Requests to Intervene (PSC REF#: 523856), Healthy Climate Wisconsin, Inc., Wisconsin EcoLatinos, Good Trouble Beloit, Inc., and the League of Women Voters of Beloit (hereinafter, “Community Intervenors”) file these comments in the above-captioned docket.

As described in our Request to Intervene, each of the Community Intervenors represents the interests of local members who will be directly affected by both the environmental impacts of the project, and any potential upward pressure on utility rates that may result from the costs of the project.

The Community Intervenors’ initial concerns about this project focused on the air emissions generated by the proposed generating units, and the cumulative effects of the combined emissions from both new and existing sources. The air emissions are concerning both from the perspective of global climate change caused by greenhouse gas emissions associated

with our continuing reliance on fossil fuels, as well as the environmental and public health impacts associated with other pollutants.¹

In addition to Community Intervenors' concerns regarding the air emissions from the facility, which arguably fall outside of the scope of the Commission's authority to approve or deny the Certificate of Authority, Community Intervenors have identified significant flaws in the Commission's public notice and environmental assessment processes in this docket, which have limited the ability of community members to participate in the process, and have their voices heard by the Commission. These comments focus on those flaws.

I. Comments on Public Notice and the Scoping Process, and Opportunities for Public Participation.

A. The Commission's duties under WEPA, and its administrative rules.

The Wisconsin Environmental Policy Act (WEPA) was enacted in 1972,² and perhaps to emphasize its importance, the legislature codified the Act in Chapter 1 of our state statutes. Wis. Stat. § 1.11. WEPA requires that “[a]ll agencies of the state” include “a detailed statement,” commonly referred to as an Environmental Impact Statement (“EIS”), “in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the human environment.” *Id.* Each state agency has, by rule, developed its own process for determining what agency actions rise to the level of a major action significantly affecting the quality of the human environment. The Public Service Commission's WEPA rules are found in

¹ These concerns were highlighted by recent citizen-based monitoring of PM_{2.5} in Beloit, which was supported in part by Community Intervenors and other members of the Stateline Clean Air Coalition. When the 2023 monitoring data 2023 were compiled by [IQAir](https://www.wpr.org/news/beloit-residents-environmental-groups-want-state-to-monitor-city-for-harmful-soot-pollution), it led to the ranking of Beloit as the “most polluted regional city in the nation” that year. <https://www.wpr.org/news/beloit-residents-environmental-groups-want-state-to-monitor-city-for-harmful-soot-pollution> (last visited January 14, 2025); IQ Air (2023) *2023 World Air Quality Report*, at 27, (available for download at: <https://www.iqair.com/us/world-air-quality-report-press-kit>, last visited, January 9, 2025).

² 1971 Wis. Laws, ch. 274, § 2.

Chapter PSC 4 of the Wisconsin Administrative Code. In order to determine whether an EIS is required, Commission staff prepare an environmental assessment (“EA”), which is defined as:

a concise document that provides a factual investigation of the relevant areas of environmental concern in sufficient depth to permit a reasonably informed preliminary judgment of the environmental consequences of the proposed action. The EA shall include a recommendation whether the proposed action is a major action significantly affecting the quality of the human environment, within the meaning of s.1.11 (2) (c), Stats., for which an EIS is required.

Wis. Admin. Code § PSC 4.20(1) (emphasis added). The PSC’s EA process is performed in close cooperation with the Department of Natural Resources (DNR) Office of Energy, and the EA is intended to address WEPA compliance for both agencies.³ An EA prepared by the PSC must include “[a]n evaluation of significant positive and negative, short-term and long-term environmental effects that would result if the commission approves the proposed action,” Wis.

Admin. Code § PSC 4.20(2)(d) and must consider a variety of factors, including, among others:

- Conflicts with federal, state or local plans or policies;
- Significant controversy associated with the proposed action;
- Direct and indirect environmental effects; and
- The cumulative effect of the proposed action when combined with other actions and the cumulative effect of repeated actions of the type proposed.

Wis. Admin. Code § PSC 4.20(2)(d) 2, 3, 9 &10.

Before preparing an EA, Commission staff initiate what is known as the “scoping process.” PSC 4 requires that “[w]hen it commences the preparation of an EA, the commission shall make a diligent effort to notify the public that an EA is being prepared. The announcement may be included with a notice of investigation or notice of hearing.” Wis. Admin. Code § PSC 4.20(1m). Although PSC 4 contemplates that this announcement, or “scoping letter” may accompany the formal docket notice, as a practical matter, when the Commission decides to open an investigation rather than a contested case proceeding, as it did here, the 90-day statutory

³ Final EA, at 8; Wis. Stat. § 196.025(2m)(b)2.

deadline to issue a decision⁴ requires the scoping process to begin long before the notice of investigation is issued, and frankly, before most members of the public are aware of the project.

B. The scoping process was flawed because notice was ineffective, and the public did not have sufficient information to effectively participate.

Commission staff began the scoping process in this docket on May 16, 2024, with the issuance of an Environmental Assessment Scoping Letter. Staff later reissued the Scoping Letter on June 24, 2024 ([PSC REF#: 506192](#)), with a new, July 8 deadline for public comments. The scoping letters included very brief descriptions of the project, its location, a very brief description of the need for the project, and some of the permits and approvals needed. Notably, the scoping letter does not disclose the need for an air permit from DNR, nor does it describe any air emissions from the project.

WPL's March 29, 2024, docket application ([PSC REF#: 495931](#)) was heavily redacted, due to its request for confidential treatment of certain information deemed to be critical energy infrastructure information (CEII). This made it very difficult for members of the public to understand and evaluate the effects of the project on their community and participate in the scoping process.

We note that, at this stage in the process, there had been little, if any, press coverage of the project, and public awareness was very low. The Final EA states that the scoping letter was sent to the following, in accordance with Wis. Admin. Code § PSC 4.20(1m), on May 16.

- Local residents and landowners potentially affected by the project
- Municipal officials in the towns and counties covered by the project area
- Local news media
- Libraries in the project area
- Regional Planning Commissions
- Legislators representing the affected area
- Any other persons with a demonstrated interest in the proposed project

⁴ The deadline in this docket has been extended for an additional 90 days, pursuant to Wis. Stat. § 196.49(5r)(b) (See, [PSC REF#:526335](#)).

Final EA, at 8. However, no mailing list is posted on ERF for the May 16 letter, so it isn't clear whether that mailing was completed as described. As noted above, the Scoping letter was reissued on June 24, and the mailing list associated with that letter ([PSC REF#: 506191](#)) includes the editors of the Milwaukee Journal-Sentinel and Wisconsin State Journal (not "local" media), but not the Beloit Daily News, Janesville Gazette or any other local publication in Rock County. As such, Community Intervenors question whether Commission Staff fully complied with the scoping requirements found in § PSC 4.20(1m).

Moreover, even if local media outlets received the scoping letter, it doesn't appear to have generated any news coverage. Community Intervenors have searched the internet for any public notice or contemporaneous news coverage of the project from that time frame, and can find no such coverage.

In addition, WPL had not yet filed its Construction Permit Application with the DNR's Air Program, so during the scoping process, no detailed information about the air permit application, or the air emissions associated with the project was available to the DNR, the PSC, or the public.⁵

Community Intervenors assert that the deficiencies in the scoping process, the lack of actual notice to many members of the public, and the fact that critical information regarding the environmental effects of the project were unavailable at the time of the scoping process, deprived members of the public an opportunity to provide meaningful public input to the environmental assessment process. Community Intervenors strongly urge the Commission to repeat the scoping process, or provide some other means to mitigate the harms caused by these flaws in the process.

⁵ The application for construction permit 24-PSD-168 was not received until August 9, 2024, and not deemed complete by DNR Staff until October 5, 2024, long after the last opportunity for public comment on the EA was past. WDNR Air Management Program, Permit Tracking System, https://apps.dnr.wi.gov/warp_ext/am_permittracking2.aspx?id=13490124 (last visited January 9, 2025).

On July 22, Commission staff issued a preliminary determination of its finding of no significant impact (FONSI) on the human environment, and its decision not to prepare an EIS ([PSC REF#: 509577](#)). The preliminary determination letter indicated that copies of the draft environmental assessment (“Draft EA”) were available upon request, and invited public comments on the draft, no later than August 9. By this time, Community Intervenors and others had begun to raise awareness about the project and its potential environmental impacts, and nearly 100 public comments were posted on the PSC website prior to the August 9 deadline, many of which criticized the public participation process, and called for the PSC to prepare an EIS.

After receiving the public comments on the preliminary determination and Draft EA, Commission staff filed its final environmental assessment (“Final EA”) on the ERF system on August 26, 2024. The Final EA ([PSC REF#: 515164](#)) made no substantive changes to the content of the document circulated as the Draft EA in response to the public comments received, and fails to acknowledge the receipt of public comments on the preliminary determination and Draft EA.

II. Comments on WEPA compliance and the Sufficiency of the Final EA.

Community Intervenors respectfully submit that the Final EA prepared by Commission staff is inadequate in many respects. We comment on some of those shortcomings below.

The signature page of the Final EA states that “[t]his environmental assessment complies with Wis. Stat. § 1.11, and Wis. Admin. Code § PSC 4.20.” Final EA, at 43. Community Intervenors disagree. PSC 4 provides in part that:

When the comment period [on the Draft EIS] expires, the commission shall determine whether the proposed action is a major action significantly affecting the quality of the

human environment within the meaning of s. 1.11 (2)(c), Stats., for which an EIS is required. The determination shall be based on the EA prepared under sub. (2) and any comments received on the preliminary determination under sub. (3).

Wis. Admin. Code § PSC 4.20(4)(a). If the Commission staff based its FONSI determination in part on the comments received on the preliminary determination and Draft EIS, there is no indication of that in the Final EIS, or anywhere else in the record.

A. The Final EA fails to mention or respond to the numerous public comments on the preliminary determination and Draft EA.

The only statement in the Final EA regarding public comments, under the heading “Summary of Public Comments” is: “The Commission received no public comments on the proposed project during the EA scoping period.” Final EA, at 44. The term “scoping process” is not defined in PSC 4, and it is not clear whether the scoping period, as that term is used by staff, ends before, or after, comments are solicited on the preliminary determination. We note that the Public Comment forms for all of the comments on the preliminary determination include the following text: “NOTE: Public comments are currently being solicited by Commission staff for this docket. These comments will be used by staff in its scoping and analysis of this case, but will not be part of the official record.” This suggests that comments on the preliminary determination are part of the scoping process.

At any rate, the statement that no public comments were received during scoping, and the failure to acknowledge anywhere in the record the large number of comments received after the issuance of the preliminary determination, misrepresents the record by omission. The Final EA also concludes that “[t]here is no known significant controversy associated with the proposed project,” Final EA, at 44, despite the receipt of nearly 100 public comments on the draft EA and preliminary determination, including many commenters who raised concerns about the environmental assessment process, and requested that the Commission perform an EIS.

The failure to respond to the public comments on the preliminary determination in the Final EA, or even acknowledge that the comments were received, has left community members feeling as though they have not been heard by the Commission, or that the Commission is intentionally ignoring public input regarding the project. In speaking with members of the public, Community Intervenors have witnessed frustration and anger from community members who feel as though their comments have been ignored. Accordingly, Community Intervenors strongly urge the Commission to hold either an in-person or virtual public hearing in this docket, to give members of the public a meaningful opportunity to be heard. If the Commission elects not to schedule a public hearing, then at a minimum, Community Intervenors request that the Commission provide public notice, and open a written public comment period, with a publicly-accessible hyperlink, to provide members of the public an easy way to submit written comments.

B. The Commission’s consideration of the cumulative effects of the project is inadequate.

PSC 4 requires that the Commission consider “[t]he cumulative effect of the proposed action when combined with other actions and the cumulative effect of repeated actions of the type proposed.” Wis. Admin. Code § PSC 4.20(2)(d)8. This language is quoted in Section 5.8 of the Final EA, but the entirety of the Commission staff’s “analysis” of the cumulative effects of the project is as follows:

The air emissions produced by this power plant would, along with all of the other carbon emissions in the world, be a contributor to the overall effect of global climate change. There has been a recent trend in the United States to lower overall carbon emission as part of an overall energy transition. The energy transition at this time largely involves increasing the use of renewable energy sources along with the continued use and construction of some traditional carbon-emitting facilities such as the proposed project, to still allow for a reliable electric system.

Noise, dust, light, and visual impacts already present from the existing power plant facilities would increase with the cumulative effects of adding additional power generation from the RICE units. Storm water runoff may have an additional cumulative effect when

added to existing runoff from the site. The ongoing impacts at the REC site are difficult to predict in terms of any potential closure and decommissioning of any existing units, and what the site restoration or reuse may be in the future. At the time of this EA, all existing units at REC property are likely to continue operation after the construction of the proposed facility.

Final EA, at 45-46.

The cursory nature of this analysis is woefully inadequate. The EA fails to quantify current emissions from the existing Riverside Energy Center, much less other sources of emissions in the area. Nor does it contain any quantitative estimates of the effects of this project, or how, when combined with the effects of repeated actions by the Commission, approving construction of fossil fuel-fired generation, this project will continue to exacerbate global climate change, and regional air pollution. While the air emissions of this project may be relatively small, the cumulative effects of this project, combined with existing emissions in the region, and other newly-proposed natural gas-fired generation around the state, may be enormous. By failing to meaningfully address cumulative effects, the Final EA fails to comply with the Commission's WEPA obligations.

C. The Final EA inadequately addresses conflicts with the Clean Energy Goals established in Wisconsin's Clean Energy Plan.

Section 5.2 of the Final EA purports to address the ways in which the proposed action "[c]onflicts with federal, state or local plans or policies," as required by Wis. Admin. Code § PSC 4.20(2)(d)2. Community Intervenors agree that the proposed action conflicts with at least one state plan, but the discussion of this conflict in the EA is also inadequate. Section 5.2 of the Final EA mentions Governor Evers' Clean Energy Plan, but includes no meaningful discussion of conflicts with that plan. Instead, it refers the reader to another section of the report, stating that "[t]he proposed project's relation to Governor Evers' Clean Energy Plan is described in the

GHG Emissions section 3.1.7 above.” Final EA, at 43. In fact, Section 3.1.7 of the EA includes no discussion of, nor does it even mention, the Clean Energy Plan.⁶ Section 5.2 of the Final EA concludes:

While the proposed facilities would produce greenhouse gas emissions, it is also contemplated in energy transition plans that some level of greenhouse gas emitting sources would still be in existence for some period of time, while renewable energy resources and other technologies are still continuing to come online.

Final EA, at 43. It is unclear to which “energy transition plans” this quotation refers, but it cannot be the Clean Energy Plan, which clearly states the goals for Wisconsin’s energy transition:

In Wisconsin, electricity generation and imported energy, accounts for the largest share, at 32.2 percent, of GHG emissions in 2018. As such, it is a critical focus on this sector in the push for clean energy and to address climate change impacts. The State of Wisconsin has a goal of 100 percent carbon-free electricity consumed by 2050.⁷

The Clean Energy Plan further notes that many Wisconsin utilities, including Alliant Energy, WPL’s parent company, have established similar internal goals. Alliant’s goals, as summarized in the Clean Energy Plan, include an interim goal of a 50% CO₂ reduction by 2030, and net-zero CO₂ emissions by 2050. Clean Energy Plan, at 44. Community Intervenors maintain that approval and construction of new fossil fuel-burning generating units with 30-year useful lives, in 2025 and beyond, conflicts with those goals.

⁶ Section 3.1.7 includes a discussion of greenhouse gas emissions and global climate change, but references the report of Governor Evers’s Task Force on Climate Change, and the Wisconsin Initiative on Climate Change Impacts (WICCI), rather than the Clean Energy Plan. Final EA, at 20-21.

⁷ Wisconsin Office of Sustainability and Clean Energy, Great Plains Institute, and Slipstream, Inc. (April 2022) *State of Wisconsin Clean Energy Plan*, at 43, <https://osce.wi.gov/Documents/SOW-CleanEnergyPlan2022.pdf> (last visited January 15, 2025).

Because the Final EA fails to adequately address this conflict with Wisconsin's Clean Energy Plan, Community Intervenors urge the Commission to prepare a Supplemental EA, that addresses this deficiency, and the other deficiencies of the Final EA noted above.

III. Conclusion.

For the reasons set forth above, Community Intervenors request that the Commission: A) repeat the scoping process, or provide some other means to mitigate the harms caused by these flaws in the process; B) prepare a Supplemental EA, to address the flaws in the Final EA prepared by Commission staff; and C) schedule a live or virtual public hearing, to permit members of the public to provide meaningful input, in comments that will become part of the record, or, at a minimum, provide public notice and a publicly-accessible link for submission of written public comments that will appear as part of the record reviewed by the Commissioners.

Community Intervenors reserve the right to file additional comments as needed.

Dated this 16th day of January, 2025.

MIDWEST ENVIRONMENTAL ADVOCATES

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