

V. Summary and Order

On November 15, 2002, the Public Service Commission determined that an application submitted by Wisconsin Energy Corporation to construct the largest power plant in the history of the state at the Oak Creek Power Plant site met the legal requirements to be a “complete” application thereby beginning starting a process before the Commission in which the application was required to be resolved within no more

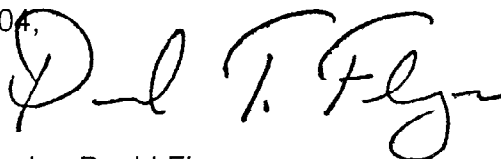
than 360 days. It is the conclusion of this court that the Wisconsin Energy Corporation application, as of November 15, 2002, does not meet the legal requirements in that it does not propose at least two alternative sites for the new plant, it does not present the required regulatory approvals and it does not include agreements for the use of the substantial transmission line facilities that inevitably must be constructed as an integral part of this project. It was therefore legal error to commence the approval process based upon that incomplete application and the resulting Order is hereby vacated and the matter remanded to the Commission to permit the applicant to submit a legally sufficient application.

On November 10, 2003, the Public Service Commission issued a Order modifying the proposed new Oak Creek facility and approving the application as modified. It is the conclusion of this court that the Order does not reflect adherence to the Wisconsin Energy Priorities Law nor does it include required cost and design information about substantial new power transmission lines that will be needed in order for the proposed new plant to operate. Moreover, the Order approves funding for construction intended to permit future expansion of the Oak Creek Power Plant site to accommodate new generation facilities that the Commission has determined there to be no present need to build and the approval order has been issued despite the fact that required regulatory approvals for the proposed new plants have not been obtained. For these reasons, the Order is hereby vacated and the matter remanded to the Commission for further proceedings consistent with the foregoing rulings.

Finally, the Order modified and thereafter approved an agreement whereby the City of Oak Creek agreed to accept from Wisconsin Energies Corporation, certain

annual payments to mitigate the cost to the city of the new facilities. It is the conclusion of the court that the applicable law required that the Commission either approve or reject the proposed agreement as submitted to the Commission. The modification of the agreement is therefore vacated and the matter is remanded to the Commission for further proceedings.

By the court this 29th day of November, 2004,

A handwritten signature in black ink, appearing to read "D. T. Flanagan". The signature is written in a cursive, flowing style with a large initial "D" and a distinct "T." before the last name.

Judge David Flanagan