



We Energies
231 W. Michigan Street
Milwaukee, WI 53203

www.we-energies.com

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Public Service Commission of Wisconsin
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August 7, 2015

FILED VIA ERF

Ms. Sandra J. Paske
Secretary to the Commission
Public Service Commission of Wisconsin
P.O. Box 7854
Madison, WI 53707-7854

RE: In the Matter of the Application of Wisconsin Electric Power Company for All Approvals for the Transfer of Ownership of Certain Assets Located in Wauwatosa, Wisconsin from Wisconsin Electric Power Company to Milwaukee Regional Medical Center Thermal Service, Inc.

Docket No. _____

Dear Secretary Paske,

Wisconsin Electric Power Company ("Wisconsin Electric") submits the above referenced Application and respectfully requests that the Commission open a docket titled as such.

As described in further detail in the enclosed Application, Wisconsin Electric currently owns and operates the Milwaukee County Power Plant ("MCP") and related steam distribution assets located in Wauwatosa, Wisconsin. Milwaukee Regional Medical Center Thermal Service, Inc. ("MRMC Thermal"), a wholly owned non-profit subsidiary of Milwaukee Regional Medical Center, Inc. desires to purchase ownership of MCP and the related steam distribution assets.

Wisconsin Electric respectfully requests that the Commission conduct an appropriate investigation and, upon completion of its review, grant the necessary authority to Wisconsin Electric to sell its ownership in MCP and the related steam distribution assets to MRMC Thermal.

Please include the following individuals on the service list for this docket:

WISCONSIN ELECTRIC POWER COMPANY

James A. Schubilske
231 W. Michigan Street
Milwaukee, WI 53201
Jim.Schubilske@we-energies.com

Catherine Phillips
231 W. Michigan Street
Milwaukee, WI 53201
Catherine.Phillips@we-energies.com

Thank you for your time and consideration in this matter.

Sincerely,



James A. Schubilske
Vice President
State Regulatory Affairs

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of the Application of Wisconsin Electric Power Company for All Approvals for the Transfer of Ownership of Certain Assets Located in Wauwatosa, Wisconsin from Wisconsin Electric Power Company to Milwaukee Regional Medical Center Thermal Service, Inc.

Docket No. _____

APPLICATION

I. Introduction

Wisconsin Electric Power Company (“Wisconsin Electric”) currently owns and operates the Milwaukee County Power Plant (“MCP”) steam generation and associated distribution assets located in Wauwatosa, Wisconsin. Wisvest LLC (“Wisvest”), a nonregulated affiliate of Wisconsin Electric, owns and operates assets at MCP used to produce and distribute chilled water. Together, these facilities provide substantially all the heating and cooling needs for the Milwaukee Regional Medical Center (“MRMC”), a consortium of six health care and education institutions adjacent to MCP.

Wisconsin Electric requests approval by the Public Service Commission of Wisconsin (“PSC”) to transfer ownership of MCP and the related steam distribution assets to Milwaukee Regional Medical Center Thermal Service, Inc. (“MRMC Thermal”), a wholly owned non-profit subsidiary of Milwaukee Regional Medical Center, Inc. (“MRMC Inc.”) formed for the purpose of owning the facilities necessary to supply the steam and chilled water needs of certain of the MRMC Inc. member institutions.¹

¹ No regulatory approval is required for the transfer of the chilled water assets because Wisvest is not a public utility and the chilled water assets are not public utility assets. The sale of Wisvest’s chilled water assets to MRMC Thermal are covered in a separate asset purchase agreement. Similar to the agreement between Wisconsin Electric

For the reasons set forth in this Application, Wisconsin Electric desires to sell its interest in MCPP and the related steam distribution assets to MRMC Thermal and MRMC Thermal desires to purchase that interest. To that end, Wisconsin Electric and MRMC Thermal have entered into an Asset Purchase Agreement ("APA"), the keys terms of which are described in Section IV of the Application. Because Wisconsin Electric is a public utility as defined in Wis. Stat. 196.01(5), the proposed transaction may not take place without the consent and approval of the PSCW. The requirement for such consent and approval is set forth in Wis. Stat. 196.80 which provides in relevant part:

(1m) With the consent and approval of the commission but not otherwise a public utility may:

...
(e) Sell, acquire, lease or rent any public utility plant or property constituting an operating unit or system.

Here, Wisconsin Electric proposes to sell MCPP and the related steam distribution assets constituting an operating system. By this Application, Wisconsin Electric requests the consent and approval required under § 196.80 and any other consents and approvals that may be necessary to consummate the proposed transaction.

II. Background and rationale for the proposed transaction

MCPP was built in 1955 and was originally owned and operated by Milwaukee County. In 1996, Wisconsin Electric purchased MCPP and the related steam assets from the County² and Wisvest purchased the chilled water assets. In its current configuration, MCPP consists of three

and MRMC Thermal for the sale of MCPP and the steam distribution assets, the agreement between Wisvest and MRMC Thermal is for the sale of all the assets related to the production and distribution of chilled water, including associated easement rights and permits to serve certain of the MRMC Inc. members.

² In a separate transaction, Wisconsin Electric also purchased some of the electric distribution assets on the County grounds just prior to the purchase of MCPP and the steam distribution system. Wisconsin Electric will retain ownership of these electric distribution assets and Wisconsin Gas will retain all the natural gas assets on the County grounds.

coal boilers and two natural gas boilers with the capacity to produce 429,500 lbs per hour of high pressure steam. MCPP also has three turbine generators capable of producing 11 MW of electricity. MCPP is primarily a steam plant with the production of some ancillary electricity.³ Steam is provided only to the chilled water plant and certain members of MRMC Inc. Therefore, there is a separate steam rate for MCPP on file with the PSCW.

MRMC consists of six health care and education institutions which together form Wisconsin's largest academic health center:

- Blood Center of Wisconsin and the Blood Research Institute
- Children's Hospital and Health System
- Curative Care Network⁴
- Froedtert Memorial Lutheran Hospital
- Medical College of Wisconsin
- Milwaukee County Behavioral Health Division

All of MRMC Inc.'s members are located adjacent to the MCPP in an area bounded by US Hwy 45, North 87th Street, Watertown Plank Road and Wisconsin Avenue. Attachment A is a map showing the locations of MRMC Inc. members.

MRMC has a Level One Adult Trauma Center and a Level One Pediatric Trauma Center, which provide the highest level of specialty expertise and meet strict national standards. Specialized teams, facilities and equipment are available around the clock, 365 days a year to treat life-threatening injuries. Wisconsin Electric has worked closely with MRMC since 1996 to provide MRMC a high level of reliability to serve this unique load.

Several years ago, Wisconsin Electric began investigating the future of MCPP and in particular the need to install emission control equipment at MCPP to meet the Industrial Boiler

³ Approximately one percent of the assets that will be transferred to MRMC Thermal are electric system assets.

⁴ As of 2012, at the request of Curative Care Network, Wisconsin Electric no longer provides steam service.

Maximum Achievable Control Technology ("MACT") standards. At the same time, MRMC Inc. began developing a long term strategic plan which included a desire for even further redundancy in MRMC's steam and chilled water systems and a cleaner source of fuel for power generation. MRMC Inc. approached Wisconsin Electric to purchase MCPP and the related steam and chilled water assets so that its members could take on the responsibility of supplying steam and chilled water to the hospital, medical and educational facilities on the County grounds. Wisconsin Electric will continue to provide electricity, and Wisconsin Gas will continue to provide natural gas, to MCPP and to MRMC Inc.'s members.

For the PSCW to approve an application under § 196.80, it must find that the proposed transaction is consistent with the public interest. In this case, all the members of MRMC Inc. desire to purchase MCPP, Wisconsin Electric desires to sell the plant and related steam distribution assets to MRMC Thermal, and all the steam customers (i.e. MRMC Inc. members and Wisvest) approve of the sale. MRMC Inc. believes that, in the long-term, the ability to provide steam and chilled water service will provide its members greater oversight and control over these resources, improve efficiencies through more direct coordination of thermal energy supply and demand and allow it to develop more redundancy in these systems. Electric customers will benefit from the transaction in at least two ways: (1) electric customers will no longer be allocated a portion of the O&M costs for the steam generating plant; and (2) electric customers will not incur additional O&M costs to comply with Industrial Boiler MACT regulations or to provide greater redundancy.

III. Overview of the sale of MCPP and the steam distribution assets

Under the APA, Wisconsin Electric will sell the plant and related steam distribution assets to MRMC Thermal. In addition, MRMC Thermal is currently constructing a natural gas-

fueled transition boiler so that upon closing, the MCPP will run entirely on natural gas.

Wisconsin Electric and MRMC Thermal have executed an Access and Services Agreement (“Access Agreement”) which grants MRMC Thermal access to the MCPP site to construct the transition boiler.

The transition boiler will allow for the coal boilers, turbine generators, and related equipment to be retired prior to the change in ownership, removing the need for MRMC Thermal to obtain coal plant operating expertise, reducing emissions and eliminating the plant's electric generation capabilities. The turbine generators will be retired because the remaining MCPP gas boilers and new transition gas boilers will be sized solely to serve the steam customers and will not have sufficient high pressure steam to drive the turbine generators. Therefore, at closing, the plant will no longer be fueled with coal or be capable of generating electricity. The Access Agreement requires that MRMC Thermal remove the transition boiler at its own cost if the transaction does not close. MRMC Thermal will then serve itself—i.e. the five members of MRMC Inc. which utilize steam and chilled water. MRMC Thermal will become an electric customer of Wisconsin Electric and will have its own emergency backup generation.

The purchase price for the purchased assets is a negotiated price of (a) [REDACTED] plus (b) the cost of all MCPP capital expenditures made by Wisconsin Electric from June 10, 2014 to the closing date.

IV. Key terms of the APA

On May 8, 2015, Wisconsin Electric and MRMC Thermal entered into an APA under which Wisconsin Electric agreed to sell its interest in MCPP and the related steam distribution assets to MRMC Thermal. A confidential version of the APA entered into by Wisconsin Electric and MRMC Thermal is included as Attachment B to this Application.

The key terms of the APA are summarized below.

- Assets to be sold by Wisconsin Electric include the following:

[REDACTED]

- Assets excluded from sale include the following:

[REDACTED]

- Liabilities assumed by MRMC include the following:

[REDACTED]

- In addition to certain breaches of representation, Wisconsin Electric will indemnify MRMC Thermal for:

[REDACTED]

[REDACTED]

V. Compliance with Wis. Stat. § 196.807

Wisconsin Statutes § 196.807(2)(a) provides that:

...a person may not sell an energy unit unless the terms of the transfer require the person to which the energy unit is transferred to offer employment to the nonsupervisory employees who are employed with the energy unit immediately prior to the transfer and who are necessary for the operation and maintenance of the energy unit.

Section 196.807(3)(a) also specifies that during the 30-month period beginning immediately after the transfer of the energy unit:

1. Wage rates shall be no less than the wage rates in effect immediately prior to the transfer.
2. Fringe benefits shall be substantially equivalent to the fringe benefits in effect immediately prior to the transfer.
3. Terms and conditions of employment, other than wage rates and fringe benefits, shall be substantially equivalent to the terms and conditions in effect immediately prior to the transfer.

Under the terms of the APA, all employees of Wisconsin Electric who are currently working at MCPP will be offered similar positions at other Wisconsin Electric generating facilities with wage rates, fringe benefits and terms and conditions of employment substantially similar to their employment at MCPP. As such, Wis. Stat. § 196.807 is satisfied.

VI. MRMC Thermal is not a public utility

As indicated above, MRMC Thermal will be providing steam and chilled water only to certain members of its parent, MRMC Inc., located on the MRMC campus. A depiction of the

⁵ [REDACTED]

corporate structure relationship among the members, MRMC Inc. and MRMC Thermal is included as Attachment C. MRMC Thermal will not be providing MRMC Inc., MRMC Inc.'s members or other entities with retail electric service. Retail electric service to MRMC Thermal, MRMC Inc. and MRMC Inc.'s members will be provided by Wisconsin Electric.

Based upon longstanding Wisconsin Supreme Court precedent and PSCW precedent, MRMC Thermal requests that the PSCW make a determination in this proceeding finding that MRMC Thermal will not be a public utility and will not be providing public utility services after the consummation of these transactions and the operation of the facilities as described in this proceeding.

MRMC Thermal will not be a public utility because it will not be holding itself out generally to the public to provide any public utility service. Instead, MRMC Thermal will be providing steam and chilled water services only to MRMC Inc.'s members, all of whom are located on the MRMC campus. See Attachment A. These steam services and chilled water services will be provided by contract between MRMC Thermal and the identified members. MRMC Thermal will not have a schedule of rates for these services available to the public.

Moreover, the steam and chilled water services are the types of service normally provided by numerous industrial and commercial concerns to themselves and/or affiliates in Wisconsin without creating public utility status. In fact, chilled water service was never treated as a public utility service while the MCPP has been owned by Wisconsin Electric. Instead the chilled water service has been provided by a nonutility affiliate of Wisconsin Electric, Wisvest. Moreover, neither the chilled water services nor the steam services were considered public utility services when Milwaukee County owned the MCPP until it was purchased by Wisconsin Electric in 1996. For most of the time since the construction of the MCPP to the present, members of

MRMC Inc. or their predecessor entities on the land identified on Attachment A have been the primary customers of the steam and chilled water services provided by the plant.

Since *Cawker v. Meyer*, 147 Wis. 320, 133 N.W. 157 (1911), the Wisconsin Supreme Court consistently has held that whether an entity is a public utility is determined by whether its product or service is intended for and open to all members of the public who may require it. Where an entity does not hold itself out generally to the public to provide a public utility service, it is not a public utility. See e.g. *City of Sun Prairie v. PSC*, 37 Wis. 2d 96, 154 N.W.2d 360 (1967). In implementing this principle, the Wisconsin Supreme Court has determined that even where an entity had declared itself to be a public utility, the entity was not a public utility because it was not providing services generally to the public. See e.g. *Union Falls Power Co. v. City of Oconto Falls*, 221 Wis. 457, 265 N.W. 722 (1936).

The PSCW has implemented these judicial principles in determinations it has made regarding public utility status. See *Application of Consolidated Water Power Company and Wisconsin Public Service Corporation for All Approvals Required for Sale of Electric Distribution Facilities*, June 30, 2006, Final Decision, PSC Docket No. 5-BS-146 (PSC REF # 56489) (Finding that an existing public utility would not continue to be a public utility after the proposed transfer of residential customers and distribution facilities, despite its desire to remain a public utility.); *Petition of Consolidated Water Power Company for a Declaratory Ruling as to its Status as a Public Utility Following the Sale of Certain Electric Distribution Facilities to the City of Wisconsin Rapids*, Final Decision, November 8, 2007, PSC Docket Nos. 5-DR-108 and 1330-ER-101 (PSC REF # 85376).

Based on the circumstances pertaining to MRMC Inc., its members and MRMC Thermal, and clear legal precedent, the PSCW should make a determination that MRMC Thermal will not

be a public utility and will not be providing public utility services upon consummation of the transactions and the operation of facilities as explained in the relevant documents and information filed in this proceeding.

REQUESTED RELIEF

For the reasons as set forth in this Application, and as will be further supported by the evidence to be entered into the record in this docket, the proposed transaction is consistent with the public interest. Wisconsin Electric therefore respectfully requests that the PSCW issue all authorizations, approvals, rulings and orders necessary to permit the effectuation of the transaction, including, without limitation, the following findings and conclusions:

1. The PSCW has jurisdiction over the proposed transaction.
2. The transaction is reasonable and consistent with the public interest as required by Wis. Stat. § 196.80(3).
3. The consideration received by Wisconsin Electric under the APA is reasonable as compared to the value of the assets to be transferred.
4. Upon consummation of the transactions and under the operation of the facilities identified in this proceeding, MRMC Thermal will not be a public utility and will not be providing any public utility services in Wisconsin.
5. The offer of employment under the terms of the APA complies with all the requirements of Wis. Stat. § 196.807.
6. It is reasonable and prudent for Wisconsin Electric to transfer ownership of MCPP to MRMC Thermal pursuant to the APA.

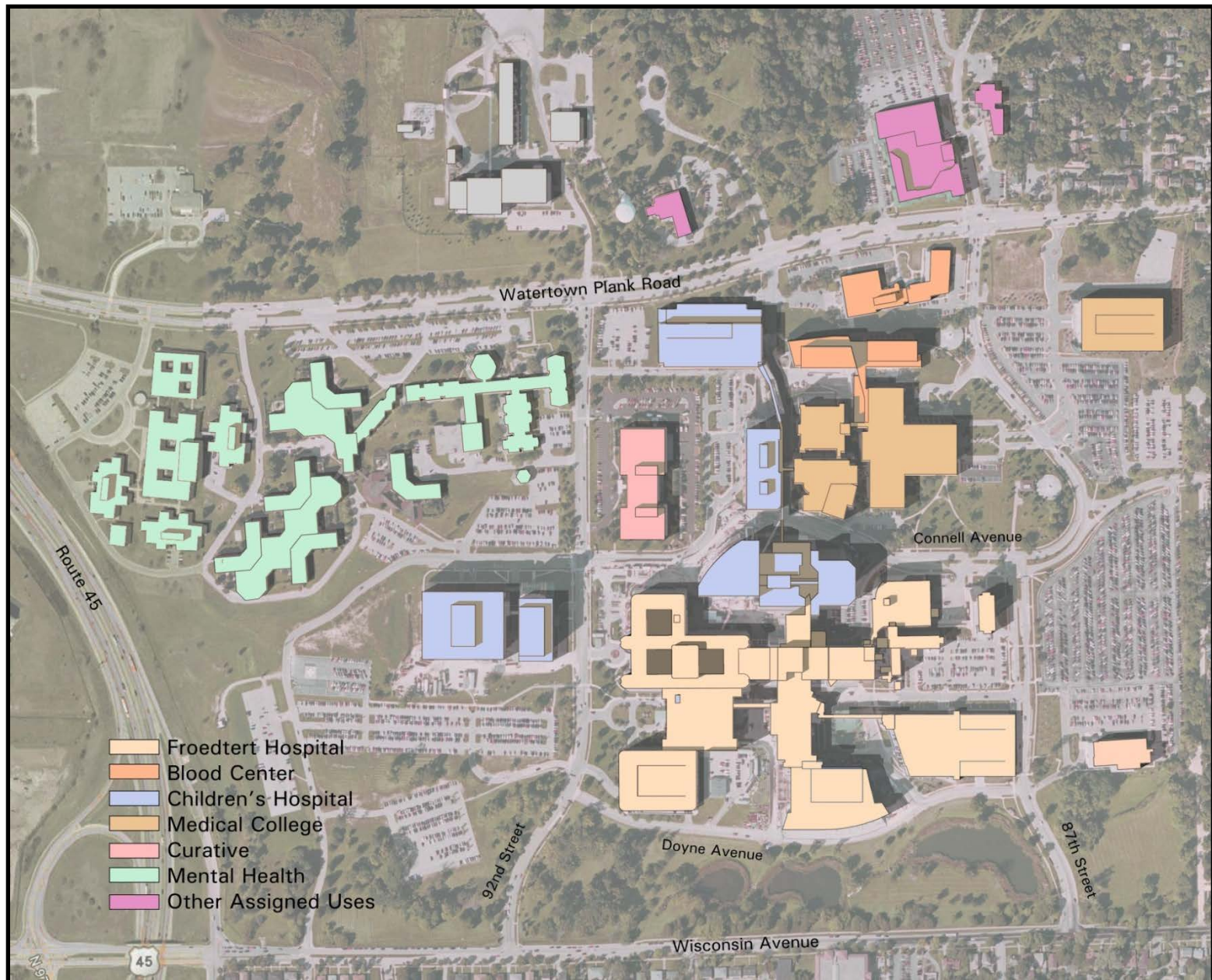
In addition to the enumerated findings and conclusions, Wisconsin Electric also requests that the PSCW grant all other requisite approvals and all other and further relief as may be proper and lawful.

Dated this 7th day of August, 2015 in Milwaukee, Wisconsin.

Respectfully submitted,

/s/ Catherine Phillips

Catherine Phillips
Legal Counsel
Wisconsin Electric Power Company



The entire document is confidential

ATTACHMENT C

CORPORATE STRUCTURE DIAGRAM

