

AFFILIATED INTEREST AGREEMENTS
Summary of Key Terms that are Consistent between the
Port Washington Agreements
and the
Elm Road Agreements

Key Terms in Common – Facility Lease

- Lessor's and Lessee's responsibilities
In the case of the Elm Road facilities the parties are WE as Lessee and the ERGS LLC as Lessor. The Lessor's responsibility is to develop, design, engineer, procure, permit, finance, construct, commission and own the new generation facilities. Once a facility is completed, the Lessor's only continuing responsibility is to finance capital improvements as required by law (for example, changes in environmental regulations) or as requested by the Lessee (subject to certain restrictions). The Lessee's responsibility is to make payments under the lease both during construction and after the plant is in service, and to maintain and operate the plant in accordance with good utility practice.
- Construction Invoicing (Article 2)
During construction, the Lessee (WE) will be invoiced monthly for carrying costs on construction, management services costs, and community impact mitigation costs. As requested by the customer groups in the PWGS proceeding, the first construction invoice will include pre-CPCN expenses (not capital) and carrying costs accrued on major equipment.
- Event of Loss or Event of Total Loss and Insurance During Construction (Article 3)
During construction Lessor/ERGS maintains insurance. If an event of loss occurs during construction the Lessor reconstructs or completes construction automatically (if loss < \$1 million) or with PSC approval of cost recovery from the Lessee (if loss > \$1 million). If an event of total loss or the PSC denies cost recovery the lease may be terminated by the Lessor.
- Performance Guarantees (Article 4)
The performance measures and guarantees and possible damages amounts differ due to the technology differences, but the overall concept is the same between the PWGS and ERGS leases.
- Failure to reach Lease Effective Date (Article 5)
The Lease Effective Date is synonymous with the commercial operation date of the new unit. Meeting these requirements of the lease triggers the start of the lease rent payments. The remedies for failure to reach the Lease Effective Date depend upon whether Lessee causes the failure, Lessor causes the failure, or there is a force majeure event. The provisions in the ERGS lease are identical to the PWGS lease except for some name conforming changes and the extension of time from 48 months to 60 months in the event that a Damages Amount would be assessed (the time extension being consistent with the longer lease term).

- Nature of the Lease Transaction, Term, Method of Lease Payment (Articles 6 & 7)

For these coal-fueled plants at the Elm Road site, the initial lease term will be thirty (30) years from the date a plant begins operation. This is five years longer than the twenty-five year minimum allowable lease term under the leased generation statute (Wis. Stat. 196.52(9)(b)(9)). The PWGS lease term was derived the same way.
- Representations and Warranties (Article 8)

Common terms (due organization, due authorization of the parties, non-contravention, enforceability, etc.) and special representations (Lessor is not engaged in any business other than building the facility subject to this lease, Lessor does not own any other assets and has no subsidiaries, etc.) as of the Decommissioning Completion Date are the same between the PWGS and ERGS leases.
- Use and Maintenance of the Facility (Article 9)

WE will serve as plant operator on behalf of all of the owners. Both fixed and variable operating costs will be shared among the owners in a predetermined manner.
- Additional Capital Investment / Improvements (Article 10)

WE, as the plant operator, will determine if and when capital expenditures are required and will secure approval as needed from the owners. The owners will be responsible for providing the funds for these investments as long as the expenditures do not materially diminish the value of the facility. In the case of an ERGS LLC's interest, the Lessee (WE) must also be financially able to make the additional lease payments necessary to provide the Lessor a return of and a return on these additional investments. As money is advanced to finance the improvements, the rent in the facility lease will be increased to reflect the additional carrying costs. When the improvement is complete, the rent payment will be adjusted to include a return of investment as well as a return on the additional investment over the remaining life of the lease.
- Special Lessor Covenants (Article 11)

Lessor has same limitations during the lease term regarding operating other businesses, owning other assets, etc. as they represented at the Decommissioning Completion Date. These covenants are the same between the ERGS and PWGS leases.
- Inspection and Right to Enter (Article 12)

Lessor has same rights to enter the ERGS premises as they do the PWGS premises.
- Insurance during Lease Term (Article 13)

After the plant is in-service, the Lessee/WE maintains insurance. Events of loss require repair or replacement by the Lessee. An event of total loss terminates the lease. Lessor receives condemnation awards and/or loss proceeds plus six months' rent payments. Lessor and Lessee must true-up the difference between the loss amount plus six months' rent and the aggregate principal amount remaining on the lease. The unit can be repaired or replaced, but only with PSCW approval.
- End of a Lease Term, Renewals (Article 14)

ERGS LLC would retain ownership of the facility and can attempt to sell or lease the facility to another party. The ground sublease from ERGS LLC to the Lessee/WE would terminate, but the ground lease from WE to ERGS LLC would remain intact (although now at a rent based on market value rather than book value) so that ERGS LLC still has control of the land on which the facility is located. Day-to-day operation of the facility

would also be back in the hands of ERGS LLC and the other owners. It is possible that WE could contract to operate the plant on behalf of the owners.

- Return of the Leased Facility (Article 15)
The facility must be returned in a reasonable condition given ordinary wear and tear.
- Defaults, Remedies, Liens, Indemnification (Articles 16-19)
After the plant is in-service, the Lessee/WE maintains insurance.
- Compliance Audit; Dispute Resolution (Article 20)
An independent auditor will perform annual audits of the parties' compliance with the lease provisions. Disputes may involve good faith negotiation or may require binding arbitration per these lease terms. These provisions are identical between the ERGS and PWGS leases.
- Confidentiality (Article 21)
After the plant is in-service, the Lessee/WE maintains insurance.
- Transfer Restrictions (Article 22)
Allowance had to be made to allow new common facilities to be transferred between the owners; otherwise, the provisions are the same as the PWGS lease.

Key Terms in Common – Ground Lease and Ground Sublease

- Brownfield site
One of the important economic and environmental advantages of the PTF proposal is that it uses “brownfield” sites. The existing sites at both Port Washington and Oak Creek are owned by WE. Because the PTF generation facilities will be built and owned not by WE, but by a Project LLC, a mechanism is necessary to transfer control of the sites to the Project LLC during the construction period and then back to WE when the plants are finished and WE gains operational control of them under the facility leases. The ground leases and subleases were developed to accomplish these objectives.
- Multiple owners of the facility
WE will lease the sites to ERGS LLC during the construction period. When the facilities have been constructed, control of the sites will be conveyed back to WE by means of the subleases. The other owners will not be parties to the ground leases and subleases. They will instead receive some easement and access rights to the facility.
- Leasehold interests
Each ground lease will grant ERGS LLC a leasehold interest in the WE-owned real estate as a site for the generation facility in question. In addition, each ground lease will convey certain non-exclusive easements over the other sites at that location, and over land retained by WE. Under the terms of each ground lease, WE will also reserve certain non-exclusive easements over each site as necessary for the continued use, operation and maintenance of WE's existing generation units, where appropriate.