

**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

5-UR-107

**ORDER ON RE-FILING**

This Order, pursuant to Wis. Admin. Code § [PSC 2.04\(1\)](#), directs Commission staff to refile [Ex-PSC-Spanjar-3 \(delayed\) - PSC REF#: 223132](#), omitting the following four filings:

- [PSC REF#: 214718](#)
- [PSC REF#: 223131](#)
- [PSC REF#: 222041](#) (not included in the original [Ex.-PSC-Spanjar-3](#), but identical to [PSC REF#: 223131](#))
- [PSC REF#: 222640](#) - comment of Nick Korth.

[PSC REF#: 214718](#) is a statement by a party to this proceeding, Wisconsin Paper Council, informing the Commission that it would forego filing any direct testimony. Because this filing is not a public comment, it appeared in [Ex.-PSC-Spanjar-3](#) in error.

On two occasions the organization Consumer Energy Alliance, filed two identical comments in this docket. [PSC REF#: 222041](#) and [PSC REF#: 223131](#) (Comment). The Comment contains a cover letter and what the letter purports to submit are, “2500 comments from Wisconsin electric users.”

The Comment shall not enter the record because of fundamental flaws in the document. Also a witness for the Consumer Energy Alliance who appeared at the public hearing session to present and support the document, provided inadequate and incorrect information and, therefore, failed to rehabilitate the Comment’s inherent deficiencies.

The Commission has long recognized the importance of public participation in its proceedings. The Commission takes great care and effort to facilitate this participation. Currently, the Commission allows several convenient ways for a member of the public to offer his or her opinion in a particular case. A person may: (1) submit a written comment on the Commission's web site, (2) send a comment by mail, (3) speak at a public hearing, or (4) submit a written comment in person at a public hearing.

Although the Commission accepts comments in many forms, a proper comment must clearly indicate the commenter's correct identity, and accurately reflect the commenter's opinion. Also, but for the few comments sent by mail, every comment contains an affirmation of its veracity.

A petition extends the convenience of participating by written comment. It allows a person to simply sign on to a pre-written statement rather than using the person's own words. The Commission currently allows a petition as a form of public comment.

The Commission considers a petition to be a set of identical written comments submitted simultaneously by many individual commenters. Although a petition may lack an affirmation of validity from each commenter, a valid petition must demonstrate a reasonable assurance of truth and accuracy. A petition's validity may derive from multiple factors. The Commission will look at a petition's format and distribution method to determine whether it provides an adequate assurance that names collected are genuine and are of those commenters who agree with the petition's stated position.

For example, one can reasonably attribute the petition's statement of position to a commenter if the petition includes that statement at the top of each signature page. The same

applies to a list of names collected through an Internet web site, if the collection site presents the statement of position to the commenter before the commenter joins the list.

The Comment contains none of the design elements expected of a petition to ensure the identities of commenters or verify their opinion. The Comment consists solely of the cover letter and 59 pages of typed names and addresses. No signatures or hand-written entries exist. No indication of how the organization solicited comments appears. No statement of position shows up in connection with any of the names.

In addition to the design elements a petition may possess assuring its validity, Commission practice provides a sponsor of a petition with the opportunity to demonstrate a petition's validity. To exercise that opportunity, the sponsor must appear as a witness at the public hearing session, provide the Administrative Law Judge a copy of the petition, and answer any clarifying questions necessary to lay a proper foundation for its acceptance.

Consumer Energy Alliance witness Ryan Scott appeared at the public hearing to offer the Comment. Witness Scott offered a hardcopy of the Comment that consisted of the same cover letter and list discussed above.

The witness also provided a DVD. Witness Scott fielded a number of questions from the Administrative Law Judge. Many of the witness's answers appeared to indicate that the DVD contained additional information.

"We didn't want to print out all the signatures because it would just be an incredible amount of paper." [Transcript Volume IV-Public Hearing dated Oct. 8, 2014 - PSC REF#: 222324](#) at 46:7-8.

“So people affirmed, we have evidence people affirmed on that CD, that they affirmed the petition, being in favor of the petition, including their address, names, etcetera.” [Transcript Volume IV-Public Hearing dated Oct. 8, 2014 - PSC REF#: 222324](#) at 46:19-22.

“The telephone call was the extent of their submission. But there is a record of it on the DVD on the CD I submitted.” [Transcript Volume IV-Public Hearing dated Oct. 8, 2014 - PSC REF#: 222324](#) at 48:4-6.

Because these statements made it appear the DVD might contain additional information such as “all the signatures” and “evidence people affirmed” during the solicitation process, a decision to accept the Comment was deferred until a review of the DVD could take place. However, review of the DVD reveals that it contains nothing more than a PDF file of the cover letter and list of names identical to the Comment. The lack of any additional information Witness Scott seemed to suggest existed on the DVD, means the testimony and DVD fail to provide any more assurance with respect to the Comment’s validity.

[PSC REF#: 222640](#) contains an appearance slip from Mr. Nick Korth, collected at the public hearing session held in Milwaukee, Wisconsin, on October 8, 2014. Attached to the appearance slip is a letter on Environmental Law & Policy Center letterhead to Madison Gas and Electric Company, We Energies, and Wisconsin Public Service Corporation from “45 Wisconsin Ratepayers.” Mr. Korth also attached to his appearance slip an article by Jeremy Rifkin entitled *Beyond Obama’s Plan: A New Economic Vision for Addressing Climate Change*, published by Common Dreams on June 2, 2014.

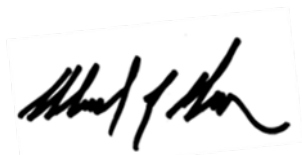
The appearance slip and attachments shall not enter the record. First, the Rifkin article contains no contribution or modification by Mr. Korth. Therefore the article violates the

directive that “[a] person . . . may not include as part of a comment, any document not written or substantially modified by that person.” [Notice of Hearing Signed and served via ERF on 8/27/14; mailed USPS 8/28/14 - PSC REF#: 214601](#) at 2.

Second, the appearance slip contains an error that calls its validity into question. Written on the appearance slip is the statement, “I’m turning in a petition signed by 7806 (cheeseheads) citizens that oppose WeEnergies rate case. #Team Solar.” However, the petition lists only 45 persons.

While the appearance slip indicates Mr. Korth wished to speak at the hearing, the slip also contains the statement, “decided not to speak.” The hearing transcripts show Mr. Korth did not speak at the hearing. By deciding not to appear, Mr. Korth lost the opportunity to explain the deficiencies of his comment, and provide the proper foundation to find the petition valid in this proceeding.

Commission decisions have deep and wide ranging consequences. The Commission recognizes that gathering the public’s opinion before making such decisions is important, and encourages public comments in many forms. But the Commission can only rely on comments that come with a reasonable assurance of truth and accuracy. The Comment and Mr. Korth’s submissions fail all the Commission’s tests for truth and accuracy it typically applies to comments. Therefore these documents shall not appear in the record.

A handwritten signature in black ink, appearing to read "Michael E. Newmark", is written over a horizontal line.

Michael E. Newmark  
Administrative Law Judge  
DL: 00947808