

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Wisconsin Public Service Corporation for Authority to
Construct and Place in Operation a New Multi-Pollutant Control
Technology System for Unit 3 of the Weston Generating Station,
Marathon County, Wisconsin

6690-CE-197

PREHEARING CONFERENCE MEMORANDUM

This memorandum orders the following consistent with the prehearing conference held on Tuesday, July 10, 2012, and pursuant to Wis. Admin. Code § PSC 2.04(1):

I. PARTIES**A. Applicant:**

1. Wisconsin Public Service Corporation

B. Intervenor:

1. Citizens Utility Board
2. Clean Wisconsin
3. Wisconsin Industrial Energy Group, Inc.
4. Wisconsin Paper Council

II. ISSUE

- A. Should the Commission grant a Certificate of Authority for the project, pursuant to Wis. Stat. §§ 1.12, 196.025 and 196.49, and Wis. Admin. Code ch. PSC 112?

III. SCHEDULE

- | | |
|--|---|
| • September 17, 2012, at 12 noon. | Applicant's direct testimony and exhibits. |
| • November 5, 2012, at 12 noon. | Staff and Intervenor direct testimony and exhibits. |
| • December 4, 2012, at 12 noon. | All rebuttal testimony. |
| • January 7, 2013, at 12 noon | Surrebuttal. |
| • January 10, 2013, at 9:30 a.m. | Public Hearing Session – PSC Building, Madison. |
| • January 10, 2013
to begin immediately after the public
session. | Party Hearing Session – PSC Building, Madison. |
| • 14 days after the last day of
the party hearing session, at 12 noon | Initial Brief. |

- 10 days after the deadline to file the initial brief, at 12 noon. Reply Brief.
- TBA Briefing Memorandum.
- Five days after filing of the Briefing Memorandum, at 12 noon. Party Comments on Briefing Memorandum.

IV. OTHER FACILITATING MATTERS

A. Filing and Service

1. Procedure

- a. Contact the Commission's Records Management Unit with respect to filing questions.
- b. File by ERF. If size or format prevents ERF filing, file by delivery to the Commission's Records Management Unit on standard optical disc storage media.
- c. File no document that already appears on ERF. This applies to any offer as an exhibit of an entire document that already appears on ERF in this docket. *See* Prehearing Conference Memorandum § IV A 4. This does not apply to any offer as an exhibit of an excerpt of a document already filed on ERF in any docket. *See* Prehearing Conference Memorandum § IV B.
- d. File a redacted public version of every document filed under request for confidential handling. *See* Prehearing Conference Memorandum § C and Wis. Admin. Code § 2.12(4).
- e. Filing constitutes certification of service. *See* Wis. Admin. Code § PSC 2.06(3)(a).
- f. Serve all filings on parties and Commission staff.
- g. Serve by e-mail to the addresses on the Commission e-mail service list and the Commission docket coordinator. If size, format, or the protection from public release of information filed under request for confidential handling prevents e-mail service, serve by delivery on standard optical disc storage media to the same recipients on the e-mail service list and the Commission docket coordinator.
- h. The Commission e-mail service list shall contain only one e-mail contact for each party. Parties and Commission staff may establish and maintain a courtesy copy e-mail list to which the Commission attaches no service requirements.
- i. Serve the Commission docket coordinator any, but, unless otherwise required, file no party to all-party correspondence.
- j. In computing any period of time that follows service by a party or Commission staff, or that follows an order of the Administrative Law Judge, the day of e-mailing is the day of mailing. *See* Wis. Admin. Code § PSC 2.05(2). This applies regardless of any dated signature or ERF filing date stamp.

2. Discovery

- a. File any response to a Commission data request.
- b. File no party discovery requests or responses.
- c. Serve any, but file no, party discovery requests with the Commission staff docket coordinator.
- d. Respond to any discovery request and data request with best efforts, but no later than 14 days of service of the request with an exception of 21 days allowed for just cause. For any request made in response to rebuttal testimony best efforts means within 48 hours.
- e. File a request for protective order to a discovery request or data request within 7 days of service of the request. File any response by 12 noon 3 days after the filing of the request and any reply by 12 noon 2 days after filing of the response.
- f. File any request to compel a response to a discovery request or data request. File any response by 12 noon 3 days after the filing of the request and any reply by 12 noon 2 days after filing of the response.

3. Other Requests

- a. File request for intervention under Wis. Admin. Code § PSC 2.21(4). File any response by 12 noon 3 days after the filing of the request and any reply by 12 noon 2 days after the filing of the response.
- b. Unless made at hearing, file any request to waive or modify the application of this order in particular circumstances for good cause. File any response by 12 noon 3 days after the filing of the request and any reply by 12 noon 2 days after the filing of the response.
- c. File any request for interlocutory review under Wis. Stat. § PSC 2.27. File any response by 12 noon 3 days after the filing of the request and any reply by 12 noon 2 days after the filing of the response.

4. Prehearing Testimony and Exhibits

- a. File any prehearing testimony and exhibits indicated in the above schedule by the deadline assigned.
- b. Any offer, as an exhibit, of an entire document already filed on ERF in this docket, shall contain only a request to mark the existing filing. Include in the request the proper exhibit number.
- c. File any objection to prehearing testimony and exhibits by the deadline of the next round of filing. File any response by 12 noon 3 days after the filing of the objection and any reply by 12 noon 2 days after filing of the response. Not applicable to the last round of prehearing testimony and exhibits. *See* Prehearing Conference Memorandum § IV E 2.
- d. File the volume of written testimony for any witness being compelled to appear, and corresponding exhibits, by the deadline to file rebuttal testimony.
- e. File all corrections to prehearing testimony and exhibits by one day prior to the party hearing session. Timely filed corrections require no request or pre-approval

from the Administrative Law Judge, but such corrections are subject to objection at hearing.

- i. For testimony, a correction may take the form of either a replacement page or an errata sheet that indicates the location of each correction by page and line number.
- ii. For exhibits, a correction shall take the form of a replacement exhibit.

5. Post Hearing

- a. File any document not filed prior to the party hearing session but received into the record at the party hearing session by 12 noon 3 days after the last day of the party hearing session.
- b. File documentary evidence not previously filed but identified at the party hearing session for which offer into the record is delayed until after the party hearing session by 12 noon 3 days after the last day of the party hearing session unless a different filing date is set at the hearing.
- c. File the affidavit of any witness attesting to the truthfulness and accuracy of that witness's written testimony and exhibits offered into the record in the absence of a live oath or affirmation by 12 noon 3 days after the hearing.
- d. File any objection to or request to offer rebuttal or countervailing evidence for:
 - i. Any evidence offered by a member of the public, by 12 noon 2 days after service of the transcript of the public hearing session. File any response by 12 noon 3 days after the filing of the objection and any reply by 12 noon 2 days after filing of the response;
 - ii. Any documentary evidence not previously filed but identified at the party hearing session for which offer into the record is delayed until after the party hearing session, by 12 noon 3 days after the date of filing. File any response by 12 noon 3 days after the filing of the objection and any reply by 12 noon 2 days after filing of the response.
- e. File any transcript correction by 12 noon 5 days prior to the deadline to file the initial post hearing brief. In a docket without briefs file any transcript correction by 12 noon 5 days after issuance of the final transcript volume.
- f. File any request for leave to present additional evidence [*See* Wis. Stat. § 227.45(2)] or request to take official notice under Wis. Stat. § 227.45(3). Verify any exhibits offered after the hearing by affidavit. File any response by 12 noon 3 days after the filing of the request and any reply by 12 noon 2 days after the filing of the response.
- g. File any request for rehearing or reopening under Wis. Stat. §§ 196.39 or 227.49. File any response by 12 noon 5 days after the filing of the request. The Commission shall accept no reply from the requester.

6. Paper Copies

- a. Within 5 calendar days after any filed document identified below appears on ERF, a party shall provide to the Commission Records Management Unit:

- i. 15 collated paper sets of all exhibits.
- ii. 15 collated paper sets of all prehearing testimony that contain any page rendered in color.

B. Hearing Preparation

1. The scope of written testimony is narrowed with each round of filing such that it addresses only the testimony filed in the previous round.
2. Unless a witness retracts a position stated in prior testimony that position is retained. To avoid unduly repetitive testimony, if restating a position stated in prior testimony is necessary, instead of providing that position again, incorporate the prior statement by reference.
3. An exhibit that consists of a document readily accessible to the public shall only contain the title page and the portion of the document relevant to the purpose of the filing. This includes portions of any document already filed on ERF and entire documents already filed on ERF but not in this docket.
4. No evidence shall enter the record solely by citation to an Internet hyperlink.
5. Any party who compels a witness to appear at hearing shall create a volume of written testimony for that witness in the form of either a deposition or interrogatory. This requirement shall not apply if the party receives consent of the other parties and Commission staff prior to the deadline to file such testimony.
6. A party shall endeavor to identify its employees or members who wish to file written comments or participate at the public hearing session in support of that party's position and shall use best efforts to organize the testimony of such witnesses in a manner that avoids undue repetition.
7. The applicant shall make an adequate number of personnel with knowledge of the issues in this docket available at each public hearing session to answer questions from members of the public.
8. Contact the Administrative Law Judge by 12 noon 1 day prior to the first day of the party hearing session to:
 - a. Request to take a witness at a specific prearranged time.
 - b. Identify the witnesses that a party or Commission staff intends to cross-examine. This does not waive the right to cross-examine other witnesses.
 - c. Identify any need to conduct a portion of the hearing *in camera*.
 - d. Request the scheduling of additional hearing time.
9. The Administrative Law Judge shall hear oral arguments in lieu of briefs at the beginning of the first day of the party hearing session with respect to any pending motion for which the deadline to file briefs would not expire prior to that day.
10. If the Administrative Law Judge issues a Prehearing Witness and Exhibit List, the items on the list shall enter into the record at the beginning of the first day of the party hearing session, subject to any pending or allowable objections and corrections to the list.

C. Confidentiality

1. Wis. Admin. Code § PSC 2.12 already protects from public disclosure any record filed with the Commission under a request for confidential handling that meets the requirements of that section. Such protection renders unnecessary other protective measures available from the Administrative Law Judge to prevent public disclosure of a trade secret, or other confidential research, development, or commercial information filed in this docket unless and until a party demonstrates a specific and credible threat of disclosure.
2. The Commission shall hear *in camera* any oral testimony and cross-examination to which a claim that confidential handling under Wis. Admin. Code § PSC 2.12 should apply and place such testimony in a separate transcript volume. To maintain this claim, the claimant shall file a request as described in Wis. Admin. Code § PSC 2.12(3)(a) along with a redacted copy of the volume consistent with Wis. Admin. Code § PSC 2.12(4) by 12 noon 5 days after issuance of the volume by mail from the Administrative Law Judge. The claimant shall omit from the original volume any affirmation of the veracity of that volume from the court reporter. The redacted volume exists only for Commission staff to evaluate the claim and for public convenience. The redacted volume provides no authoritative record of the proceedings. In the case of any discrepancy between the original volume and the redacted volume, the original volume shall control.
3. The Commission shall afford to any transcript volume receiving confidential handling under Wis. Admin. Code § PSC 2.12 the same handling and retention process and procedure that applies to all other documents which the Commission grants confidential handling.

D. Format Requirements

1. **Prehearing Testimony and Exhibits**
 - a. Paginate every page of prehearing testimony, centered at the bottom, and according to the following convention:
 - “[identify the round of testimony]-[identify the party]-[identify the witness]-[page #]”
 - “Direct-PSC-Smith-1”
 - b. Page numbers for each filing shall begin at “1” and continue in numerical order for that filing.
 - c. Mark every exhibit using a cover page centered at the bottom, and according to the following convention:
 - Ex.-[identify the party]-[identify the witness]-[exhibit #]”
 - “Ex.-PSC-Smith-1”
 - d. Exhibit numbers for each witness shall begin at “1” and continue in numerical order for that witness.
 - e. Indicate on any page of prehearing testimony and any exhibit, by highlight or shading, any specific text filed under request for confidential handling treatment.

- Public Version:
 - “The cost was [REDACTED]....”
 - Confidential Version:
 - “The cost was \$2.00....”
- f. Paginate any written testimony and mark any exhibit filed under request for confidential handling treatment under the proper numbering convention succeeded by the letter “c”.
- “Direct-PSC Smith-1c”
- g. Paginate any prehearing testimony and mark any exhibit filed publicly for which another version is filed under request for confidential handling treatment the proper numbering convention succeeded by the letter “p”.
- “Direct-PSC Smith-1p”
- h. Paginate any replacement page and mark any replacement exhibit with the same page or exhibit number as the original version, except the letter “r” shall immediately succeed the number.
- “Direct-PSC-Smith-1r”
 - “Direct-PSC-Smith-1cr”
 - “Direct-PSC Smith-1pr”
- i. Refer to any existing prehearing testimony or marked exhibit by using the assigned page or exhibit number.
- “As mentioned in Direct-PSC-Smith-15”
 - “I prepared Ex.-PSC-Smith-1....”
- j. Except for the existing testimony or a marked exhibit in this docket, include in any reference to a document already posted on ERF, the ERF identifier in the following format “PSC REF#:_____”.
- “As demonstrated in the Applicant’s March 2001 report (PSC REF#: 123456)”

2. Paper copies

- a. Organize the paper submission according to the following convention:
- i. Punch each paper filing to fit a standard three ring binder. Do not include a binder.
 - ii. For testimony, precede each submission with a tabbed page that identifies the following:
 - “[round of testimony]-[party]-[witness]”
 - “Direct-PSC-Smith”
- b. For exhibits, precede each set of exhibits with a tabbed page that indicates the following:
- “Ex.-[identify the party]-[identify the witness]-[exhibit #]”
 - “Ex.-PSC-Smith-1”
- c. For any filing made under a request for confidential handling, only submit in paper, the confidential version of the filing. Do not submit a paper copy of the redacted version of the filing.
- d. Every paper copy shall exactly duplicate its corresponding ERF filing, including any color rendering and the PSC REF#.

3. Briefs

- a. For any brief, request for rehearing or reopening under Wis. Stat. §§ 196.39 or 227.49, and response and reply thereto, use 12 point double-spaced type and one-inch margins.
- b. Cite to the record all noted evidence and assertions of fact.
- c. Cite to no evidence or assertion of fact outside the record.
- d. Limit the number of pages as follows:
 - i. Initial brief - 30 pages.
 - ii. Reply brief - 15 pages.
 - iii. Non-party brief - 15 pages.
 - iv. Request for rehearing or reopening and response thereto - 15 pages.

E. Hearing Procedure

1. Before the call of witnesses, the Administrative Law Judge shall:
 - a. Hear corrections to the Prehearing Witness and Exhibit List.
 - b. Hear any remaining corrections to the prehearing testimony and exhibits.
 - c. Hear any pending or allowable objections.
 - d. Enter the items identified on the Prehearing Witness and Exhibit List into the record, as modified by any corrections and sustained objections.
2. Object to the last round of prehearing testimony and exhibits at the beginning of the party hearing session.
3. The order of appearances and cross-examination by parties shall follow the order of parties as provided in the list above. Commission staff shall follow all parties. Each party and Commission staff may arrange the order of its witnesses.
4. The Commission shall accept individual witness appearances by telephone as provided by Wis. Stat. § 807.13. The Commission requires neither prior notice of such request nor prior notice of any consent of the other parties or Commission staff.
5. Prior to cross-examination, any witness may offer brief oral testimony that responds only to the last round of prehearing testimony or any testimony presented at the hearing offered by another witness. Parties and Commission staff shall use best efforts in this matter to avoid undue surprise or prejudice.
6. Limit cross-examination of a witness by the length and scope required to reasonably investigate matters with respect to the testimony of that witness. To investigate beyond these parameters requires the party to have followed the applicable prehearing process for compelling the witness to appear at hearing for direct examination.
7. Provide an adequate number of copies of any document referred to during the hearing, but not previously offered into the record.
8. The Commission intends to webcast all hearings held in Madison. Therefore, the Commission will make no phone lines available to monitor such hearing.
9. Upon an order to exclude proffered evidence, and if time permits, the sponsor of such evidence may make an offer of proof separate from the record and entered into the record only if so ordered.

F. Post-Hearing Procedure

1. The record closes upon the issuance of the Post Hearing Witness and Exhibit List subject to a request for leave to present additional evidence or take official notice.
2. If before the Commission takes action to review the record a request is filed for leave to present additional evidence or take official notice, the Administrative Law Judge may grant the request upon reasonable terms if the additional evidence or noticed fact is material and good cause prevented its presentation at hearing. However, such request does not automatically stay any Commission open meeting discussion with respect to the existing record, or the issuance of a final decision by the Commission. The effect of either action effects a denial of the request unless otherwise indicated by the Commission.

G. ALJ Orders

1. Unless made at hearing, the Administrative Law Judge shall act only on a request officially filed.
2. Written orders and notices of the Administrative Law Judge shall be issued to parties using only the Commission e-mail service list.
3. Any request that contains a representation or certification of the consent of the parties and Commission staff shall be granted without order unless otherwise ordered within 5 days of filing.
4. Any request to which a response is authorized, but no timely response is filed, shall be granted without order, unless otherwise ordered within 5 days after the deadline to respond.
5. The Administrative Law Judge may waive or modify the application of this order in particular circumstances for good cause.



Michael E. Newmark
Administrative Law Judge