

SECURITIES AND EXCHANGE COMMISSION

(Release No. 35-27998;70-10110)

Wisconsin Electric Power Company

Order Authorizing Acquisition of Utility Assets and Granting Exemption

July 8, 2005

Wisconsin Electric Power Company (“Wisconsin Electric”) a Wisconsin corporation and a 3(a)(1) exempt holding company, Milwaukee, Wisconsin has filed an application (“Application”) with the Securities and Exchange Commission (“Commission”) under sections 9(a)(2), 10 and 3(a)(1) of the Public Utility Holding Company Act of 1935, as amended (“Act”). The Commission issued a notice of the Application on April 29, 2005 (HCAR No. 27964).

Wisconsin Electric requests approval under sections 9(a)(2) and 10 in connection with Wisconsin Electric’s lease and operation of the electric generation facilities owned by Port Washington Generating Station, LLC (“Project Company”). Project Company is an electric utility company under the Act. Wisconsin Electric also requests an exemption by order under section 3(a)(1) from all of the provisions of the Act other than section 9(a)(2) of the Act.

I. Description of the Parties

A. Wisconsin Electric

Wisconsin Electric is a wholly owned combined electric and gas utility company subsidiary of Wisconsin Energy Corporation (“WEC”). WEC is a public utility holding company exempt by order under section 3(a)(1) of the Act.¹ Wisconsin Electric has

¹ See HCAR No. 27965 (May 2, 2000) *corrected by* HCAR No. 27965A (June 14, 2005).

claimed an exemption under section 3(a)(1) of the Act under rule 2. As a result of acquiring interests in two public utility companies, and the lease of Project Company's assets, Wisconsin Electric itself is a holding company as defined by section 2(a)(7) of the Act. Wisconsin Electric presently owns an interest in two public utility subsidiaries, American Transmission Company, LLC ("ATC") and ATC Management Inc. ("ATC Management").² Wisconsin Electric generates, distributes and sells electric energy at retail and wholesale in Wisconsin and the upper peninsula of Michigan.³ Wisconsin Electric also purchases, distributes and sells natural gas to retail customers and transports customer owned gas in Wisconsin. As of December 31, 2004, Wisconsin Electric had 1,081,400 electric retail customers and 437,800 gas retail customers.

Wisconsin Electric states that all of its generating plants are located in Wisconsin, except the Presque Isle plant and 11 small hydro plants which are located in the upper peninsula of Michigan. As of December 31, 2004, Wisconsin Electric operated approximately 21,900 pole-miles of overhead distribution lines and 20,400 miles of underground distribution cable as well as approximately 352 distribution substations and 267,700 line transformers.

As of December 31, 2004, Wisconsin Electric's gas distribution system included approximately 8,983 miles of mains connected at 22 gate stations to the pipeline

² See HCAR No. 27329 (Dec. 28, 2000) ("2000 Order")

³ Wisconsin Electric is subject to regulation by a number of regulatory bodies including the Federal Energy Regulatory Commission ("FERC") under the Federal Power Act's authority to regulate wholesale sales of electric power, accounting and certain other matters. Wisconsin Electric's hydroelectric facilities are also regulated by FERC. Wisconsin Electric is also subject to regulation by the Public Service Commission of Wisconsin ("PSCW").

transmission systems of ANR Pipeline Company, Guardian Pipeline, L.L.C., Natural Gas Pipeline Company of America, Northern Natural Pipeline Company and Great Lakes Transmission Company. Wisconsin Electric has a liquefied natural gas storage plant which converts and stores in liquefied form natural gas received during periods of low consumption. The liquefied natural gas storage plant has a send-out capability of 70,000 dekatherms per day. Wisconsin Electric also has propane air systems for peaking purposes. These propane air systems will provide approximately 2,000 dekatherms per day of supply to the system.

Wisconsin Electric operates two district steam systems that supply steam for space heating and process uses. These systems are located in Milwaukee and in Wauwatosa, Wisconsin and are subject to regulation by the PSCW.

B. ATC

ATC is a Wisconsin limited liability company and electric public utility company which was formed to own all electric transmission facilities in Wisconsin, as well as certain very limited transmission facilities located in northern Illinois and the upper peninsula of Michigan.⁴ As of December 31, 2004, ATC owned a total of 8,776 miles of transmission lines, 6,882 miles of which are located in Wisconsin, 1,884 miles of which are located in the upper peninsula of Michigan and 10 miles of which are located in Illinois.⁵ Wisconsin Electric states that as of December 31, 2004, it holds a 33.2% ownership interest in ATC and Edison Sault owns a 4.6% ownership interest in ATC.

C. ATC Management Inc.

⁴ See 2000 Order.

⁵ Wisconsin Electric states that a small number of miles of transmission lines are under construction by ATC in Minnesota.

ATC Management, a Wisconsin corporation, is the manager of ATC and as of December 31, 2004, has a nominal membership interest (a one/one millionth share) in ATC. Wisconsin Electric states that as of December 31, 2004, it held a 37.8% ownership interest in ATC Management.

II. Project Company Lease

W.E. Power, LLC ("W.E. Power") is a Wisconsin limited liability company that is a wholly owned, direct subsidiary of Wisconsin Energy. Project Company, a Wisconsin limited liability company which is a wholly owned subsidiary of W.E. Power, was formed specifically to develop, construct, and own a 100% interest in two 545 megawatt gas fired, combined cycle generating units located at Wisconsin Electric's existing Port Washington, Wisconsin power plant site ("Port Washington Units"). In addition, Project Company developed, constructed and owns a 100% interest in certain generator interconnection equipment necessary to interconnect the Port Washington Units with the ATC transmission grid. W.E. Power does not and will not own any such facilities directly. Upon completion of construction and the satisfaction of certain conditions precedent, including the successful testing of the units, Project Company will lease the Port Washington Units to Wisconsin Electric under the terms of 25-year facility leases, one for each unit ("Facility Leases"), and certain other related contractual arrangements ("Port Washington Transaction").⁶ Wisconsin Electric states that the other contracts are: (1) Ground Lease and Easement Agreements, (2) Ground Sublease Agreements, (3) an Asset Purchase and Sale Agreement and (4) a Right of First Refusal Agreement. The

⁶ Wisconsin Electric states that the Port Washington Units became operational on a test basis on June 3, 2005.

Port Washington Transaction is to be implemented using a “leased generation” structure specifically authorized under Wisconsin’s “Leased Generation Law.”⁷

Wisconsin Electric requests authority from the Commission to enter into this lease transaction. The site on which the Port Washington Units were built is owned by Wisconsin Electric and is leased to the Project Company under the Ground Leases. Coincident with the commencement of the terms of the Facility Leases, Project Company will sublease back to Wisconsin Electric the real property on which the Port Washington Units have been constructed under the Ground Sublease Agreements.

Wisconsin Electric states that it will recover lease payments, management costs, demolition costs and community impact mitigation costs in rates. Lease payments will cover carrying costs during construction and plant costs plus an allowed return on equity during operation. The lease payments will be further adjusted to incorporate capital improvements that Project Company is obligated to fund under most circumstances.

Wisconsin Electric will make fixed payments over the terms of the respective Facility Leases beginning when each Port Washington Unit becomes operational. Each Facility Lease will be treated as an operating lease under regulatory accounting and as a capital lease under generally accepted accounting principles. Each Facility Lease is a “net lease” under which Wisconsin Electric’s obligations to make rent payments is absolute and unconditional.

⁷ See 2001 Wis. Legis. Serv. 16, § 3008mc (West) (codified as Wis. Stat. § 196.52(9) (2002)). This law establishes a regulatory framework under which nonutility affiliates may develop, construct, and own large-scale dedicated generating facilities within the state of Wisconsin and lease those facilities to their regulated, franchised public utility affiliates.

III. Section 3(a)(1) Exemption

Wisconsin Electric requests an order of exemption under section 3(a)(1) on the basis that its material public utilities are located substantially within the state of Wisconsin and derive their operating revenues substantially within the state of Wisconsin.⁸ Wisconsin Electric states that its gross operating revenue for the years 2004, 2003 and 2002, respectively, was \$2.616 billion, \$2.521 billion and \$2.295 billion. Wisconsin Electric's out of state operating revenue for the years 2004, 2003 and 2002, respectively, was \$155 million, \$143 million and \$126 million, and therefore its percentage of revenue derived from out of state sales for those years was 5.94%, 5.69% and 5.51%, respectively. Wisconsin Electric states that ATC's gross operating revenue for the years 2004, 2003 and 2002, respectively, was \$262.6 million, \$225.6 million and \$205.3 million. In addition, ATC's out of state operating revenue for the years 2004, 2003 and 2002, respectively, was \$25.2 million, \$25.0 million and \$14.1 million or 9.6%, 11.8% and 6.87% of gross operating revenue, respectively. Wisconsin Electric further states that all of the operating revenue derived from the lease of the Port Washington Units will come from utility operations within Wisconsin.

Wisconsin Electric states that the fees, commissions and expenses to be paid or incurred by Wisconsin Energy directly or indirectly in connection with this Application are estimated to be approximately \$22,000. Wisconsin Energy states that the PSCW has jurisdiction over the Transaction and that the PSCW approved the Transaction by order

⁸ For a discussion of the "materiality" and "substantially" standards in the determination of exemptions under sections 3(a)(1) and 3(a)(2), *see* NIPSCO Industries, HCAR No. 26975 (February 10, 1999).

dated December 20, 2002.⁹ Wisconsin Energy states that the FERC also has jurisdiction over the Transaction and approved the Transaction on October 1, 2003.¹⁰ Wisconsin Energy states that no other state commission and no federal commission, other than the Commission, has jurisdiction over the relief requested in this Application.

Due notice of the filing of this Application, as amended, has been given in the manner prescribed in rule 23 under the Act, and no hearing has been requested of, or ordered by, the Commission. On the basis of the facts in the record, it is found that the applicable standards of the Act and rules under the Act are satisfied, and that no adverse findings are necessary.

IT IS ORDERED, under the applicable provisions of the Act and rules under the Act, that the Application, as amended, be granted immediately, subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland
Deputy Secretary

⁹ See Approval of Affiliated Interest Transactions Between W.E. Power; Wisconsin Elec. Power Co.; and Wisconsin Energy Corp., PSCW Docket Nos. 05-AE-109, 05-CE-117, 137-CE-104, and 6650-CG-211 (December 20, 2002).

¹⁰ See Wisconsin Energy Corp, 105 FERC ¶ 62,002 (2003).