December 22, 2016

Ms. Kavita Kale  
Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Highway  
Lansing MI 48917

Re: WISCONSIN ELECTRIC POWER COMPANY, WISCONSIN PUBLIC SERVICE CORPORATION, and UPPER MICHIGAN ENERGY RESOURCES CORPORATION, MPSC Case No. U-18061

Dear Ms. Kale:

Enclosed for electronic filing is a compliance filing in Case No. U-18061 of the Final Decisions issued today by the Public Service Commission of Wisconsin in Case Nos. 5-BS-212 and 5-AI-100.

Also enclosed is the Proof of Service. If you should have any questions, please kindly advise.

Very truly yours,

Miller, Canfield, Paddock and Stone, P.L.C.

Michael C. Rampe

By: ________________________________

Michael C. Rampe

cc:  Robert Garvin  
     Ted Eidukas  
     Catherine Phillips  
     Koby Bailey  
     Jim Schubilske  
     Dennis Derricks  
     David Kyto  
     Eric Meils  
     Joe Wilson  
     Colleen Sipiorski  
     Rosemarie Jorgensen  
     Amy Winkler
This is the Final Decision in the application filed by Wisconsin Electric Power Company (WEPCO) and Wisconsin Public Service Corporation (WPSC) (together, applicants), as electric, steam, and gas public utilities, under Wis. Stat. § 196.795(5)(s), for approval of a transaction that will transfer certain electric and natural gas distribution assets located in Michigan to a new affiliated Michigan jurisdictional utility. The new Michigan utility will be called Upper Michigan Energy Resources Corporation (UMERC). The applicants assert that the transfer of distribution assets in this docket requires approval under Wis. Stat. § 196.795(5)(s) only and does not require approval under Wis. Stat. § 196.80. Nevertheless, the applicants further assert that to the extent Wis. Stat. § 196.80 applies, the transaction is consistent with the public interest as required under that statute. The application is GRANTED, subject to the conditions in this Final Decision.

Introduction

Factual Background

WEPCO is an investor-owned electric, steam, and natural gas public utility as defined in Wis. Stat. § 196.01(5)(a), and provides electric, steam, and natural gas services. WEPCO serves approximately 1,100,000 electric customers in Wisconsin and the Upper Peninsula (UP) of
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Michigan, approximately 450,000 natural gas customers in Wisconsin, and about 500 steam customers in metropolitan Milwaukee, Wisconsin. In the UP of Michigan, WEPCO has approximately 27,500 retail electric customers, 50 distribution-only electric customers, and approximately 2,500 miles of electric distribution lines. Distribution-only customers are customers who purchase capacity and energy from an alternate energy provider other than WEPCO or WPSC. These UP electric distribution assets will be transferred to UMERC. WEPCO will retain ownership of the Presque Isle Power Plant (PIPP). WEPCO’s UP customers, with the exception of the Empire and Tilden mines, will initially remain full requirements customers of WEPCO, but will later be transferred to UMERC.

WPSC is an investor-owned electric and natural gas public utility as defined in Wis. Stat. § 196.01(5)(a), and provides electric and natural gas services. WPSC serves approximately 445,000 electric customers and 323,000 natural gas customers in northeastern and north central Wisconsin and an adjacent portion of the UP. In the UP of Michigan, WPSC has approximately 9,000 retail electric customers, 16 distribution-only electric customers, approximately 619 miles of electric distribution lines, 5,300 retail natural gas customers, and 17 natural gas transport customers. These UP assets and customers will be transferred to UMERC.

The Commission issued a Final Decision on May 21, 2015, in docket 9400-YO-100, authorizing the acquisition of WPSC’s parent, Integrys Energy Group, Inc. (Integrys), by WEC Energy Group (WEC). WEC is a Wisconsin holding company with a number of wholly-owned subsidiaries, including WEPCO. Integrys is a Wisconsin holding company that owns and operates WPSC and is a subsidiary of WEC. The formation of UMERC is a requirement of a settlement agreement that was filed with the Michigan Public Service Commission (MPSC) and
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was executed in connection with the Michigan approval of the acquisition of Integrys by WEC.\textsuperscript{1}

The applicants state that the formation of UMERC would lead to greater operational and regulatory efficiency for the Commission, the applicants, and their Wisconsin customers, help facilitate the construction of future electric generation in the UP of Michigan, and ensure that the cost of any electric generation is properly allocated to UMERC’s ratepayers in the UP of Michigan.

**Procedural Background**

On June 14, 2016, the applicants filed with the Commission, under Wis. Stat. § 196.795(5)(s), an application seeking approval of a transaction that will transfer certain electric and natural gas distribution assets located in Michigan to UMERC. (PSC REF#: 287202.) The Commission issued a Notice of Investigation on August 11, 2016. (PSC REF#: 290035.) On August 19, 2016, Titus Energy, Inc. (Titus Energy), Citizens Utility Board of Wisconsin (CUB), and Wisconsin Industrial Energy Group (WIEG) requested to intervene in this docket. (PSC REF#: 290418, PSC REF#: 290469, PSC REF#: 290477, respectively.) The intervenors did not request a hearing by the date set out in the Order granting intervention, (PSC REF#: 291365), but requested party status in order to participate in this proceeding. No hearing was required or held in this docket, though the parties were provided with an opportunity to be heard through the submission of written comments to the Commission Memorandum dated November 15, 2016. (PSC REF#: 294358.) The Commission received initial comments on November 30, 2016, from the applicants, CUB and WIEG (filed jointly), and Titus Energy. (PSC REF#: 294806, PSC REF#: 294803, PSC REF#: 294802, respectively.) The Commission

\textsuperscript{1} \url{http://efile.mpsc.state.mi.us/efile/docs/17682/0215.pdf}
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received reply comments on December 6, 2016, from the applicants, CUB and WIEG (filed jointly), and Titus Energy. (PSC REF#: 295151, PSC REF#: 295152, PSC REF#: 295121, respectively.)

**Request for Hearing**

While the intervenors did not request a hearing by the date set out in the Notice of Investigation, Titus Energy requested a hearing in this matter on December 12, 2016, under Wis. Admin. Code § PSC 2.23, or, in the alternative, Wis. Stat. § 196.02(7). (PSC REF#: 295345.) Whether to hold a hearing is entirely within the discretion of the Commission. Titus Energy requested a hearing based on its concern that WEPCO’s Wisconsin ratepayers would bear the costs of WEPCO’s existing generation used to serve WEPCO’s Michigan customers. Titus Energy stated that the hearing would develop a record upon which the Commission could assign these assets and liabilities to UMERC as part of any decision approving the transaction. The Commission denies Titus Energy’s request a hearing for several reasons.

Titus Energy has not attempted to demonstrate how the record it seeks to develop at a hearing is relevant to the Commission’s analysis of the transaction under Wis. Stat. § 196.795 in this docket, or Wis. Stat. § 196.52 in docket 5-AI-100. As such, the rate-related concerns Titus Energy raised in its motion are more properly addressed in a rate case, as more fully discussed below. Further, as Titus Energy admitted in its motion, the time for requesting a hearing has long past. In its motion, Titus Energy did not raise any argument or theory that it had not previously raised in its initial or reply comments. While Titus Energy asserted that material information had come to light in the applicants’ reply comments, the applicants were responding to Titus Energy’s assertions in its initial comments, citing a data request response that has been
available for months. Titus Energy also asserted that the applicants changed their position on the Purchase Power Agreements that are the subject of docket 5-AI-100, and that Titus Energy therefore was deprived an opportunity to respond. But Titus Energy did not cite anything in the record to demonstrate any change in position. Further, Titus Energy asserted that the applicants only recently responded to WIEG’s discovery requests, but the parties’ independent discovery schedule does not dictate the manner or timing in which this Commission enters a disposition in this docket or docket 5-AI-100. Last, Titus Energy was afforded a reasonable opportunity to be heard through the submission of comments and reply comments.

Findings of Fact

1. WEPCO is an investor-owned electric, natural gas, and steam public utility as defined in Wis. Stat. § 196.01(5)(a) and provides electric, natural gas, and steam services.

2. WPSC is an investor-owned electric and natural gas public utility as defined in Wis. Stat. § 196.01(5)(a) and provides electric and natural gas services.

3. UMERC will compensate WEPCO for transfer of its UP assets at fair market value, and UMERC’s acquisition of such assets will not result in unjust discrimination or have an anticompetitive impact on any competitor of UMERC.

4. UMERC will compensate WPSC for transfer of its UP assets at fair market value, and UMERC’s acquisition of such assets will not result in unjust discrimination or have an anticompetitive impact on any competitor of UMERC.

5. The potential burden of administering the contract or arrangement for WEPCO to transfer its UP assets to UMERC is not greater than the potential benefits to WEPCO’s customers, and WEPCO has minimized transferring such assets to non-utility affiliates within WEC.
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6. The potential burden of administering the contract or arrangement for WPSC to transfer its UP assets to UMERC is not greater than the potential benefits to WPSC’s customers, and WPSC has minimized transferring such assets to non-utility affiliates within WEC.

7. WEPCO’s transfer of its UP assets to UMERC, as conditioned by this Final Decision, is consistent with the public interest.

8. WPSC’s transfer of its UP assets to UMERC, as conditioned by this Final Decision, is consistent with the public interest.

9. No significant environmental consequences are associated with these transactions.

Conclusions of Law

1. WEPCO is an investor-owned electric, natural gas, and steam public utility as defined in Wis. Stat. § 196.01(5)(a).

2. WPSC is an investor-owned electric and natural gas public utility as defined in Wis. Stat. § 196.01(5)(a).

3. The Commission has authority under Wis. Stat. §§ 1.11, 1.12, 196.02, 196.025, 196.395, 196.795, and Wis. Admin. Code chs. PSC 2 and 4, to issue this Final Decision authorizing the applicants’ proposed transactions, subject to the conditions stated in this Final Decision.

4. The application is a Type III action under Wis. Admin. Code § PSC 4.10(2) and the preparation of neither an environmental impact statement (EIS) nor an environmental assessment (EA) is necessary.

5. The Commission may impose any term, condition, or requirement necessary to protect the public interest pursuant to Wis. Stat. §§ 196.02, 196.395, and 196.795.
Opinion

Transactions to Create UMERC

The transactions in this docket require approval under Wis. Stat. § 196.795(5)(s) since they represent a transfer of distribution assets from public utility affiliates in a holding company system, WEPCO and WPSC, to UMERC, a non-utility affiliate that will be in the same holding company system. While UMERC will provide retail electric service in Michigan, it will not be a public utility under Wis. Stat. §196.01(5) because it will serve no customers in Wisconsin.

Under Wis. Stat. § 196.795(5)(s), the Commission may not approve the transfer of property from a public utility affiliate in a holding company system to a non-utility affiliate in the same holding company system unless the non-utility affiliate will compensate the public utility affiliate for selling, transferring, or exchanging with the non-utility affiliate any property at the fair market value of the property, and that the acquisition of the property of the non-utility affiliate will not result in unjust discrimination against, or have an anticompetitive impact on, any competitor of the non-utility affiliate. Further, the Commission may not approve any contract or arrangement for transfer if it determines that the potential burden of administering such contract or arrangement is greater than the potential benefits to the customers of the public utility affiliate or if it determines that the public utility affiliate has not minimized transferring to non-utility affiliates in the holding company system such property.

The applicants stated that the transfer of assets and ownership would take place in three steps. In step 1, two contribution of assets agreements, one each for WEPCO and WPSC, would initially transfer UP assets and liabilities to two newly-created companies, referred to as NewCo 1 and NewCo 2, respectively. The contribution of assets agreements would simultaneously deliver shares of common stock equivalent to the net book value of the assigned
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assets to WEPCO and WPSC. In step 2, three assignment and assumption agreements would transfer the UMERC stock from WEPCO and WPSC to WEC. WEPCO would transfer the UMERC stock directly to WEC. WPSC, however, would require two separate and consecutive assignment and assumption agreements in order to transfer the shares first from WPSC to its intermediate corporate parent, Integrys, and subsequently from Integrys to its ultimate parent company, WEC. In step 3, a plan of merger agreement would combine the assets and liabilities held by NewCo 1 and NewCo 2 by merging the latter into the former, with the surviving entity being renamed UMERC.

The applicants have represented that the proposed transfer of assets and ownership would be in compliance with Wis. Stat. §§ 196.795(5)(s), in this docket, and 196.52(3)(a), in docket 5-AI-100, and any restrictions set forth in rate case dockets 6690-UR-124 for WPSC and 5-UR-107 for WEPCO. (PSC REF#: 280356, PSC REF#: 292923.) The applicants have also represented that the proposed step 2 would constitute non-cash, in-kind dividend distributions of the NewCo 1 and NewCo 2 shares of common stock from WEPCO and WPSC, respectively, to their ultimate parent company, WEC. These dividend distributions are to be authorized by the respective boards of directors, subject to compliance with the authorized capital structures and any dividend payment restrictions for WEPCO and WPSC established by the Commission in the most recent rate case for each utility. (PSC REF#: 294124, PSC REF#: 294125.)

In order to complete the proposed transaction, applicants have requested that the Commission either approve or take notice of the following agreements:

1. The Contribution Agreements, which addresses the assignment of assets and liabilities from WEPCO and WPSC to UMERC and “transfer of stock equivalent
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to the book value of the assigned assets back to WEPCO and WPSC.” (PSC REF#: 287201 at 4.)

2. The WPS Assignment and Assumption Agreement, which addresses an agreement needed for the transaction from WPSC to its intermediate parent, Integrys, and then to its ultimate parent, WEC.

3. The WEPCO Assignment and Assumption Agreement, which addresses an agreement for the transaction from WEPCO to its parent, WEC.

4. The Plan of Merger Agreement, which addresses the agreement that is necessary to combine the assets and liabilities held by NewCo 1 and NewCo 2 to form UMERC.

Transaction Tax Effect

The transaction, as described in the application, is structured to meet the requirements of a tax-free spin-off of under Section 355 of the Internal Revenue Code. Section 355 was enacted as part of the Revenue Act of 1924 to permit a tax-free separation from one or more existing businesses previously operated by a single corporation (the “distributing corporation”). A separation is achieved through the distribution by the distributing corporation, in this case WEPCO and WPSC, of stock of one or more subsidiaries (the “controlled corporations”) to the shareholders of the distributing corporation. The rationale is that such a corporate division is merely a change in the form of business which continues to be owned and operated by the same shareholders. (PSC REF#: 293667.)

The applicants believe that the transaction meets the requirements for a non-taxable transaction under Section 355, whose requirements include:
1. Control at the time of distribution, where each distributing corporation and each controlled corporation will be engaged in an active trade or business that has been actively conducted for at least 5 years.

2. Active trade or business, where both these active trade or business will continue to be conducted after the distributions, and the distributions have a business purpose apart from any reduction in federal income tax.

3. Distribution of all controlled stock, where distributions within a controlled corporation should not be treated as a “device” for the distribution of earnings.

4. Continuity of shareholder interest, where the disposition of shares will not lead to a change in a control and not trigger tax under Section 355.

5. Assumption of liabilities, where the amount of liabilities assumed by each of the controlled corporations will not exceed the tax basis of the assets transferred to the controlled corporation.

6. Continuity of business enterprise, where the shares acquired were not acquired by purchase.

The applicants state no cash would be paid in connection with the creation of UMERC and since there would be no gain or loss recognized by any party, there would be no tax liability. However, the applicants indicate that if the Internal Revenue Service (IRS) were to determine that the transaction does not qualify under Section 355, it would be treated as a taxable distribution of appreciated property from WPSC and WEPCO to their respective parent companies under Section 311(b) of the Internal Revenue Code. Under this section, any gain would be realized at the level of the entity making the distribution, namely WEPCO and WPSC.
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As a taxable transaction among affiliated companies in WEC, the gain would then be treated as a deferred intercompany transaction. However, the underlying tax due is deferred and would be payable only if UMERC stock leaves WEC.

In order to facilitate the timely approval of the application by MPSC, WEC has agreed to a tax indemnification of UMERC if the IRS determines that the transaction does not qualify under Section 355. (PSC REF#: 293667.) The applicants believe that any tax liability would accrue to WEPCO and WPSC. (WEC data request response 03-JK-02, PSC REF#: 293055.) The recovery of potential tax liabilities from WEPCO and WPSC, as requested by the applicants, is contrary to the Commission’s decision in docket 9400-YO-100, the acquisition of Integrys by WEC, where the Commission ordered that any transaction related costs remain at the holding company level. Accordingly, the Commission finds it reasonable that any tax liability resulting from the proposed transfer of assets shall remain at the holding company (WEC) and the applicants shall not seek to recover from Wisconsin retail customers any tax liability resulting from this transaction, consistent with Order Conditions 6 and 11 of the Commission’s Final Decision in docket 9400-YO-100.

**PIPP and Future UP Electric Generation**

After the formation of UMERC, WEPCO will retain ownership of its hydroelectric generating facilities in the UP and the PIPP. The Empire and Tilden mines will initially remain full requirements customers of WEPCO. Under the terms of agreements between WEC and the owners of the Empire and Tilden mines (data request response 02-JK-08, PSC REF#: 291835), WEPCO has agreed to continue operating PIPP and to not seek to retire the plant until new electric generation resources are constructed by UMERC. In return, the mines would enter into a
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long-term purchase power agreement with UMERC to help defray the cost of construction of new UP electric generation. The timing of when such generation resources would be constructed and placed in operation is not known and would be subject to approval by MPSC during a Certificate of Need proceeding. At that time, WEPCO may seek to retire PIPP. The retirement of PIPP will likely result in the need to recover any unrecovered book value and decommissioning costs from both WEPCO’s and UMERC’s customers. The applicants proposed to assign the Michigan jurisdictional portion of these costs to UMERC based on a historical slice of system basis, calculated as of the date that PIPP is retired. The applicants contend this methodology will result in Wisconsin customers being in the same position they are now with respect to the unrecovered book value and decommissioning costs for PIPP. Based on this contention, the Commission understands that the UMERC slice of system allocation is assumed to come from the non-wholesale portion of the unrecovered book value and decommissioning costs. On December 9, 2016, the MPSC issued its order addressing the formation of UMERC (MPSC docket U-18061).² Order Condition A of the MPSC Order approves the settlement agreement proposed in the Michigan proceeding.³ The settlement agreement sets the slice of system allocation of PIPP retirement and decommissioning costs at 6.595 percent. It also establishes a regulatory asset through which the PIPP retirement and decommissioning costs will be recovered from UMERC customers.

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² [http://efile.mpsc.state.mi.us/efile/docs/18061/0114.pdf](http://efile.mpsc.state.mi.us/efile/docs/18061/0114.pdf)
³ The MPSC Order also states that “the Joint Applicants shall neither seek nor support changes before FERC [the Federal Energy Regulatory Commission] that will shift any costs to UMERC customers that are currently shared between Wisconsin and Michigan.” WEPCO and WPSC have represented, and it is the Commission’s expectation, that this MPSC Order condition does not limit WEPCO and WPSC from advocating in litigation related to PIPP System Support Resource matters before FERC and the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), including, but not limited to, FERC docket EL14-34-000 or D.C. Circuit dockets 16-1049, 16-1385, 16-1388, 16-1389, 16-1391, or 16-1397, or any remands thereof.
However, neither the determination by the MPSC in docket U-18061 nor the Commission’s determinations in this Final Decision shall be construed as a determination on the recoverability of any costs related to or resulting from this transaction. The Commission retains jurisdiction to address the recoverability of any such costs in subsequent rate cases. Further, WEPCO and WPSC shall notify the Commission of any proposed changes before the Federal Energy Regulatory Commission (FERC) that will shift costs to WEPCO or WPSC customers that are currently shared between Wisconsin and Michigan and shall cooperate with Commission staff to address such proposed changes.

At this time, it appears likely that new electric generation resources will be constructed in the UP; however, it is unknown if additional infrastructure, including transmission facilities, would be needed to provide safe, reliable and adequate services in the UP. A portion of the cost of any additional transmission facilities required by these new generation resources would be recovered from Wisconsin customers under American Transmission Company LLC’s FERC tariffs.

In addition to other conditions imposed in this Final Decision, the Commission finds that it is reasonable to impose conditions related to PIPP and any new generation resources or transmission alternatives in the UP. First, the applicants shall work with UMERC to ensure that any new generation resources or transmission alternatives in the UP are economical for both Michigan and Wisconsin ratepayers. Second, WEPCO shall submit any request to retire PIPP concurrently with any generator interconnection request filed by UMERC, to ensure that facilities studies prepared by the Midcontinent Independent System Operator, Inc. (MISO), consider both actions concurrently, thereby minimizing the need for new transmission facilities. Third, WEC shall notify the Commission when it files the Certificate of Need application with
the MPSC for any new generation resources located in the UP that are owned, operated, or leased by UMERC. Fourth, WEPCO shall concurrently file with MISO and the Commission its request to MISO to retire PIPP. Fifth, WEC shall concurrently file with MISO and the Commission any generator interconnection request filed with MISO by UMERC. Last, to help effectuate these conditions, it is reasonable that the Commission shall have access to all books and records of UMERC pursuant to Wis. Stat. § 196.795(5)(b).

Compliance with Wis. Stat. § 196.80

The applicants asserted that the transfer of distribution assets does not require approval under Wis. Stat. § 196.80. Under Wis. Stat. § 196.80, a public utility cannot sell, acquire, lease or rent any public utility plant or property constituting an operating unit or system unless the Commission finds that the proposed action is consistent with the public interest. First, the applicants asserted that Wis. Stat. § 196.80 only applies to a public utility plant, and since the assets being transferred are in Michigan, these assets do not constitute a public utility plant. Second, the applicants asserted that unlike Wis. Stat. § 196.795(5)(s), Wis. Stat. § 196.80 only applies to sales, acquisitions, leases, or rentals by a public utility. Nevertheless, the applicants asserted that to the extent Wis. Stat. § 196.80 applies, the transaction is consistent with public interest as required under that statute. The Commission declines to decide whether Wis. Stat. § 196.80 applies to the transaction. Rather, the Commission finds that the transaction is consistent with the public interest, and therefore, to the extent Wis. Stat. § 196.80 applies to the transaction, it is satisfied.

Environmental Impacts of the Transaction

The Commission determines that this is a Type III action and has performed its environmental review as required by Wis. Admin. Code § PSC 4.10(3). Neither an EIS under
Wis. Stat. § 1.11 nor an EA is required. The Commission also determines that its environmental review of the project complies with the Wisconsin Environmental Policy Act, pursuant to Wis. Stat. § 1.11 and Wis. Admin. Code ch. PSC 4. The proposed project is not anticipated to significantly impact archeological resources, endangered and sensitive species, or wetlands and waterways in the project area.

**Order**

1. Any tax liability resulting from the proposed transfer of assets shall remain at the holding company (WEC) and the applicants shall not seek to recover from Wisconsin retail customers any tax liability resulting from this transaction, consistent with Order Conditions 6 and 11 of the Commission’s Final Decision in docket 9400-YO-100.

2. Neither the determination by the MPSC in Case No. U-18061 nor Commission’s determinations contained in this Final Decision shall be construed as a determination on recoverability of any costs related to or resulting from this transaction. The Commission retains jurisdiction to address the recoverability of any such costs in subsequent rate cases.

3. WEPCO and WPSC shall notify the Commission of any proposed changes before FERC that will shift costs to WEPCO or WPSC customers that are currently shared between Wisconsin and Michigan and shall cooperate with Commission staff to address such proposed changes.

4. The applicants shall work with UMERC to ensure that any new generation resources or transmission alternative in the UP is economical for both Michigan and Wisconsin ratepayers.
5. WEPCO shall submit any request to retire PIPP concurrently with any UMERC generator interconnection request, such that any facilities studies prepared by MISO consider both actions concurrently.

6. WEC shall notify the Commission when it files the Certificate of Need application with the MPSC for any new generation resources located in the UP that is owned, operated, or leased by UMERC.

7. WEPCO shall concurrently file with MISO and the Commission its request to MISO to retire PIPP.

8. WEC shall concurrently file with MISO and the Commission any generator interconnection request filed with MISO by UMERC.

9. Within 30 days of completion of the transaction, WEPCO and WPSC shall file with the Commission the accounting entries to record the transactions.

10. The Commission shall have access to all books and records of UMERC pursuant to Wis. Stat. § 196.795(5)(b).

11. This Final Decision shall take effect one day after the date of service.

12. Jurisdiction is retained.

Dated at Madison, Wisconsin, this 22nd day of December, 2016.

By the Commission:

Sandra J. Paske
Secretary to the Commission

SJP:JAK:jlt:DL: 01486764

See attached Notice of Rights
NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

The following notice is served on you as part of the Commission's written decision. 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.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an untimely petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

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

Revised: March 27, 2013

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4 See Currier v. Wisconsin Dep’t of Revenue, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.
APPENDIX A

CONTACT LIST FOR SERVICE BY PARTIES

CITIZENS UTILITY BOARD
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Docket 5-BS-212

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Joint Application of Wisconsin Public Service Corporation and Wisconsin Electric Power Company for Approval of Affiliated Interest Agreements Related to a Transaction by which Upper Michigan Energy Resources Corporation would Acquire Certain Assets Located in the Upper Peninsula of Michigan

FINAL DECISION

This is the Final Decision in the application filed by Wisconsin Electric Power Company (WEPCO) and Wisconsin Public Service Corporation (WPSC) (together, applicants), as electric, steam, and natural gas public utilities, under Wis. Stat. § 196.52, for approval of the affiliated interest agreements necessary to form a new Michigan utility called Upper Michigan Energy Resources Corporation (UMERC) and to allow UMERC to serve its customers. (PSC REF#: 287201.) The application is GRANTED, subject to the conditions in this Final Decision.

Introduction

Factual Background

In its Final Decision in docket 5-BS-212, the Commission approved a transaction that allowed the applicants to transfer certain electric and natural gas distribution assets located in the Upper Peninsula (UP) of Michigan to UMERC. WEPCO will transfer approximately 27,500 retail electric customers, 50 distribution-only electric customers, and approximately 2,500 miles of electric distribution lines to UMERC. Distribution-only customers are customers who purchase capacity and energy from an alternate energy provider other than WEPCO or WPSC. WEPCO will not initially transfer the Empire and Tilden mines, which will remain full requirements customers of WEPCO until a new generation solution is built. At that time, these customers will
be transferred to UMERC. WPSC will transfer approximately 9,000 retail electric customers, 16 distribution-only electric customers, approximately 619 miles of electric distribution lines, 5,300 retail gas customers, and 17 gas transport customers to UMERC.

The applicants requested that the Commission approve or take notice of the following four agreements in this docket:

1. Take notice of the Purchased Power Agreements (PPA) between WEPCO and UMERC, and between WPSC and UMERC, under which WEPCO and WPSC will each sell UMERC all capacity and energy necessary to meet UMERC’s needs until a generation solution is in place in the UP.

2. Approve the Base Contract for Sale and Purchase of Natural Gas, which would release interstate pipeline capacity between WPSC and UMERC and according to which UMERC will pay ANR Pipeline Company (ANR) directly for capacity.

3. Approve the Asset Management Affiliated Interest Agreement, which would add UMERC as a party to the previously approved affiliated interest agreement in docket 5-AU-111 (PSC REF#: 290787) and would allow UMERC to receive all operation and maintenance services from WEPCO, WPSC, and WEC Business Services (WEC).

4. Take notice of the Wholesale Distribution Service Agreement, which would allow cross-border distribution assets to be used to provide service in either Michigan or Wisconsin, which will be entered into between WEPCO and UMERC and between WPSC and UMERC.

In its application (PSC REF#: 287201), the applicants stated that agreements are “reasonable and consistent with the public interest because they will fairly compensate WEPCO,
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WPSC, and their customers for the facilities, electricity, natural gas and services the utilities will be providing to UMERC.”

**Procedural Background**

On June 14, 2016, the applicants filed with the Commission, under Wis. Stat. § 196.52, for approval of the affiliated interest transactions necessary to complete the transaction approved in docket 5-BS-212 and to allow for UMERC to serve its customers. (PSC REF#: 287201.) A Notice of Investigation was issued on October 20, 2016. (PSC REF#: 293219.) No hearing was required or held in this docket. However, because the Commission Memorandum dated November 15, 2016 (PSC REF#: 294358), discussed the issues in both docket 5-BS-212 and this docket, the parties to docket 5-BS-212 were provided with an opportunity to be heard on the issues in this docket through the submission of written comments. The Commission received initial comments on November 30, 2016, from the applicants, Citizens Utility Board of Wisconsin (CUB) and Wisconsin Industrial Energy Group (WIEG) (filing jointly), and Titus Energy, Inc. (Titus Energy). (PSC REF#: 294806, PSC REF#: 294803, PSC REF#: 294802, respectively.) The Commission received reply comments on December 6, 2016, from the applicants, CUB and WIEG (filing jointly), and Titus Energy. (PSC REF#: 295151, PSC REF#: 295152, PSC REF#: 295121, respectively.)

**Request for Hearing**

Titus Energy requested a hearing in this matter on December 12, 2016, under Wis. Admin. Code § PSC 2.23, or, in the alternative, Wis. Stat. § 196.02(7). (PSC REF#: 295345.) Whether to hold a hearing is entirely within the Commission’s discretion. Titus Energy requested a hearing based on its concern that WEPCO’s Wisconsin ratepayers would bear the costs of WEPCO’s existing generation used to serve WEPCO’s Michigan customers. Titus
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Energy requested a hearing to develop a record upon which the Commission could assign these assets and liabilities to UMERC as part of any decision approving the transaction. The Commission denies Titus Energy’s request for a hearing for several reasons.

Titus Energy has not attempted to demonstrate how the record it seeks to develop at a hearing is relevant to the Commission’s analysis of the transaction under Wis. Stat. § 196.795 in docket 5-BS-212, or Wis. Stat. § 196.52 in this docket. As such, the rate-related concerns Titus Energy raised in its motion are more properly addressed in a rate case, as more fully discussed below. Further, as Titus Energy admitted in its motion, the time for requesting a hearing in docket 5-BS-212 has long past. In its motion, Titus Energy did not raise any argument or theory that it had not previously raised in its initial or reply comments. While Titus Energy asserted that material information had come to light in the applicants’ reply comments, the applicants were responding to Titus Energy’s assertions in its initial comments, citing a data request response that has been available for months. Titus Energy also asserted that the applicants changed their position on the PPAs that are the subject of this docket, and that Titus Energy therefore was deprived an opportunity to respond. But Titus Energy did not cite anything in the record to demonstrate any change in position. Further, Titus Energy asserted that the applicants only recently responded to WIEG’s discovery requests, but the parties’ independent discovery schedule does not dictate the manner or timing in which this Commission enters a disposition in this docket or docket 5-BS-212. Last, Titus Energy was afforded a reasonable opportunity to be heard through the submission of comments and reply comments on the Commission Memorandum.
Findings of Fact

1. WEPCO is an investor-owned electric, natural gas, and steam public utility as defined in Wis. Stat. § 196.01(5)(a) and provides electric, natural gas, and steam services.

2. WPSC is an investor-owned electric and natural gas public utility as defined in Wis. Stat. § 196.01(5)(a) and provides electric and natural gas services.

3. UMERC will be a Michigan-only jurisdictional electric and natural gas public utility, and an affiliate of WEPCO and WPSC.

4. The Base Contract for Sale and Purchase of Natural Gas and the Asset Management Affiliated Interest Agreement filed in docket 5-AI-100 (PSC REF#: 287201), as conditioned by this Final Decision, are reasonable, consistent with, and necessary to protect the public interest, within the meaning of Wis. Stat. § 196.52.

5. Approval of the Base Contract for Sale and Purchase of Natural Gas and the Asset Management Affiliated Interest Agreement filed in docket 5-AI-100 (PSC REF#: 287201), as conditioned by this Final Decision, is consistent with the general public interest and public convenience and necessity.

6. No significant environmental consequences are associated with these transactions.

Conclusions of Law

1. WEPCO is an investor-owned electric, natural gas, and steam public utility as defined in Wis. Stat. § 196.01(5)(a).

2. WPSC is an investor-owned electric and natural gas public utility as defined in Wis. Stat. § 196.01(5)(a).

3. The agreements are reasonable, consistent with, and necessary to protect the public interest, within the meaning of Wis. Stat. § 196.52.
4. The Commission has authority under Wis. Stat. §§ 1.11, 1.12, 196.02, 196.025, 196.395, 196.52, and Wis. Admin. Code chs. PSC 2 and 4, to issue this Final Decision authorizing the applicants’ proposed affiliated interest agreements, subject to the conditions stated in this Final Decision.

5. The application is a Type III action under Wis. Admin. Code § PSC 4.10(2) and the preparation of neither an environmental impact statement nor an environmental assessment is necessary.

6. The Commission may impose any term, condition, or requirement necessary to protect the public interest pursuant to Wis. Stat. §§ 196.02, 196.395, and 196.795.

**Opinion**

The transactions in this docket require approval under Wis. Stat. § 196.52 because they involve contracts or arrangements for the furnishing of services or property. The agreements proposed by the applicants either effectuate the transaction or allow UMERC to serve its customers. The four agreements that the applicants request the Commission approve or take notice of are discussed below.

**PPAs**

UMERC, a Michigan jurisdictional electric and natural gas distribution utility, will not own any electric generation assets when formed. WEPCO and WPSC would each enter into a PPA with UMERC to provide all of the capacity and energy necessary to meet UMERC’s needs until new UP generation resources are placed in service. The proposed PPAs are based on a Federal Energy Regulatory Commission (FERC)-approved formula rate that will recover the embedded cost of generation, including fuel, operation and maintenance costs, purchased power,
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taxes, and return on capital. The capacity price under the proposed PPAs is based on the cost of 
an allocated slice of WEPCO’s and WPSC’s generation portfolio, and the energy price reflects a 
slice of the system average fuel and purchased power costs. The proposed PPAs contain a 
true-up mechanism designed to ensure that the costs of providing electricity to UMERC would 
ultimately be recovered from UMERC customers through the Michigan Public Service 
Commission (MPSC) fuel cost reconciliation proceedings. It is reasonable to require the 
applicants to provide documentation annually to the Commission that the FERC-approved 
formula is being used to calculate the cost of energy and capacity charged to UMERC under the 
PPAs. It is also reasonable that the PPAs be treated as fully allocated sales. The completion of a 
generation solution for the UP of Michigan would lead to the termination of the PPAs.

The MPSC, in its Order authorizing the formation of UMERC, dated December 9, 2016, 
conditioned its approval of the transaction as follows:

The Joint Applicants shall neither seek nor support changes before FERC that will 
shift any costs to UMERC customers that are currently shared between Wisconsin 
and Michigan.

The Commission is not bound by any condition placed on this transaction by the MPSC. 
Further, this condition does not prevent costs from being shifted to Wisconsin ratepayers. 
Therefore, the Commission requires that WEPCO and WPSC notify the Commission of any 
proposed changes before FERC that will shift costs to WEPCO or WPSC customers that are 
currently shared by Wisconsin and Michigan and cooperate with the Commission staff to address 
such proposed changes.

1 http://efile.mpsc.state.mi.us/efile/docs/18061/0114.pdf
2 WEPCO and WPSC have represented, and it is the Commission’s expectation, that this MPSC Order condition 
does not limit WEPCO and WPSC from advocating in litigation related to Presque Isle Power Plant System Support 
Resource matters before FERC and the United States Court of Appeals for the District of Columbia Circuit (D.C. 
Circuit), including, but not limited to, FERC docket EL14-34-000 or D.C. Circuit dockets 16-1049, 16-1385, 
16-1388, 16-1389, 16-1391, or 16-1397, or any remands thereof.
Base Contract for the Sale and Purchase of Natural Gas

UMERC and WPSC proposed to enter into a base contract for the sale and purchase of natural gas and an asset management arrangement under which WPSC will release approximately 9,761 dekatherms per day of ANR interstate pipeline capacity to UMERC, and UMERC will pay ANR directly for the cost of that capacity. WPSC will manage UMERC’s gas supply and deliver gas to the Menominee No. 2 gate. UMERC will pay WPSC for the gas supply service it needs to serve its customers. The proposed agreement is reasonable and will allow UMERC to continue to serve WPSC’s former natural gas customers in the UP. UMERC’s obligations are considered firm requirements and, as such, will be included in WPSC’s annual gas supply plan. The transactions under this agreement are subject to the Natural Gas Standards of Conduct for Affiliates as established in docket 05-GI-108. The Standards of Conduct are intended to protect against undue discrimination as it relates to the transfer of utility pipeline capacity and/or gas supply, market information, other utility assets, and interpretation and/or application of utility tariffs or operating procedures. These non-discrimination standards minimize the unfair competitive advantages that could result from the close relationship that exists between a utility and its affiliate. In sum, WPSC shall reflect any obligations to UMERC under the base contract and gas supply agreement in its annual gas supply plan filing to the Commission. WPSC shall also notify the Commission of any capacity releases to UMERC above those identified in the agreement under the 21-day letter process, and WPSC shall be bound by the natural gas standards of conduct in its transactions with UMERC.

Affiliated Interest Agreements in Docket 5-AU-111

UMERC will receive all management, operation, and maintenance services from the applicants and WEC under the existing affiliated interest agreements, as approved in the
Commission’s Final Decision in docket 5-AU-111, dated August 29, 2016. (PSC REF#: 290787.) UMERC will pay WEC and the applicants their fully-embedded cost for all services provided to avoid cross-subsidization of UMERC’s operation by customers of the Wisconsin utilities. UMERC was not a party to the agreement approved in docket 5-AU-111. It is reasonable to require that WEC file a revised agreement that reflects the addition of UMERC as a party to that agreement. UMERC is an affiliate of WEPCO and WPSC and part of the WEC holding company system, and as a result, the Commission shall have access to all books and records of UMERC pursuant to Wis. Stat. § 196.795(5)(b).

Wholesale Distribution Services Agreement

The applicants intend to execute agreements for wholesale distribution services with UMERC. These agreements are necessary to allocate the cost of cross-border distribution assets, such as substations and distribution circuits located in Michigan that are used to provide service to Wisconsin customers, and vice versa. In particular, the agreements for wholesale distribution services will allow WEPCO to continue to use the substations, distribution lines, and other distribution assets transferred to UMERC in providing retail electric service to the mines. For these reasons, the Commission finds that wholesale distribution services agreements are reasonable.

Order

1. The Base Contract for Sale and Purchase of Natural Gas filed in docket 5-AI-100 (PSC REF#: 287201) is approved as conditioned by this Final Decision.

2. The Asset Management Affiliated Interest Agreement filed in docket 5-AI-100 (PSC REF#: 287201) is approved as conditioned by this Final Decision.
3. All sales, purchases and provision of services between the applicants and UMERC shall be in accordance with the Base Contract for Sale and Purchase of Natural Gas and the Asset Management Affiliated Interest Agreement filed in docket 5-AI-100 (PSC REF#: 287201), as conditioned by this Final Decision, and all applicable laws, rule, and orders, and as those laws, rules, and orders may be amended from time to time.

4. Within 30 days of completion of the transaction, WEC shall file with the Commission copies of the final and fully-executed versions of the PPAs between WEPCO and UMERC and between WPSC and UMERC, the Base Contract for Sale and Purchase of Natural Gas, the Asset Management Affiliated Interest Agreement, and the Wholesale Distribution Service Agreement.

5. Within 30 days of completion of the transaction, WEC shall file the accounting entries related to the in-kind dividend disbursements and estimates of the effects of the transactions on WEC’s capital structure.

6. Within 30 days of completion of the transaction, WEPCO and WPSC shall file estimates of the effects of the transactions on WEPCO’s and WPSC’s capital structure.

7. Within 30 days of completion of the transaction, the applicants shall file with the Commission a summary of any costs incurred in connection with the transaction, including any tax liability or other transaction costs.

8. The applicants shall provide documentation annually to the Commission that the FERC-approved formula is being used to calculate the cost of energy and capacity charged to UMERC under the power purchase agreements.

9. The PPAs between WEPCO and UMERC, and WPSC and UMERC, shall be treated by WEPCO and WPSC as fully-allocated sales.
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10. WEPCO and WPSC shall notify the Commission of any proposed changes before FERC that will shift costs to WEPCO or WPSC customers that are currently shared between Wisconsin and Michigan, and shall cooperate with Commission staff to address such proposed changes.

11. WPSC shall reflect any obligations to UMERC under the Base Contract for Sale and Purchase of Natural Gas in its annual gas supply plan filing to the Commission. WPSC shall also notify the Commission of any capacity releases to UMERC above those identified in the agreement under the 21-day letter process, and WPSC shall be bound by the natural gas standards of conduct in its transactions with UMERC.

12. The Commission shall have full access to all books and records underlying all sales, purchases and provision of services between the applicants and UMERC under the Base Contract for Sale and Purchase of Natural Gas and the Asset Management Affiliated Interest Agreement filed in docket 5-AI-100 (PSC REF#: 287201), as conditioned by this Final Decision.

13. The Commission shall have access to all books and records of UMERC pursuant to Wis. Stat. § 196.795(5)(b).

14. As authorized in Wis. Stat. §§ 196.02, 196.52 and 196.795, this Final Decision is expressly conditioned upon the reserve power of the Commission to revise and amend its terms and conditions to protect and promote the public interest.

15. The applicants shall obtain Commission approval prior to the effective date of any suspensions, modifications, or termination of the Base Contract for Sale and Purchase of Natural Gas or the Asset Management Affiliated Interest Agreement.
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16. Approval of the Base Contract for Sale and Purchase of Natural Gas and the Asset Management Affiliated Interest Agreement, as conditioned by this Final Decision, is not a determination by the Commission that the charges are just and reasonable.

17. This Final Decision shall take effect one day after the date of service.

18. Jurisdiction is retained.

Dated at Madison, Wisconsin, this 22nd day of December, 2016.

By the Commission:

Sandra J. Paske
Secretary to the Commission

SJP:JAK:jlt:DL: 01488018

See attached Notice of Rights
NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

The following notice is served on you as part of the Commission's written decision. 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.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an untimely petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.3 The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

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

Revised: March 27, 2013

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3 See Currier v. Wisconsin Dep’t of Revenue, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.
STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of
WISCONSIN ELECTRIC POWER COMPANY,
WISCONSIN PUBLIC SERVICE CORPORATION,
and UPPER MICHIGAN ENERGY RESOURCES CORPORATION for approval, pursuant to MCL 460.6q, Case No. U-18061
for the transfer of control of Wisconsin Electric Power Company’s Michigan electric distribution assets and Wisconsin Public Service Corporation’s Michigan electric and natural gas distribution assets to Upper Michigan Energy Resources Corporation, and related approvals.

PROOF OF SERVICE

STATE OF MICHIGAN

COUNTY OF INGHAM

Crystal L. Abbott, being first duly sworn, deposes and says that on December 22, 2016 she served the Final Decisions issued today by the Public Service Commission of Wisconsin in Case Nos. 5-BS-212 and 5-AI-100 on the parties listed on the attached Service List via electronic mail.

Subscribed and sworn before me on this 22nd day of December, 2016.

Amie L. Sullivan, Notary Public
State of Michigan, Eaton County, Acting in Ingham County
My Commission Expires: March 17, 2018
SERVICE LIST
MPSC CASE NO. U-18061

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