

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Joint Application of Wisconsin Electric Power Company,
Wisconsin Public Service Corporation, and Madison Gas and
Electric Company for Approval to Acquire Ownership Interests
in the Paris Solar Generating and Battery Energy Storage System

Docket: 5-BS-254

**REPLY BRIEF OF WISCONSIN ELECTRIC POWER COMPANY
AND WISCONSIN PUBLIC SERVICE CORPORATION**

The only questions the Commission must ask in deciding whether to approve Joint Applicants' acquisition of the Paris solar generating and BESS facility are whether the Project will: (1) substantially impair the efficiency of the utilities' service; (2) provide facilities unreasonably in excess of probable future requirements; or (3) add to the cost of service without proportionately increasing the value or available quantity of service. Wis. Stat. § 196.49(3)(b). If the Commission answers "no" to each of these questions, then it must approve the Application.

Neither CUB nor WIEG has identified a reason to deny the Application. Though CUB's brief—for the first time—asserts that the Application should be denied because Joint Applicants' analyses fail to demonstrate the Project's economic benefits to CUB's satisfaction, CUB fails to support this argument, especially in light of the statutory presumption in *favor* of granting the Project and the overwhelming evidence that the GRP (including the Project) will provide customers a net present value of more than \$1 billion in savings over the next twenty years.¹ CUB's main challenges to Joint Applicants' analyses are not based on the statutory framework governing the Application, but rather on *how* the utilities presented their data and whether other sensitivities or scenarios should have been modeled—regardless of how unrealistic they are.

¹ Direct-WEPCO WPSC-Eidukas-r-8:4-7.

WIEG, on the other hand, expressly states that it does not challenge the utilities' economic analysis (or their need for the Project). WIEG focuses solely on the BESS portion of the Application and asks this Commission to require Joint Applicants to enter into a PPA with Invenergy, or at least impose (unidentified) terms allegedly common to PPAs to protect the utilities' customers from perceived risks associated with BESS. WIEG's concerns about BESS are unfounded, overstated, and fail to consider the benefits of owning the Project and the steps the utilities have taken to mitigate any risks. WIEG also fails to propose any tangible or realistic solutions to its concerns.

This leaves the Commission with no reason to deny the Application under Wis. Stat. § 196.49(3)(b), and every reason to approve it without delay.

I. The Commission should reject CUB's arguments against the Project.

In conclusory fashion, CUB makes one argument related to Wis. Stat. § 196.49(3)(b). CUB questions the need for the Project, alleging that Joint Applicants failed to demonstrate that they considered conserving energy, different generation resources, different sites for the Project, and different sizes of solar and BESS as alternatives to the Project.² CUB forgets (or ignores) that WEPCO and WPSC (the "Utilities") are retiring approximately *1,600 MW* of fossil-fueled generation in the next few years. CUB has not explained how conserving energy could make up for this loss of capacity. Nor has any other party challenged the shortfall that these retirements would create if the Utilities did not build or acquire new generation resources. The Project is one key step towards filling that capacity gap. To the extent CUB suggests that WEPCO and WPSC should have considered "smaller" or "different" units, it fails to say which ones (or why). And the Utilities *have* considered different sites and concluded that Paris was optimal.³

² CUB Br. at 3, 21.

³ Direct-WEPCO WPSC-Gerlikowski-pr-12:12-15.

CUB's remaining arguments boil down to two general challenges to WEPCO's and WPSC's economic modeling: (1) the Utilities' comparison of the GRP to the status quo alternative; and (2) the breadth of scenarios and sensitivities that the Utilities modeled.⁴

A. The GRP supports approval of the Project and there is no basis in Wisconsin law to initiate an integrated resource plan proceeding.

CUB characterizes the GRP as an integrated resource plan ("IRP") and asserts that evidence of the reasonableness of an IRP alone is insufficient to justify approving an individual project.⁵ Yet only a few pages later, CUB asks the Commission to do just that: open an independent docket to evaluate the GRP and condition approval of the Paris Project on the outcome of that docket.⁶ The Commission has not had that authority since the 1990s, as CUB concedes.⁷ CUB has also failed to explain what it seeks to gain from opening such a proceeding. What additional evidence is relevant to *this Project* that would only be presented in an evaluation of the GRP? CUB has not identified any, the Utilities are not aware of any, and the Utilities have affirmatively shown that the GRP, including the Paris Project, will save customers money.

Despite arguing that the GRP cannot justify the Application, CUB also argues that "nothing in the law precludes the Commission from evaluating and making determinations regarding the sufficiency of the IRP vis-à-vis the question of whether Paris is in the public interest."⁸ The Utilities agree, which is why they presented evidence supporting *both* the GRP and the Paris Project. CUB nevertheless insists that this docket is really an evaluation of the GRP, not the Paris Project, going so far as to argue that rejecting its preferred procedure would infringe on due process rights by failing to notify the public of the docket's true scope.

⁴ CUB Br. at 3–5, 6–19.

⁵ *Id.* at 4.

⁶ *Id.* at 20.

⁷ Wis. Stat. § 196.491(2); 1997 WI Act 204; CUB Br. at 3, n. 3, 4 (citing the Legislature's repeal of the IRP statute and framing the relevant question as whether Paris may be acquired, not whether the GRP is reasonable).

⁸ *Id.* at 4.

This argument lacks merit. The Utilities are not asking the Commission to approve the GRP. They are asking the Commission to approve their proposed acquisition of the solar generating and BESS facility in Paris, Wisconsin—nothing more. CUB concedes that it is appropriate for the Commission to consider GRP evidence in support of that proposal, which is all the Utilities have asked the Commission to do.

CUB is also wrong in stating the Utilities have presented no evidence specific to the Paris Project.⁹ The Utilities evaluated alternatives to the Paris Project, including other sites, other projects, other developers, and the option of entering into a PPA.¹⁰ Their modeling still selected this Project over alternatives in multiple runs.¹¹ It is unclear what CUB believes is missing from this robust evaluation of the Paris Project beyond four sensitivities discussed below.

CUB fails to consider all the reasons why the Utilities modeled the GRP: (a) they needed a comprehensive plan to retire and replace approximately 1,600 MW of generation; (b) modeling only individual projects as opposed to the GRP would ignore concerns that affect the Utilities' entire generation fleets, including reliability, resiliency, the environment, economic benefits, and market risk; and (c) in transitioning their generation fleets, the Utilities are not planning a one-for-one replacement for each retirement—nor would it be practical to do so.

Ultimately, CUB's position seems to be that *it* can attack the Project by attacking the GRP, but WEPCO and WPSC cannot cite the GRP as support for the Project.¹² This is as silly as it is one-sided. In reviewing the Project, the Commission can and should consider all the benefits the GRP will provide, including affordable, reliable, and clean energy, \$1 billion in customer savings, a more diverse generation portfolio, and more advanced and cost-effective technology.

⁹ *Id.* at 4–5.

¹⁰ Direct-WEPCO WPSC-Gerlikowski-pr-12:5–8.

¹¹ Rebuttal-WEPCO WPSC-Gerlikowski-pr-6:3–7:14, Ex.-WEPCO WPSC-Gerlikowski-6cr.

¹² CUB Br. at 4.

B. No additional modeling is needed to support approval of the Project.

In 22 pages of briefing, one thing is clear: no amount of additional modeling would be enough to satisfy CUB.¹³ The rest of CUB’s arguments only prove this point.

CUB challenges the scope of WEPCO’s and WPSC’s scenario and sensitivity testing, arguing that a “greater” number of scenarios and a “wider range of input variables” should have been modeled.¹⁴ Yet CUB only proposes modeling four sensitivities: (a) a range of discount rates from 2% to 18% instead of WACC; (b) a range of natural gas prices from \$2.00/MMBtu to \$8.00/MMBtu; (c) battery degradation rates; and (d) different modes of BESS operation.

The first two sensitivities that CUB proposes rest on unrealistic assumptions and the last two were raised only in passing before CUB submitted its brief.¹⁵ None of these additional sensitivities would be useful, as Staff has already concluded.¹⁶ Ignoring Staff’s conclusions—and barely concealing its apparent belief that it knows better than Staff how to vet such applications—CUB insists that the Utilities must model overtly unrealistic assumptions to know when the Project would become *uneconomical*.¹⁷ This is not what Section 196.49(3)(b) requires.

CUB’s challenge to the Utilities’ use of WACC as a discount rate is particularly unreasonable. CUB argues that one discount rate (WACC) cannot represent the range of customers’ preferences, Project risks, or the incremental rate of change in revenue requirements.

CUB recommends applying a range of discount rates from 2% to 18% instead.

¹³ See, e.g., CUB Br. at 6 (describing WEPCO’s and WPSC’s approach as “lacking in analytical rigor” and the robust record in this docket as “flimsy at best”); *id.* at 7 (noting, as to MGE’s analysis, that “it would be valuable if the number of modeled scenarios were greater” and “considered a wider range of input variables” without stating what would have sufficed); *id.* at 21 (suggesting the Commission should require Joint Applicants to look at alternatives including “smaller units” and “different generation” without identifying what those might be).

¹⁴ CUB Br. at 7.

¹⁵ Direct-CUB-Singletary-r-9:7–9 (merely concluding that “additional considerations such as battery performance degradation rates and the impact of different modes of BESS operation . . . should be examined.”). At no point, on the record or in briefing, has CUB identified a proposal for these sensitivities at any level of specificity.

¹⁶ Direct-PSC-Grant-pr-16:5–18.

¹⁷ Direct-CUB-Singletary-r-9:16–18.

For the reasons stated in Section III.B.i. of the Utilities' initial brief, CUB's arguments are misguided. The Utilities will not repeat their arguments here, but reiterate that CUB's dispute concerns only the *degree* of value the Project will provide customers—not *whether* the Project has net economic value. And in any event, Staff witness Mr. Bacalao already examined a range of discount rates from 5.22% to 11.22%.¹⁸ An even lower discount rate would only make the Project appear more valuable in current dollars, and CUB makes no attempt to support a discount rate exceeding 11%. Notably, even at that level, and even applying the discount rate to the whole Project, the NPV reduction to customer benefits is less than ten percent of the Project's cost.¹⁹

The fact is that CUB is trying to displace standard methodology when this docket presents no special reason to do so. That FERC and this Commission each applied a customer-focused discount rate *one time*, in proceedings very different from this one, is no reason to abandon WACC and endorse CUB's approach. The Commission's decision permitting customer discount rates to be used was in an advance plan docket over thirty years ago.²⁰ And the federal decision is a twenty-six-year-old case involving relicensing of several hydroelectric projects where the D.C. Circuit merely upheld FERC's decision as not arbitrary or capricious.²¹ That CUB had to reach so far back and so far afield leaves no doubt that its argument is a stretch.

CUB's challenge to WEPCO's and WPSC's modeling of natural gas prices is similarly unconvincing. CUB asks the Commission to reject a long-standing industry tool for forecasting natural gas prices (EIA's Annual Energy Outlook) and instead require the Utilities to model an arbitrary range of natural gas prices that CUB itself proposes: \$2.00/MMBtu to \$8.00/MMBtu.²²

¹⁸ Direct-PSC-Bacalao-r-11-12.

¹⁹ *Id.* (an 11.22% discount rate reduces NPV by \$34 million, or 7.85% of the Project's \$433 million cost).

²⁰ *In re Advance Plans for Construction of Facilities*, 1989 WL 418616 (1989).

²¹ *N. California Power Agency v. F.E.R.C.*, 37 F.3d 1517, 1518-22 (D.C. Cir. 1994).

²² CUB Br. at 16-17.

For the reasons stated in Section III.A. of the Utilities' initial brief, the Commission should reject this argument. The Utilities tested a range of nominal prices increasing from below \$3.00/MMBtu to nearly \$9.00/MMBtu over the life of the Project.²³ The Project was economical under all prices within this range. To model *real* prices ranging from \$2.00 to \$8.00 for *every year* of the expected life of the units, as CUB now demands, would simply be doing more math.²⁴ So as fervent as CUB's one-man crusade against EIA's Annual Energy Outlook may be, CUB has identified no record basis for the Commission to depart from its long-standing acceptance of this useful and routinely used planning tool.

CUB's final proposed sensitivities pertain to BESS and, aside from a single passing reference, were raised for the first time in CUB's brief.²⁵ If CUB considered these sensitivities important, it should have proposed them in detail, either in testimony or via data requests. Now—with the record closed—is not the time to do so. Regardless, CUB's ultimate request (to quantify the risk of obsolescence) is something CUB could have done to support its own argument. The Utilities are confident in the BESS technology and have taken steps to mitigate any risks, as explained in their initial brief and below in response to WIEG's arguments.

Finally, the Commission should reject all of the conditions CUB seeks to impose on Project approval. The Commission lacks authority to evaluate the GRP as an IRP. CUB's additional sensitivities would not be useful. And requiring the Utilities to notify and seek Commission approval the moment costs exceed the \$433 million project estimate is unreasonable and unwarranted for the reasons stated at pages 16 to 17 of the Utilities' initial brief.

²³ Direct-WEPCO WPSC-Gerlikowski-pr-21 (Figure 4).

²⁴ That is not to say natural gas prices are *irrelevant* in this docket – only that they are not “especially critical to the discussion in this docket,” as CUB insists (CUB Br. at 14, n. 9). CUB's assertion that the GRP “includes a significantly increased proportion of natural gas” (*id.*) is not supported by Direct-CUB-Kihm-2, the only record evidence CUB cites in support of this assertion.

²⁵ Direct-CUB-Singletary-r-9:7–9.

II. The Commission should reject WIEG’s demand to impose a PPA or PPA-like conditions, which would amount to denying the Application.

WIEG expressly states that it does not challenge the Utilities’ need for the Project or their economic analysis.²⁶ Instead, WIEG focuses entirely on the BESS portion of the Project, arguing that Applicants should not be authorized to own the Project, but rather should transform their proposed contract with Invenergy into a PPA. Alternatively, WIEG proposes imposing PPA-like protections for customers, yet WIEG fails to identify what protections it seeks.²⁷ WIEG’s concerns about BESS are that: (1) it is costly; (2) the technology may not perform as expected; and (3) the technology—or some of its components—may become obsolete.²⁸

WIEG’s concern with the cost of BESS is primarily focused on the total cost of all BESS projects in the GRP, not Paris alone.²⁹ WIEG expresses concern over the “very ambitious Generation Reshaping Plan,” the “speed at which the replacement is to take place,” and the “extraordinary total cost of WEPCO’s and WPSC’s generation reshaping plan.”³⁰ WIEG even suggests that approving the Paris Project would somehow constitute approval for projects pending in four other dockets: “If the Commission finds that it must decide whether the GRP is reasonable before approving the Paris Project in this proceeding, it seems that such a finding could be expected in all of the [individual GRP] cases.”³¹

Like CUB, WIEG either misunderstands or misstates the question before the Commission, which is whether Applicants should be permitted to acquire the Paris Project. This question does not require the Commission to “approve” the GRP, nor does it ask the Commission

²⁶ WIEG Br. at 3.

²⁷ WIEG recommends “order points” to protect ratepayers (WIEG Br. at 4) and “ratepayer protections” (*id.* at 6), but never proposes any such protective terms.

²⁸ WIEG Br. at 5–7.

²⁹ *Id.* at 2.

³⁰ *Id.* at 2.

³¹ *Id.* at 5.

to approve any project other than Paris. That question comes down to whether the Paris Project comes at a good price and will provide a net present value to customers.³² It does and it will, and WIEG expressly disavows any argument to the contrary.³³

WIEG's second concern wholly ignores the steps that the Utilities have taken to mitigate any performance risks that BESS may pose, including negotiating a two-year warranty and periodic augmentation with Invenergy. It also fails to wrestle with the Utilities' argument that owning the Project will allow them to manage risks better than under a PPA.³⁴

WIEG's third concern is misguided. The fact that newer or even better technology may come along while the Utilities are operating BESS will not inherently make the BESS technology obsolete.³⁵ Most offices still make good use of landline telephones despite the advent of cellular technology, and no one would argue that analog watches, fireplaces, or hammers lost all value when digital watches, modern HVAC systems, or nail guns entered the scene.

Finally, even if WIEG's concerns were valid, its proposed solutions are entirely hypothetical. WIEG theorizes that Invenergy should have no problem entering into a PPA tomorrow because it indicated openness to that approach in its application for a CPCN.³⁶ Invenergy submitted that application nearly two years ago, in February 2020.³⁷ Since then, it has been negotiating the terms of a sale to Joint Applicants. Invenergy never offered the Utilities a PPA and the Utilities did not request one because they determined that owning the Project would provide their customers more benefits.³⁸ Now, two years into those negotiations, requiring the Utilities to transform their acquisition into a PPA would amount to denying their Application.

³² WEPCO and WPSC Br. at 4–5.

³³ WIEG Br. at 3.

³⁴ Rebuttal-WEPCO WPSC-O'Connor-4:1–2.

³⁵ *Id.* at 5:1–8; Surrebuttal-WEPCO WPSC-Hagerty-r-2:12–20.

³⁶ WIEG Br. at 8–9.

³⁷ PSC Docket 9801-CE-100.

³⁸ Sur-surrebuttal-WEPCO WPSC-Gerlikowski-5:8–16; Ex.-WEPCO WPSC-Gerlikowski-2c at 2–3.

A PPA is simply not the deal on the table. Nor are the hypothetical terms that WIEG demands—but never spells out—necessary to protect customers from risks. The Utilities have already negotiated a warranty for and periodic augmentation of the BESS capacity. Any additional risk-shifting to Invenergy would come at a price and there is no guarantee Invenergy would even agree to such a deal. Other utility-scale BESS projects across the country and the globe demonstrate the value the Paris Project will deliver to the Utilities’ customers.³⁹ The Commission should not deny customers these benefits simply because BESS is a relatively new technology, or because particular intervenors have marching orders to stoke fear and seek delay.

CONCLUSION

Applicants have demonstrated a need for the Paris Project and have shown that it will provide customers economic value. There is no statutory basis to deny the Application and no reason to impose the conditions that CUB and WIEG request. The Project will help the Utilities reduce their carbon footprint and deliver affordable, reliable, and clean energy to customers. WEPCO and WPSC respectfully request that the Commission grant their Joint Application with MGE and, in doing so, take a decisive step towards Wisconsin’s cleaner energy future.

Dated this 26th day of January, 2022.

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³⁹ Rebuttal-WEPCO WPSC-Hagerty-r-17:10–22.

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