

**COUNTY OF MILWAUKEE**  
INTEROFFICE COMMUNICATION

DATE: March 23, 2015 (Updated from March 2, 2015)

TO: Supervisor Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM: Paul Bargren, Corporation Counsel  
David Cialdini, Project Manager, DAS-Economic Development

SUBJECT: File 15-202: Consent and Mutual Waiver for release of Deed restrictions and reverter provisions regarding the Milwaukee Regional Medical Center power plant at 9250 W Watertown Plank Rd.

**REVISION**

As requested at the March 16, 2015, meeting of the Economic and Community Development Committee, this Revised Report supplements the initial Report and may be added to File 15-202 in advance of the March 26, 2015 meeting of the Board of Supervisor. There are no changes to other documents in the File.

**REQUEST**

Authorization for the County to enter into a Consent and Mutual Waiver agreement with the Milwaukee Regional Medical Center Thermal Service, Inc., ("Thermal" or "MRMC"), and Wisconsin Electric Power Company ("WEPCO") relating to the power plant property at 9250 W Watertown Plank Rd in the City of Wauwatosa, which is owned by WEPCO.

The agreement will release encumbrances on two parcels of County land located next to the power plant. The agreement will also waive two rights held by the County that no longer have value and may have unintended negative consequences.

**BACKGROUND**

Thermal is in discussions for the possible purchase of the power plant and generating and distribution systems from WEPCO and an affiliate.

Milwaukee County originally owned and operated the power plant but conveyed the land and some of the generating and distribution systems to WEPCO in December 1996 in a quit claim deed. The County sold the rest of the system to the affiliate.

The power plant provides electricity, steam and chilled water to buildings on the County Grounds. Proceedings related to the 1996 transaction (File No. 95-1010, adopted December 21, 1995) show that WEPCO told the County and the County Grounds customers at the time that their energy costs would be lower under WEPCO than if the County continued to operate the plant. WEPCO also committed to serving new development at the County grounds, including expansion at the Milwaukee County Research Park and providing steam for the areas west of Highway 45. WEPCO and

the County also reached agreement on employment of all County workers at the power plant.

According to the 1996 fiscal note, the sale price was \$58 million. But this included the distribution system on the County Grounds as well as the electric, steam and chilled water generation equipment at the plant itself. The fiscal note said that "future general obligation debt associated with the power plant of \$5.6 million" was retired with proceeds from the sale. A price for the plant itself was not broken out. The power plant parcel is listed as 15.3 acres. It is shown in yellow on the map in this file.

The 1996 sale to WEPCO ended a very complex set of negotiations over the course of more than two years in which members of the Milwaukee Regional Medical Center had originally agreed to buy the power plant and distribution systems, but apparently could not come to final agreement. WEPCO eventually stepped in to make the purchase. Now, two decades later, MRMC apparently may finally acquire the system.

Two other parcels were involved in the transaction and are addressed in this file. One is 6.8 acres and one is 3.6 acres. Both parcels are owned by the County and will continue to be owned by the County. However, as part of the 1996 transaction, WEPCO retained certain rights over the two parcels.

First, with an eye toward possible expansion of the power plant, WEPCO obtained an option to purchase the 6.8 acre parcel at fair market value. The option is good as long as WEPCO or (probably) a successor owns and uses the power plant to generate energy. This prevents the County from making any use of the parcel.

Second, WEPCO obtained a right of first refusal on the 3.6 acre parcel, also valid as long as WEPCO owned and used the property, meaning it could match any offer the County obtained if the County tried to sell the land. If WEPCO bought the land, it would be required to maintain it as a buffer between the power plant and neighboring uses.

The Waiver agreement in this file removes both the option and right of first refusal restrictions, giving the County full and unencumbered title to its lands. While the terms of the 1996 deed appear to mean that WEPCO's sale of the property to Thermal would extinguish the option and first-refusal right, there may be some ambiguity. The Waiver agreement removes all doubt and is good practice to establish clear title.

The 1996 transaction also created both a "Retained Right of First Refusal" and a "Retained Option to Reacquire" for the County. The Waiver agreement removes both.

Under the Retained Right of First Refusal, the County would have 90 days to match any offer to WEPCO to buy the power plant. For example, the County could match MRMC's expected offer (reported as "negotiated," albeit not necessarily at full value) to buy the power plant now. However, that would leave the County paying a presumably significant sum to own and operate a coal-fired power plant, possibly with a large

number of medical institutions as customers expecting uninterrupted service, possibly with no customers at all, certainly with the potential for large environmental liabilities in years to come. The likelihood of such a purchase being in the County's best interest seems virtually nil.<sup>1</sup> Thus, waiving the right of first refusal gives up nothing of value to the County but allows WEPCO and MRMC to clear an unnecessary encumbrance.

The Retained Option to Reacquire would allow the County to repurchase the site if 10 years passed without any energy being generated at the site by WEPCO or (most likely) its successor (see Quit Claim Deed ¶ 18). The terms of the Option would require the owner to raze the plant and conduct environmental remediation before selling the vacant land to the County at fair market value. In the view of Corporation Counsel, it is extremely unlikely the Option to Reacquire could ever be exercised. There would be little if any chance that an owner would face the high costs of demolition and remediation only to sell the land, when generating a bit of power once every 10 years could avoid those costs, even if the main plant itself was no longer needed. Alternately, an owner might retain some or all of the power plant beyond its normal useful life, creating an eyesore, just to be able to meet the "generation-of-power" requirement. To avoid that or other unintended consequences detrimental to the County as adjacent landowner, Corporation Counsel believes that waiving this provision makes sense for the County. MRMC, generally considered a good partner for the County, will benefit from clearing this portion of the title.

The terms of the Waiver agreement take effect only if and when Thermal actually completes the proposed transaction with WEPCO.

## RECOMMENDATION

Economic Development and Corporation Counsel respectfully request that the Board approve this mutual release. The parcels restricted under the Option and Right of First refusal would be released from these restrictions, freeing up over 10 acres of County land in a key area. The waiver by the County of its right of first refusal and Retained Option to Reacquire give up rights that no longer have legal or practical value and will aid the County's partner MRMC. Corporation Counsel believes that any loss of rights by the County, which is de minimis at most, is outweighed by the benefits to the County in obtaining unfettered control over its two parcels.



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<sup>1</sup> See, .e.g., <http://www.metrocorpocounsel.com/articles/30134/so-you-want-shut-down-your-coal-fired-power-plant>

cc: Chris Abele, County Executive  
Marina Dimitrijevic, County Board Chairwoman  
Economic and Community Development Committee Members  
Committee (ECD)  
Teig Whaley-Smith, Director, Department of Administrative Services  
Julie Esch, Director of Operations, Department of Administrative Services  
Raisa Koltun, Chief of Staff Office of the County Executive  
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