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Public Service Commission of Wisconsin
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PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Dominion Nuclear Projects, Inc. and Dominion Energy 9812-EI-100
Kewaunee, Inc. for approval of the Sale of Dominion Energy
Kewaunee, Inc.'s Stock to EnergySolutions, LLC

ORDER ON REQUESTS FOR INTERVENTION AND PARTY STATUS

This Order, pursuant to Wis. Admin. Code §§ PSC 2.04(1) and PSC 2.21, processes the pending requests for intervention filed in both Docket No. 5-EI-136 and this docket. This Order also clarifies the party status of other filers in the instant docket.

BACKGROUND

This docket originates from conditions placed on the approval of transfer of ownership of the Kewaunee Nuclear Power Plant (KNPP) from Wisconsin Public Service Corporation (WPSC) and Wisconsin Power and Light Company (WPL) to Dominion Energy Kewaunee, Inc. (DEK). Final Decision, Docket No. 5-EI-136 ([PSC REF#: 32803](#)). The Commission's primary statutory duty is to protect the consuming public. *Wisconsin Power & Light Co. v. Public Service Comm'n*, 45 Wis. 2d 253, 259, 172 N.W.2d 639 (1969). In Docket No. 5-EI-136, this duty took the form of restoring a "local voice" in the key areas of nuclear waste storage, decommissioning, and the reliability of Wisconsin's electric system . . ." Final Decision (Docket No. 5-EI-136) at 36. The Commission viewed the Proffered Conditions contained in the Final Decision, among other ratepayer benefits, as "essential" to its determination that the original sale of KNPP was in the public interest. Final Decision (Docket No. 5-EI-136) at 37.

The Proffered Conditions that triggered the instant docket are:

- DEK must seek Commission approval for the sale of KNPP, or DEK, to a third party. Proffered Condition 4, Final Decision, Exhibit B.

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- DEK must grant WPSC and WPL a right of first refusal (ROFR) to purchase KNPP. Proffered Condition 8, Final Decision, Exhibit B.
- DEK, must commit to the return to ratepayers any funds that remain in the Dominion Energy Kewaunee Qualified Decommissioning Trust Fund for KNPP after the completion of all KNPP decommissioning activities. Proffered Condition 9, Final Decision, Exhibit B.
- A subsequent third party purchaser of KNPP or DEK must commit to be bound by the same conditions set forth in this Exhibit B. Proffered Condition 11, Final Decision, Exhibit B.
- WPSC and WPL must to seek a Commission declaration on the prudence of the exercise or waiver of their ROFR to purchase KNPP, triggered upon receipt of a notice of Bona Fide Offer to purchase DEK by a third party. ROFR, Final Decision, Attachment A.

On May 27, 2021, in Docket No. 5-EI-136, and on June 16, 2021, in the instant docket, Dominion Nuclear Projects, Inc., and DEK (Applicants) applied for approval of the sale of DEK's stock to EnergySolutions, LLC (EnergySolutions). DEK shutdown KNPP in 2013, and began the decommissioning process. If approved, the proposed sale will result in EnergySolutions becoming responsible for completing KNPP decommissioning. Application ([PSC REF#: 412242](#) and [PSC REF#: 413730](#)).

On July 9, 2021, WPSC and WPL filed a petition in the instant docket for declaratory ruling on the prudence of their decision to waive their ROFR with respect to the proposed sale. Petition ([PSC REF#: 415591](#)). The Notice of Proceeding ([PSC REF#: 418610](#)), opened this docket to consider both the proposed sale, and prudence declaration.

REQUESTS FOR INTERVENTION

At various times, both before and after the issuance of the Notice of Proceeding, the Commission received requests for intervention in both Docket No. 5-EI-136 and the instant docket. Because the Commission consolidated all matters with respect to the conditions triggered by the

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proposed sale into the this docket, an entity approved as a party in this Order, will be a party to the instant docket regardless of which docket it filed its request to intervene.

The Commission received the following unopposed requests to intervene, and this Order, pursuant to Wis. Admin. Code §§ PSC 2.04(1) and PSC 2.21, grants those requests:

- Citizens Utility Board ([PSC REF#: 415039](#))
- Wisconsin Industrial Energy Group ([PSC REF#: 419401](#))
- EnergySolutions ([PSC REF#: 412248](#))¹

The Commission received the following requests to intervene for which Applicants and EnergySolutions (Opponents) oppose:

- NorthStar Group Services (NorthStar) ([PSC REF#: 413720](#))² and ([PSC REF#: 413747](#))³. (NorthStar Request).

The NorthStar Request generated numerous filings, in support and in opposition.⁴ The NorthStar Request asserted both intervention by right under Wis. Admin. Code § PSC 2.21 (1), and permissive intervention, under Wis. Admin. Code § PSC 2.21 (2).

INTERVENTION BY RIGHT

It is settled law that, “[i]n determining whether a person has a right to intervene, the Commission applies a two-part test: (1) has the petitioner demonstrated that it has or will suffer

¹ Filed in Docket No. 5-EI-136, in compliance with Proffered Condition 11, Final Decision, Exhibit B

² Filed in Docket No. 5-EI-136.

³ Filed in the instant docket.

⁴ Dominion Nuclear Projects, Inc. and Dominion Energy Kewaunee, Inc.'s Response to NorthStar Group Services, Inc.'s Request to Intervene (DEK Response) ([PSC REF#: 414523](#)), EnergySolutions, LLC's Opposition to Request to Intervene And Notice of Appearance of NorthStar Group Services, Inc. ([PSC REF#: 414591](#)), NorthStar Group Services, Inc.'s Response to Objections to Intervention. (NorthStar Response) ([PSC REF#: 415917](#)), Dominion's Sur-Reply to NorthStar Group Services, Inc.'s Response to Objections to Intervention. ([PSC REF#: 416359](#)), and the Request to Intervene of the Citizens Utility Board and Statement of Support for the Intervention Request of NorthStar Group Services, Inc. ([PSC REF#: 415039](#)).

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an injury in fact; and (2) is that injury to an interest the law seeks to regulate or protect.” *Order on Request to Intervene*, Docket No. 6680-CE-176 at 3. ([PSC REF#: 273536](#)).

This Order denies NorthStar’s request to intervene by right because NorthStar asserts no legally protected interest that the outcome of this proceeding would injure. To support its claim to intervention by right, NorthStar asserts that “[t]he disposition of this proceeding will directly impact NorthStar’s substantial interest in having an opportunity to decommission [KNPP].” NorthStar Request at 3.

However, the interest NorthStar describes is merely that of a competitor and, “the interest of a competitor, without more, is insufficient to confer standing.” *Order*, Docket No. 5-EI-136 at 5. ([PSC REF#: 14815](#)) (Entergy Nuclear, Inc. (ENI) Intervention Order) at 5 (citing *MCI Telecommunications Corp. v. Public Service Commission*, 164 Wis. 2d 489, 476 N.W. 2d 575 (Ct. App. 1991)). NorthStar fails to show the existence of a protected right to compete for the decommissioning of KNPP, so it has no right to intervene in this proceeding.

PERMISSIVE INTERVENTION

Permissive intervention allows a person who cannot intervene by right to, “nevertheless intervene in a proceeding . . . if the person's participation likely will promote the proper disposition of the issues . . . and if the person's participation will not impede the timely completion of the proceeding . . .” Wis. Admin. Code § PSC 2.21(2).

Opponents to NorthStar’s permissive intervention focus on a limited view of the issues directly related to the Proffered Conditions with respect to the proposed sale. DEK Response at 11-12. Opponents point out that these issues include neither: 1) the cost of decommissioning, nor 2) the choice of decommissioning provider. Opponents conclude that because NorthStar

proposes to introduce facts about such matters, its participation will fail to promote the proper disposition of the issues, confuse the record, and cause unnecessary delay. *Id.*

However, the issues in this proceeding go far beyond the limitations subscribed by Opponents. The Final Decision explained that DEK, WPSC, and WPL, by agreeing to the Proffered Conditions, “recognize[ed] ongoing Commission authority over the plant owner's financial viability, decommissioning funds, ratepayers' entitlement to these funds, and actual decommissioning to greenfield status.” Final Decision (Docket No. 5-EI-136) at 36-37. The Proffered Conditions that triggered this proceeding invoked this authority. Upon that authority, the Commission opened this proceeding to determine both the appropriateness of the proposed sale, and the prudence of waiving the ROFR. By combining both matters into one investigation, the Commission recognized these matter interrelate, as do the facts necessary to decide them.

A summary of the prudence review standard reveals the close relationship between the sale and waiver issues. The Wisconsin Court of Appeals has defined ‘prudence’ in the context of utility regulation as:

Carefulness, precaution, attentiveness, and good judgment, as applied to action or conduct.... This term, in the language of the law, is commonly associated with ‘care’ and ‘diligence’ and contrasted with ‘negligence.’

Wisconsin Public Service Corporation v. Public Service Commission, 156 Wis. 2d 611, 617, 457 N.W.2d 502 (Ct. App. 1990) (citations omitted).

Imprudence, according to the court, is the waste of assets, lack of caution, or the failure to take reasonable steps to protect assets. *See id.* at 619. These practices by definition are unreasonable and, therefore, subject to disallowance in rates by the Commission. *Id.*

NorthStar claims to be an expert in nuclear plant decommissioning. NorthStar Request at 4. NorthStar asserts that it can demonstrate the existence of a less expensive alternative to completing KNPP decommissioning than that proposed by EnergySolutions. NorthStar Request

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at 4-6. NorthStar states that it can bring to bear facts with respect to EnergySolutions' financial condition, and decommissioning track-record. NorthStar Response at 12-13.

WPSC's and WPL's waiver of the ROFR, but for Commission intervention, will result in EnergySolutions becoming the decommissioning provider for KNPP. After the completion of KNPP decommissioning, any funds not expended from the Dominion Energy Kewaunee Qualified Decommissioning Trust Fund for KNPP returns to ratepayers. NorthStar claims it will bring to bear its expertise to show that by waiving of their ROFR, WPSC and WPL tacitly: 1) committed ratepayers to paying a higher decommissioning cost than was otherwise available, 2) committed ratepayers to decommissioning by a financially unstable, or otherwise unreliable provider, or 3) both. Such evidence could demonstrate that the waiver resulted in an imprudent waste of ratepayer assets.

Furthermore, the Commission has articulated that a prudence review does not introduce facts gained from hindsight, but, "investigates whether the management of the utility applied good judgment given the situation at the time it made the decision at issue." *Amended Findings of Fact, Conclusions of Law, and Order*, Docket No. 6680-UR-110 at 10. (PSC REF#: 3352).⁵ Because NorthStar engaged in negotiations to purchase the ROFR from WPSC and WPL, it is likely that NorthStar possesses unique insight and perspective on WPSC's and WPL's decision-making process, and the facts they knew at the time they made their decisions.

The NorthStar Request contains many similarities to the intervention request of ENI in the proceeding that spawned the Final Decision (Docket No. 5-EI-136). When evaluating that request, the ALJ (after rejecting ENI's claim to intervention by right on competitive grounds)

⁵ This document is no longer available on the Commission public facing Electronic Regulatory Filing System, therefore, a copy of this order is attached as Appendix A.

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accepted ENI's claim to permissive intervention because: 1) "[a]t a minimum ENI's business activities suggest that it has information or expertise that will assist the Commission, especially in light of the unusual subject matter of this proceeding... [and, 2)] the Commission will also benefit from hearing testimony from a different perspective." ENI Intervention Order (Docket No. 5-EI-136) at 6-7.⁶

NorthStar asserts unique experience and expertise in the field of nuclear decommissioning, and first-hand knowledge of the particular transactions at issue. Therefore, NorthStar's participation likely will promote the proper disposition of the issues. Also, because the Commission has yet to set a schedule for this proceeding, NorthStar's participation will not impede its timely completion. For these reasons, the Order grants NorthStar permissive intervention, subject to the conditions explained the next section.

CONDITIONAL INTERVENTION

NorthStar's grant of permissive intervention relies, in part, on assertions made by NorthStar CEO Scott E. State, in an affidavit and separately filed exhibits.⁷ However, the Commission received an unsigned version of this affidavit. NorthStar shall file a fully executed and notarized copy of this affidavit, with referenced exhibits attached, no later than five days after the issuance of this Order. Failure to comply will rescind the grant of intervention without further order.

⁶ Subsequently, ENI withdrew its intervention, and did not participate in Docket 5-EI-136. Letter to Lynda Dorr. ([PSC REF#: 15095](#)).

⁷ [PSC REF#: 415918](#) Affidavit of Scott E. State in Support of NorthStar's Response to Objections to Intervention
[PSC REF#: 415919](#) Ex. A to Affidavit of Scott E. State
[PSC REF#: 415920](#) Ex. B of Affidavit of Scott E. State
[PSC REF#: 415921](#) Ex. C to Affidavit of Scott E. State
[PSC REF#: 415922](#) Ex. D to Affidavit of Scott E. State
[PSC REF#: 415923](#) Ex. E to Affidavit of Scott E. State
[PSC REF#: 415924](#) Ex. F to Affidavit of Scott E. State
[PSC REF#: 415925](#) Ex. G to Affidavit of Scott E. State

PARTY STATUS OF OTHER FILERS

This Order clarifies that WPSC and WPL are parties to this proceeding. Neither WPSC nor WPL filed either a request to intervene or a notice of appearance in either Docket No. 5-EI-136 or the instant docket. However, they filed the Petition.⁸ Under Wis. Admin. Code § PSC 2.20 (c), a person filing a petition is a “petitioner,” and a party to the proceeding.

To add more representatives to the service list, WPSC and WPL shall file respective Notices of Appearance.



Michael E. Newmark
Administrative Law Judge

MEN:jac DL:01830034

⁸ WPSC and WPL titled the Petition as a “Request...for a Declaratory Ruling.” However, statute governs a declaratory ruling and requires its initiation by “petition”. *See* Wis. Stat. § 227.41 (1).

Appendix A

Date Mailed June 19, 2001

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of the Wisconsin Power and Light Company, as an
Electric, Water and Natural Gas Public Utility, to Change
Electric, Water and Natural Gas Rates

6680-UR-110

**AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

This Amended Order arises out of the application of Wisconsin Power and Light Company (WP&L) for authority to increase electric rates in 2001 due to an emergency or extraordinary increase in fuel costs. The application is APPROVED, in part, subject to conditions.

Introduction

WP&L is a public utility as defined in Wis. Stat. § 196.01, engaged in the production, transmission, distribution, and sale of electric energy in various areas across the southern portion of Wisconsin from Grant County on the west to Walworth County on the east and generally northward through the central part of the state to Wood and Menominee Counties.

On April 29, 1997, the Commission issued an order in this docket establishing rates for WP&L based on a 1997 test year and a biennial period ending December 31, 1998. That order set rates for electric fuel costs based on a monthly fuel cost estimate, and reinstated the monitoring of fuel costs for WP&L under Wis. Admin. Code ch. PSC 116 (Fuel Rule). The Fuel Rule establishes a system of monthly reporting of electric fuel costs and a process for adjusting rates, after hearing, if actual costs deviate more than an allowed percentage from the fuel cost estimate on an annual basis.

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On November 5, 1997, the Commission issued an order in docket 6680-UM-100 approving the merger of Interstate Power Company, IES Industries, Inc., and WP&L Holdings, Inc. including its affiliate, WP&L. As a condition of the merger, the Commission ordered a freeze on WP&L's retail rates for four years. The merger order contained an exception to this condition that allows rates to change under the Fuel Rule.

On December 20, 2000, WP&L filed an application for an electric rate increase under Wis. Admin. Code § PSC 116.06. The application stated that WP&L's fuel costs had exceeded the cumulative ranges in 2000 and that they will exceed its annual variance in 2001. WP&L's application requested an electric increase of \$72.5 million on a Wisconsin retail basis for 2001. WP&L's application requested that the Commission either implement a surcharge on an interim basis, or if a surcharge could take effect by February 1, 2001, that the increased fuel costs be deferred. Prior to this application, WP&L requested and received, with modifications, three upward adjustments to its original fuel cost estimate resulting in the implementation of three surcharges to WP&L's rates.

On December 22, 2000, the Commission, in its order in docket 1-AC-202, amended Wis. Admin. Code §§ PSC 116.06(1) and 116.06(2) (Emergency Rule). These provisions of the Fuel Rule involve the trigger under which the Commission may consider an increase in the cost of fuel an extraordinary increase. The Emergency Rule allows a utility to seek a rate increase based on fuel cost projections for the year in which it is reasonably anticipated that the rate increase would go into effect, provided those estimated fuel costs would exceed the utility's annual range.

Also on December 22, 2000, the Commission reopened docket 6680-UR-110 under Wis. Stat. § 196.39, to consider WP&L's application for an increase in rates and issued a Notice of

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Hearing. Hearings were held on Wednesday, January 19, 2001, before Administrative Law Judge Jeffrey Patzke to consider the need for and the amount of an interim surcharge, as well as the appropriate rate design, to recover increased fuel costs.

On February 8, 2001, the Commission issued its Interim Decision in this proceeding. The Commission approved WP&L's application, in part, with a surcharge, subject to refund, resulting in an estimated \$46,398,000 increase in electric revenues on an annual basis.

After issuing the Interim Decision on this request, the Commission proceeded with further hearings to establish a final fuel surcharge. These hearings, noticed on March 16, 2001, were held on April 24 and 25, 2001, in Madison and April 26, 2001 in Janesville. The parties for purposes of review under Wis. Stat. § 227.47 are listed in Appendix A to this order.

Final surcharges as shown in Appendix C are authorized for retail electric service resulting in an estimated \$57,757,000 increase in electric revenues on an annual basis. These surcharges are in addition to the fuel cost surcharges authorized in this docket on July 15, 1998, March 3, 1999, and May 4, 2000. Electric revenues resulting from this surcharge are subject to refund and interest at WP&L's short-term debt rate to be determined at the time the Commission decides that a refund is due to WP&L's ratepayers. This increase is to replace the increase set forth in the Commission's interim order in this docket issued February 8, 2001.

Findings of Fact

1. The existing rates for WP&L, which are derived from the cost of fuel, as provided in the May 4, 2000, order in this docket, are unjust and unreasonable because such rates are inadequate.

2. WP&L's filed request meets the conditions of the Emergency Rule.
3. The approved 2001 fuel cost estimate on a total company basis is \$306,687,087.
4. The increase to WP&L's fuel cost estimate allocated to the Wisconsin retail jurisdiction is \$57,757,000.
5. WP&L was imprudent when it entered into a contract with RockGen Energy to purchase capacity and energy from RockGen Energy LLC on August 10, 1998 (hereafter referred to as the "RockGen Contract") based on an unsupported and unsupportable set of assumptions upon which the contract appeared to save ratepayers money. This contract created potential economic risk to ratepayers that far outweighed its potential economic benefits. Full rate recovery of WP&L's costs associated with the purchase of capacity and energy from Rock Gen is therefore, unreasonable and unjust.
6. To create WP&L's new 2001 fuel cost estimate it is reasonable to do the following:
 - Include the fuel costs associated with 2001 load and to calculate these costs by rerunning the ENPRO (economic dispatch) model.
 - Reflect actual contracted capacity costs for 2001, excluding the capacity costs related to WP&L's purchase power contract with Duke Energy Trading and Marketing.
 - Use the 12-month NYMEX futures strip to forecast natural gas prices for 2001 considering that any revenue that WP&L may over collect on an annual basis is subject to refund as a condition of this order.
 - Use an average of historical prices for 1999 and 2000 Wisconsin Basis, as published in *The Energy Connection*, to forecast natural gas costs on a Wisconsin basis for 2001.
 - Exclude costs associated with the Commonwealth Edison Company (CEC) purchase power contract (CEC Contract) incurred in 2000 from forecasted and actual 2001 fuel costs to reflect proper accrual accounting.

- Include costs of the CEC Contract at the estimated contract capacity and energy prices on an accrual basis.
- Include the Morgan Stanley purchase power costs allocated among the utility affiliates as required by the System Coordination and Operating Agreement.
- Include on-peak energy prices for purchase power based on historical actual on-peak energy prices and Commonwealth Edison Company Hub (CEC Hub) futures prices for non-summer months and, for the summer months, prices of \$70 per MWh for June and \$80 per MWh for July and August.
- Include on-peak sales for resale opportunity revenues at the incremental cost of gas-fired generation plus a small margin for the summer months and at the CEC Hub prices for the non-summer months.
- Reflect updated information concerning Nelson Dewey petroleum coke prices, wind energy purchases, power plant equivalent forced outage rates, WP&L's voluntary green pricing program, revised power plant outage schedules and correction to the ENPRO dispatch model to include CEC Contract minimums.
- Include in fuel costs the actual fuel costs incurred for January, February, and March of 2001.
- Limit rate recovery for costs anticipated from purchases from RockGen by a formula that caps the anticipated cost of energy at the point at which the total cost of a transaction with RockGen parallels the running cost of a proxy-generating unit.

7. To collect the rate increase approved herein, it is reasonable to allocate the increases in energy related costs that have been identified with the production and purchase of on-peak and off-peak energy, respectively, among the various customer classes based upon class on-peak and off-peak energy consumption.

Conclusions of Law

1. WP&L is a public utility as defined in Wis. Stat. § 196.01(5)(a) and is operating as an electric, natural gas, and water public utility.

2. The Commission has authority under Wis. Stat. §§ 196.02, 196.03, 196.06, 196.20, 196.37, 196.39, 196.395, 196.70, and Wis. Admin. Code ch. PSC 116 to issue the following decision amending its prior order in this docket, subject to the conditions specified herein.

Opinion

2001 Fuel Costs

In its application, WP&L indicated that it expects its actual fuel costs for 2001 will exceed its currently authorized fuel cost by 44.34 percent, which is outside its authorized fuel range for monitoring fuel costs of plus or minus 3 percent on an annual basis. For this reason the Commission finds WP&L's filing meets the conditions of the Emergency Rule. WP&L's filing requested a rate increase of \$72.5 million on a Wisconsin retail basis for 2001. At the hearing to determine interim rates in this proceeding, WP&L modified its requested increase to \$65.9 million on a Wisconsin retail basis to reflect more current forward prices from the CEC Hub to forecast the cost of purchased power and more current NYMEX futures prices to forecast the cost of natural gas.

The Commission finds WP&L's existing rates derived from the cost of fuel, as provided in the May 4, 2000, order in this docket, are unjust and unreasonable because such rates are inadequate. For this reason, the Commission approves a new estimate of fuel costs for 2001 of \$306,687,087 based on 14,175,141,000 net kWh produced, as shown in Appendix D. Appendix B shows the allocation of the cost increase to the Wisconsin retail jurisdiction of \$57,757,000.

2001 Load Growth

At the inception of the fuel rules in 1985, utilities filed annual rate cases. Application for rate adjustments under the Fuel Rule (fuel cases) were filed on the basis of the test year forecast from the most recent full rate case. The Commission's practice in that timeframe was to not update the sales forecast in the fuel case since any difference between the test year forecast from the rate case and a revised forecast submitted by a utility would likely not be material. In order to incorporate the new load, Commission staff would have had to review the utility's new sales forecast, and this would add to the time necessary to complete the fuel audit. Since fuel cases, by definition, are emergency or extraordinary in nature, there was no good reason to take the additional time to determine a new sales forecast, given that a revised sales forecast typically was not materially different than the original test year forecast. Also, the market for purchased power was generally stable based on cost plus a margin for profit, such that the incremental cost of serving new load was not that far different from the cost of serving the historical load on a cost per kWh basis.

Annual rate cases are no longer required. For the past several years, electric utilities have generally filed a rate case every other year. The discrepancies between forecasts of current load and the load forecasted in the most recent rate case are potentially much larger as the time between the original rate case and the fuel filing increases. Also the purchase power market is no longer cost-based and is increasingly volatile. Utilities must now pay market prices for electricity, which has substantially increased the overall cost to serve load and especially the cost to serve incremental load. Furthermore, as a result of the rate freeze ordered in docket 6680-UM-100, WP&L has not filed a base rate case since 1997; therefore, the load growth WP&L experienced since that time is not accurately reflected in the current fuel cost estimate.

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As a result, the Commission finds it is appropriate in this proceeding to incorporate the fuel costs associated with incremental load for 2001 to provide WP&L the opportunity to recover its actual expected fuel costs for the remainder of this year.

Purchase Power Capacity Costs

In 1994, the Commission issued an order in docket 1-AC-143 to establish the appropriate application of electric fuel rules within the biennial rate case process. In that order, the Commission interpreted all purchase power capacity costs and related transmission wheeling costs as costs of fuel. The Citizens' Utility Board (CUB) requested that the Commission exclude WP&L's costs for additional capacity purchased to meet planning reserves from WP&L's requested fuel cost rate increase. In the context of this proceeding, the Commission decided not to deviate from the 1-AC-143 order. The Commission is addressing changes to the policy established in docket 1-AC-143 in its current consideration of permanent changes to the Fuel Rule in docket 1-AC-197. To create WP&L's new 2001 fuel cost estimate, therefore, it is reasonable to reflect actual contracted capacity costs for 2001, excluding the capacity costs related to WP&L's purchase power contract with Duke Energy Trading and Marketing (Duke Contract). The next sections discuss the Commission's exclusion from rate recovery of the costs incurred under the Duke Contract.

RockGen Purchase Power Contract Costs

The Commission must allow a utility a reasonable opportunity to collect in rates all anticipated costs of utility service reasonably incurred for a set future period. Wis. Stat. § 196.37(1). To set just and reasonable rates, the Commission must decide to what extent a

utility's claimed anticipated cost of service is accurate and justified. The Commission may disallow, from rates, the recovery of a utility's claimed anticipated cost of service that the Commission finds unreasonable. Wis. Stat. § 196.37(2). This authority simultaneously ensures that a utility has the opportunity to be adequately compensated for its services regulated within Commission jurisdiction and fulfills the Commission's primary statutory duty to protect the consuming public. *Wisconsin Power & Light Co. v. Public Service Comm'n*, 45 Wis. 2d 253, 259 (1969). Rate setting, therefore, involves balancing utility and ratepayer interests.

When considering a utility's rate increase request, it is the Commission's responsibility to evaluate the prudence of a utility's anticipated cost of service. The issue of prudence involves evaluating a utility's past management decisions. The Wisconsin Court of Appeals has defined "prudence" in the ratemaking context as:

Carefulness, precaution, attentiveness, and good judgment, as applied to action or conduct...This term, in the language of the law, is commonly associated with "care" and "diligence" and contrasted with "negligence."

Wisconsin Public Service Corporation v. Public Service Commission, 156 Wis. 2d 611, 617 (Ct. App. 1990).

Imprudence, according to the court, is the waste of assets, lack of caution, or the failure to take reasonable steps to protect assets. These practices by definition are unreasonable and, therefore, subject to disallowance in rates by the Commission. *Id.* at 619.

When issues of prudence arise before the Commission, the utility is protected by a presumption that its actions were prudent and any party alleging imprudence has the burden of proof. In *Waukesha Gas & Electric Co. v. Railroad Commission*, 181 Wis. 281, 304 (1923), the Court held, "In the absence of satisfactory proof to the contrary it must be presumed that investment was prudently made." The Commission also recognizes that a prudence review does

not judge a utility's decisions with the benefit of hindsight. A prudence review, instead, investigates whether the management of the utility applied good judgment given the situation at the time it made the decision at issue.

In this case, WP&L seeks to recover in rates the cost it anticipates it will incur under purchase power contracts related to RockGen. The discussion below contains the basis upon which the Commission finds:

- WP&L's execution of these contracts was imprudent.
- WP&L's requested rate increase related to the costs under these contracts is unreasonable.
- The reasonable amount of rate recovery for the cost of service resulting from these contracts.

Finding of Imprudence Regarding the RockGen Contract and Associated Duke Contract

One of the questions before the Commission in this proceeding is whether it should allow full recovery of costs incurred by WP&L arising from its contract to purchase energy and capacity from RockGen LLC. Contract is commonly known as a "tolling arrangement" which fundamentally differs from a utility's traditional rate-based supply portfolio. In a rate-based plant, the utility invests its own capital to construct the plant. The Commission allows a utility to collect in rates a capacity payment to cover this cost along with a rate of return on the capital investment. In a tolling arrangement, the owner of the plant (who is independent of the utility) invests the construction capital and the utility pays a fixed capacity payment to the owner. The Commission allows the utility to collect the cost of this payment in rates. In terms of capital cost, rate-based units and tolling arrangements have been competitively priced.

The utility's cost of taking energy from a rate-based plant compared to that under a tolling arrangement is similar. The energy cost from a rate-based plant is set at the cost of operating the plant because the utility controls the dispatch of the electric generating unit, has rights to the full output of the plant, and provides the fuel to the generating unit. Like the rate-based option, the utility fully controls and pays for the operation of the plant under a tolling arrangement. More importantly, these energy costs follow the same predictable pattern as that of the traditional rate-based option. The Commission has approved rate recovery for the costs incurred from providing service from the rate-based option for decades. In a recent rate case, the Commission found WEPCO's costs to operate a plant under the terms of the tolling arrangement reasonable.¹ In subsequent rate cases the Commission has allowed full recovery of these costs in rates.

When deciding how to acquire its needed capacity, WP&L solicited and received bids from a number of independent power producers. Among these bids, WP&L received tolling arrangement proposals similar to the one chosen by WEPCO.² The record shows that according to WP&L's own screening cost analysis, for capacity factors greater than 1 percent, the RockGen proposal was more expensive when compared to any other bids. On August 10, 1998, however, WP&L entered into a power purchase agreement (RockGen Contract) with RockGen Energy LLC for 150 MW of firm power that would be generated at the 450 MW RockGen Energy Center (RockGen).

¹ Docket 6630-UR-111

² The record in this case also shows that when evaluating its bids for capacity, WEPCO rejected the concept of open-ended pricing similar to the RockGen Contract. WEPCO determined that a contract that obtained only the firm dispatch rights of a plant for planning reserve purposes and left energy prices to the market was too risky for its ratepayers given a reasonable forecast of the energy market and electrical system conditions at the time. Instead of making such an unnecessary gamble, WEPCO chose the more predictable tolling arrangement.

Under the RockGen Contract, WP&L pays a reduced capacity payment relative to the capacity payment associated with either a rate-based peaking unit or a tolling arrangement. WP&L's cost to take energy from RockGen, however, is not set as it is in the rate-base and tolling options. The energy cost under the RockGen Contract has no limit in that it is priced at the market rate for the day of the energy purchase. WP&L contends that this arrangement provided the capacity to meet required planning reserves at the least cost to ratepayers. This is only true, however, when one assumes, as WP&L did at the time it executed the Contract, the following set of conditions:

- Market prices for energy would fall significantly in the near future.
- WP&L would only need the planning reserve capacity from RockGen at a 0.03 percent capacity factor, in other words, one day out of ten years.
- The “virtual transfer capacity mechanism” (VTCM) involved in the RockGen Contract provided a hedge on the market price of energy under the contract, if WP&L was forced to take energy from the RockGen facility.

The following section addresses the merits of each of these assumptions and explains why WP&L acted imprudently when it relied on these assumptions as the basis for executing the RockGen Contract.

High market energy prices existed at the time WP&L executed the RockGen Contract. Purchasing energy from RockGen at these prices would have been much more expensive than getting the same energy from a rate-based plant or through a tolling arrangement. The record shows that if energy prices decreased in the future, the maximum possible annual savings to ratepayers would be less than \$2 million. If energy prices did not decrease, the extra cost to ratepayers relative to a utility-owned generation unit or a non-utility owned tolling arrangement would have no limits. WP&L apparently assumed at the time it entered the contract that these

prices would decrease in the future. It conducted no quantitative analysis at the time to determine what risk a contract tied to this market would create in the future. The Commission finds that WP&L was, therefore, imprudent to rely on this assumption when entering into the contract.

WP&L believed it would only take energy from RockGen at a capacity factor of 0.03 percent, or one day out of 10 years. Based on this assumption, WP&L believed that it was not exposing ratepayers to unreasonable risk even if it had to pay high market prices on that day. The record shows that a utility is likely to use its capacity for planning reserve purposes during situations of extreme and unplanned weather conditions, forced outages at other plants, and sales underestimates. Production cost computer model runs, conducted by Commission staff, indicate that WP&L could end up taking energy from RockGen at up to, on average, a 7 percent capacity factor each year. Based on this quantitative analysis, purchases from RockGen become more expensive than producing the same amount of energy using a rate-based plant or through a tolling arrangement that WP&L could have constructed or entered into at the time WP&L executed the Contract. This amount of use far exceeds the capacity factor at which WP&L assumed it would use RockGen. WP&L could have conducted this computer modeling before entering into the Contract, but chose against conducting such analysis. WP&L was, therefore, imprudent to rely on this assumption when entering into the Contract.

WP&L contends that the VTCM included in the RockGen Contract provides a hedge on the market price of energy under the contract, if WP&L is forced to take energy from the RockGen facility. The existence of a hedge on market risk should, in WP&L's view, make the contract a prudent one. WP&L can take energy from RockGen on short notice. This a necessary

requirement when using a plant for planning reserves. At the time WP&L needs RockGen energy, however, RockGen may be supplying power to another customer. The VTCM allows WP&L to find another source of power for RockGen's existing customer and transfer that power to that customer. If WP&L finds this replacement power in a lower priced energy market, the Contract allows WP&L to take the energy from RockGen at this lower market price instead of paying the higher price that exists in Wisconsin. Under this scenario, WP&L ratepayers end up paying less than the Contract would otherwise require. WP&L claims the VTCM is, therefore, a hedge on local market energy prices, because when the local price is high, the VTCM allows WP&L to search other markets for a lower price.

The VTCM may theoretically mitigate the cost of high-energy prices in the local market. This theoretical ability to hedge, however, is of little practical use. The record indicates that the times WP&L will need to use RockGen most likely will be the times when its system experiences unexpected demand stress caused by the factors indicated above. If such conditions exist, the local market price for energy will likely rise. Historical analysis of periods before the execution of the Contract shows that, during these situations, the price of energy in local markets through the region rose. The record shows that this condition also currently exists. Such reactions in the markets that surround Wisconsin mean that price differentials upon which the VTCM theoretically rely will very rarely exist in reality. Also, constraints on the transmission system, existing at the time WP&L executed the Contract and which currently exist, limit the reach of the VTCM into more distant and, therefore, less interrelated markets. WP&L conducted no quantitative analysis at the time it executed the Contract to indicate if and when these conditions would change. At the time when ratepayers need mitigation of the market price the

most, market conditions and transmission constraints cause this mechanism to fail. By entering into a purchase power agreement that included no effective hedge related to market energy prices, WP&L imprudently placed ratepayers at great price risk.

The record demonstrates that the set of assumptions WP&L relied upon to predict that the RockGen Contract would create savings to the ratepayer was not reasonable at the time WP&L executed the Contract. At that time, the market price of energy was high. Variables that affect the future of this market, including the availability of generation and the condition of the transmission system were and still are uncertain. A utility traditionally uses its capacity for planning reserves much more than WP&L's assumed amount. Market conditions and restraints on the transmission system, known at the time and currently existing, make the use of the VTCM practically impossible. Before executing the RockGen Contract, WP&L conducted only a very limited quantitative analysis regarding these factors. WP&L contends that most of the assumptions it relied upon could not have been analyzed quantitatively at the time. WP&L entered into this Contract believing its set of assumptions would be correct; however, WP&L did not support or substantiate these assumptions. This action placed ratepayers at substantial economic risk and was imprudent. The costs associated with this Contract are, therefore, unreasonable.

Finally, the Commission recognizes that WP&L recently entered into a purchase power contract with the energy marketer Duke Energy Trading and Marketing under which, for a fixed fee, WP&L has the right to take energy from up to 150 MW of capacity from RockGen at a capped energy price (Duke Contract). This is the amount of capacity WP&L is already paying for to reserve firm energy under the RockGen Contract, but at market prices.

By entering into the Duke Contract, WP&L recognizes that the assumptions it made when evaluating the RockGen Contract were erroneous. The Duke Contract is an attempt by WP&L to fulfill a more realistic assessment of its generation needs. If WP&L had prudently evaluated and rejected the RockGen Contract before its execution, however, the Duke Contract would have been unnecessary. For this reason, the Commission concludes that the cost WP&L anticipates it will incur under both purchase power contracts related to RockGen is unreasonable.

For all the reasons stated above, the Commission finds WP&L was imprudent when it entered into the RockGen Contract based on an unsupported and unsupportable set of assumptions upon which the contract appeared to save ratepayers money. The RockGen Contract created potential economic risk to ratepayers that far outweighed its potential economic benefits. Full rate recovery of WP&L's costs associated with the purchase of capacity and energy from RockGen is, therefore, unreasonable and unjust.

WP&L's Defenses Related to the RockGen Contract

Finally, the Commission addresses WP&L's claim that our agency is estopped from denying any recovery of the costs incurred under the RockGen contract under a new theory of regulatory estoppel. WP&L asserts two reasons why the actions and an omission of the Commission during the appeal of the order approving the construction of the RockGen facility estop the Commission from denying recovery of contract costs in this proceeding: (1) The Wisconsin Supreme Court relied on statements of the Commission to approve the RockGen

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Certificate of Public Convenience and Necessity (CPCN) on appeal; and, (2) WP&L relied on these same statements to believe it would recover the costs related to the contract.³

In the CPCN proceeding to approve the construction of RockGen, RockGen Energy and WP&L moved to strike all testimony regarding the purchase power contract executed between RockGen and WP&L, on the basis that economic factors could not be considered in CPCN proceedings of wholesale merchant plants. The Commission allowed testimony on the contract to remain in evidence only for the purpose of evaluating non-economic issues.⁴ The Commission, therefore, honored the request of RockGen Energy and WP&L that the Commission not consider the prudence of the contract during the CPCN proceeding. The Commission made the following Finding of Fact:

19. The Commission makes no finding in this proceeding as to the reasonableness of the purchase power agreement executed between Alliant-WP&L and RockGen Energy (Exhibit 96).⁵

This CPCN order was appealed, ultimately to the Wisconsin Supreme Court. The issue on appeal of the CPCN order was limited to whether RockGen met the standards for expedited

³ On page 6 footnote 3 of its brief, WP&L states:

Thus although the Commission's Order during the RockGen CPCN proceeding indicated that it makes no finding as to the reasonableness of the RockGen contract, subsequent actions by the Commission (including advocating in favor of the RockGen contract and facility before Wisconsin's highest court) clearly indicates the Commission believes that the RockGen contract is reasonable and beneficial to Wisconsin rate payers.

⁴ Page 1 of the *Minutes and Informal Instructions of the Open Meeting of Tuesday November 24, 1998*.

⁵ Page 3 of the December 18, 1998, Order in Docket 9335-CE-101. *Application of RockGen Energy LLC (Polsky Energy Corporation) for Authority to Construct and Place in Operation a Simple-Cycle Combustion Turbine Generating Facility, Known as the RockGen Energy Center, to be Located in Dane or Rock County*.

CPCN processing under 1997 Wisconsin Act 204, § 96.⁶ The Legislature promulgated this non-statutory provision to respond to the reliability problems experienced in 1997 caused by a shortage of native capacity. The Commission's appellate brief made reference to the RockGen Contract for the specific and sole purpose of showing that the output of the facility would contribute to reliability because "[t]he bulk of the output of the RockGen generating facility most likely will be sold to utilities within Wisconsin..." Commission brief at page 34. The issue of rate recovery for costs incurred by WP&L under the RockGen Contract was not an issue on appeal. Contrary to WP&L's claim, therefore, the Commission's statements do not indicate that the Commission "believed" that the RockGen Contract was prudent in the context of cost recovery at issue in the present case.

The legal standard for equitable estoppel against an agency of state government places a high bar on the claimant. According to the Wisconsin Supreme Court, estoppel may lie generally when an action or non-action is alleged on the part of a government agency which, on the part of one against whom estoppel is asserted, induces reasonable reliance thereon by the other, either in action or non-action, which is to that party's detriment. *Wisconsin Dep't of Revenue v. Moebius Printing Co.*, 89 Wis. 2d 610, 634, 638, (1979). Estoppel will lie against a government agency, however, only if the conditions above are met, if the government's conduct would work a serious injustice, and if the public's interest would not be unduly harmed by the imposition of estoppel. One cannot assert estoppel against the government when the application

⁶ In *Responsible Use of Rural & Agric. Land v. PSC*, 2000 WI 129, the Wisconsin Supreme Court stated, at paragraph 51, "The Agreement facilitated, by bringing the project within § 96's expedited process, the construction of a plant that will add to instate electric generation capacity- 'a valuable addition to Wisconsin's electric energy portfolio.' Order at 5." Nowhere in the opinion does the Court address the issue of rate recovery of contract costs.

of the doctrine interferes with the police power for the protection of the public health, safety, or general welfare. *Id.* at 635-6.

WP&L's argument is puzzling since it entered into this contract in August of 1998, one year before the appeal of the CPCN order and the statements made therein. These facts show that it is impossible for WP&L to have reasonably relied on the statements the Commission made when WP&L executed the contract, because consummation of the contract occurred prior to the statements. Even if WP&L could meet the elements of the defense of estoppel against a private person, it failed to show that a Commission decision to disallow recovery on the contract poses a serious injustice to WP&L and that the public interest would not be unduly harmed by the imposition of estoppel. Furthermore, imposing estoppel in this case would certainly interfere with the Commission's authority to establish reasonable rates, a function rooted in the state's police power for the protection of the public health, safety, and general welfare.

Limited Rate Recovery for Costs Anticipated for Purchases From RockGen

The Commission finds it is reasonable to limit ratepayers' risk associated with the RockGen Contract by adopting a formula that caps the cost of energy at the point at which the total cost of a transaction with RockGen parallels the running cost of a proxy-generating unit. The Commission derived the capacity cost of the proxy unit by using an adder chosen within a range of capacity costs for alternative generating units available at the time WP&L executed the RockGen Contract.

The record contains a range of values for the capital costs of the alternative generating units. Based on this information, the appropriate cost adder falls between the lowest and the highest suggested adder value. The record does not compel the Commission to choose a specific

adder value. The Commission, therefore, refrains from making such a determination. The appropriate cost adder, however, is somewhat larger than the lowest possible value in the record. For purposes of this proceeding, the running cost of the proxy generating unit in conjunction with all other WP&L generating units is \$4.5 million less than WP&L's suggested cost recovery for the RockGen Contract. Since WP&L should have controlled the price risk back in 1998, it is reasonable to decrease the retail rate recovery sought by WP&L by \$4.5 million.

WP&L's requested recovery amount for the costs related to RockGen includes capacity costs associated with the subsequent contract WP&L entered into with Duke Energy Trading and Marketing. This contract would not have been needed if WP&L had applied an appropriate price risk management policy back in 1998. Through the Duke Energy Trading and Marketing contract, WP&L is essentially paying twice for the same capacity. For this reason, the Commission is imposing a limit to costs anticipated for all purchases from the RockGen facility, as described above.

Lastly, the Commission recognizes the uncertainty of predicting the future market prices for energy. Consistent with the decision to limit ratepayer risk related to RockGen purchases to the costs associated with the proxy unit, should WP&L be able to prove in a future rate case during the life of the RockGen Contract that market energy prices and usage rates of RockGen will cause ratepayer savings relative to the proxy unit, the Commission may allow WP&L to keep some of this savings as revenue under conditions to be determined at that time.

Natural Gas Forecast

The record in this proceeding includes testimony regarding the volatility of natural gas prices, and the use of the NYMEX futures prices for forecasting the cost of natural gas. WP&L

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based its forecast of the cost of natural gas on a 12-month NYMEX strip for natural gas futures. Alternatives considered by the Commission included using a 24-month average NYMEX strip to smooth the volatility, and using the most recent mid-month NYMEX strip to avoid the volatility associated with beginning of month or bid week prices. The record also includes several forecasts for Wisconsin basis. Wisconsin basis is the difference in the price of natural gas between the Henry Hub (the Louisiana hub for futures gas pricing) and Wisconsin.

The Commission finds that the NYMEX strip is an imperfect predictor of future natural gas prices, but is as good a tool as is available. Given the refund provision imposed by the Commission, it is reasonable to use a 12-month NYMEX futures strip to forecast natural gas prices for 2001. The Commission also finds that, since there is no published index for Wisconsin basis, it reasonable to use an average of historical prices for 1999 and 2000 Wisconsin basis, as published in *The Energy Connection*, to forecast Wisconsin basis for 2001.

Capacity and Energy Costs Incurred Under the Commonwealth Edison Company Contract

CUB suggests that the purchase power contract between Commonwealth Edison Company (CEC) and WP&L (CEC Contract) requires WP&L to incur costs for energy and capacity in excess of the level that it would have incurred if it had constructed and operated its own generating plant to supply this energy and capacity. The CEC Contract was signed in 1992 and WP&L has taken service under the contract since 1996. The Commission finds it is not appropriate to revisit the merits of this contract after five years of service and numerous full rate proceedings and fuel proceedings in which costs under this contract were included as appropriate fuel costs.

CEC Accrual

Generally Accepted Accounting Principles and the Uniform System of Accounts require a utility to use accrual accounting unless the Commission expressly grants that utility a waiver to use cash basis accounting. This means that without express authorization to book an expense on the date the cost is billed a utility must book the expense on the date the cost is incurred.

Under the CEC purchase power contract, natural gas costs related to the operation of the CEC plant are estimated at the time WP&L takes the power and then later true up using natural gas prices set at a future date. Historically, no material difference existed between the natural gas cost at the time of purchase and the natural gas cost at the time of true up. For this reason, in the past, no material difference existed between these estimated costs when incurred, the cost actually billed, and the cost estimated in rates.

In late 2000, early 2001 gas prices rose sharply. For this reason, a material difference existed, for that period, between accounting for the costs incurred under the CEC purchase power contract on an accrual versus a cash basis. WP&L claimed that the increase between the price estimated in 2000 for power purchased in 2000 and the price billed for this power was recoverable in 2001 rates because the cost was billed in 2001. WP&L asserts it had been using cash basis accounting when booking CEC costs and that the Commission never disapproved of this method. WP&L, however, never sought, nor did the Commission ever previously authorize, cash basis accounting related to this contract. Under accrual accounting, the true-up costs paid in 2001 for power received in 2000 are not a 2001 fuel cost. Had WP&L applied the proper accounting method it would have included in its 2000 costs an estimated amount of the price it would ultimately pay. In late 2000, WP&L should have accounted for in 2000 the increasing natural gas prices for electricity purchased and received in 2000. Furthermore, the Commission

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is not authorized to allow WP&L to collect 2000 costs in 2001 rates as it is barred by the prohibition against retroactive ratemaking under Wis. Stat. § 196.37(1). To create WP&L's new 2001 fuel cost estimate, therefore, it is reasonable to exclude costs associated with the CEC purchase power contract incurred in 2000 from forecasted and actual 2001 fuel costs.

Morgan Stanley Contract Cost Allocation

WP&L has provided sufficient evidence demonstrating that the energy purchases and associated costs under the Morgan Stanley contract are appropriately allocated between WP&L and its affiliated utilities. The cost of this contract is allocated among WP&L and its affiliates under the terms of the System Coordination and Operating Agreement approved by the Commission in conjunction with the merger. To create WP&L's new 2001 fuel cost estimate, therefore, it is reasonable to include the Morgan Stanley purchase power costs allocated among the utility affiliates as required by the System Coordination and Operating Agreement.

Purchase Power Energy

Estimating the average on-peak energy price based on the Commonwealth Edison hub (CE Hub) futures prices along with recent actual WP&L purchase power prices results in an appropriate level of non-summer on-peak purchase power energy costs. The average on-peak energy prices for the 2001 summer months of \$70 per MWh for June and \$80 per MWh for July and August are appropriate to calculate estimated purchase power costs for the summer months. Such average summer on-peak energy prices are based on the historical relationships between CE Hub prices, actual WP&L on-peak summer purchase power prices and the running cost of WP&L-owned combustion turbines.

Sales for Resale

The sales for resale revenue estimate for monitored fuel costs is based on recent on-peak and off-peak actual sales for resale volumes. The appropriate price estimate for on-peak economy sales for resale is the CEC Hub price for the non-summer months. For the summer months, the appropriate price is based on the incremental cost of gas-fired generation plus a small margin.

Cost Allocation and Rate Design

It is reasonable to allocate the increases in energy related costs that have been identified with the production and purchase of on-peak and off-peak energy, respectively, among the various customer classes based upon class on-peak and off-peak energy consumption. Energy cost increases allocated to classes with time-differentiated energy charges shall be collected with on-peak and off-peak surcharges. No increase in capacity-related costs has been identified in this proceeding; therefore, no allocation of capacity-related costs is necessary.

Refund of Surcharge

Wis. Admin. Code § PSC 116.6(3) requires that the revenues collected from this surcharge will be subject to refund, pending the Commission's review of any excess revenues collected by WP&L while the surcharge is in effect. In recent fuel cases of WEPCO and MGE, these utilities offered to refund to ratepayers any revenues collected through the surcharge authorized in their respective fuel cases in excess of the actual fuel costs incurred on an annual basis. The Commission accepted the enhanced refund mechanisms offered by WEPCO and MGE and conditioned these utilities' respective fuel surcharges as follows:

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Consistent with WEPCO's offer, any fuel costs collected in excess of fuel costs actually incurred shall be refunded to ratepayers on an annual basis with interest at WEPCO's short-term debt rate to be determined at the time of the refund.

Page 12, Order point 4 of Amended Findings of Fact, Conclusions of Law and Order, dated May 3, 2001, in docket 6630-UR-111, *Application of Wisconsin Electric Power Company for Approval of Plan to Improve Reliability Through Infrastructure and Incentives and Request for Rate Increase for Test Year 2000*.

Consistent with MGE's offer, MGE shall refund to ratepayers any monies collected through the surcharge, authorized herein, in excess of total fuel costs actually incurred—*independent of earnings and on an annual basis*. Such refund shall be on an annual basis with interest at MGE's short-term debt rate to be determined at the time of the refund.

Page 6-7, Order point 3 of Amended Findings of Fact, Conclusions of Law and Order, dated May 9, 2001, in docket 3270-UR-110, *Application of Madison Gas and Electric Company for Authority to Change Electric and Natural Gas Rates*.

In the above orders the Commission also stated that the surcharges remain subject to the refund mechanism provided by Wis. Admin. Code § PSC 116.06(3).

In the present case, the Commission determines that applying the enhanced refund mechanism, as described above, is just and reasonable. In this case, like in the last fuel cases for WEPCO and MGE, the utility requested that the Commission change its practice of relying on historical trends in fuel prices as inputs used to establish the fuel cost estimate that becomes the basis of the rate surcharge. WP&L asked the Commission to rely instead on futures prices to forecast the cost of natural gas and purchase power.

The Commission recognizes that this is a time of unprecedented volatility in the market prices for natural gas and purchase power. This volatility makes historical pricing data an unreliable predictor of future natural gas and energy prices. The futures market under these circumstances, however, is only a slightly better predictor than anything else available. A

surcharge based on inputs of this nature is, therefore, the most accurate the Commission is currently able to establish.

The Commission recognizes that a surcharge based on the current futures market contains an increased risk of inaccuracy when applied over time. The Commission finds that the enhanced refund mechanism is a necessary protection to ratepayers where the surcharge imposed relies on futures pricing. Like the recent WEPCO and MGE fuel cases, the present case contains such a surcharge. The surcharge and the enhanced refund mechanism allow WP&L the opportunity to collect the best current estimate of fuel costs, while ensuring that, in the end, WP&L's ratepayers are not forced to provide WP&L more revenue in rates, related to fuel costs, than the utility actually spends.

Commissioner Garvin dissents on this determination on the basis that the enhanced refund mechanism imposes a duty on WP&L with respect to refunds in addition to the duty established by administrative rule, and WP&L did not offer to become subject to such condition, as did WEPCO and MGE.

Order

1. WP&L may increase its retail electric rates by adding surcharges to all applicable Wisconsin retail rate schedules as shown in Appendix C for service rendered on and after the effective date of this decision.

2. The forecast for the cost of natural gas shall be based on the 12-month NYMEX strip as of May 9, 2001. The forecast for Wisconsin basis shall be based on the historical prices for 1999 and 2000 Wisconsin Basis, as published in *The Energy Connection*.

3. WP&L shall recover in rates only the costs anticipated for purchases from RockGen on the basis described above in the Opinion section. This limitation reduces WP&L's requested fuel cost increase by \$4.5 million on a Wisconsin retail basis.

4. WP&L shall provide a billing message to notify each customer with an explanation of these surcharges in accordance with Wis. Admin. Code § PSC 113.0406(1).

5. Any fuel costs collected in excess of fuel costs actually incurred shall be refunded to ratepayers on an annual basis with interest at WP&L's short-term debt rate to be determined at the time of the refund.

6. WP&L shall refund any fuel surcharge amounts that result in excess revenues as defined by Wis. Admin. Code § PSC 116.06 (3), with interest at WP&L's short-term debt rate to be determined at the time of the refund.

7. WP&L shall maintain appropriate records acceptable to the Commission to enable it to return refunds to its customers, if required and ordered to do so by the Commission.

8. Appendix D of this order is substituted for the monthly fuel estimates authorized in the May 4, 2000, order in this docket.

9. The surcharges authorized shall remain in effect until the issuance of a later decision that sets new retail electric rates.

10. The effective date of this order shall be the date of mailing. Before the rates authorized in this order become effective, WP&L shall inform the Commission in writing of the date on which the applicant plans to implement its authorized rates and revised tariffs, shall file the rate schedules and such revised tariffs with the Commission, and shall post the authorized rates in its offices and pay stations pursuant to Wis. Stat. §§ 196.19 and 196.21.

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11. In all other respects, the April 29, 1997, order in this docket remains in effect without change.

12. Jurisdiction is retained.

Dated at Madison, Wisconsin, _____

By the Commission:

Lynda L. Dorr
Secretary to the Commission

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See attached Notice of Appeal Rights

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

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

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98

APPENDIX A (CONTESTED)

In order to comply with Wis. Stat. § 227.47, the following parties who appeared before the agency are considered parties for purposes of review under Wis. Stat. § 227.53.

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(Not a party but must be served)
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RENEW WISCONSIN

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WISCONSIN PUBLIC SERVICE CORPORATION

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MADISON GAS AND ELECTRIC COMPANY

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WPS ENERGY SERVICES, INC.

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CITIZENS' UTILITY BOARD

by

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KOHLER COMPANY

by

Mr. Mike Potts
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WISCONSIN HEALTH CARE ASSOCIATION

by

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INPOWER MARKETING CORP.

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VULCAN CHEMICALS

by

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Godrey & Kahn
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LAKEHEAD PIPE LINE COMPANY, INC.

by

Mr. Shane Henriksen
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Duluth, MN 55802

Wisconsin Power and Light Company
Calculation of Increase in Wisconsin Retail Fuel Costs

Total Company Fuel Costs to Meet 2001 load	\$ 306,687,087
x Allocation factor for 2001	<u>0.75298</u>
Total Wisconsin Retail Fuel Costs for 2001	\$ 230,929,000
Authorized Total Company Fuel Costs from 2000 TY from May 4, 2000 Order	\$217,455,118
x Allocation Factor for Wisconsin Retail from Previous-Authorized Order	<u>0.74370</u>
Authorized Wisconsin Retail Fuel Costs for May 4, 2000 Order	<u>161,721,000</u>
Additional Wisconsin Retail Fuel Costs to meet 2001 Load	\$ 69,208,000
Less: Incremental WI Retail Revenues from increase in Retail Sales	
2001 Wisconsin Retail Sales	10,047,930
May 4, 2000 Order Wisconsin Retail Sales	<u>9,383,512</u>
Increase in Wisconsin Retail Sales	664,418
Fuel Cost per MWh for May 4, 2000 Order	
Total Company Fuel Costs from May 4, 2000 Order	\$217,455,118
x Allocation Factor for Wisconsin Retail Sales Used May 4, 2000 Order	<u>0.74370</u>
Wisconsin Retail Fuel Costs for May 4, 2000 Order	\$161,721,000
Divided by: Wisconsin Retail Sales	<u>9,383,512</u>
Fuel Cost per MWh for Wisconsin Retail Included in Current Rates	\$ 17.235
Incremental WI Retail Revenues from Increase in Retail Sales	<u>11,451,000</u>
Incremental Costs to be borne by Wisconsin Retail Ratepayers	\$ 57,757,000
2001 Wisconsin Retail Sales	<u>10,047,930</u>
Fuel Surcharge per kWh	<u>\$ 0.00575</u>

Authorized Surcharges

	Rate Schedule	KWh Surcharge
Gs-1	General Service	\$0.00576
Gs-3	General Service: Time of Day	
	On-Peak	\$0.01040
	Off-Peak	\$0.00164
Gs-4	General Service: Unmetered	\$0.00472
Gw-1	General Service: Time-of-Day w/Water Heating	
	On-Peak	\$0.01040
	Off-Peak	\$0.00164
Rw-1	17 Hour Controlled Water Htg.	\$0.00524
Rw-3	11 Hour Controlled Water Htg	\$0.00227
Cg-2	Commercial Service Standard	\$0.00611
Cg-2 TOD	Commercial Service Time-of-Day	
	On-Peak	\$0.01040
	Off-Peak	\$0.00164
Cp-1	Large Commercial/Industrial	
	On-Peak	\$0.01040
	Off-Peak	\$0.00164
Cp-2	Transmission Industrial	
	On-Peak	\$0.01040
	Off-Peak	\$0.00164
Ms-1	Streetlighting	\$0.00254
Ms-2	Decorative Lighting	\$0.00384
Ms-3	Area Lighting	\$0.39/Fixture
NI-1	Non-Standard Lighting	\$0.00384
Mz-1	Traffic Signals	\$0.00515

Wisconsin Power and Light Company
Monitoring for Fuel Costs as of May 2001

	<u>Fuel Costs</u>	<u>Net kWh Produced</u>	<u>Fuel Cost per Net kWh Produced</u>	<u>Cumulative Cost per kWh</u>
January	\$22,924,241	1,174,376,000	\$0.01952	\$0.01952
February	25,972,019	1,122,795,000	0.02313	0.02129
March	21,514,651	1,119,916,000	0.01921	0.02061
April	19,003,445	1,028,121,000	0.01848	0.02011
May	21,674,057	1,132,961,000	0.01913	0.01991
June	29,422,368	1,233,787,000	0.02385	0.02063
July	35,705,753	1,387,438,000	0.02574	0.02149
August	32,805,238	1,324,990,000	0.02476	0.02195
September	24,335,826	1,168,435,000	0.02083	0.02182
October	26,064,350	1,143,480,000	0.02279	0.02192
November	23,558,040	1,107,192,000	0.02128	0.02186
December	<u>23,707,099</u>	<u>1,231,650,000</u>	<u>0.01925</u>	<u>0.02164</u>
Total	<u>\$306,687,087</u>	<u>14,175,141,000</u>	<u>\$0.02164</u>	<u>\$0.02164</u>