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Public Service Commission of Wisconsin  
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**PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application of Wisconsin Energy Corporation for Approval to Acquire  
the Outstanding Common Stock of Integrys Energy Group, Inc.

9400-YO-100

**FINAL DECISION**

This is the Final Decision in the Commission's review of the acquisition of Integrys Energy Group, Inc. (Integrys Energy), by Wisconsin Energy Corporation (WEC or applicant). The transaction is approved, subject to conditions.

**Introduction**

On August 6, 2014, WEC filed an application under Wis. Stat. § 196.795(3) for authority to acquire 100 percent of the outstanding common stock of Integrys Energy. WEC is a Wisconsin holding company with a number of wholly-owned subsidiaries. Through its subsidiary utilities, Wisconsin Electric Power Company (WEPCO) and Wisconsin Gas LLC (WG), WEC serves 1.1 million electric customers and 1.1 million natural gas customers throughout Wisconsin and the Upper Peninsula of Michigan (UP). WEPCO also provides steam services in the Milwaukee metropolitan area. WEC also owns W.E. Power, LLC, and has an ownership interest in American Transmission Company LLC and ATC Management Inc. (ATCLLC and ATCMI, together ATC).

Integrys Energy is a Wisconsin holding company which presently owns and operates five regulated natural gas and electric utilities: Wisconsin Public Service Corporation (WPSC), Michigan Gas Utilities Corporation, Minnesota Energy Resources Corporation, Peoples Gas Light and Coke Company, and North Shore Gas Company that serve a total of 2.1 million

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customers in Wisconsin, Minnesota, Michigan, and Illinois. Integrys Energy's subsidiary, WPSC, serves approximately 445,000 electric customers and 323,000 natural gas customers in northeastern and north central Wisconsin and an adjacent portion of the UP. Integrys Energy also has an ownership interest in ATC.

The proposed transaction is structured as a merger of Integrys Energy and a special purpose subsidiary of WEC. Upon merging, WEC will change its name to WEC Energy Group, Inc. (WEC Energy). Under the terms of the acquisition, Integrys Energy shareholders will receive 1.128 WEC shares plus \$18.58 in cash for each Integrys Energy share. Total consideration was valued on June 20, 2014, at \$71.47 per Integrys Energy share, representing a 17.3 percent premium over Integrys Energy closing price that day. The acquisition will be financed by issuing new WEC stock and by WEC issuing approximately \$1.5 billion in debt, likely in the form of intermediate and long-term debt. Upon closing of the acquisition, Integrys Energy shareholders will own approximately 28 percent of the combined company, and WEC Energy will own approximately 60 percent of ATC's member interests and manager's shares. The overall Integrys Energy acquisition is valued at approximately \$9.1 billion, with \$3.3 billion of assumed Integrys Energy debt. On November 21, 2014, both WEC and Integrys Energy held separate shareholder meetings, and the proposed acquisition was approved by each set of shareholders. (Rebuttal-WEC-Reed-33, [PSC REF#: 233140](#).)

A prehearing conference was held September 25, 2014, to identify the persons who would be actively participating as full parties, to identify and designate the issues set for hearing, and to set procedural schedules for filing testimony and discovery. On August 6, 2014, and January 26, February 5, and March 6, 2015, WEC and Integrys Energy filed testimony in support

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of the proposed acquisition. ([PSC REF#: 234750](#).) Commission staff and intervenors filed testimony on January 14, February 19, and March 11, 2015. (*Id.*) Technical hearings for the parties were held before Administrative Law Judge Michael Newmark on March 11, 2015, in Madison, Wisconsin.<sup>1</sup> The Commission held hearings for public comment on February 25, 2015, in Milwaukee, Wisconsin, and on February 26, 2015, in Green Bay, Wisconsin.<sup>2</sup> The Commission also requested and received comments from members of the public through its Internet web site. ([PSC REF#: 233247](#).) The Commission conducted its hearings as Class 1 contested case proceedings pursuant to Wis. Stat. §§ 196.795(3), 227.01(3)(a), and 227.44. The parties, for purposes of review under Wis. Stat. § 227.47 and 227.53, are listed in Appendix A. Other appearances are listed in the Commission file.

Initial briefs were filed on March 30, 2015,<sup>3</sup> and reply briefs were filed on April 6, 2015.<sup>4</sup> The Commission considered this matter at its open meeting of April 30, 2015.

### **Findings of Fact**

1. As conditioned by the Final Decision, the acquisition is in the best interests of utility consumers, investors, and the public pursuant to Wis. Stat. § 196.795(3).
2. It is reasonable to require that WEC Energy and its subsidiaries follow specific record keeping and accounting practices, as described in this Final Decision, to ensure that the Commission has adequate information necessary to exercise its continuing jurisdiction over WEPCO, WG, and WPSC (collectively the Wisconsin Utilities) and the holding company. It is further reasonable to impose conditions related to the rate recovery of acquisition and transition

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<sup>1</sup> ([PSC REF#s: 230880, 233527, 233588](#) (confidential), and [233592](#) (confidential).)

<sup>2</sup> ([PSC REF#s: 230880, 233601, and 233602](#).)

<sup>3</sup> ([PSC REF#s: 233833, 233826, 233828, 233817, 233818, 233820, 233806, and 233822](#).)

<sup>4</sup> ([PSC REF#s: 234151, 234144, 234154, 234115, 234143, 234141, and 234132](#).)

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related costs to ensure that Wisconsin ratepayers do not pay costs for which they receive no benefit.

3. It is reasonable for WEPCO (including utility operations of WEPCO-Electric, Wisconsin Electric-Gas (WE-GO), Valley Steam (VA-Steam), Milwaukee County Steam (MC-Steam)), and WG to be subject to an earnings cap for three years, beginning with 2016, as described in this Final Decision. It is further reasonable that WG be subject to the same earnings cap as described in this Final Decision, but any excess earnings shall be escrowed and used to offset the costs of the West Central Natural Gas Lateral project, which was authorized in docket 6650-CG-233.

4. It is reasonable to impose conditions, as described in this Final Decision, relating to the recoverability of costs associated with approvals of the proposed transaction in other jurisdictions to ensure that any such costs are not passed on to Wisconsin ratepayers. It is further reasonable to impose conditions related to ongoing capital investments at the Presque Isle Power Plant (PIPP) to enable the Commission to monitor developments at the plant that may impact Wisconsin ratepayers.

5. It is reasonable to impose the reporting and study conditions, as described in this Final Decision, to ensure that the Commission remains adequately informed of developments that may be material to the exercise of the Commission's jurisdiction.

6. It is reasonable to impose conditions, as described in this Final Decision, regarding the maintenance of employee headcounts, operational and corporate headquarters, and rate equalization among the Wisconsin Utilities to ensure that the public interest is protected.

7. It is reasonable to impose certain conditions, as described in this Final Decision regarding holding company debt, intercompany lending, and credit ratings to ensure that the acquisition does not adversely affect the credit of the Wisconsin Utilities.

8. It is reasonable to impose certain conditions, as described in this Final Decision, relating to the holding company structure, service company operations, and agreements between affiliates, service company allocators, and audit to ensure that the Commission's regulation of the existing holding companies is not harmed by the proposed acquisition and that the holding company structure is not harmful to the rate-paying public.

9. It is reasonable to restrict WEC Energy to voting only 34.07 percent of ATCMI's shares, on matters requiring a vote of ATCMI's owners—except WEC Energy may vote its full ownership interest on fundamental corporate matters—to moderate WEC Energy's influence over ATC's operations.

10. It is reasonable to accept all of the uncontested conditions WEC agreed to in this proceeding, except as modified by this Final Decision, and to acknowledge and accept all of the commitments made by WEC in its application and in the course of these proceedings.

11. The conditions imposed in this Final Decision are reasonable to protect the public interest.

### **Conclusions of Law**

1. WEC and Integrys Energy are holding companies as defined in Wis. Stat. § 196.795(1)(h).

2. WEPCO, WG, and WPSC are public utilities as defined in Wis. Stat. § 196.01(5).

3. The Commission has authority under Wis. Stat. § 196.795 to grant its consent and approval to WEC to acquire 100 percent of the outstanding common stock of Integrys Energy.

4. The Commission has authority under Wis. Stat. §§ 196.02, 196.395, 196.52, 196.79, and 196.795 to grant its consent and approval of a series of interrelated transactions involving WEC and its affiliates and Integrys Energy and its affiliates resulting in a merger of the entities and to issue this Final Decision.

5. The Commission has authority under Wis. Stat. §§ 196.02, 196.395, 196.79, and 196.795 to impose the conditions specified in this Final Decision.

6. The acquisition, subject to conditions, is in the best interests of utility consumers, investors, and the public pursuant to Wis. Stat. § 196.795(3).

### **Opinion**

The Commission is charged by the legislature with regulating public utility mergers and acquisitions, as well as the formation and acquisition of public utility holding companies. When the Commission is asked to approve a proposed public utility merger or, as is the case here, the acquisition of a public utility holding company, the Commission must determine whether the proposed acquisition is in the public interest.

Wisconsin Stat. § 196.795, the Holding Company Law, sets forth a variety of limitations on holding company formation and holding company activities. The acquisition of a public utility holding company is governed specifically by Wis. Stat. § 196.795(3). It states:

No person may take, hold or acquire, directly or indirectly, more than 10 percent of the outstanding voting securities of a holding company, with the unconditional power to vote those securities, unless the commission has determined, after investigation and an opportunity for hearing, that the taking, holding or acquiring is in the best interests of utility consumers, investors, and the public.

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The Commission conducted this proceeding as a Class 1 proceeding and acts “under standards conferring substantial discretionary authority upon” the Commission. (Wis. Stat. § 227.01(3)(a).) When the Commission makes determinations as to the best interests of the public or the public interest, it acts in a policy-making, or quasi-legislative role.

The Commission has a longstanding history of implementing the Holding Company Law and evaluating a wide range of holding company structures and proposed acquisitions. In 1986 and 1987, the Commission approved the formation of Wisconsin Energy Corporation and WPL Holdings, Inc., in dockets 9402-YO-100 and 9403-YO-100, respectively. From 1990 to 2002, the Commission considered, and ultimately approved four additional major holding company formations/acquisitions: the creation of WPS Resources Corporation, MGE Energy, Inc., and Alliant Energy Corporation, and the merger of WICOR with WEC. More recently, the Commission considered the acquisition of Peoples Energy Corporation by Integrys Energy in docket 9405-YI-100, and the recognition of ITC Holdings Corporation as a Wisconsin holding company in docket 9408-YO-100. Each of the transactions and applications presented complex legal, regulatory, and economic issues and were motivated by unique developments in the energy industry. In every case, the Commission was tasked with determining whether the public interest was served and, if not, whether the public interest could be served by the Commission conditioning its approval.

The Commission’s analysis of the proposed acquisition was aided by the substantial involvement in this proceeding by a wide spectrum of stakeholders. The parties to this proceeding included trade unions, residential and small commercial ratepayers, industrial and

other large commercial customers, environmental policy groups, other Wisconsin public utilities, and the applicant.

In this proceeding, the parties debated the meaning of the term “best interests” as used in Wis. Stat. § 196.795(3). The debate between the applicant and intervenors centered on three disagreements. First, they disagreed as to whether “best interests” means simply that no harm will result from the proposed acquisition, or, alternatively, whether the acquisition must confer affirmative benefits. The applicant argued for the application of a no harm standard, while other parties contended that there must be a benefit in order for the Commission to approve the acquisition. Second, the parties and the applicant disagreed about to whom the best interests standard applies. Should it apply individually, to each named entity—utility consumers, investors and the public—or should it be applied in the aggregate? The applicant argued that the standard applied in the aggregate, while other parties argued that the transaction must be in the best interests of each named group. Third, the intervenors and the applicant disagreed about the timing, magnitude, and certainty of the benefits of the transaction to ratepayers and the public. The applicant identified a number of attributes of the acquisition that, over time, it stated would result in benefits to ratepayers and the public. The intervenors argued that the identified benefits were not quantified and were uncertain, at best, and that the Commission should impose additional conditions to ensure that ratepayers and the public would, in fact, benefit from this transaction.

Regarding the question of whether best interests means no harm, the Commission does not accept the applicant’s position. The interpretation of best interests is fact specific and is, in large part, a policy decision of this Commission. Case law, statutory construction principles,

together with the facts of this proceeding, indicate that “best interests” in Wis. Stat. §196.795(3) means something more than finding no harm resulting from the transaction.

Wisconsin Stat. § 196.795(3) does not specifically define “best interests.” However, there are many instances in related statutes where the law specifically articulates no harm type standards. The Commission finds it persuasive that such language is *not* used here. Under Wis. Stat. § 196.795(2)(e), for example, the Commission “shall issue a certificate of approval to form a holding company unless it finds that the formation of the holding company would *materially harm* the interests of utility consumers or investors.” (Emphasis added.) Similarly, under Wis. Stat. § 196.795(4), “[i]f the Commission finds that the capital of any public utility affiliate *will be impaired* by the payment of a dividend,” the Commission may “order the public utility affiliate to limit or cease the payment of dividends to the holding company until the potential for *impairment* is eliminated.” (Emphasis added.) Last, under Wis. Stat. § 196.795(5)(g), no holding company may be operated in any way “which *materially impairs* the credit, ability to acquire capital on reasonable terms or ability to provide safe, reasonable, reliable and adequate utility service of any public utility affiliate in the holding company system.” (Emphasis added.) In each of these statutory provisions adjacent to or near Wis. Stat. § 196.795(3), the legislature appears primarily concerned with *preventing* harm to customers.

The related statutes support the intervenors’ argument that something more than “do no harm” is required by Wis. Stat. § 196.795(3). Because the legislature explicitly has expressed no harm type standards in other places, its failure to do so in subsection (3) indicates that best interests is not a no harm standard. That is, the legislature used different words because it meant different things. Further, while the Commission has never addressed this question in these terms,

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the Commission has approved previous mergers in part because they were expected to provide benefits to ratepayers and the public. The Commission has never expressed a no harm standard in its consideration of a proposed acquisition or utility merger.

Regarding the second question of whether the best interests standard applies individually to each named entity, or in the aggregate, the Commission agrees with the intervenors. A plain meaning interpretation of the statute shows that “utility consumers, investors and the public” should be viewed individually. The use of the word “and” in Wis. Stat. § 196.795(3) is conjunctive and supports the assertion that the acquisition must be independently, not aggregately, in the best interests of utility consumers, investors, and the public. Further, interpreting the statute to allow an aggregate benefit would lead to potentially absurd results. Such a construction would ostensibly permit an acquisition to financially harm utility consumers, so long as that harm was less than the gain to shareholders, or vice versa. It is clear that the best interests of each group enumerated in the statute must be balanced separately.

Finally, with respect to the magnitude, timing, and certainty of benefits, the statute is less clear. The Commission has, in the past, considered both the short- and long-term benefits of a transaction in its holistic analysis of a proposed acquisition. Synergy savings and operational changes often take time to develop and should be pursued in a thoughtful manner. Just because benefits may not be immediately realized upon consummation of a merger or acquisition does not necessarily deprive the public and utility consumers of a benefit. The Commission’s determination of whether the public interest is served by any particular merger or acquisition must be made on a case-by-case basis. Nevertheless, this Commission has typically conditioned

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its approval of holding company transactions in a manner such that there was some degree of certainty in the benefits for utility ratepayers and the public.

In this case, the applicant offered a number of concessions to mitigate the concerns of Commission staff and the intervenors, including a prohibition on the recovery of the acquisition premium and transaction costs in rates, restrictions on voting its majority interest in ATC, a commitment to not reduce its represented labor force beyond normal attrition for two years post-closing, execution of the appropriate affiliated interest agreements, and conferring with Commission staff and affected parties before filing for approval of any legal merger of regulated utilities or before seeking to equalize rates between the Wisconsin Utilities. (Ex.-WEC-Lauber-10, [PSC REF#: 232948](#).) The applicant further identified several attributes of the acquisition that could, over time, result in additional benefits to utility consumers, investors, and the public. These include:

- the creation of a larger, Wisconsin-based company with greater financial liquidity and improved access to capital markets;
- the maintenance of WEC's and Integrys Energy's long traditions of making contributions to regional economic development and educational, cultural, and charitable activities;
- the opportunity for increased efficiencies in operations, purchasing, and corporate services;
- the creation of a more diversified generation portfolio with a larger geographic footprint; and
- the facilitation of continued prudent investment in needed utility infrastructure, including the ability to use the strong cash flow of the combined companies to fund future investments without issuing new debt.<sup>5</sup>

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<sup>5</sup> (Direct-WEC-Lauber-6-13, [PSC REF#: 233142](#); Direct-WEC-Schott-5-7, [PSC REF#: 213335](#).)

Several intervenors argued that the applicant did not provide specific evidence or guarantees to demonstrate that the proposed transaction would benefit utility consumers (*i.e.*, ratepayers) and the public. They argued that the applicant's offered conditions were insufficient, and the potential future benefits too uncertain, to meet the best interests standard. To address this uncertainty, Commission staff and intervenors proposed a number of additional conditions for the Commission's consideration.

An acquisition of this magnitude introduces uncertainty for all parties that, but for the acquisition, would not have existed. The opposing intervenors appear to want certainty or guarantees of tangible, even immediate benefits. This uncertainty has been addressed financially for the shareholders who have had the opportunity to exercise control over the decision through their votes.<sup>6</sup> To address the uncertainty that this transaction presents to utility consumers and the public, the Commission concludes that it is reasonable to impose conditions on the approval of the transaction above and beyond what the applicant proposed or otherwise agreed to in the course of this proceeding. As the Commission concludes that the imposition of additional conditions is reasonable, it need not and does not specifically opine as to whether the transaction as proposed by WEC satisfies Wis. Stat. § 196.795(3).

Some intervenors proposed various benefits that would provide ratepayers with a short-term benefit, including a rate freeze, bill credit or write-offs. The Commission received evidence regarding the pros and cons of each proposed short-term benefit. The Commission is not convinced that these proposals are appropriate. Further, while the Commission may have the

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<sup>6</sup> The benefits to the shareholders of WEC and Integrys Energy are not contested; clearly, the shareholders of these companies found sufficient value to approve the necessary actions at their respective stockholder meetings. ([PSC REF#: 233140](#).) Therefore, the Commission does not need to look for further evidence to justify the benefit to utility investors.

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power to manufacture some immediate and quantifiable benefit through bill credit, rate freeze, or specific write-offs, the Commission is cognizant that such forced economic action could have an equal and opposite reaction. For example, a rate freeze could actually create greater risks for ratepayers should there be substantial and unanticipated cost increases during the freeze or should there be decreases in costs that escape scrutiny and are not reflected in rate decreases. (Direct-PSC-Larson-9-11, [PSC REF#: 233118](#).)

Instead, the Commission finds it reasonable to impose conditions that will provide an opportunity, if not certainty, for ratepayers to benefit from this transaction. As will be discussed more fully in this Final Decision, for WPSC ratepayers, the Commission will require the new holding company to fully consider the possibility of delaying or avoiding construction of the proposed Fox Energy Center Unit 3, in Wrightstown, Wisconsin (Fox Unit 3), preventing any further analysis of that project until a joint integrated resource plan (IRP) has been completed and provided to the Commission. Testimony was offered in the proceeding that such a plan could identify up to \$600 million in avoided net present value revenue requirements as a result of delaying or canceling future generation projects. (Direct-PSC-Detmer-2, [PSC REF#: 229717](#).)

For the other Wisconsin Utilities, the Commission finds it reasonable to implement an earnings cap for three years, beginning in 2016. An earnings cap, as will be discussed more fully in this Final Decision, will ensure that, to the extent synergy savings are realized, these savings are shared with the ratepayers.

In addition to creating an opportunity for financial benefits for ratepayers, the Commission also finds it reasonable to impose other conditions to facilitate its regulation of these companies into the future. The transaction will result in a complex, multi-jurisdiction

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holding company. The Commission finds that it is reasonable, and in the public interest, to impose additional conditions on both the holding company and its regulated subsidiaries to ensure adequate reporting and monitoring of costs and revenues. This Commission is charged with ensuring just and reasonable rates for Wisconsin ratepayers, maintaining continuing jurisdiction over the holding company, and ensuring that the Commission receives adequate information in a timely fashion.

The Commission recognizes that the proposed acquisition will result in the immediate creation of a Fortune 300 company within the state, providing jobs to Wisconsin families and assisting with economic development. Currently, both Integrys Energy and WEC have a significant presence in Wisconsin, including conducting charitable and philanthropic activities within the communities in which they operate. The Commission finds that it is reasonable to require WEC, for a period of ten years after closing, to seek Commission approval for relocating its corporate headquarters because the continued presence of the corporate headquarters in Wisconsin is in the public interest.

As the Commission considered the fundamental questions of this case and its analysis of any particular proposed condition, the Commission was guided by several important principles. First, while an applicant must provide evidence and assurance that the best interests standard will be met, it is neither possible nor necessary to address every potential hypothetical future scenario in this Final Decision. The Commission's failure to adopt any particular condition does not indicate that the Commission is indifferent to the concerns raised by any particular party. In fact, many of the concerns raised, such as the possibility of WEC Energy seeking to equalize or make level the rates between WEPCO and WPSC, are of paramount concern to the Commission.

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However, many of these concerns reflect future uncertainty, which does not warrant immediate action in this proceeding. Furthermore, the Commission is entrusted with substantial powers in Wis. Stat. ch. 196 to take actions, when necessary, to address many of the concerns raised by the parties.

Specifically, the Commission possesses the authority to adjust public utility rates, investigate holding company activities that might harm the public utilities, restrict the issuance of dividends, and prevent the issuance of stocks and bonds. Wis. Stat. §§ 196.02, 196.03, 196.05, 196.20, 196.22, 196.26, 196.37, 196.795, and 201.03. Affirmative Commission approval is required before any public utility contracts with an affiliate, or undertakes any significant capital expenditure. Wis. Stat. §§ 196.49, 196.491, and 196.52. Finally, Wis. Stat. § 196.02 provides the Commission with the authority “to supervise and regulate every public utility in this state and to do all things necessary and convenient to its jurisdiction.” The existence and exercise of these powers mitigate the need to adopt many of the proposals requested by the intervenors.

Secondly and similarly, this proceeding is not an appropriate venue to re-litigate past Commission decisions. Some of the conditions proposed by the intervenors have been recently considered, and rejected, by the Commission and need not be revisited here.

Finally, while the Commission declines to re-litigate past cases and need not attempt to perfectly predict the future in this proceeding, it remains the fundamental purpose of the Commission to ensure that the proposed transaction is in the best interests of the ratepayers and public. In addition to its fundamental determinations, the Commission finds that the public interest is served and protected by the imposition of the additional conditions and limitations, as discussed in the following paragraphs.

### **Acquisition Premium**

The acquisition premium is the payment of a price that exceeds the acquired company's book value. In its application, WEC identified that it is paying an acquisition premium of \$2.4 billion.<sup>7</sup> The applicant has committed to not seek any rate recovery of the acquisition premium and has agreed to a condition that the acquisition premium shall not be allocated to WEPCO, WG, or WPSC.<sup>8</sup> Further, the applicant has agreed to track the acquisition premium in its accounting system. The Commission finds it reasonable to require that no acquisition premium be allocated to or recovered from the ratepayers of the Wisconsin Utilities, and to require that WEC Energy identify all acquisition premium in its accounting system so as to assure that ratepayers are not held responsible for the premium paid to acquire Integrys Energy.

### **Push-Down Accounting**

Push-down accounting refers to "pushing down" the acquiring entity's (WEC) accounting and reporting basis (which is recognized in conjunction with its accounting for a business combination) to the acquired entity's (Integrys Energy) stand-alone financial statements. In November 2014, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2014-17 that makes the application of push-down accounting optional. WEC has indicated that it plans to keep the financial statements of the acquired regulated subsidiaries at historical cost. However, for financial accounting purposes, WEC Energy is obligated to comply with Securities and Exchange Commission (SEC) regulations should the optional nature of the current FASB standard change in the future. The Commission finds it

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<sup>7</sup> ([PSC REF#: 213332](#), at 3.)

<sup>8</sup> ([PSC REF#s: 233140, 230443, 232943, 233141, 230450, 232948.](#))

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reasonable to impose an uncontested condition<sup>9</sup> prohibiting push-down accounting related to this acquisition, except where required by Generally Accepted Accounting Principles (GAAP) for financial reporting. Further, it is reasonable to prohibit the Wisconsin Utilities from using push-down accounting for Wisconsin regulatory or ratemaking purposes, regardless of GAAP requirements.<sup>10</sup> The Commission finds that this condition is reasonable to ensure that the acquisition will not affect the capital structure of the Wisconsin Utilities and is necessary for the Commission's continuing jurisdiction over ratemaking.

### **Acquisition Transaction Costs**

Transaction costs generally include expenses that are incurred in connection with the execution of a transaction. In this case, the transaction costs are related to the acquisition of a holding company (Integrus Energy) by a holding company (WEC). All parties agree that transaction costs for this acquisition shall not be recovered from ratepayers. However, there is no standard definition of transaction costs, which may vary depending on the nature of the transaction. The Commission agrees that transaction costs shall not be recovered from Wisconsin ratepayers and finds it reasonable to condition its approval of the transaction to ensure that transaction costs are properly identified and reported so that ratepayers are not charged for these costs. These conditions include: the identification and estimated amount of transaction costs; allocation of transaction costs between the holding company and the operating utilities; and the treatment of these costs for accounting and ratemaking purposes.

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<sup>9</sup> ([PSC REF#s: 232943, 230450, 232948.](#))

<sup>10</sup> Currently GAAP does not require push-down accounting for financial reporting. If the GAAP requirement changes, and push-down accounting is required, the Wisconsin Utilities may use it for financial reporting purposes only. This means that push-down accounting will not be used for regulatory accounting, including the PSC Annual report or for ratemaking purposes, including the PSC financial and regulatory capital structures used in rate proceedings.

First, the Commission finds it reasonable that the categories of costs, and estimated amounts, as shown in Table 1 be defined as transaction costs for the purpose of this acquisition. The Commission finds, however, that this list may not be exhaustive, and the Commission retains jurisdiction to review any costs allocated to the Wisconsin Utilities as part of its ratemaking authority. Second, all transaction costs incurred by or allocated to the Wisconsin Utilities shall be specifically identified and allocated to non-utility accounts. Third, transaction costs shall be expensed as they are incurred. Fourth, transaction costs shall not be considered in determining excess revenues under Wis. Admin. Code § PSC 116.07(6) or in any other Commission determination in which earnings are a consideration. Finally, the Wisconsin Utilities may not recover any acquisition-related costs from the Wisconsin retail jurisdictions. After closing, and in any rate proceeding decided within six years after the transaction closing, the applicant shall provide proof that no transaction costs are included in historical expenses of the Wisconsin Utilities or in the determination of revenue requirement.

**Table 1 Estimated Transaction Costs**

<b>Transaction Cost Category</b>	<b>Estimated Amount</b>
Investment Banking	\$22 million
Legal	\$14.4 million
Legal Debt Offering	\$1.5 million
Regulatory Affairs	\$1 million
Transfer Agent Fees	\$1 million
Printers Fees	\$1 million
Securities and Exchange Commission Registration	\$750,000
Ratings Agency Fees	\$650,000
Tax and other Financial Consulting Work	\$350,000
Audit Fees – S-4	\$250,000
Communications	\$100,000
Change-in-control Payments	\$47.6 million
Portion of “Cash-out” Payments that vest at closing	Portion of \$140 million
Six years of directors’ and officers’ tail insurance or equivalent policy	\$1.9 to \$5.6 million annually

### **Transition Costs and Synergy Savings**

Transition costs generally include those expenses incurred after closing that are necessary to implement the merger or integrate the holding companies and their associated subsidiaries. Such expenses may include, but are not limited to: the relocation of employees; legal and accounting services; engineering services; information technology; and customer service. Transition costs are expensed in the year they are incurred and are generally recoverable to the extent that the expenditures benefit ratepayers. Synergy savings refers to savings—typically via avoided costs or reduction in expenses—that result from the efficiencies of combining multiple companies into one. The treatment of transition costs and synergy savings are related because in order to obtain the efficiencies, costs typically must be incurred.

The Commission recognizes that the applicant will incur post-closing costs to complete the merger of the holding companies, including the formation of a service company that will support WEC Energy's regulated and unregulated subsidiaries across four state jurisdictions. Although the applicant suggested that the Wisconsin Utilities could see reductions in non-fuel operations and maintenance expenses of between 3 to 5 percent in future years,<sup>11</sup> the applicant did not identify how it planned to achieve these savings nor how much it would cost during the transition period to achieve these efficiencies. The Commission acknowledges that in general, transition costs can be reviewed as test-year expenses during future rate cases for the Wisconsin Utilities. But, the absence of a transition or integration plan places a high burden on the Commission to ensure that ratepayers receive benefit from any transition costs for which they may be asked to pay. While the Commission does not believe that denying recovery of transition costs is required to satisfy

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<sup>11</sup> ([PSC REF#s: 213334, 233141.](#))

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Wis. Stat. § 196.795(3), the Commission finds it reasonable to condition its approval such that transition costs are transparent, auditable, and result in corresponding ratepayer benefits.

Specifically, the Commission finds that WEC Energy and the Wisconsin Utilities shall: (1) pass along merger savings net of the cost to achieve those savings to ratepayers; (2) provide a detailed analysis and justification for any transition costs sought to be recovered from ratepayers; and (3) identify and track all transition costs incurred by each utility and allocated to it in a manner that is readily reviewable and auditable by the Commission at a location within Wisconsin.<sup>12</sup>

Further, the Wisconsin Utilities may recover transition costs in rates only if and to the extent that such costs are: (1) incurred by or allocated to each of the utilities; (2) associated with financial benefits that each utility's ratepayers will receive as a result of the acquisition; and (3) the acquisition-related savings realized by each utility's ratepayers are equal to or greater than its transition costs. The Commission recognizes that the offsetting savings and benefits may be either quantitative or qualitative, and varying in time. The Commission notes that any determination on the appropriateness of a deferral for either savings or costs, and the associated carrying costs, will be made upon request or in the appropriate rate proceeding. Absent an approved deferral, all transition costs incurred prior to the next rate case shall be borne by the utility.

In addition, WEC Energy shall seek Commission approval of any allocation factors and methodology associated with synergy savings if such savings become an issue in a future proceeding. Any differences in allocations from other jurisdictions shall be absorbed by WEC

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<sup>12</sup> ([PSC REF#s: 230450, 232948.](#))

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Energy. For any severance and/or early termination costs for which WEPCO, WG, or WPSC seek rate recovery, the applicable utility shall provide detailed information in any rate proceeding on each instance of severance and/or early termination—the position, the reasoning, the costs and savings, etc.—in sufficient detail for the Commission to make a determination on whether the cost is an unrecoverable transaction cost or a transition cost eligible for recovery from ratepayers.

Finally, WEC Energy shall provide its merger and integration plans to the Commission when developed, and prior to implementation for Commission informational purposes. The applicant did not provide details in its application regarding how it intends to transition its operations. As a result, the Commission finds it reasonable to remain adequately informed of the progress of the integration, regardless of whether there is a rate proceeding, to ensure that as the integration proceeds, it does so in the best interest of ratepayers. The integration plans shall not be subject to Commission approval; however the Commission maintains continuing jurisdiction over the operations of the Wisconsin Utilities.

### **Earnings Cap and Revenue Sharing**

As noted, the applicant identified expected synergy savings of between 3 to 5 percent per year over the long term.<sup>13</sup> However, these savings are uncertain and will not accrue to ratepayers unless or until the Wisconsin Utilities file a rate case with the Commission. The Commission finds it reasonable to ensure that ratepayers have an opportunity to share in the benefits of the proposed acquisition in the short-term. The Commission considered a number of options offered by various parties and Commission staff that were intended to produce quantifiable, short-term

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<sup>13</sup> ([PSC REF#s: 213334, 233141.](#))

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benefits to ratepayers and reduce uncertainty. These proposals included a bill credit for ratepayers, a rate freeze for a specified period of time, a reduction to WEPCO's transmission escrow balance, and an earnings cap. The Commission finds that an earnings cap, with revenue sharing, is the most reasonable mechanism for providing WEPCO and WG ratepayers an opportunity to benefit from the acquisition, without imposing an unreasonable burden on the applicant or its shareholders.

The record in this case demonstrates disagreement among the parties regarding the magnitude and timing of synergy savings as a result of this acquisition. The Commission recognizes that the acquisition may present opportunities for savings by the Wisconsin Utilities in the short term, before their next rate case. Further, it is reasonable to conclude that some portion of any return above the authorized rate of return on equity levels could be considered to have been the result of savings achieved through this acquisition. An earnings cap with revenue sharing provides the appropriate mechanism by which these savings can be shared with the ratepayers. The Commission finds that maintaining the earnings cap for three years is a reasonable period of time for ratepayers to capture some synergy savings from the transaction.

WEPCO (including utility operations of WEPCO-Electric, WE-GO, VA-Steam, and MC-Steam) and WG shall be subject to an earnings cap for three years, beginning on January 1, 2016, to ensure that the proposed acquisition is in the best interests of their ratepayers, shareholders, and the public. Under this cap, if WEPCO earns above its authorized return, calculated on a fuel rules basis (Wis. Admin Code ch. PSC 116), it is reasonable that 50 percent of the first 50 basis points of additional earnings be used to write off, on a dollar-for-dollar basis, the transmission escrow earning the highest interest rate, with WEPCO permitted to retain the

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remaining 50 percent. For any earnings that exceed 50 basis points over the authorized earnings, calculated on a fuel rules basis, it is reasonable that 100 percent shall be used to write off the transmission escrow earning the highest interest rate. For WG, it is reasonable that an earnings cap mechanism work the same, but that excess earnings be applied to reduce the costs of the West Central Natural Gas Lateral project authorized in docket 6650-CG-233.

The Commission recognizes and shares the concerns about the growing balance of deferred costs and the impending construction costs of the West Central Natural Gas Lateral project. The method chosen by the Commission for sharing any excess revenues, as determined by the earnings cap, will help to minimize the bill impacts to WEPCO and WG customers in future rate proceedings. Rather than directing the operating utilities to offer bill credits, or use any excess as a temporary offset in a future rate case, the Commission finds that matching excess revenues with these write-offs is more reasonable. It creates a concrete and quantifiable benefit to ratepayers, but avoids cash flow and administrative concerns often raised by utilities when bill credits or revenue requirement offsets are contemplated. The Commission further directs Commission staff to track the results of the application of the earnings cap and to report this information to the Commission in each future applicable rate case proceeding.

The Commission does not find it reasonable to impose an earnings cap on WPSC at this time. This transaction is expected to close in the third quarter of 2015. WPSC has already filed an application for a 2016 test-year rate case, and by the time this transaction closes, it is likely that Commission staff will have completed its audit. WPSC's 2016 test-year rate case provides the Commission with an opportunity to identify specific synergy savings in that proceeding. Furthermore, the Commission finds that WPSC ratepayers have an opportunity to benefit by the

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possibility of delaying or avoiding the construction of new generation resources through a joint IRP.

### **Joint Integrated Resource Planning**

The applicant stated that one of the benefits of the acquisition is the ability to conduct a joint IRP of the Wisconsin electric operating utilities' generation portfolios. (Direct-WEC-Lauber-7, [PSC REF#: 233142](#).) According to the applicant, the larger generation portfolio and geographic footprint created by the acquisition may result in economic opportunities that are not available to the stand-alone companies (Rebuttal-WEC-Leverett-14, [PSC REF#: 233143](#).) Commission staff's EGEAS modeling of the combined utilities' generation portfolios demonstrates that there is a potential to avoid approximately \$600 million in net present value revenue requirement by delaying or canceling future electric generation projects if WPSC and WEPCO portfolios are combined for planning purposes. (Direct-PSC-Detmer-2, [PSC REF#: 229717](#).)

The applicant did not identify any specific capital projects that would be avoided or delayed as a result of the acquisition. However, WPSC submitted an application to the Commission on January 21, 2015, for a Certificate of Public Convenience and Necessity for a 400 megawatt combined-cycle natural gas plant, known as Fox Unit 3 (docket 6690-CE-202). Commission staff and other parties noted that while WPSC, as a standalone utility, may have a need for capacity in the near-term, this project may not be needed if the generation portfolios are combined because WEPCO has surplus generation capacity that may be available to meet WPSC's needs. (Rebuttal-PSC-Detmer-7, [PSC REF#: 231996](#).)

The Commission agrees that combining the generation portfolios of the operating utilities could result in economic benefits for ratepayers, including the avoidance or delay of new generation facilities. According to the applicant, the operating utilities are prohibited from conducting joint planning until after the acquisition is completed. As a result, the Commission finds that it is premature to consider WPSC's proposal for Fox Unit 3 until the operating utilities have had an opportunity to conduct a joint IRP. Such planning will be helpful in determining whether existing resources could be used to avoid or delay the need for Fox Unit 3.

To ensure that unnecessary capital costs related to new generation are avoided and that customers receive the benefits of the larger company's combined generation portfolio, it is reasonable to require that WPSC withdraw its application for Fox Unit 3 within ten days of the effective date of this Final Decision.<sup>14</sup> Further, neither WEC Energy nor its subsidiaries shall propose any new electric generation projects that would unnecessarily increase system capacity, and for which the cost would be allocated to Wisconsin ratepayers, unless: (1) WEC Energy submits a joint IRP for its combined generation portfolio to the Commission for review; and (2) such a plan demonstrates that any new generation project is beneficial to ratepayers and economical in meeting its operating utilities' capacity and energy needs. The Commission encourages WEC Energy to coordinate with Commission staff on the content and modeling inputs for the IRP to ensure that the plan sufficiently meets the Commission's directives.

The Commission further directs that the IRP include an analysis of the extent to which future capacity or energy needs can be met with existing intercompany resources. If the IRP

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<sup>14</sup> If the transaction fails to close, WPSC shall be permitted to re-file the application, if necessary, or re-start Commission staff's review of its previously-filed application upon written notice to the Commission of the failure of the transaction to close.

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demonstrates that savings can be achieved by sharing resources among subsidiaries, the Wisconsin Utilities shall enter the appropriate agreements, including affiliated interest agreements under Wis. Stat. § 196.52. If the IRP demonstrates a need to build new generation resources, WEC Energy or its subsidiaries may file an application with the Commission under Wis. Stat. §§ 196.49 or 196.491(3) no sooner than 30 days after the plan is submitted to the Commission.

### **Service Quality and Rate-Related Issues**

Wisconsin Stat. § 196.03(1) requires a public utility to furnish reasonably adequate services and facilities at just and reasonable rates. The Commission recognizes that this acquisition will likely result in changes to customer service processes and operations. Thus, the Commission finds it reasonable to monitor the integration of the two holding companies to make sure that ratepayers continue to receive safe and reliable service, that best practices are shared across subsidiaries, and that there is no diminution of service for customers. To this end, the Commission requires WPSC to cooperate with Commission staff on a study of WPSC's gas emergency response processes. Within six months after closing of the transaction, the joint study group shall report back to the Commission on whether WPSC's process for responding to natural gas emergencies could be improved.

Integrus Energy is in the process of implementing a new software system across its subsidiaries, the Integrus Energy Customer Experience (ICE). While the applicant did not indicate whether it intends to adopt this platform for its other subsidiaries, concerns were raised about the impacts that such a project could have on customer service, if it were to be implemented. As a result, WEC Energy, on behalf of WEPCO and WG, shall notify the

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Commission at least 30 days before implementing any customer service policy changes resulting from the implementation of the ICE software system. This is necessary to ensure that Commission staff are informed of the progress of the integration of operations and the adoption of best practices in order to properly address customer inquiries and complaints.

To some extent, maintaining a well-trained and adequately-staffed workforce is important for ensuring that the utilities continue to provide reasonably adequate and safe service.

Intervenors raised concerns about the number of employees that would remain at the two companies post-closing. The Commission notes that the applicant has made a commitment that for two years from the date of the closing of the transaction, any reduction in head count among employees in Wisconsin who are represented by a labor union may occur only as the result of voluntary attrition or retirement.<sup>15</sup> While some parties argued that WEC Energy should be required to maintain the current employee head count,<sup>16</sup> the Commission disagrees that this is necessary to serve the public interest. Indeed, some of the expected synergy savings and efficiencies of this transaction are likely to require a reduction in employees performing duplicative functions, over time. As a result, the Commission finds the applicant's commitment to be reasonable.

A number of parties raised concerns about the possibility of WEC Energy seeking to make level, or equalize, the retail rates between the Wisconsin Utilities after this transaction closes.<sup>17</sup> While the applicant has indicated that it has no plans to merge the operations of WEPCO and WPSC, rate equalization could occur through other mechanisms, such as the

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<sup>15</sup> ([PSC REF#s: 213336, 230450, 232948.](#))

<sup>16</sup> ([PSC REF#s: 229742.](#))

<sup>17</sup> (*See, e.g.*, [PSC REF#s: 229736, 232008.](#))

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allocation of costs from the new service company. Presently, WEPCO's retail electric rates are generally higher than the corresponding rates for WPSC. The Commission recognizes and shares the concerns of customers in WPSC's service territory, particularly those industrial customers for whom power costs are a significant component of their operating expenses. Customers of WPSC should not be responsible for paying for costs required to serve customers of WEPCO and WG. However, the Commission notes that it retains jurisdiction over any future merger of the Wisconsin Utilities, as well as jurisdiction over the retail rates of each utility. Thus, the Commission will have the opportunity to ensure that the rates for each utility are just and reasonable in future rate proceedings. Nonetheless, the Commission finds it reasonable to require that, for a period not to exceed ten years after the transaction closes, WEC Energy shall confer with Commission staff and other parties before filing for approval of any legal merger or before proposing any mechanism to equalize, or make level, the retail rates of the Wisconsin Utilities.

### **Corporate and Operational Headquarters**

The applicant stated that after closing, “[t]he headquarters and associated jobs will remain in Wisconsin, and decisions concerning energy policy will continue to be made in Wisconsin, subject to oversight by the Wisconsin Commission.”<sup>18</sup> The applicant identified this fact as one of the benefits of the transaction.<sup>19</sup> The Commission agrees that maintaining the corporate and operations headquarters, along with the associated jobs, in Wisconsin is in the public interest and a benefit to the state. As a result, the Commission finds it reasonable to

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<sup>18</sup> (Direct-WEC-Lauber-10-11, [PSC REF#: 233142](#); see also Direct-WEC-Reed-39-40, [PSC REF#: 213334](#); Ex.-PSC-Hubert-1, Schedule 2, [PSC REF#: 229764](#).)

<sup>19</sup> ([PSC REF#: 233833](#) at 7.)

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require that WEC Energy seek Commission approval prior to any relocation of the corporate or operations headquarters out of the state of Wisconsin for a period of ten years following the closing of this transaction. After the ten-year period, WEC Energy shall comply with the all applicable legal requirements before relocating its corporate or utility headquarters.<sup>20</sup>

### **Regulatory Actions in Other Jurisdictions**

As previously noted, this is a complicated transaction that requires approval or waiver of authority from the Federal Energy Regulatory Commission (FERC) as well as four state commissions, with each jurisdiction's review progressing on a different time schedule. Concurrent with this proceeding, the applicant undertook substantial efforts to obtain a settlement acceptable to the Michigan Public Service Commission (MPSC) in docket U-17682. The Settlement Agreement submitted in MPSC docket U-17682 on January 30, 2015, contemplated, among other considerations, the sale of significant assets and service territory in the UP by both WEPCO and WPSC, including the sale of PIPP.<sup>21</sup>

An Amended and Restated Settlement Agreement was subsequently filed with the MPSC in docket U-17682 on March 13, 2015.<sup>22</sup> As part of this agreement, WEPCO will continue to operate as a single electric utility with operations in both Wisconsin and the UP. In addition, the applicant committed to a number of conditions, including the continued operation of PIPP, without seeking a System Support Resource agreement with the Midcontinent Independent

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<sup>20</sup> Wisconsin Stat. § 196.06 requires: "Each public utility shall have an office in one of the towns, villages or cities in this state in which its property or some part thereof is located, in which it shall keep all books, accounts, papers and records required by the commission to be kept within the state. No books, accounts, papers or records required by the commission to be kept within the state shall be removed from the state, except upon conditions prescribed by the commission."

<sup>21</sup> ([PSC REF#: 231176.](#))

<sup>22</sup> ([PSC REF#: 233625.](#))

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System Operator, Inc. (MISO), until the earlier of December 31, 2019, or until a new generation facility is built, provided that both Tilden Mining Co., L.C., and Empire Iron Mining Partnership (the Mines), if operational, remain full requirements customers of WEPCO. WEC further committed to making any necessary capital investments in PIPP until its retirement and to notify the MPSC of any planned capital expenditures for the remainder of the life of PIPP. WEC also committed to be an investor and/or owner operator in any plant built to replace PIPP, provided that the costs of such a plant or a purchased power agreement are fully recovered through Michigan retail rates. Finally, WEC agreed to the creation of a Michigan-only jurisdictional electric utility, if it is reasonable and prudent to achieve a long-term solution to the power needs in Michigan.

Although this agreement has potential implications for Wisconsin ratepayers, this Commission is not a party to the agreement. Currently, WEPCO's costs are allocated between Wisconsin and Michigan according to the historical "slice of system" approach, unless and until a new Michigan-only electric utility is formed. The Commission is concerned about the additional capital and operation and maintenance costs that may be associated with continuing to operate PIPP under the Michigan agreement. While such costs may be necessary and prudent to meet WEC's obligations in Michigan, the Commission retains jurisdiction to review any costs allocated to Wisconsin customers as part of its rate-making authority.

To this end, WEC Energy shall notify the Commission of its planned capital expenditures for the remaining life of PIPP. Further, WEC Energy and WEPCO shall limit their capital investment in PIPP as much as is prudent, and shall advise Commission staff at least four weeks in advance, if possible, but in urgent situations no later than seven days after the capital

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expenditure is made, of any capital expenditure or group of capital expenditures for a singular purpose of more than \$5 million that is not included in the original plan. Notwithstanding the cost threshold established under Wis. Stat. § 196.49(5g)(a), if the Commission finds that it is necessary and convenient, it may open an investigation on its own motion related to any planned or unplanned capital investments related to PIPP.

Due to the timing and changing nature of the Settlement Agreement in Michigan, there is uncertainty as to whether the commitments made by the applicant to obtain approval of the acquisition in Michigan could affect ratepayers in Wisconsin. Therefore, the Commission finds it reasonable that any costs borne by WEC Energy, WEPCO, Integrys Energy, or WPSC to obtain agreement from any party for the transaction's approval in Michigan be considered transaction costs. As noted, transaction costs are those costs that are incurred in connection with the execution of the acquisition approval, and are not eligible for recovery from Wisconsin ratepayers. Further, it is reasonable to require that if such costs are incurred by WEC Energy or Integrys Energy, it is reasonable that they remain at the holding company level and not be allocated to the utilities.

In addition to any commitments made in Michigan, the applicant may be required to make additional commitments or concessions, or have conditions imposed, in order to obtain approval from FERC, and the commissions in Minnesota and Illinois. At this time, the nature and effect of any conditions imposed or concessions offered in the other jurisdictions is not fully known. As a result, the Commission finds it reasonable to require WEC Energy to file a report with the Commission within 90 days of the closing of WEC's purchase of Integrys Energy. That

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filing shall advise the Commission of the resolution of parallel proceedings in other jurisdictions and identify any conditions agreed to or included in those other commissions' orders.

### **Holding Company, Service Company, and Affiliated Interest Issues**

The Wisconsin Utility Holding Company Act, Wis. Stat. § 196.795, provides the Commission with direct control over utility holding companies, including their formation, ownership, and structure. Fundamentally, this transaction involves the acquisition of one holding company, Integrys Energy, by another holding company, WEC, and the formation of a new holding company, WEC Energy. Post-acquisition, the first tier subsidiaries of WEC Energy will be WEPCO, WG, ATC Holding LLC, WEC Business Services, LLC (currently Integrys Business Support, LLC, a first-tier subsidiary of Integrys Energy), W.E. Power, LLC, and Integrys Energy. WPSC will be a second-tier subsidiary under Integrys Energy. To facilitate its continuing jurisdiction over the restructured WEC Energy and its subsidiaries, the Commission finds it reasonable to impose a number of conditions on the holding company and its affiliates. These conditions are necessary to ensure continuation of the current conditions applicable to both WEC and Integrys Energy, as well as to facilitate the Commission's monitoring the operation of WEC Energy and its subsidiaries.

Specifically, WEC Energy shall be subject to all of the applicable requirements of Wis. Stat. § 196.795 and to all of the conditions and requirements in previous Commission orders related to WEC and Integrys Energy, including but not limited to the holding company formation orders and relevant merger orders. In addition, all books and records of all entities in the corporate structure shall be readily available for Commission staff review in a reasonable manner, subject to approval by the Commission. The Commission also finds it reasonable that

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WEC Energy, and its subsidiaries, provide prompt notice to the Commission of any filing by the holding company or its subsidiaries with other state commissions and FERC that is relevant to the Commission's authority and obligations. WEC Energy and its Wisconsin Utilities should work with Commission staff to identify which filings meet this threshold and the manner in which such filings should be made.

After closing, WEC Energy contemplates re-forming the existing service company for Integrys Energy (Integrys Business Services) as a first-tier subsidiary (WEC Business Services, LLC) which will provide services to all of its subsidiaries across four state jurisdictions. Currently, WEPCO functions as a service company for affiliates within WEC. The Commission recognizes the importance of the formation and operation of service companies, as part of holding company systems, in order to capture economies of scale and scope and to add clarity to the provision of services among the entities of a holding company. The Commission further recognizes that the creation of WEC Business Services, LLC, represents a significant operational change for some, if not all, of the Wisconsin Utilities. As a result, the Commission finds it reasonable to impose a number of conditions that will facilitate the exercise of its jurisdiction over the service company and the Wisconsin Utilities to ensure that the service company operates in the best interests of Wisconsin ratepayers.

First, as a condition of this acquisition, the Commission maintains continuing jurisdiction over the service company structure. Second, the Commission shall have full access to the books and records of the service company, as provided in Wis. Stat. §§ 196.52 and 196.795(5). Third, neither WEC Energy, nor its subsidiaries, shall elect to have FERC review the allocation of costs for goods and services provided by the service company pursuant to section 1275 of the Energy

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Policy Act of 2005, 42 U.S.C. § 16462, until the Commission has had an opportunity to review and take action on any affiliated interest transaction and agreements, or after 60 days with prior written notice. Fourth, an independent audit of the service company and its transactions shall be performed within two years after closing, and thereafter every three years. The Commission shall select the auditor and have full control over the audit work, and the audit product will be a Commission product. WEC Energy shall provide the Commission with a list of all external audit firms with which the holding company has contracts, and WEC Energy shall be billed for any costs associated with the audit. Finally, in its performance of services, WEC Business Services, LLC, or its successor shall: (1) follow all applicable federal and state regulations, including codes and standards of conduct; (2) not give one or more entities in the corporate structure a competitive advantage in relevant markets; (3) not subsidize WEPCO, WG, and/or WPSC or cause WEPCO, WG, and/or WPSC to subsidize an affiliate; and (4) may not include a return on its net assets at a rate higher than the prevailing weighed cost of capital for WEPCO, WG, and/or WPSC.

In addition, the Commission finds it reasonable to limit the service company to performing services where there are efficiencies and economies of scale that could not be achieved if the service were not performed by the service company, or where qualitative factors justify performance of services by the service company. Similarly, the provision of goods and services by the service company to third parties (non-related entities) shall be limited, with any earnings from third-party services above cost used to offset the billings of member companies. The service company may provide transition services for up to 120 days to an entity that is transferred to a third party. If the provision of service is likely to exceed 120 days, WEC Energy

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shall notify the Commission. The service company shall apply any earnings from transition services as a deduction to the amounts reimbursable by its associated affiliates. These conditions are necessary to ensure that the service company is focused on providing quality service to the utilities, rather than earning profits for the holding company.

The parties generally agreed on the importance of maintaining the Commission's jurisdiction and oversight of the holding company structure and the service company. Nonetheless, several parties, along with Commission staff, proposed additional restrictions that they believed were needed to address specific concerns related to cost allocations among affiliates, limitations on services that will be provided by the service company, and the provision of services to non-affiliated third parties. The Commission finds it unnecessary to impose additional conditions related to these matters at this time. The Commission's existing statutory authority over affiliated interest agreements and utility rate setting is sufficient to address concerns related to these matters should they arise in the future.

The applicant proposed three new affiliated interest agreements as part of its application in this proceeding. These include a master service agreement between the service company and WEC's regulated affiliates and non-regulated affiliates, and a master agreement among all of WEC Energy's subsidiaries. Transactions between holding company affiliates are governed by Wis. Stat. §§ 196.52 and 196.795, and generally require Commission approval through inter-affiliate agreements. The Commission will consider these agreements in separate dockets—dockets 5-AU-108, 5-AU-109, and 5-AU-110—and any conditions specific to these agreements need not be considered here. Nonetheless, the acquisition raises some general issues related to affiliated interest agreements that the Commission believes are appropriate to address

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in this proceeding. Specifically, WEC Energy and the Wisconsin Utilities shall be obligated to comply with the terms of Wisconsin's Holding Company Act, Wis. Stat. §§ 196.52 and 196.795, relating to affiliated interest transactions. Furthermore, the Wisconsin Utilities shall not seek recovery of costs for identical services performed by operating utilities and the service company from Wisconsin ratepayers.

The Commission acknowledges the concerns of the intervenors and Commission staff related to the expansion of the holding company system across four states and the large amount of debt that will be acquired by WEC Energy to complete the transaction. The Wisconsin Holding Company Act provides sufficient statutory authority over the holding company, and the Commission may exercise its authority, as necessary, to address these concerns. Nonetheless, the Commission finds it reasonable to establish protections, known as "ring-fencing" to ensure that the actions of the holding company or other affiliates will not have negative effects on the Wisconsin Utilities.

First, it is reasonable that WEPCO, WG, and WPSC not lend money to, or guarantee the obligation of, WEC Energy nor any affiliate with which it is in the holding company system. In addition, WEPCO, WG, and WPSC may not lend money to each other, or guarantee each other's obligation without Commission authorization of the arrangement. Second, WEC Energy shall give the Commission notice 60 days prior to any movement to combine the credit ratings and portfolio of debt of any of the Wisconsin Utilities with another entity. Lastly, it is reasonable to require that WEC Energy file with the Commission, within 90 days of the consummation of the acquisition, a report detailing the debt held at the WEC Energy holding company and Integrys Energy sub-holding company levels, its relationship to total holding company debt, and the

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company's plans to reduce the debt. WEC Energy shall file with the Commission updated reports annually until the debt at the holding companies declines to 15 percent of total consolidated debt outstanding within the holding company system. These conditions will support independent credit for the Wisconsin Utilities as well as allow the Commission to monitor WEC Energy's debt as a result of this transaction.

### **Ownership Interest in American Transmission Company LLC**

American Transmission Company LLC (and its corporate manager, ATCMI, collectively, ATC) is a transmission company as defined in Wis. Stat. § 196.485. ATC provides high-voltage electric transmission service covering a large portion of Wisconsin and the UP and is a member of MISO. At the time of this proceeding, WEC owned 26.24 percent of the outstanding shares of ATC, while Integrys Energy owned 34.07 percent. After closing, WEC Energy will own a majority interest, or 60.31 percent, of ATC.

Several parties expressed concerns over the resultant majority ownership of ATC, and its associated transmission facilities, by a single holding company. To address these concerns, the applicant offered to limit its influence over the management, operations, and planning activities of ATC by restricting its voting on most matters requiring a vote of ATCMI's owners to no more than 34.07 percent, which was the amount held by Integrys Energy prior to the acquisition.<sup>23</sup> The remainder of the shares held by WEC Energy would be voted in proportion to the way in which ATCMI's owners who are unaffiliated with WEC Energy vote their shares. WEC Energy would, however, retain its full voting power on fundamental corporate matters, which include: (1) a sale of all or substantially all of the assets of ATCLLC; (2) a change in control of ATCLLC

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<sup>23</sup> ([PSC REF#s: 213336, 233142.](#))

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or ATCMI; (3) bankruptcy; (4) an initial public offering; (5) the merger or consolidation of ATCLLC with, or a proposal to acquire all or substantially all of the assets of, another company; and (6) any proposal to amend ATCLLC's or ATCMI's governing documents that would reduce WEC Energy's rights as a member or shareholder. WEC Energy further committed that it would not use its full ownership interest to initiate any of these fundamental corporate matters, or similar actions, but it would act to protect and preserve its economic interest in ATC if such actions are initiated by others. The Commission finds these restrictions to be reasonable and in the public interest.

The Commission recognizes the importance of ATC to maintaining electric reliability and service to a large portion of Wisconsin, and acknowledges the concerns raised relating to ATC. However, the Commission notes that in its *Order Authorizing Proposed Merger*, dated April 7, 2015, in docket EC14-126, FERC approved the acquisition, and accepted the voting limitation as sufficient to mitigate any market power issues related to WEC Energy's ownership of ATC.<sup>24</sup> As a result, the Commission does not need to go further than what FERC has deemed to be reasonable.

The Commission is not persuaded that further restrictions on WEC Energy, or its relationship to ATC are warranted, particularly in light of FERC's determination that the majority ownership of ATC will not create a potential for market power. No party presented evidence that the combined company will be able to inappropriately affect transmission planning or otherwise harm the operation of wholesale markets. Further, the Commission possesses powers to address any future concerns over the operation or ownership of ATC. Finally, the

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<sup>24</sup> ([PSC REF#: 234709.](#))

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Commission is not persuaded that this is the appropriate docket to consider fundamental changes to the governance of ATC.

### **Order**

1. This Final Decision takes effect one day after the date of service.
2. No acquisition premium shall be allocated to WEPCO, WG, or WPSC or recovered from the ratepayers of WEPCO, WG, or WPSC. WEC Energy shall identify all expenses related to acquisition premium in its accounting system.
3. Push-down accounting related to the acquisition may be used by the Wisconsin Utilities for financial reporting only if required by GAAP. Push-down accounting related to the acquisition shall not be used by the Wisconsin Utilities for regulatory accounting or ratemaking purposes, regardless of GAAP requirements.
4. WEPCO (including the utility operations of WEPCO-Electric, WE-GO, VA-Steam, and MC-Steam) and WG shall be subject to an earnings cap for three years, beginning with 2016. Under this cap, if WEPCO earns above its authorized return, calculated on a fuel rules basis (Wis. Admin. Code ch. PSC 116), 50 percent of the first 50 basis points of additional earnings shall be used to pay down the transmission escrow earning the highest interest rate, with WEPCO permitted to retain the remaining 50 percent. For any earnings that exceed 50 basis points over the authorized earnings, calculated on a fuel rules basis, 100 percent shall be used to pay down the transmission escrow earning the highest interest rate. For WG, the earnings cap mechanism shall work the same, but excess earnings shall be applied to reduce the costs of the West Central Natural Gas Lateral project.

5. The results of the application of the earnings cap shall be reported in each future rate case proceeding, as applicable.

6. Any costs borne by WEC Energy, WEC, WEPCO, Integrys Energy, or WPSC to obtain agreement from any party for the WEC/Integrys Energy merger approval in Michigan shall be considered transaction costs that are incurred in connection with the execution of the acquisition approval, and shall not be passed on to Wisconsin utility customers. If any such costs are incurred by WEC Energy, WEC, or Integrys Energy, they shall remain at the holding company level and not allocated to the utilities.

7. WEC Energy shall make a filing within 90 days of the closing of WEC's purchase of Integrys Energy that advises the Commission of the resolution of parallel proceedings in other jurisdictions, including any conditions included in those other commissions' orders.

8. The following categories of costs, and estimated amounts, shall be considered transaction costs for the purposes of this acquisition: investment banker \$22 million; legal \$14.4 million; legal debt offering \$1.5 million; regulatory affairs \$1 million; transfer agent fees \$1 million; printers fees \$1 million; SEC registration \$750 thousand; rating agency fees \$650 thousand; tax and other financial consulting work \$350 thousand; audit fees S-4 \$250 thousand; communications \$100 thousand; change-in-control \$47.6 million; the portion of the \$140 million "cash-out" payments that vests at closing; and between \$1.9 million to \$5.6 million annually for six years of directors' and officers' tail insurance or equivalent policy. This list may not be exhaustive.

9. All transaction costs incurred by or allocated to WEPCO, WG, and WPSC shall be specifically identified and allocated to non-utility accounts.

10. WEC Energy shall expense transaction costs as incurred.
11. WEPCO, WG, and WPSC may not recover any acquisition-related transaction costs from Wisconsin ratepayers. After closing, and in any rate proceeding decided within six years after the transaction closing, the applicant shall provide proof that no transaction costs are included in historical expenses of the operating utility or in the determination of revenue requirement.
12. Transaction costs shall not be considered in determining excess revenues under Wis. Admin. Code § PSC 116.07(6) or in any other Commission determination in which earnings are a consideration.
13. WEC Energy and the Wisconsin Utilities shall: (1) pass along merger savings net of the cost to achieve those savings to ratepayers; (2) provide a detailed analysis and justification for Transition Costs it seeks to recover; and (3) identify and track transition costs in a manner that can be audited by the Commission.
14. The Wisconsin Utilities may recover transition costs only if and to the extent such costs are: (1) incurred by or allocated to each of the utilities (each utilities' portion or share of transition costs); (2) associated with financial benefits that each utility's ratepayers will receive as a result of the acquisition; and (3) the acquisition-related savings realized by each utility's ratepayers are equal to or greater than its acquisition-related transition costs. Offsetting savings and benefits may be either quantitative or qualitative, and varying in time.
15. WEPCO, WG, and WPSC shall identify and track all transition costs incurred by the utility and allocated to it in a manner that is readily reviewable and auditable by the Commission at a location within Wisconsin.

16. The applicant shall seek Commission approval of any allocation factors and methodology associated with synergy savings, if such savings become an issue. Any differences in allocations from other jurisdictions shall be absorbed by WEC Energy.

17. For severance and/or early termination costs for which any of the Wisconsin Utilities seek rate recovery, each utility shall provide detailed information in any rate proceeding on each instance of severance and/or early termination, including the position, the reasoning, the costs and savings, etc., in sufficient detail for the Commission to make a determination on whether the cost is an unrecoverable transaction cost or a transition cost.

18. WPSC shall withdraw its application for Fox Unit 3 within ten days of the effective date of this Final Decision. If the transaction does not close, WPSC may re-file the application to re-start Commission staff's review of the previously-filed application upon written notice to the Commission of the failure of the transaction to close.

19. WEC Energy shall submit a joint IRP for its combined generation portfolio to the Commission for review. If the plan demonstrates that savings can be achieved by sharing resources among subsidiaries, the operating utilities shall enter the appropriate agreements, including affiliated interest agreements under Wis. Stat. § 196.52. If the plan demonstrates a need to build new generation resources, WEC Energy or its subsidiaries may file an application with the Commission under Wis. Stat. §§ 196.49 or 196.491(3) no sooner than 30 days after the plan is submitted to the Commission.

20. WEPCO shall disclose its planned capital expenditures for the life of the PIPP to the Commission staff. WEC Energy and WEPCO shall limit such capital investments as much as is prudent, and shall advise Commission staff at least four weeks in advance if possible, but in

urgent situations no later than seven days after the capital expenditure is made, of any capital expenditure or group of capital expenditures exceeding \$5,000,000 for a singular purpose not included in the original plan.

21. WEC Energy and WPSC shall cooperate with Commission staff on a study of WPSC's gas emergency response process. Within six months after closing of the transaction, this joint study group shall report back to the Commission.

22. WEC Energy, on behalf of the operating utilities WEPCO and WG, shall notify the Commission at least 30 days before implementing any customer service policy changes as a result of any potential implementation of the ICE software.

23. For a period of ten years from the date of closing the transaction, WEC Energy shall obtain approval from the Commission to move its corporate headquarters (and associated employees) or its operational headquarters (and associated employees) for its Wisconsin Utilities out of the state of Wisconsin.

24. WEC Energy shall submit its merger integration plan or plans when developed, and prior to implementation, to the Commission for informational purposes.

25. For two years from the date of closing of the transaction, WEC Energy and its Wisconsin Utilities may not reduce the number of employees in Wisconsin who are represented by a labor union except through voluntary attrition or retirement.

26. For a period of not to exceed ten years from the date of closing of the transaction, WEC Energy shall confer with Commission staff and other affected parties before filing for approval of any legal merger of utilities or seeking to make level or equalize the retail rates between the Wisconsin Utilities.

27. WEPCO, WG, and WPSC shall not lend money to, or guarantee the obligation of, WEC Energy nor any affiliate with which it is in the holding company system. WEPCO, WG, and WPSC shall not lend money to each other, nor guarantee each other's obligation without Commission authorization of the arrangements.

28. WEC Energy shall give the Commission notice 60 days prior to any movement to combine the credit ratings and portfolio of debt of any of the Wisconsin Utilities with another entity.

29. WEC Energy shall file with the Commission, within 90 days of the consummation of the acquisition, a report detailing the debt held at the WEC Energy holding company and Integrys Energy sub-holding company levels, its relationship to total holding company debt, and the company's plans to reduce the debt. WEC Energy shall file with the Commission updated reports annually until the debt at the holding companies declines to 15 percent of total consolidated debt outstanding within the holding company system.

30. WEC Energy shall be subject to all applicable requirements of Wis. Stat. § 196.795 and to all of the conditions and requirements in any Commission orders related to WEC and Integrys Energy, including but not limited to the holding company formation orders and relevant merger orders.

31. All books and records of all entities in the corporate structure shall be readily available for Commission staff review in a reasonable manner, subject to approval by the Commission.

32. The Commission shall receive prompt notice of any filing by WEC Energy or its subsidiaries with other state commissions and FERC that is relevant to the Commission's authority

and obligations. WEC Energy and its Wisconsin Utilities shall work with Commission staff to identify which filings meet this threshold and the manner in which such filings should be made.

33. The Commission shall, as a condition of this acquisition, take continuing jurisdiction over the service company's structure.

34. The Commission shall have full access to the books and records of the service company as provided in Wis. Stat. §§ 196.52 and 196.795(5).

35. The parent holding company or its subsidiaries shall not elect to have FERC review pursuant to section 1275 of EPACT 2005, 42 U.S.C. § 16462, the allocation of costs for goods and services provided by the service company, until the Commission has reviewed and taken action on the affiliated interest transactions and agreements associated with the service company of amendments thereto. If the Commission has not completed its review and approval within a reasonable time after the Commission determined an amendment to the service company agreement is complete, the entities may seek such FERC review after giving the Commission 60 days' prior written notice.

36. An independent audit of the service company and its transactions shall be performed within two years after closing, and thereafter every three years. The Commission will select the auditor and have full control over the audit work (scope, supervision, etc.) with the audit product being a Commission product. WEC Energy shall provide the Commission with a list of all external audit firms the holding company system has contracts with, and WEC Energy shall be billed for the audit costs.

37. In its performance of services, the service company: (a) shall follow applicable federal and state regulation, including codes and standards of conduct; (b) shall not give one or

more entities in the corporate structure a competitive advantage in relevant markets; (c) shall not subsidize WEPCO, WG, and/or WPSC or cause WEPCO, WG, and/or WPSC to subsidize an affiliate; and (d) may include a return on its net assets at a rate no higher than the prevailing weighed cost of capital for WEPCO, WG, and/or WPSC.

38. Commission shall retain full oversight of the service company's cost allocations and can investigate any increased allocation to WEPCO, WG, and WPSC that occur to determine the cause and appropriateness of any increased allocation.

39. The service company shall be limited to performing services where there are efficiencies and economies of scale that cannot be achieved if the service were not performed by the service company, or where qualitative factors justify performance of services by the service company.

40. The provision of goods and services by the service company to third parties (non-related entities) shall be limited, with any earnings from third-party services above cost used to offset the billings of member companies. The service company may provide transition services for up to 120 days to an entity that is transferred to a third party. If the provision of service is likely to exceed 120 days, WEC Energy shall notify the Commission. The service company shall apply any earnings from transition services as a deduction to the amounts reimbursable by its associated affiliates.

41. WEC Energy and the Wisconsin Utilities shall be obligated to comply with the terms of Wisconsin's Holding Company Act, Wis. Stat. §§ 196.52 and 196.795, relating to affiliated interest transactions.

42. The Wisconsin Utilities shall not recover from ratepayers twice for identical services performed by operating utilities and the service company.

43. On all matters requiring a vote of ATCMI's owners, WEC Energy shall independently vote only 34.07 percent of ATCMI's shares. The remainder of the shares held by WEC Energy shall be voted in proportion to the way in which ATCMI's owners who are unaffiliated with WEC Energy vote their shares. WEC Energy may retain its full voting power on the fundamental corporate matters, which include: (1) a sale of all or substantially all of the assets of ATCLLC; (2) a change in control of ATCLLC or ATCMI; (3) bankruptcy; (4) an initial public offering; (5) the merger or consolidation of ATCLLC with, or a proposal to acquire all or substantially all of the assets of, another company; and (6) any proposal to amend ATCLLC's or ATCMI's governing documents that would reduce WEC Energy's rights as a member or shareholder. WEC Energy shall not use its full ownership interest to initiate any of these or similar actions, but may act to protect and preserve its expanded economic interest in ATC if such actions are initiated by others.

44. Jurisdiction is retained.

Dated at Madison, Wisconsin, this 21<sup>st</sup> day of May, 2015.

By the Commission:



Sandra J. Paske  
Secretary to the Commission

SJP:LJH;jlt:DL: 00973820

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN  
610 North Whitney Way  
P.O. Box 7854  
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE  
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE  
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

*PETITION FOR REHEARING*

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

*PETITION FOR JUDICIAL REVIEW*

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.<sup>25</sup> The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

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

Revised: March 27, 2013

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<sup>25</sup> See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

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