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Public Service Commission of Wisconsin
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BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Joint Application of Wisconsin Electric Power Company and Wisconsin Gas LLC, both d/b/a We Energies, for Authority to Adjust Electric, Natural Gas, and Steam Rates	))))))	Docket No. 05-UR-105

POST-HEARING BRIEF OF APPLICANTS

On May 26, the Applicants (collectively "WE") put forth a proposal to keep base rates flat in 2012. WE's proposal accomplishes that objective by modifying the amortization of certain regulatory assets for one year in order to accommodate new costs WE will incur in 2012 as $1.3 billion of new investments which have been approved by the Commission come into service. The amount of the proposed modification -- $148.1 million -- corresponds to the expected cost in 2012 of the new assets -- a cost that has not been challenged in this case. WE's proposal, as it was presented on May 26, provides relief to customers during difficult economic times while at the same time protecting WE's financial integrity.

Based on the evidence in the record and for the reasons articulated in this brief, the Commission should approve WE's proposal to hold base rates flat in 2012.

I. WE proposed an innovative approach that provides a clear benefit to customers by keeping base rates flat in 2012 to allow the Wisconsin economy more time to recover from the current economic downturn.

In preparation for its traditional biennial rate review, WE performed a financial analysis that showed it would have a revenue deficiency that supports a significant base rate increase in 2012. (Ex. 3, Ex. 12, page 4; Tr. Vol. 1 5: 7- 6:9, 12:19-18: 3, Tr. Vol. 2 13:1 -14:1). The principal driver of a rate increase next year is the nearly $1.3 billion in projects the Commission previously authorized WE to construct to improve environmental performance and to supply

renewable energy. (Tr. Vol. 2 18:23-19:23). The projects were undertaken in order to comply with government mandates, will soon be completed and placed in commercial operation, and their cost must be included in rates next year (Tr. Vol. 1, 10:1-8, Tr. Vol. 2 46:8-47:13). The expected final costs will not exceed Commission approved levels.

Rather than making a traditional request for a comprehensive rate case in 2011 to set rates for 2012, WE proposed an approach that sought to avoid a traditional rate case entirely for one year and would ensure that base rates would be held steady in 2012. Under this approach, a full, traditional rate proceeding would not be abandoned, but simply deferred until 2012, the second year of the rate case cycle.

WE's motivation in offering this proposal was straight-forward. WE believes that keeping base rates flat in 2012 is in the best interest of our customers as Wisconsin's fragile economy continues to recover slowly from a severe economic downturn (Tr. Vol. 2 14:8-9). WE designed a balanced proposal that provides a clear benefit to our customers while still protecting WE's financial integrity and creditworthiness.

Under its proposal, WE will work to manage the financial impact of a one-year delay in raising base rates if the Commission takes a small number of specific steps, including allowing WE to modify, during 2012, the amortization of certain regulatory assets. Specifically, in its May 26 filing WE asked the Commission to accept its proposal to hold base rates steady in 2012 by doing the following:

- Authorize WE to reduce by $148.1 million the amount by which it amortizes certain regulatory assets in 2012.
- Authorize, effective January 1, 2012, carrying costs and depreciation totaling $148.1 million on previously authorized air quality and renewable projects.

- Authorize WE to refund to customers in 2012 the net proceeds of the settlement of spent nuclear fuel litigation with the Department of Energy.
- Authorize WE to reopen this docket in 2012 to reset rates for 2013 and to address all issues that would traditionally be addressed in a comprehensive rate case.
- Schedule a proceeding under PSC chapter 116 to establish a 2012 fuel cost plan. (Ex. 12).

WE had hoped that the Commission could evaluate its proposal so that customers would know by July 15 whether their base rates would remain steady through 2012 and be able to make plans accordingly. WE believed that an adequate basis for a decision by the Commission would be a staff investigation sufficient to confirm whether or not WE in fact faces a revenue deficiency in 2012. Because WE was proposing expressly to ***not*** seek a traditional rate case in 2011, the company did not believe that a full rate-case type audit by staff was necessary in order for the Commission to evaluate WE's proposal. In fact, a simple confirmation by staff that WE does indeed face a revenue deficiency in 2012 would mean that a rate increase in 2012 could be avoided by approving WE's proposal.

The Commission, on August 11, responded favorably to WE's proposal and rejected efforts to proceed immediately to a full rate case. In fact, the Commission commended WE for coming forward with an innovative way to mitigate the burden that would be placed on customers if the traditional rate case approach were used to deal with higher costs in 2012. (Tr. Vol. 2 40:11-16). The Commission also decided that, before making its final determination regarding the reasonableness of WE's proposal, a limited hearing should be held to address two issues:

(1) The proper amount of amortizations of regulatory assets that should be suspended during 2012.

(2) The proper accounting treatment of the net proceeds from the settlement of spent fuel litigation with the Department of Energy.

That hearing was held on August 24.

II. The hearing confirmed that conducting a comprehensive rate case in 2011 would demonstrate a significant 2012 revenue deficiency.

The hearing confirmed—through the testimony of every witness who testified -- that a rate case would show that, at its current rates, WE would indeed have a revenue deficiency in 2012. This is not surprising since no one has disputed that WE is placing $1.3 billion of new Commission approved assets in service during 2012 . Equally important, no one disputed that WE must begin recovering the cost of these investments in rates next year and that these new assets will add $148.1 million to WE's costs in 2012. (Tr. Vol. 1 9: 17-20, Tr. Vol. 2 19:20-20:15, 189:4-190:21).

The only apparent disagreement is about ***how large*** a revenue deficiency might be demonstrated in a comprehensive rate case. Staff, for example, suggested that a revenue deficiency of roughly $97 million is likely. (Ex. 11, page 17, Tr. Vol. 2 23:1-12, 25:14-15). WE witness, Mr. Lauber, however, challenged12 of Staff's proposed adjustments. Mr. Lauber offered an exhibit that explains why those Staff adjustments are in error and sets forth the amounts by which WE believes they are in error. Mr. Lauber also described other adjustments that WE would seek in a comprehensive rate case and that would increase the revenue deficiency. Based on Mr. Lauber's testimony and exhibit, WE believes it can demonstrate a revenue deficiency of nearly $170 million. (Ex. 1, Tr. Vol. 2 24:17-19, 25:16-19, 30:1-4). In other words, the hearing demonstrated that rates would indeed need to go up in 2012 if there

were a traditional rate case this year. Everyone puts that increase in the tens of millions of dollars.

There is only one scenario in which approving WE's proposal would not benefit customers. That scenario would be if one could somehow assume that a rate case in 2011 would result in a reduction of rates in 2012. Literally no one believes that to be the case nor was any evidence offered to support that conclusion.

For these reasons, WE believes it is in the public interest for the Commission to accept the company's proposal to forgo a rate case this year, hold base rates flat for 2012 while the economy is recovering, and then conduct a rate case in 2012 to set rates for 2013.

III. WE's proposal to suspend $148.1 million in regulatory amortizations for one year is reasonable.

The Commission's hearing notice in this matter asked the parties to present evidence addressing the "proper amount" of amortizations of regulatory assets that should be suspended during 2012. Since WE has proposed that the Commission forgo a traditional rate case this year, and precisely because we are ***not*** trying to figure out how much to raise rates in 2012, "proper" in this context means "reasonable."

Is it reasonable to authorize WE to suspend $148.1 million in amortizations as part of a plan to hold base rates steady through 2012? The short answer is yes and here is why the company believes this amount is reasonable:

1. The amount WE has proposed -- $148.1 million -- was not chosen arbitrarily but was a key aspect of the WE proposal. It was chosen to correspond to the expected cost in 2012 of the new investments coming into service. That cost -- $148.1 million -- is uncontroverted, and WE has little discretion but to begin

recovering it. (Tr. Vol. 1 9: 17-20, Tr. Vol. 2 19:20- 20:15, 189:4-190:21).)

2. The amount WE has proposed lies well within the range of the revenue deficiency that would in all likelihood be demonstrated in a comprehensive rate case, a range that runs from staff's $97 million to WE's $170 million.(Ex. 11, page 17, Tr. Vol. 2 23:1-12, 25:14-17, 25:19, 30:1-4).

3. Authorizing the amount of suspended amortizations that WE has proposed will not harm customers in any way but will ensure that WE's financial integrity and creditworthiness are protected. Recall that we are not trying to decide how much to raise rates in 2012. If we were, the amount chosen would obviously affect customers. Under WE's proposal, however, base rates will not change in 2012. Given that fact, it is reasonable to choose the amount that corresponds to the cost of the new investments coming into service and thereby ensure that lenders and investors will continue to view regulation in Wisconsin as fair and supported by reasoned analysis. That amount is $148.1 million.

4. In the unlikely event that modifying the proposed amount of amortizations results in WE earning more than its authorized return in 2012, the Commission has procedures through which it can monitor utility returns and take appropriate action to protect

customers, including the Commission's ability under Wis. Stat. § 196.28 to initiate, on its own motion, an investigation into rates.

5. Failing to authorize WE to suspend this amount of amortizations would risk preventing WE from recovering the carrying costs and depreciation on Commission approved projects coming into service next year. That amount is $148.1 million. Unfortunately, authorizing a smaller amount would obligate WE to withdraw its proposal and proceed to a traditional rate case. This is not an ultimatum. On the contrary, it is merely a recognition of how the components of the proposal fit together. Because the only thing that is known with reasonable certainty at this time is that the new investments will add $148.1 million to WE's 2012 costs, modifying the company's proposal would risk harming the Company's financial integrity and effectively denying the Company a reasonable return on Commission approved investments that will serve customers in 2012.

For all of these reasons it is reasonable for the Commission to authorize the modification of $148.1 million in amortizations in order to keep base rates steady through 2012.

IV. The notion that customers will pay some kind of "premium" in return for holding base rates steady in 2012 is just flat wrong.

The Commission should categorically reject WIEG's suggestion that adopting WE's proposal to keep base rates flat in 2012 will harm its customers by having them pay a "premium". The logic underlying WE's proposal is very simple. In order to avoid paying higher base rates in 2012, while the economy is still struggling to recover, certain costs that would

normally be paid in 2012 will instead be pushed off and paid in the future. The cost that WE proposes to push off into the future consists of $148.1 million in amortizations of certain regulatory assets.

This concept of "skipping a payment" during a time of economic distress and making it up later is not something WE invented out of whole cloth. It is no different than a bank allowing a customer to skip one or more mortgage payments and to make up the skipped payments in the future.

The only unexpected development at the August 24th hearing was the enormous amount of time and effort that was devoted to repetitive and specious "number crunching" by WIEG suggesting to the Commission that keeping rates flat by, in effect, skipping mortgage payments for a year somehow injures customers.

If its claim were true, WIEG would have been able to state clearly why they believe that WE's proposal harms customers. Unfortunately, no such logical explanation of WIEG's position exists in the record. No matter how many times WIEG repeats the word "premium" and no matter how many pages of "scenarios" WIEG creates, the fundamental proposition is unassailable-- WE is simply proposing to collect certain costs in the future rather than collecting them in 2012. There is no "premium."

But what about the future carrying costs that will be borne by customers if the Commission adopts the WE proposal? (Tr. Vol. 2 133:20-134:10, 146:21-147:17). Might these somehow constitute a "premium"? The simple answer is no. There is no premium.

Going back to the example of mortgage payments, if a customer is allowed to skip six months of mortgage payments, those six payments will be added to the back end of the mortgage. Obviously, then, it will take six months longer to pay off the mortgage than if the

payments had not been deferred. What is also obvious is that the customer will pay carrying costs -- interest in the case of a mortgage -- for the six months that were added to the back end of the mortgage.

For ratemaking purposes, the notion of having customers pay carrying costs authorized by the Commission on regulatory assets is a long-standing practice and does not amount to a "premium." *See* Docket No. 05-UR-104, *Final Decision* (December 18, 2009), (PSC REF# 124880), Docket No. 6690-UR-120, *Final Decision* (January 13, 2011) (PSC REF# 143675) and Docket No. 3270-UR-117, *Final Decision* (January 12, 2011) (PSC REF# 143578). If it did amount to a "premium," then the Commission has authorized a premium every time it has ordered regulatory assets to be amortized over time rather than collected from customers all at once. Until the asset has been amortized down to a zero balance, there are carrying costs. The Commission has always recognized that fact. This is nothing new and, to our knowledge, no one before has ever been tempted to call this a "premium." [1]

Finally, if it were possible to capture a "premium" simply by deferring amortizations as WE has proposed, one wonders why every utility in the nation has not adopted this approach.

Because, as we have explained, there is no "premium," there is no basis for the Commission to do anything other than approve WE's proposal as presented.

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[1] In fact, WE's proposal is actually more favorable for customers than traditional Commission practice. The reason is that WE is waiving the carrying costs on the amortizations during the time period they are suspended, that is, during all of 2012. Typical Commission practice, on the other hand, would support collecting carrying costs in 2012 on the suspended amortizations.

In addition, it will be several years before customers pay the carrying cost on the year of amortizations added to the back end to compensate for skipping the amortizations in 2012. To properly gauge the impact of those future carrying costs on customers, they must be translated into present value. Adjusted to reflect tax effects, the carrying cost is approximately 8%. (Exh. 1.1 Sched. 4). Standard finance theory tells us that for any customer whose cost of capital is greater than the 8% carrying cost, the present value of the carrying cost paid in the future is actually negative. In other words, the value to the customer of deferring payment of the carrying cost more than compensates for the carrying cost itself.

V. There is a critical difference between getting to a zero increase in base rates in 2012 by adopting WE's proposal versus some other method.

WE's proposal is an integrated package of several components. Among those components are:

- WE ***voluntarily*** agreeing to hold base rates flat for 2012.
- WE ***requesting*** that the amortization of certain regulatory assets be modified to offset the cost of new investments coming into service.
- WE proposing to forgo a comprehensive rate case in 2011 but to reopen the docket in 2012 to set rates for 2013, with all the issues on the table that would be debated in any other comprehensive rate case.

There are good reasons to resist "cherry picking" WE's proposal. In particular, serious legal and regulatory process issues would be raised by a cobbled-together hybrid approach under which WE is ***ordered*** to modify specified pre-approved amortizations to "get to zero."

As was brought out at the hearing, Wisconsin is noted for having a balanced and reasoned regulatory climate. (Tr. Vol. 2 153:5-9). The Commission's legacy in this regard serves our state well. In particular, it helps enable Wisconsin utilities to obtain capital from lenders and investors at reasonable cost even during times of economic stress. That legacy would be jeopardized if the Commission were now to send a message that it deals with the cost of new utility investments coming into service by ordering utilities to rejigger how they amortize other assets on their balance sheets.

There is also a serious legal problem with the notion that the Commission should hold a rate case and simply ***order*** WE to do what WE -- as a part of its overall proposal -- has offered to do voluntarily. To the best of our knowledge the Commission has never unilaterally ordered that

previously authorized amortizations be modified in order to drive a prospective rate increase to zero. Such a sharp departure from past practice could be fairly characterized as arbitrary and capricious and could be challenged in court on that basis. *See, e.g. Doubleday Broadcasting v. FCC, 655 F. 2d 417, 423 (D.C. Cir. 1981).* A discriminatory application of this new approach would provide further support for a legal challenge. If the Commission wants to order one utility to get to a zero base rate increase by modifying amortizations, then it will need to order all the Wisconsin utilities that are seeking rate increases to do so. For these reasons, if the Commission wants to keep base rates steady during 2012, the prudent way to accomplish that objective is to approve WE's proposal as presented.

VI. There doesn't seem to be any controversy about the proper accounting treatment from the net proceeds of spent fuel litigation with the Department of Energy (DOE).

As WE witness Mr. Lauber testified, both the proceeds from the settlement with DOE and the costs that WE incurred to obtain the settlement are currently subject to deferral accounting treatment. Mr. Lauber proposed that this treatment continue until a proceeding takes place in which both the amount of the settlement proceeds and the costs incurred can be examined by interested parties. A logical venue for that examination would be a proceeding under PSC 116 to establish a fuel cost plan for 2012. Wisconsin Electric made a filing on August 3, 2011, asking that such a proceeding be initiated.

Conclusion

As described in our May 26th filing, WE offered the Commission a choice—to keep base electric rates flat until 2013 by pushing off for one year the need for a rate increase or else commence a rate proceeding this year to implement higher rates in January 2012. The evidence from the hearing confirms that electing to conduct a traditional rate proceeding—where WE would seek recovery of costs attributable to nearly $1.3 billion of investments in environmental

and renewable projects that the PSCW has previously approved—would be certain to result in a significant rate increase next year.

WE believes the choice is clear. WE made a proposal that will benefit customers by providing them with needed relief during difficult economic times, while protecting WE's credit ratings and financial integrity. For all of the reasons articulated in this brief and based on the evidence in the record, the Commission should approve WE's proposal as it was presented on May 26.

Respectfully submitted this 12th day of September, 2011.

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