



BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Wisconsin Power and Light Company's Request for Approval of an
Experimental Economic Development Program Rider and the
Associated Approval of Deferral Treatment of Revenue Discounts

6680-GF-126

FINAL DECISION

This is the Final Decision regarding the request of Wisconsin Power and Light Company (WP&L) to implement a new, discounted economic development rate (EDR). The request is GRANTED, subject to conditions. This Final Decision also addresses several related procedural motions.

Introduction

On November 13, 2009, WP&L filed a proposal with the Commission to create an experimental EDR for large commercial and industrial electric customers. WP&L's proposed EDR would be a "rider," available to customers that WP&L serves under rate schedules CP-1 and CP-2. Under its original proposal, a new member of these CP rate classes that is moving into WP&L's service territory and meets other specified conditions would be eligible for a discounted energy rate, as would an existing member of the rate classes that meets the specified conditions and is incrementally increasing its load. WP&L also proposed to make the discounted rate available to existing CP customers in such economic distress that, but for a rate discount, they would be forced to reduce load, close facilities or move facilities out of Wisconsin.

WP&L explained in its filing that the national recession has severely affected businesses in its service territory. The utility stated that many of its "industrial and commercial customers

have either closed or significantly reduced their production or operations,” leading to substantial employment losses that have taken a serious toll. WP&L declared, “[T]he prospect of significant increased industrial and commercial output in its service territory in the near term is tenuous, and [WP&L] believes that the competition between communities to develop new industry will be even more intense than in the past.” WP&L proposed this experimental EDR “to assist communities in its service territory” by encouraging the reestablishment of local industrial and commercial customers. Economic development can also spread the utility’s fixed costs over a larger customer base, which can help protect existing customers against rate increases.

WP&L would set the price for electricity under its experimental EDR high enough to cover marginal costs, plus make some contribution to its fixed costs. WP&L also sought deferral treatment of the discounts. It requested that, until the utility’s next rate case, the Commission defer the difference between the full tariff rate and the discounted EDR for qualifying customers as a regulatory asset. WP&L would seek recovery of this deferred regulatory asset in subsequent base rate case proceedings.

The Commission initially reviewed WP&L’s request at an open meeting on February 19, 2010. At this meeting, the Commission rejected WP&L’s request for deferral of rate differences. The Commission’s standard regulatory approach is to establish a forward test year, forecasting costs and revenues for a future year. Any unforecasted decrease or increase in actual electric load during the test year occurs at the utility’s risk or reward.¹ This makes deferral of an EDR discount unnecessary during the test year.

¹ If WP&L gains additional load because of an EDR, the utility will benefit by receiving additional, unforecasted revenue to cover its fixed costs.

On February 19, 2010, the Commission generally approved the concept of an EDR for the purpose of attracting and expanding business, creating jobs in WP&L's service territory, and helping to protect existing customers, but did not approve the proposal as filed. The Commission suggested areas of improvement to the draft EDR and recommended that WP&L seek comments from the Wisconsin Industrial Energy Group (WIEG), Citizens' Utility Board (CUB), and other interested groups. WP&L worked with these organizations and with Commission staff to prepare a revised proposal, which it presented to the Commission on March 9, 2010.

WIEG, CUB, Clean Wisconsin, and a number of local entities interested in economic development filed comments on the revised draft. CUB and Clean Wisconsin requested that the Commission name them as intervenors in this docket. CUB also filed a request that the Commission conduct a Class 1 contested case hearing on WP&L's proposal.

At its open meeting on March 31, 2010, the Commission addressed the requests for intervention, the request for hearing, and the merits of WP&L's experimental EDR rider.

Findings of Fact

1. WP&L filed its initial EDR proposal on November 13, 2009. In response to Commission suggestions and comments from other interested persons, WP&L filed a revised EDR proposal on March 9, 2010.
2. The experimental EDR rider, as modified by this Final Decision, creates a new class of service.
3. The customers that qualify for the experimental EDR rider have different usage characteristics than existing customers on the CP rate schedules.

4. The experimental EDR rider, as modified by this Final Decision, is a classification that reasonably considers these usage characteristics.

Conclusions of Law

1. The Commission has the authority to approve WP&L's experimental EDR, subject to conditions expressed in this Final Decision, pursuant to Wis. Stat. §§ 196.02(1), 196.03(1), 196.19, 196.20(1), 196.37, 196.395, and 196.40.

2. Pursuant to Wis. Stat. §§ 196.02(2), 196.37, and 196.60, the Commission concludes that WP&L's experimental EDR, as modified by this Final Decision, is not unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise unlawful.

Opinion

Requests for intervention

CUB and Clean Wisconsin filed requests to intervene with the Commission. These groups base their requests on Wis. Admin. Code § PSC 2.21. The first three subsections of this rule define intervention as follows, with emphasis added:

PSC 2.21 (1) INTERVENTION BY RIGHT. A person whose substantial interests may be affected by the commission's action or inaction **in a proceeding** shall be admitted as an intervenor.

(2) **PERMISSIVE INTERVENTION.** A person not satisfying the criteria of sub. (1) may nevertheless intervene **in a proceeding or docket** if the person's participation likely will promote the proper disposition of the issues to be determined in the proceeding or docket and if the person's participation will not impede the timely completion of the proceeding or docket.

(3) **PROCEDURE.** A person requesting intervention in a proceeding shall **file a request no later than 60 days after the issuance of the notice of proceeding, or within a different time set by the administrative law judge at the final prehearing conference.** A person requesting intervention in a docket shall file a request no later than 60 days after the opening of the docket, or within a different time set by the commission at the time it opens the docket.

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Under these rules, intervention must occur in a Commission “proceeding” or a Commission “docket.”

Wisconsin Admin. Code § PSC 2.02(13) defines “proceeding” to mean “a contested case or other docket that includes a hearing,” while Wis. Admin. Code § PSC 2.02(7) defines “docket” to mean “an investigation, proceeding, or other matter opened by a vote of the commission.” Another Commission rule further describes how the Commission opens a docket. Wisconsin Admin. Code § PSC 2.09(1) explains, “A docket is opened when the commission issues a notice of investigation, a notice of proceeding, or such other notice sufficient to identify the basis and nature of the docket. A notice is issued when the secretary of the commission signs it.”

Because the Commission has not yet officially voted to issue a notice for this matter, the Commission’s current review of WP&L’s proposed EDR is neither a proceeding nor a docket. Although the Commission’s Records Management Unit has assigned WP&L’s proposal a docket number for tracking purposes, and although the Commission did review WP&L’s proposal on February 19, 2010, the rules for intervention in Wis. Admin. Code § PSC 2.21 do not apply until the Commission votes to open a docket.

WP&L’s proposed EDR is effectively a rate decrease. The Commission ordinarily does not take a vote to open utility rate decrease proposals because a utility can adopt a rate decrease merely by filing a tariff without any official Commission review. In the case at hand, WP&L did not request that the Commission open a docket when it filed its EDR proposal, and the Commission is handling this matter informally. As a result, the requests that CUB and Clean Wisconsin filed do not meet the standards for intervention under Wis. Admin. Code § PSC 2.21.

However, any interested person can file comments in an informal Commission action without intervening. Although the Commission denies the requests of CUB and Clean Wisconsin to intervene, it accepts the comments of CUB, Clean Wisconsin, WIEG, and the other local entities and it has considered their concerns on the merits.

Request for contested case hearing

CUB bases its request for a Class 1 contested hearing on Wis. Stat. § 227.42(1), which states:

227.42 (1) In addition to any other right provided by law, any person filing a written request with an agency for hearing shall have the right to a hearing which shall be treated as a contested case if:

- (a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;
- (b) There is no evidence of legislative intent that the interest is not to be protected;
- (c) The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and
- (d) There is a dispute of material fact.

CUB maintains that its members “will be injured in fact or are threatened with injury if the Commission approves WPL’s proposed EDR because the EDR may negatively impact WPL’s existing ratepayers through increased rates and/or increased emissions.”

WP&L’s EDR constitutes a rate decrease for certain qualified customers, not a rate increase. CUB’s first assertion, that it is entitled to a contested case hearing because its members are threatened with injury “through increased rates,” is incorrect. WP&L is not increasing the rates of any customer class. In the current test year, the EDR will have no effect on the rates of CUB’s members and in future rate cases, a successful EDR could protect WP&L’s existing

customers by spreading fixed costs over a somewhat larger base or by maintaining WP&L's existing base.

CUB's other assertion is that it has a right to a hearing because, if WP&L does attract more electric load with its EDR, emissions from its generating plants might increase. This allegation is based on speculation. The total emissions from the generating units that provide electricity to WP&L customers depend on many factors. For example, an increase in load that makes units run more efficiently, with less ramping, may have no effect on total emissions. Furthermore, EDR customers will not be wasting energy. One condition of participation in the EDR is that the customer, unlike any other WP&L customer, must implement all economically viable energy efficiency and energy conservation opportunities that have a payback period of five years or less. Because of this requirement, an EDR customer's additional energy consumption will tend to emit fewer pollutants than the energy consumption of other customers. Finally, even if an EDR would create additional pollution, CUB does not explain how this would be an injury to its members that "is different in kind or degree from injury to the general public caused by the agency action." See *Wisconsin's Environmental Decade v. DNR*, 115 Wis. 2d 381, 407 (1983).

CUB's motion does not assert facts sufficient to show that it would be injured or that any potential injury would be different in kind or degree from the injury to the general public. For these reasons, the Commission concludes that CUB's request does not comply with Wis. Stat. § 227.42(1)(c).

Commissioner Azar dissents.

Review of WP&L's proposed EDR

The revised EDR that WP&L filed with the Commission on March 9, 2010, is attached to this Final Decision as Appendix A. The Commission approves this EDR, subject to the changes described in this Final Decision.

Length of pilot program

WP&L's EDR is experimental; the utility initially proposed a five-year pilot period for customers to sign up for the EDR and capped the total annual level of discounts at \$5 million during the pilot period, on a cumulative annual basis. In its first review of the EDR, the Commission agreed with the dollar cap, but directed that WP&L shorten the trial period to a single year, subject to extension upon Commission approval. On further review, the Commission concurs with WP&L's recommendation that a trial period of two years will help allow the program to develop and will give more meaningful information about the EDR's effectiveness. The Commission approves a two-year trial period for signing up customers and directs WP&L to revise its filing accordingly.

Program review

In its first review, the Commission recommended that WP&L propose standards for measuring the utility's economic viability and the level of economic recession in WP&L's service territory to establish evidence about whether continuing to implement the EDR would be just and reasonable. WP&L offered a set of economic metrics relating to county unemployment rates and changes in WP&L's industrial sales volume, but it cautioned that any limited set of measurements may not capture all the benefits of an EDR program. As an alternative, WP&L

suggested that it file an annual report, by March 31 of each year, which the Commission could use to review the program periodically. The report would include:

1. Unemployment rates by county in WP&L's service territory and the statewide unemployment rate, compared to a baseline period (years 2005, 2006, and 2007) that is prior to the recent economic downturn.
2. The most recent three-year average industrial sales volume, compared to the baseline period.
3. The number of new customers enrolled in the EDR during the year.
4. The number of customers that completed the EDR during the year and are taking service at non-discounted rates.
5. The number of customers that dropped out of the program during the year.
6. The total number of customers enrolled in the program, stratified according to the years in the program and the corresponding prorated level of discount.
7. The incremental revenues that WP&L received for the calendar year under the program.
8. The incremental energy that customers in the program consumed during the calendar year.

The Commission agrees that requiring WP&L to file this annual report is an appropriate means of reviewing whether an EDR continues to be just and reasonable. The Commission approves the filing of this report in lieu of establishing economic metrics and directs WP&L to revise its filing accordingly.

Rate case report

The Commission initially directed WP&L to file a report about the progress of the EDR, no later than its 2012 rate case filing. The Commission agrees with WP&L, however, that the annual report described above provides sufficient information and a separate rate case report is unnecessary.

Notifying Commission when customers are added or removed

The Commission recommended that WP&L notify the Commission when it adds customers to the EDR or removes customers from the EDR. WP&L does not object to this requirement, and the Commission finds it a reasonable element of the EDR program.

Load retention customers

WP&L's original filing extended the EDR to existing customers in economic distress. It would have allowed these customers to qualify for the EDR when necessary to retain their existing load if they met all the terms and conditions of the tariff and filed an affidavit stating that the EDR is a "significant determinant" in their decision to stay located in Wisconsin. The Commission initially responded by recommending that WP&L delete this portion of the EDR. The proposed affidavit appeared to be too weak to prevent existing customers, not in real economic distress, from becoming "free riders" on the EDR. In its revised filing, WP&L complied by deleting the provision that made the EDR applicable to customers in economic distress, but the utility recommended that it be reinstated. Otherwise, said WP&L, the utility had "very little opportunity to help our local communities retain jobs." WP&L also discounted the likelihood that a customer would become a free rider by publicly threatening to close or move its operations simply to reduce its electric bill. As an alternative approach, WP&L proposed that

the EDR be available to a customer in economic distress only with the Commission's prior approval. The Commission agrees that this approach is reasonable because the Commission can investigate the customer's financial status and the customer's opportunities to move operations out of Wisconsin. The Commission directs WP&L to revise its filing accordingly.

Establishing a specific rate discount

WP&L initially proposed that its EDR would provide a range of rate discounts, subject only to the limit that the EDR must cover "not less than" 105 percent of the marginal cost of serving the customer's incremental load. The Commission rejected this proposal, though, because it gave the utility too much discretion to establish different rates for customers with similar usage characteristics. In its March 9, 2010, revisions, WP&L sets a firm EDR at 105 percent of marginal costs for the first year, with the discount annually decreasing on a *pro rata* basis over the EDR's five-year life until the customer pays full CP-1 or CP-2 rates. The Commission accepts this revision because the firm EDR avoids discriminatory treatment among EDR customers, and the decreasing discount gradually moves these customers to full rate status without rate shock.

Defining marginal costs

The Commission's initial recommendations included a suggestion that WP&L be more specific about how it calculates marginal costs. WP&L has done so, and the Commission finds its definition of marginal costs reasonable.

Establishing the load level that qualifies for the EDR

WP&L modified its tariff to specify that the EDR discount for an expanding CP customer applies only to the incremental additional load, above the customer's base level. However,

WP&L's proposed tariff does not explain how to calculate the base level or the incremental load for an expanding customer, nor does it explain how to establish the qualifying load level for a new customer or a customer in economic distress. A reasonable method for an expanding CP customer is as follows:

1. The base level is the customer's energy consumption for each month of the prior calendar year.
2. If the customer's energy consumption for a month in the test year exceeds the customer's energy consumption for the same month of the base year, the additional kilowatt-hours are incremental load that qualifies for the EDR.
3. The customer need not have incremental load every month of the year, but at the end of each 12-month period that the customer has been on the EDR, WP&L shall determine whether the customer's total incremental load for the entire twelve months exceeds the annual base level. If not, the customer is disqualified from the EDR.

For a load retention customer, the Commission reserves the right to decide how much load qualifies for the EDR when it reviews the customer's application and approves an EDR for the customer. For a new customer, all of the electric load from its new facilities in Wisconsin qualifies as incremental.

The Commission directs WP&L to revise its filing and include this method of establishing the load levels that qualify for an EDR.

Rate calculation

On pages 5 and 6 of its March 9, 2010, cover letter, WP&L explained how it would implement the discount for new customers and expanding existing customers. The Commission finds this implementation method reasonable. The Commission directs WP&L to use a similar approach when it calculates rates for a customer in economic distress.

Minimum additional load

The Commission initially recommended that WP&L specify how much additional load an expanding customer must add in order to qualify for the EDR. Because WP&L is applying the EDR only to incremental load additions for these customers, not to the existing customer's prior load, the Commission agrees with WP&L that specifying a minimum incremental load level is no longer necessary.

Defining the government economic assistance programs

The Commission initially recommended that WP&L be more specific about the forms of government financial assistance that an EDR applicant must have received. WP&L's revised filing includes a list of local, state, and federal programs and specifies a minimum grant of \$500,000. The Commission finds these terms reasonable. For new and incremental load additions, WP&L proposes that the customer must have received the governmental aid for the specific project that adds the load. The Commission also finds this requirement reasonable as a means of independently verifying that the project will be a lasting economic improvement. For customers in economic distress that only want to maintain their existing electric load, however, it is not reasonable to require that the governmental aid must be for a specific project that adds more load. Instead, it is reasonable to require that the customer receive the governmental aid no

more than 24 months before it qualifies for the EDR. This requirement offers an equivalent independent verification of the customer's economic stability.

WP&L suggests that the listing of governmental aid programs could stay up to date by including "Other, subject to Commission approval." The Commission agrees and directs WP&L to revise its tariff accordingly. The Commission delegates approval of these other governmental aid programs to the Administrator of the Gas and Energy Division.

Removing the competitor clause

Under WP&L's first filing in November 2009, the EDR would not have been available to customers that have direct competitors within the utility's service territory. WP&L defined "direct competitor" as "either a company that manufactures the same end product or offers the same service to the same group of customers." The Commission recommended that WP&L make this condition more specific, finding it too difficult to implement as written. In its revisions, WP&L acknowledges the difficulty of defining "direct competitor" and suggests that, by confining the EDR for expanding customers to their incremental load additions, the competitor clause may be unnecessary. The Commission agrees that this alternative approach is reasonable.

Affidavits

The Commission's original suggestions directed that WP&L require an affidavit from every customer seeking the EDR. WP&L responded by preparing a *pro forma* affidavit in which the customer must declare that it would not be expanding load or locating new operations in WP&L's service territory, but for the existence of the EDR, either alone or in combination with other available economic assistance. The Commission finds WP&L's revised affidavit

reasonable for customers that are expanding or locating new operations in WP&L's service territory. Because the Commission has also approved use of the EDR for customers in economic distress in this Final Decision, the Commission further directs WP&L to create an affidavit that covers load retention for customers in economic distress. Paragraph 6 of the EDR should add another paragraph, stating:

In order to be eligible for this Rider, a customer in economic distress that is seeking to retain its existing load shall sign an affidavit, attesting to the fact that "but for" the rate discounts available under this Rider, either on its own or in combination with a package of economic development or job creation incentives from local, county, State of Wisconsin, or federal programs, the customer would be reducing its energy consumption, shutting facilities in Wisconsin, or leaving Wisconsin.

Participation in energy efficiency programs

The Commission recommended that WP&L revise its initial filing by including, as a condition of qualifying for the EDR, the requirement that the customer participate in all economically viable energy efficiency and energy conservation programs with a payback period of five years or less. WP&L did so, but is concerned that some customers will be unable to incur these additional costs. WP&L suggests that the customer only be required to meet with Focus on Energy representatives to identify possible energy efficiency and energy conservation programs, and with WP&L representatives to identify opportunities for participation in the utility's Shared Savings program.

As currently filed, WP&L's proposed EDR requires a customer to participate only in "economically viable" energy efficiency and demand-side management programs. This phrase gives the customer an opportunity to decline such a program, even if it has a payback period of five years or less, when the customer cannot afford the start-up cost. The Commission finds that WP&L's currently filed EDR properly balances the need to avoid a tariff that encourages the

wasteful use of energy with the need to promote development in economically troubled parts of WP&L's service territory. The Commission therefore approves this portion of WP&L's currently filed tariff and rejects WP&L's recommended alternative.

Reimbursement requirement for disqualification from the EDR

The Commission suggested that WP&L include a provision in its revised tariff that requires a customer to reimburse WP&L for the value of the EDR discount received if the customer ceases operations or otherwise drops out of the EDR before the entire five-year discount period ends. WP&L did so, but it has concerns that this requirement could be viewed as an additional liability on the customer's financial books and that WP&L's ability to collect forfeited discounts will be both difficult and uncertain. It argues that the reimbursement requirement is too onerous for potential customers and should be discarded.

Reimbursement requirements are standard parts of many financial aid programs, but the Commission acknowledges WP&L's concerns. To reduce the burden on EDR customers, the Commission agrees that if a customer does not sustain its operations and reduces its load below the base level established when it first qualified for the EDR, it must reimburse WP&L only for the amount of EDR discounts received in the most recent two years that the customer was on the program. Because the EDR discount diminishes annually, the longer an EDR customer can maintain its economic development activity and stay on the EDR, the lower the reimbursement penalty for disqualification. The Commission directs WP&L to revise this provision of the EDR accordingly.

Discrimination

During its first review of WP&L's proposal, the Commission recommended that WP&L consider creating the EDR as a new rate class instead of a rider on the existing CP rate schedule. The Commission offered this recommendation to make more clear that WP&L's EDR would not be improperly charging different rates to the same class of customers. Upon further review, the Commission agrees with WP&L that establishing a rider is a common practice and can be sufficient to create a distinct rate class for purposes of avoiding discriminatory treatment of customers under Wis. Stat. §§ 196.37 and 196.60. The Commission therefore concludes that creating WP&L's EDR as a rider on the CP rate schedule is an appropriate rate design structure, and WP&L need not substitute a separate rate class for the rider.

Avoiding discrimination is a key statutory requirement. Preventing discrimination requires more than just an evaluation of the EDR's structural design; the Commission must ensure that when WP&L implements its rates and provides service, the utility is not charging customers different rates for like contemporaneous service. Wisconsin Stat. § 196.37(2) declares:

196.37(2) If the commission finds that any measurement, regulation, practice, act or service is unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise unreasonable or unlawful . . . , the commission shall determine and make any just and reasonable order relating to a measurement, regulation, practice, act or service to be furnished, imposed, observed and followed in the future.”

Furthermore, Wis. Stat. § 196.60(1)(a) provides that no electric utility:

196.60(1)(a) [D]irectly or indirectly, may charge, demand, collect or receive from any person more or less compensation for any service rendered or to be rendered by it in or affecting or relating to the production, transmission, delivery or furnishing of heat, light, water, telecommunications service or power or for any service in connection therewith, than that prescribed in the published schedules or

tariffs then in force, or established under this chapter, or than it charges, demands, collects or receives from any other person for a like contemporaneous service.

Under these statutes, the Commission does not allow a utility to offer different rates to customers that are receiving a like contemporaneous service. As the Commission stated in *Petition of the City of West Allis for a Declaratory Ruling as to the Legality of Discounted Employee Water Bills*, docket 6360-DR-100, 68 Wis. PSC 55, 57-58 (1985), the Commission will not “approve rates which unjustly discriminate between customers within the same class of service i.e., customers with similar usage characteristics.”

WP&L’s proposal, as modified by this Final Decision, is not discriminatory because it sets a tariff for a distinct class of customers. To qualify for an EDR, a large commercial or industrial customer must meet more standards than any other CP customer. It must:

1. Expand or stabilize WP&L’s electric load. Load expansion provides economic protection for all existing customers because WP&L has excess capacity in its electric plant. Under these circumstances, load expansion allows WP&L to spread its fixed costs over more customers without incurring more costs to add capacity so each customer’s share of the fixed costs will decrease. Load stabilization also protects all existing customers economically because, under the EDR, WP&L can keep a customer that must otherwise reduce its consumption. Load stabilization helps avoid the concentration of fixed costs on a shrinking customer base.
2. Affirmatively declare that the customer would not be expanding or stabilizing load without the EDR. A customer seeking to increase its electric load or locate new operations in WP&L’s service territory must sign an affidavit stating that, but

for the availability of the EDR, it would not be adding the incremental load. A customer in economic distress must sign an affidavit declaring that, but for the availability of the EDR, the customer would be reducing its energy consumption, shutting facilities in Wisconsin, or leaving Wisconsin.

3. Identify and implement all economically viable energy efficiency and energy conservation opportunities that have a payback period of five years or less.
4. Have received at least \$500,000 in local, state, or federal financial assistance for economic development or economic stimulus. WP&L's proposed rider requires that expanding customers and new customers must have received this financial assistance "for the specific project that adds incremental load before its first accepts service" under the EDR. These requirements offer an independent verification that the customer will be providing an economic improvement to the local community of lasting value, which means the benefit of load expansion that existing WP&L customers in other rate classes will see is more likely to be significant. For economically distressed customers seeking an EDR for load retention, this Final Decision adds the requirement that the customer must have received the government financial assistance no more than 24 months before qualifying for the EDR. This requirement, as discussed above, offers similar independent verification that an economically distressed customer, with proper support, still has sufficient economic stability to benefit the community and other WP&L customers.

These conditions create a distinct rate class of customers, different than other CP classes. These are customers that would not be providing incremental new load or retaining existing load but for the existence of the EDR, and that are actively implementing energy efficiency and energy conservation programs. These are not the same usage characteristics as other CP customers. For these reasons, WP&L will not be providing “like contemporaneous service” to CP customers and to EDR customers, and therefore will not be violating the laws against discrimination. Furthermore, these are customers with demonstrated economic value to the community and to other WP&L ratepayers. Establishing a separate rate class for them, in these times of severe economic recession and unemployment, is just and reasonable.

Finally, the Commission notes that the EDR discount covers more than the participating customer’s marginal costs, so the customer is always contributing to the recovery of fixed costs. The EDR rate lasts for five years, but the discount diminishes on a *pro rata* basis annually, which moves the EDR customer to the standard CP rate in a measured manner. This diminishing discount recognizes that an EDR customer, after it has made the commitment to expand or stabilize its load in WP&L’s service territory, eventually loses its distinguishing usage characteristics. The gradual transfer of this customer to the standard CP rate recognizes this change while reasonably avoiding rate shock.

Summary

With the changes described in this Final Decision, the Commission finds that WP&L’s experimental EDR rider is just and reasonable, does not violate state laws prohibiting discrimination, and is in the public interest. The Commission authorizes WP&L to implement its

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experimental EDR rider, after modifying it to satisfy the terms of this Final Decision and filing the new version with the Commission.

Commissioner Azar dissents from the Commission's approval of the EDR.

Order

1. This Final Decision takes effect on the day after mailing.
2. The requests for intervention are denied.
3. The request for a contested case hearing is denied.
4. WP&L's request for a deferral is denied.
5. WP&L's EDR is approved, subject to conditions in this Final Decision.
6. WP&L shall submit a compliance filing that incorporates into its March 9, 2010, tariff the changes discussed in this Final Decision.
7. As soon as WP&L adds a customer to the EDR or removes a customer from the EDR, it shall notify the Commission.
8. WP&L shall file an annual report, by March 31 of each year, containing the information described in this Final Decision.
9. Jurisdiction is retained.

Commissioner Azar will be filing a separate dissent in this docket at a later date.

Dated at Madison, Wisconsin, June 4, 2010

By the Commission:


Sandra J. Paske
Secretary to the Commission

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See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN
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**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 mailing of this decision, as provided in Wis. Stat. § 227.49. The mailing 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 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 mailing 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 mailing 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 mailed its original decision.² 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: December 17, 2008

² See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

Appendix A



March 9, 2010

FILED ELECTRONICALLY

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**RE: Wisconsin Power and Light Company's Request Docket No. 6680-GF-126
 for Approval of an Experimental Economic
 Development Program Rider, and the Associated
 Approval of Deferral Treatment of Revenue
 Discounts.**

Dear Secretary Paske:

At its Open Meeting of February 19th, the Public Service Commission of Wisconsin (Commission or PSCW) discussed the merits of Wisconsin Power and Light Company's (WPL) request for approval of an experimental economic development program rider and associated approval of deferral treatment of revenue discounts. WPL understands that the Commission generally approved of the concept and the rationale for WPL's desire to offer discounted rates in order to aid economic development and job creation efforts in WPL's service territory. In addition, the Commission provided feedback about suggested revisions to WPL's proposal, and also recommended that WPL work with PSCW staff, the Citizens Utility Board (CUB), the Wisconsin Industrial Energy Group (WIEG), the State of Wisconsin Department of Commerce (DOC), and other parties to gain further feedback and input to WPL's proposal. Finally, the Commission recommended that WPL file a revised proposal for consideration within 30 days.

WPL talked with, shared information and suggestions, and received input from PSCW staff, CUB, WIEG and DOC in developing a revised proposal. In addition to addressing the Commission's suggested revisions in the revised proposal, WPL independently and through discussions with these groups identified possible alternatives to some of the Commission's recommendations.

Attached to this letter are the following:

1. Narrative Summary of Revisions and Alternatives to the Commission's Suggested Revisions. This document identifies the changes made to meet WPL's understanding of the Commission's suggested revisions and where applicable describes alternatives for Commission consideration. In addition this document provides additional rationale for not implementing the revisions recommended by the Commission.

Public Service Commission of Wisconsin
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2. A redlined revised version of the originally filed economic development rate rider that incorporates WPL's understanding of the Commission's suggested revisions. As indicated in the previously mentioned attachment, WPL does not agree that all of the Commission's suggested modifications are appropriate and necessary and requests consideration of its proposed alternatives. If the Commission modifies any of its original recommendations the rider sheets will need to be updated via a compliance filing.
3. A clean version of the revised economic development rate rider sheet that incorporates WPL's understanding of the Commission's suggested revisions.
4. A pro-forma affidavit that customers would sign for them to qualify for the discounted rates.

The attachments listed above do not address the Commission's decision to deny deferral treatment of revenue discounts. While WPL understands, but disagrees with, the Commission's rationale for denial of deferral treatment WPL is not seeking review of that decision. However, WPL seeks clarification in the Commission's Final Decision and Order that future rate case proceedings will reflect projected sales volumes and revenues at the discounted rates for known participating customers.

WPL notified CUB and WIEG of its plans to file the revised proposal. WPL shared drafts with both and suggested that they file comments as they deem appropriate as soon thereafter as possible.

Questions regarding this Application may be directed to Neil Michek at (608) 458-7618 or to me at (608) 458-3652.

Sincerely,

s/s Catherine A. Briggs

Catherine A Briggs
Manager Regulatory Pricing

Summary of Revisions and Alternatives to the Commissions
Suggested Revisions to WPL's Economic Development Rate Proposal

The following is based on Wisconsin Power and Light's (WPL) understanding and interpretation of the Public Service Commission of Wisconsin's (PSCW or Commission) February 19, 2010 open meeting discussions regarding WPL's economic development rate proposal. WPL discussed its understanding and interpretations with PSCW staff in the development of the revised proposal and also received input on the revisions and alternatives offered for consideration from both the Citizens Utility Board (CUB) and the Wisconsin Industrial Energy Group (WIEG). The revised tariff Rider language (redlined and clean) included in this filing reflects the Commission's February 19th discussion. This document explains options for consideration, and provides WPL's feedback regarding the Commission's recommendations that WPL believes are too onerous and jeopardize the usefulness of the program.

General Modifications to WPL's Request:

1. Modify the proposal to reflect a one-year trial period rather than a five-year trial period.

WPL recognizes the Commission's authority to establish the length of the trial period as a condition in the Commission's Final Decision and Order in this proceeding. WPL does not believe a sunset provision is a necessary provision of the tariff rider itself.

If the Commission chooses to establish a sunset date, WPL recommends that the Commission Order also establish a deadline prior to that sunset date by which WPL shall file a report summarizing the impacts of the program, as well as any economic metrics that the Commission requires. The report deadline should be set well in advance of the sunset date to allow Commission review of the program. This review would allow the Commission to determine if the tariff rider should continue uninterrupted, be modified or be terminated.

WPL Concern

WPL understands the Commission's hesitancy to establish a five-year trial since this is a new program. However, WPL believes that an initial trial period of at least two-years will allow the program to develop, and has a better chance of providing meaningful information about the effectiveness of the program.

Alternative for Consideration:

WPL proposes, that once approved, the tariff rider be allowed to be in effect and active until an explicit decision to the contrary by the Commission. As explained further below, WPL recommends that the Commission periodically review the

impacts of the proposed economic development rider prior to making any decision about whether to continue, modify or discontinue the discounted rate program.

2. Identify economic metrics that would be used to establish evidence of and an expectation of when the economic development rate is just and reasonable.

Based on discussions with PSCW staff, WPL understands this recommendation is intended to provide a possible method to determine, based on predefined objective measures, whether the proposed economic development rate program should continue. WPL considered various metrics and recommends that the Commission rely on the following metrics, if the Commission desires to establish predefined economic measures.

Metrics:

- A comparison of the unemployment rates in the counties in which WPL provides electric service relative to a baseline period or rate (i.e. five percent) and relative to the statewide average.
- A comparison of WPL's industrial sales volumes relative to the three-year baseline period of 2005, 2006 and 2007.

WPL's service territory has been severely impacted by reductions in industrial sales. The loss of this industrial load has resulted in the loss of significant numbers of jobs within WPL's service territory. These two metrics are directly linked to the primary goals of the proposed program, increasing jobs and reestablishing industrial load.

WPL, based on input from PSCW staff, identified the three year period of 2005, 2006, and 2007 as an appropriate baseline period for comparison of industrial sales because it excludes the impacts of the sharp economic downturn that started in late 2008. The metric would compare the most recent (i.e. 2008, 2009, 2010) three year average industrial sales (i.e. CP-1 and CP-2, and related subclasses) in megawatt-hours (MWH) to the baseline three year average. Use of three year averages rather than a single base year would smooth any peaks or valleys in results.

WPL has not made any specific reference to metrics in the revised tariff language; rather, WPL believes that any required metrics should be addressed in the Commission's Final Decision and Order.

WPL Concerns:

WPL believes that identified metrics would be useful tools to evaluate the need for the proposed program. However establishing a limited number of metrics that define whether the economic development rate program should continue is

premature. WPL is concerned that tying the applicability of the program to any single, or a limited number of metrics, may not capture all the benefits of the program. WPL recommends, as discussed further below, that the Commission periodically review the impacts of the proposed program.

Alternative A for Consideration:

WPL suggests that it be required to file an annual report to the Commission by March 31st of each calendar year providing the following information:

- Unemployment rates by county for WPL's Service Territory, and the state wide unemployment rate, including a comparison of that employment rate data to a baseline period prior to the recent economic downturn.
- The most recent three-year average industrial sales volumes, including a comparison of that three-year average relative to the baseline period of 2005, 2006, and 2007.
- Number of new customers enrolled under the proposed rate schedules during the year.
- Number of customers that exited the proposed rate schedules during the year that are now taking service at the non-discounted rates.
- Number of customers that dropped out of the program.
- The total number of customers enrolled.
 - Customer count information would be stratified by the years in the program that correspond to relative prorated level of discount they receive.
- Annual calendar year incremental revenues received under the program.
- Annual calendar year incremental energy consumed by customers in the program.

The Commission could then periodically review the program either within the context of future rate case proceedings, or separately.

Alternative B for Consideration

If the Commission prefers the use of a limited number of predetermined metrics, the Commission's Final Decision and Order could specify that the program remain in effect for a period of five years, or indefinitely, until the specific metrics indicate that the economic recovery has occurred and the program is no longer necessary.

3. Establish a process to notify the PSCW when each customer is added or removed from the program.

Establishing an internal procedure to provide notification to the Commission whenever any customers are added or removed from the program is manageable. That requirement should be addressed within the Commission's Final Decision and Order.

Alternative for Consideration:

WPL's suggested annual report includes new customer information. That report would provide the requested information without duplication of effort to notify the Commission as each customer is added or removed.

4. Report on the progress of the tariff no later than the utility's filing of its rate case for the test year 2012.

Including a report on the progress of the tariff no later than the utility's filing of its rate case for test year 2012 is manageable and WPL recommends that the Commission's Final Decision and Order clearly establish this compliance requirement. However WPL believes its alternative proposal to file an annual report would address the Commission's requirements.

Structural Revisions:

5. Redesign the proposal as a new rate class, rather than as a rider to the existing CP-1 and CP-2 rate classes.

WPL has not revised the structure of the tariff language to be structured as two new rate schedules. WPL and PSCW staff discussed this matter and WPL believes that there is agreement that structuring the program as a rider to the existing CP-1 and CP-2 rate classes creates the equivalent of new rate classes. WPL also shared this document in draft form with WIEG and CUB and did not receive feedback opposing this interpretation.

WPL sees no legal difference between 1) adding a rider containing such specific additional provisions while keeping all of the other CP-1 and CP-2 requirements and 2) creating separate rate schedules that replicate the existing requirements of rate schedules CP-1 and CP-2 and adds the additional requirements in the rider sheet to the new tariff pages. WPL sees this as a "distinction without a difference."

WPL believes this structure is more efficient administratively, and more understandable from the customer perspective. It facilitates billing a customer that is adding load, and it facilitates the customer's transition to the base CP-1 or CP-2 rate schedules when the term of the discounts is complete.

6. Set the initial rate discount equivalent to 105% of the marginal cost rather than allowing a range of discounts up to that level.

WPL's original filing included language that stated that rates would be "...discounted such that the individual customer's rates cover a floor price that reflects **not less than 105%** (*emphasis added*) of the marginal cost of serving the customer's incremental load."

The revised tariff language states that the discount in year-one of the program for each customer **will be 105%** (*emphasis added*) of the marginal cost. This change was made in response to the Commission's concern that the original language allows too much flexibility, and therefore concerns about potential discrimination. As indicated in the tariff language the discounted rate would increase (reduced discount) on a prorated basis over five year until the customer would pay the full CP-1 or CP-2 rates.

7. Clarify that the economic development rate discounts apply only to the incremental load.

The modified tariff language clarifies in several locations that the discounted rates only apply to the incremental load. However WPL takes this opportunity to further clarify how the discount would be applied in the following examples.

Example 1: New Customer (or Retained Customer if Allowed)

- a. WPL would calculate the incremental marginal cost of serving the new customer based on the language in the tariff. These calculations would be based on projected demand and energy levels.
- b. WPL would then multiply that marginal cost by 105% to establish the floor costs for the usage projections.
- c. WPL would then calculate the projected costs based on that projected demand and energy using the non-discounted industrial (i.e. Cp-1 and Cp-2) rate.
- d. WPL would compare the results of the calculations at full rates to the floor price to establish a percentage discount level for year-one under the contract. That discount percentage would be used for calculating the customer's bill during year-one.
- e. Each subsequent year, the customer's usage levels would be reviewed to ensure that the customer still meets the minimum requirements. If the customer continued to qualify for the discount, the discount percentage would decline on prorated basis, such that at the end of the contract period the customer would pay the full non-discounted rate in effect at the time.

Example 2: Incremental Additional Load for An Existing Customer

- a. Steps a. through c. above would remain the same, but would only apply to the **incremental** (*emphasis added*) demand and energy for the customer.
- b. WPL would compare the results of the calculations at full rates to the floor price to establish a percentage discount level for year-one under the contract for the **incremental** usage.
- c. WPL would then calculate the applicable percentage discount to be applied to all usage by calculating the incremental usage as a percentage of the forecasted total usage.

For Example:

- a. If the customer's discount percentage for the incremental usage is 20% of the full tariff rate, and
- b. If the incremental usage was equivalent to 20% of the customer's new total projected usage,

Then:

The discount applied to all usage would be 4% ($20\% * 20\%$)

This will ensure that only the incremental usage qualifies for the discount. This method is significantly less administratively burdensome than calculating separate bills for existing and incremental usage.

8. Establish a minimum incremental load level to be added by the customer to qualify for the economic development rate.

The modified tariff language currently reflects a minimum incremental annual energy usage of 1,000,000 kWh. For purposes of drafting the revised tariff language, this load level was chosen because it is roughly the equivalent of adding a new CP-1 customer.

Alternative for Consideration:

WPL's believes that the clarifications that ensure that the discounts are available only to "incremental" load, in combination with all of the other requirements that need to be met prior to qualifying for the Rider provide sufficient protection. Therefore an alternative is to eliminate a minimum energy usage level to qualify for the Rider.

9. Provide definitions or examples of which government economic development assistance programs would allow the customer to qualify for the economic development rate.

The revised tariff language includes a listing of available economic development aid that the customer must also have received in order to qualify for the discounted rate. The tariff language also specifies a minimum amount of

qualifying economic development assistance that must have been received. Finally, the revised language includes a provision that clarifies that the economic development assistance must be specific to the project that is increasing load and creating jobs.

WPL Concern:

WPL's concern is that the listing of possible qualifying economic development programs could become stale if the State of Wisconsin or the federal government establishes new programs.

Alternative for Consideration:

WPL suggests that the listing include an "Other, subject to Commission approval" category. That would provide flexibility in the event that new programs are developed and yet allow the Commission explicit review before for inclusion as a qualifying program.

10. Provide further clarification of the definition of "marginal costs".

The revised tariff language includes further definition of the "marginal costs" consistent with the information provided to PSCW staff during its initial review of the proposed program, and subsequent discussions since the Commission's initial deliberation of the proposed program.

11. Provide further clarification of the "competitor clause".

WPL understands the Commission's desire to further clarify the availability of these discounted rates or lack thereof depending on whether the customer that is proposing to expand or develop new load has a competitor in WPL's service territory. WPL struggles with the wording of that provision as well. WPL's intent was to attempt to alleviate price competition concerns between similarly situated customers making similar products in WPL's service territory.

As discussed above, the revised tariff language clarifies that the discounted rate will only apply to the "incremental" load of a new or expanding customer. With those clarifications, WPL believes it may be reasonable to delete the competitor clause language entirely. WPL understands that PSCW staff is in agreement with this modification.

Alternative for Consideration:

While clearly defining competitors may be difficult and subject to interpretation, allowing the original language to remain in the Rider provides a measure of perceived equity between competing customers. WPL's understands that similar

concerns were raised in the past when Wisconsin Public Service Corporation filed a somewhat similar proposal.

Applicability or Conditions of Use Revisions:

12. Exclude use of the programs as a load retention tool for existing customers that are threatening to leave the WPL system.

The revised tariff language reflects the discussion of the Commission at its February 19th open meeting.

WPL Concern:

WPL believes that the Commission's concern is that existing customers may attempt to over-use this opportunity as a method to leverage their ability to seek lower costs. WPL believes that it is unlikely that companies will publicly threaten to move operations to reduce electric bills; there are too many other negative ramifications for most companies to make such allegations unless they are seriously considering such moves. WPL's concern is that a complete exclusion of this program for these instances provides WPL with very little opportunity to help our local communities retain jobs. WPL believes job retention is as important as job creation. In addition, any retention customer would still need to meet all of the other requirements of the proposed Rider.

Alternative A for Consideration:

One possible alternative is that the program be available to customers in such situations, but only with prior Commission approval. That would allow the Commission to verify an existing company's opportunities to move operations out of Wisconsin. As with customers adding incremental load, these existing customers would need to meet all of the other conditions of receiving discounted rates, including the receipt of governmental economic development aid as listed in the tariff.

Alternative B for Consideration:

The Commission could require a separate affidavit by which the customer affirms that the availability of discounted rates was a primary reason for maintaining operations in WPL's service territory. The Commission could identify other specific requirements that retention customers would need to meet.

13. Develop an affidavit that affirms "but for" the existence of the economic development rate, either alone or in combination with other available economic programs, the customer would not have located the incremental load in WPL's service territory.

WPL's filing includes a pro-forma affidavit.

14. Require the customer to participate in all economically viable energy efficiency programs with a payback of five-years or less. Make these customers a priority for participation in the Shared Savings program, if they qualify.

The revised tariff language includes these additional requirements.

WPL Concern:

It is WPL's experience that new customers, and customers looking to expand, are particularly conscious of their initial start-up costs. To the extent that a particular energy efficiency program has a relatively short pay-back period and the customer has the financial capability to finance the incremental start-up costs associated with the energy efficiency program, they are very likely to pursue those opportunities. However some customers simply cannot incur incremental start-up costs for a variety of reasons. It is in these situations in which discounted electricity rates may be even more beneficial to make it possible for the customer to locate or expand in WPL's service territory.

Alternative for Consideration:

WPL suggests that the conditions for qualifying for the discounted rates include both of the following:

- The customer shall meet with Focus on Energy representatives to identify possible energy efficiency or demand side management programs or investments that may be beneficial to the customer, prior to qualifying for the discounted rates.
- The customer shall meet with WPL Shared Savings representatives to identify opportunities for WPL's Shared Savings program for possible energy efficiency or demand side improvements.

WPL believes that the customer should retain the right to determine whether and when any of the programs identified by Focus on Energy or WPL under its Shared Savings program are in the best interest of the company.

15. The program shall include a "claw-back" provision requiring that discounts received by the customer shall be reimbursed to WPL if the customer ceases operations, or fails to maintain the incremental load additions during the entire five-year discount period.

WPL has included language based on sample language obtained from the Department of Commerce.

WPL Concern:

Companies are generally vulnerable to potential failure in the early years of operations and this additional requirement may be viewed as an additional liability on a new company's books. To the extent that the customer fails (i.e. goes bankrupt), WPL believes that administration and collection of the costs are likely to be both difficult and uncertain.

Further, as described in WPL's initial application, the provision that the discounted rates cover at least 105% of the marginal costs will reasonably ensure that existing customers are not harmed. WPL's proposed process of an annual review of the customer's load should ensure that customer continues to qualify for the discounted rates, and to the extent that they don't the discounted rates will cease.

Alternative for Consideration:

WPL suggests that this provision should be removed as a condition of receiving the discounted rate. WPL believes this condition is too onerous for potential customers.

Summary:

The Commission discussion indicated that it had some concerns that the additional modifications to the program may be too onerous to allow the program to be successful, either individually, or on a cumulative basis. As discussed above, WPL has identified certain alternatives for Commission consideration regarding nine of the fifteen modifications requested by the Commission. WPL believes that each of those alternatives has the potential to make the program more successful than the originally proposed recommendations from the Commission. Of the Commission's recommendations, WPL believes that the following three modifications are the most onerous and may cause the rate to go unused:

Item 13: The requirement that customers participate in all economically viable energy efficiency or demand side management programs with a payback period of five years or less.

Item 11: The complete exclusion of the program from use as a load retention tool.

Item 14: Inclusion of a "claw-back" provision that requires customers to reimburse WPL for discounts received if they fail to maintain the minimum incremental load levels.

WPL strongly encourages and requests that the Commission reconsider these three modifications and the alternatives suggested. WPL believes these three modifications, in combination with the other requirements for qualifying for the program, will significantly hinder the usefulness of the program. In addition, WPL requests consideration of the value of a "competitor clause" and the other alternatives identified above.

ECONOMIC DEVELOPMENT PROGRAM RIDER
(Experimental)

ELECTRIC

1. Effective In

The Economic Development Program Rider ("Rider") is available in all territory served by Wisconsin Power and Light Company ("the Company").

2. Availability

This Rider is available to all customers served, or to be served, under Rate Schedules CP-1, CP-1A, CP-1B, or CP-2, CP-2A or CP-2B, that meet all of the following additional conditions:

- This Rider is applicable to only:
 - The incremental load added by new customers, or
 - The incremental load added by existing customers relative to prior calendar year load levels for that customer, ~~or~~
 - ~~Customer load that is subject to potential loss due to customer consideration of moving load out of the State of Wisconsin.~~
 - ~~In order to qualify under the potential loss of load provision, the Customer shall provide an affidavit indicating viable alternative locations outside of Wisconsin, and indicating that qualification for the economic development discount was a significant determinant in a decision to maintain load in Wisconsin.~~
- The incremental load shall result in an additional 1,000,000 kWh of energy use on an annual basis.

The customer must have qualified to receive, and have received local, county, State of Wisconsin or federal financial assistance for economic development or economic stimulus. The minimum value of the economic development assistance from a local, county, State of Wisconsin, or federal entity that the customer has received must be no less than \$ 500,000 and the customer must have received the assistance for the specific project that adds incremental load before it first accepts service under this Rider. The last page of this Rider provides a listing of qualifying economic development programs.

- This Rider is not available to customers or potential customers transferring load from a different electricity provider in Wisconsin to Wisconsin Power and Light Company.
- ~~This Rider is not available to customers with direct competitors within the Wisconsin Power and Light Company service territory. A direct competitor is defined as either a company that manufactures the same end product or offers the same service to the same group of customers.~~

This is an experimental pilot tariff rider program. The terms and conditions of this tariff may be modified outside of a rate proceeding, subject to approval by the Public Service Commission of Wisconsin (PSCW).

3. Rate

The rates established for each customer's incremental load will be based upon the applicable

**ECONOMIC DEVELOPMENT PROGRAM RIDER
(Experimental)**

ELECTRIC

~~Cp-1, Cp-1A, Cp-1B, Cp-2, Cp-2A or Cp-2B tariff rates schedules.~~ The rates will be discounted such that the individual customer's rates for the first year of eligibility cover a floor price that reflects not less than 105% of the marginal cost of serving the customer's incremental load, as determined on an individual customer basis.

~~The level of discount initially available under this Rider shall decline by an equivalent prorated reduction over each year of the contract term such that at the end of the contract the customer's rates shall be the tariff rates in force at such time.~~

~~Customer rates for incremental load under this Rider shall be updated for all changes to tariff rates, including fuel cost surcharges or fuel cost credits.~~

~~The calculation of the floor price shall consider any other discounts applicable to the customer and shall consider expected load curves and on-peak / off-peak energy usage projections.~~

~~Marginal costs include- consists of the following costs components:~~

- ~~• of energy at marginal rates levels equal to the projected Locational Marginal Price (LMP) forecasts underlying in the approved fuel cost projections from the most recent WPL base rate case, or base rate case re-opener proceeding~~
- ~~• marginal transmission and distribution losses~~
- ~~• transmission charges, and~~
- ~~• applicable distribution charges for customers served under tariffs CP-1, CP-1A or CP-1B,~~
- ~~• energy efficiency charges under Act 141 and~~
- ~~• gross receipts taxes.~~

~~The calculation of the floor price shall consider any other discounts applicable to the customer and shall consider expected load curves and on-peak / off-peak energy usage projections.~~

~~Customer's rate shall be updated for all changes to tariff rates, including fuel cost surcharges or fuel cost credits.~~

~~The level of economic development discount initially offered shall decline by an equivalent prorated reduction over each year of the contract term such that at the end of the contract the customer's rates shall be the tariff rates in force at such time.~~

4. Overall Subscription Limitations (\$5,000,000)

This pilot program is intended to be limited to a total annual level of discounts totaling no more than five million dollars on a cumulative annual basis during the pilot program period unless specifically authorized by the Commission to exceed that amount.

The Company may offer this pilot program for the five a period of one calendar years from the approval date of this tariff. Contracts entered into during this pilot program shall be effective until their termination.

5. Contract & Enrollment Period

Issued: 11-13-0903-09-10

Effective: 04-04-01-10

PSCW Authorization: _____

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Agreement to subscribe to this tariff will be established under a written contract between the customer and the Company. Customers with a signed contract may remain on the tariff for a term of up-to 5 years from the date of full commercial operation. Full commercial operation must be achieved within 12 months from the date of the signed contract, unless both parties mutually agree to extend that time period. Accommodations can be made for phased projects, additions, rehabilitation, and upgrading as mutually agreed between the customer and the Company.

6. Affidavit Requirement

In order to be eligible for this Rider the customer shall sign an affidavit, attesting to the fact that "but for" the rate discounts available under this Rider, either on its own or in combination with a package of economic development or job creation incentives from local, county, State of Wisconsin, or federal programs the customer would not have located operations or added load within Wisconsin Power and Light Company's service territory.

7. Sustained Operation Provision

Customer shall be required to enter into an agreement with the Company that in the event that a Customer receiving discounted rates for incremental load under this Rider fails to maintain the minimum incremental load levels described above for any calendar year during the term of the contract, the Customer will be disqualified from receipt of discounted rates under this rider for the remainder of the contract term, and the contract shall be terminated. In addition, the customer shall be required to reimburse to the Company an amount equivalent to the discounts received.

8. Energy Efficiency and Demand Side Management Requirements

In order to be eligible for this Rider the Customer shall be required meet with Focus on Energy, and the Company's Shared Savings representatives to identify economically viable energy efficiency and demand side management opportunities. The Customer shall participate in or implement all economically viable programs or projects that have a projected pay-back period of five years or less. The Customer shall implement all such programs or projects within the contract term for service under this Rider. The Customer may request an independent economic analysis of the economic viability of such programs or projects, at the Customer's cost.

9. Miscellaneous

- The customer must follow and meet all other conditions applicable to receipt of service under tariffed rate schedules as applicable
- Discount percentages calculated prior to the provision of service based on load forecasts from the customer shall be reviewed each calendar year and the floor rate shall be revised as necessary to reflect current load expectations.
- The customer shall notify the Company of any material changes in operations that could impact the calculation of the customer's floor rate, e.g.
 - If the customer's operations change energy or demand usage by more than

ECONOMIC DEVELOPMENT PROGRAM RIDER
(Experimental)

ELECTRIC

ten percent on a sustained basis for 6 months the customer shall notify the Company. The Company and the customer will then evaluate whether the changes in the Customer's energy and demand are expected to continue and whether such changes merit a reevaluation of the floor rate.

- If the customer changes base rate schedules after the original evaluation of the floor rate, the floor rate and associated discount will be reevaluated.
- During the contract period the Company will review and adjust the customer's floor rate and discount, as needed, to account for changes, including but not limited to, rate designation, load forecasts, and applicable state and federal laws and regulations.
- All service rules and extension rules that apply to Schedule Cp-1, Cp-1A, Cp-1B, Cp-2, Cp-2A, or Cp-2B will apply to customer taking service under this rider.

10. Qualifying Economic Development Programs:

State of Wisconsin Programs

CAPITAL FINANCING PROGRAMS

Wisconsin Development Fund (WDF)
Rural Economic Development Program (RED3)
Minority Business Development Fund (MBD)
Technology Development Fund (TDF)
Technology Venture Fund Loan Program (TVF)
Technology Bridge Grant and Loan Program (TBG)
Technology Matching Grant and Loan Program (TMG)
Community Development Block Grant Program (CDBG-ED)
Industrial Revenue Bond Program (IRB)

EMPLOYEE TRAINING PROGRAMS

Customized Labor Training Program (CLT)
Best Employees' Skills Training (BEST)

COMMUNITY DEVELOPMENT PROGRAMS

Brownfield Grant Program (BF)
Community Development Block Grant Program – Blight Elimination & Brownfield Redevelopment (CDBG-BEBR)
Community Development Block Grant Program – Public Facilities (CDBG-PF)
Community Based Economic Development Program (CBED)

TAX BENEFIT PROGRAMS

Agriculture Development Zone (ADZ)
Community Development Zone (CDZ)
Enterprise Development Zone (EDZ)
Development Opportunity Zone Program (DOZ)
Technology Zone Program (TZ)
Enterprise Zone Program ((EZ 10)

ECONOMIC DEVELOPMENT PROGRAM RIDER
(Experimental)

ELECTRIC

Local or County Programs

Financial assistance from a local Revolving Loan Fund

Establishment of or location in a Tax Increment Financing District

Direct loan from a unit of local government

Construction of public facilities – roads, sewer, water – to serve a project

Site acquisition and clearance

Building renovation assistance

Federal Programs

Loan Guarantees

Grants

Investment Tax Credits

Income Tax Credits tied to New Hiring

Low-Interest Loans

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(Experimental)

ELECTRIC

1. Effective In

The Economic Development Program Rider ("Rider") is available in all territory served by Wisconsin Power and Light Company ("the Company").

2. Availability

This Rider is available to all customers served, or to be served, under Rate Schedules CP-1, or CP-2, that meet all of the following additional conditions:

- This Rider is applicable to only:
 - The incremental load added by new customers, or
 - The incremental load added by existing customers relative to prior calendar year load levels for that customer.
- The incremental load shall result in an additional 1,000,000 kWh of energy use on an annual basis.

The customer must have qualified to receive, and have received local, county, State of Wisconsin or federal financial assistance for economic development or economic stimulus. The minimum value of the economic development assistance from a local, county, State of Wisconsin, or federal entity that the customer has received must be no less than \$ 500,000 and the customer must have received the assistance for the specific project that adds incremental load before it first accepts service under this Rider. The last page of this Rider provides a listing of qualifying economic development programs

- This Rider is not available to customers or potential customers transferring load from a different electricity provider in Wisconsin to Wisconsin Power and Light Company.

This is an experimental pilot tariff rider program. The terms and conditions of this tariff may be modified outside of a rate proceeding, subject to approval by the Public Service Commission of Wisconsin (PSCW).

3. Rate

The rates established for each customer's incremental load will be based upon the applicable Cp-1, Cp-1A, Cp-1B, Cp-2, Cp-2A or Cp-2B rate schedules. The rates will be discounted such that the individual customer's rates for the first year of eligibility cover a floor price that reflects 105% of the marginal cost of serving the customer's incremental load, as determined on an individual customer basis.

The level of discount initially available under this Rider shall decline by an equivalent prorated reduction over each year of the contract term such that at the end of the contract the customer's rates shall be the tariff rates in force at such time.

Customer rates for incremental load under this Rider shall be updated for all changes to tariff rates, including fuel cost surcharges or fuel cost credits.

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The calculation of the floor price shall consider any other discounts applicable to the customer and shall consider expected load curves and on-peak / off-peak energy usage projections.

Marginal costs consists of the following cost components:

- energy at marginal rate levels equal to the projected Locational Marginal Price (LMP) forecasts underlying in the approved fuel cost projections from the most recent WPL base rate case, or base rate case re-opener proceeding
- marginal transmission and distribution losses
- transmission charges
- applicable distribution charges
- energy efficiency charges under Act 141
- gross receipts taxes.

4. Overall Subscription Limitations (\$5,000,000)

This pilot program is intended to be limited to a total annual level of discounts totaling no more than five million dollars on a cumulative annual basis during the pilot program period unless specifically authorized by the Commission to exceed that amount.

The Company may offer this pilot program for a period of one year from the approval date of this tariff. Contracts entered into during this pilot program shall be effective until their termination.

5. Contract & Enrollment Period

Agreement to subscribe to this tariff will be established under a written contract between the customer and the Company. Customers with a signed contract may remain on the tariff for a term of up-to 5 years from the date of full commercial operation. Full commercial operation must be achieved within 12 months from the date of the signed contract, unless both parties mutually agree to extend that time period. Accommodations can be made for phased projects, additions, rehabilitation, and upgrading as mutually agreed between the customer and the Company.

6. Affidavit Requirement

In order to be eligible for this Rider the customer shall sign an affidavit, attesting to the fact that "but for" the rate discounts available under this Rider, either on its own or in combination with a package of economic development or job creation incentives from local, county, State of Wisconsin, or federal programs the customer would not have located operations or added load within Wisconsin Power and Light Company's service territory.

7. Sustained Operation Provision

Customer shall be required to enter into an agreement with the Company that in the event that a Customer receiving discounted rates for incremental load under this Rider fails to maintain the minimum incremental load levels described above for any calendar year during the term of the contract, the Customer will be disqualified from receipt of discounted rates under this rider for the remainder of the contract term, and the contract shall be terminated. In addition, the

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customer shall be required to reimburse to the Company an amount equivalent to the discounts received.

8. Energy Efficiency and Demand Side Management Requirements

In order to be eligible for this Rider the Customer shall be required meet with Focus on Energy, and the Company's Shared Savings representatives to identify economically viable energy efficiency and demand side management opportunities. The Customer shall participate in or implement all economically viable programs or projects that have a projected pay-back period of five years or less. The Customer shall implement all such programs or projects within the contract term for service under this Rider. The Customer may request an independent economic analysis of the economic viability of such programs or projects, at the Customer's cost.

9. Miscellaneous

- The customer must follow and meet all other conditions applicable to receipt of service under tariffed rate schedules as applicable
- Discount percentages calculated prior to the provision of service based on load forecasts from the customer shall be reviewed each calendar year and the floor rate shall be revised as necessary to reflect current load expectations.
- The customer shall notify the Company of any material changes in operations that could impact the calculation of the customer's floor rate, e.g.
 - If the customer's operations change energy or demand usage by more than ten percent on a sustained basis for 6 months the customer shall notify the Company. The Company and the customer will then evaluate whether the changes in the Customer's energy and demand are expected to continue and whether such changes merit a reevaluation of the floor rate.
 - If the customer changes base rate schedules after the original evaluation of the floor rate, the floor rate and associated discount will be reevaluated.
- During the contract period the Company will review and adjust the customer's floor rate and discount, as needed, to account for changes, including but not limited to, rate designation, load forecasts, and applicable state and federal laws and regulations.
- All service rules and extension rules that apply to Schedule Cp-1, Cp-1A, Cp-1B, Cp-2, Cp-2A, or Cp-2B will apply to customer taking service under this rider.

10. Qualifying Economic Development Programs:

State of Wisconsin Programs

CAPITAL FINANCING PROGRAMS

Wisconsin Development Fund (WDF)
Rural Economic Development Program (RED3)
Minority Business Development Fund (MBD)
Technology Development Fund (TDF)
Technology Venture Fund Loan Program (TVF)
Technology Bridge Grant and Loan Program (TBG)
Technology Matching Grant and Loan Program (TMG)
Community Development Block Grant Program (CDBG-ED)
Industrial Revenue Bond Program (IRB)

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EMPLOYEE TRAINING PROGRAMS

Customized Labor Training Program (CLT)
Best Employees' Skills Training (BEST)

COMMUNITY DEVELOPMENT PROGRAMS

Brownfield Grant Program (BF)
Community Development Block Grant Program – Blight Elimination &
Brownfield Redevelopment (CDBG-BEBR)
Community Development Block Grant Program – Public Facilities (CDBG-PF)
Community Based Economic Development Program (CBED)

TAX BENEFIT PROGRAMS

Agriculture Development Zone (ADZ)
Community Development Zone (CDZ)
Enterprise Development Zone (EDZ)
Development Opportunity Zone Program (DOZ)
Technology Zone Program (TZ)
Enterprise Zone Program ((EZ 10)

Local or County Programs

Financial assistance from a local Revolving Loan Fund

Establishment of or location in a Tax Increment Financing District

Direct loan from a unit of local government

Construction of public facilities – roads, sewer, water – to serve a project

Site acquisition and clearance

Building renovation assistance

Federal Programs

Loan Guarantees

Grants

Investment Tax Credits

Income Tax Credits tied to New Hiring

Low-Interest Loans

STATE OF WISCONSIN

_____ COUNTY

AFFIDAVIT

The undersigned affiant, _____, on behalf of _____, affirms or attests that but for Wisconsin Power and Light Company's economic development rate for retail electricity, either on its own or in combination with a package of incentives made available to the affiant from other sources, the affiant would not have:

1. located operations or added electrical load within the State of Wisconsin; or
2. retained electrical load within the State of Wisconsin.

This the _____ day of _____, 20__.

By: _____
Name: _____
Title: _____

Sworn and subscribed before me this

the _____ day of _____, 20__.

Notary Public

My Commission expires: _____