

PUBLIC SERVICE COMMISSION OF WISCONSIN

Minutes and Informal Instructions of the Open Meeting of
Thursday, September 7, 2023

The Public Service Commission of Wisconsin (Commission) met as noticed. Present were Chairperson Valcq, Commissioner Huebner and Commissioner Strand.

Minutes

The Commission approved the minutes of the open meeting of Thursday, August 31, 2023.

5-BS-271 - Joint Application of Barron Electric Cooperative and City of Spooner for Approval of an Amended and Restated Service Territory Agreement

The Commission approved the Notice of Investigation and directed it to be signed by the Secretary to the Commission.

6725-RW-178 - Tolls to be Charged for the Wisconsin Valley Improvement Company for the Six Months Period Ending June 30, 2023

The Commission approved the Notice of Investigation and directed it to be signed by the Secretary to the Commission.

560-WR-103 - Application of the City of Blair, Trempealeau County, Wisconsin, as a Water Public Utility, for Authority to Adjust Water Rates

The Commission approved the Notice of Proceeding and directed it to be signed by the Secretary to the Commission.

1730-WR-108 - Application of the Village of East Troy, Walworth County, Wisconsin, as a Water Public Utility, for Authority to Adjust Water Rates

The Commission approved the Notice of Proceeding and directed it to be signed by the Secretary to the Commission.

455-WR-104 - Application of the City of Beloit, Rock County, Wisconsin, as a Water Public Utility, for Authority to Adjust Water Rates

Draft Order to Close Docket

The Commission approved the draft order to close the docket and directed it to be signed by the Secretary to the Commission.

1490-CW-102 - Application of the City of Cumberland, as a Water Public Utility, for Authority to Construct Well #6, in the City of Cumberland, Barron County, Wisconsin

Draft Order to Reopen

The Commission approved the draft order to reopen and directed it to be signed by the Secretary to the Commission.

4220-EE-2024 - Northern States Power Company (4220) Conservation Activities and Voluntary Utility Programs for 2024

The Commission reviewed the request of Northern States Power Company (NSPW) to implement 2024 Voluntary Energy Efficiency Programs and made the following determinations:

1. The Commission denied NSPW's request for approval of its Residential Community Conservation Program (CCP) for 2024. Should NSPW wish to continue its Residential CCP, it shall submit a revised program plan by July 1, 2024 that also includes consideration of some form of a Tribal Pilot Program.

Commissioner Huebner dissented and would have approved the proposal as filed.

2. The Commission approved NSPW's Commercial CCP. NSPW shall submit an evaluation plan for its 2024 Commercial CCP for Commission staff approval by December 1, 2023.
3. The Commission approved NSPW's proposed Residential Home Energy Assessment Pilot program on the condition that, within 30 days of the final decision in this docket, NSPW provides the Commission with a proposed budget for that program.

The Commission directed the Division of Digital Access, Consumer and Environmental Affairs to draft an order consistent with its discussion.

6680-EE-2024 - Wisconsin Power and Light Company (6680) Conservation Activities and Voluntary Utility Programs for 2024

The Commission approved, with modifications, Wisconsin Power and Light's (WP&L) proposed Enhanced Low-Income Weatherization Program (ELIWP) as voluntary energy efficiency programs for 2024-2025, with the following conditions:

1. WP&L is required to submit an evaluation, measurement, and verification plan for its 2024-2025 ELIWP for Commission staff approval by December 1, 2023. WP&L shall

conduct surveys or interviews with multifamily property owners participating in the program as part of their evaluation, measurement, and verification plan.

2. WP&L is required to file an annual report for its ELIWP by April 1st of each year beginning April 1, 2024. WP&L staff shall coordinate with Commission staff on the appropriate format and content of the report prior to filing.

The Commission directed the Division of Digital Access, Consumer and Environmental Affairs to draft an order consistent with its discussion.

9819-CE-100 - Application for a Certificate of Public Convenience and Necessity of Elk Creek PV I, LLC to Construct a Solar Electric Generation Facility in the Town of Spring Brook, Dunn County, Wisconsin

The Commission reviewed the application for a Certificate of Public Convenience and Necessity (CPCN) of Elk Creek PV I, LLC (applicant) to construct a solar generation facility in the Town of Spring Brook, Dunn County, Wisconsin, and made the following determinations:

1. The Commission accepted the uncontested alternatives identified in the Final Decision Matrix.
2. The project complies with Wis. Stat. § 196.491(3)(d)6. and would not unreasonably interfere with the orderly land use and development plans for the area involved.
3. All of the proposed and alternative solar array sites meet the siting criteria of Wis. Stat. § 196.491(3)(d)3.
4. All of the following general conditions are necessary for approval of this project:
 - a. The applicant shall work with the applicable distribution utility to make available stray voltage testing at each agricultural confined animal operation within one half-mile of the project facilities, before any solar energy system construction activity that may interfere with testing commences and after the project is energized. The applicant shall work with the distribution utility and farm owner to rectify any identified stray voltage problem arising from the construction or operation of the project, in compliance with the Commission's stray voltage protocol. Prior to testing, the applicant shall work with the applicable distribution utility and Commission staff to determine where and how it will conduct the stray voltage measurements. The applicant shall report the results of its testing to Commission staff in writing.
 - b. The applicant shall perform post construction noise studies as described in the most current version of the PSC Noise Measurement Protocol. The applicant

shall work with Commission staff to determine appropriate locations and conditions for the noise measurements. In the event of a substantial change to the proposed facility layout, the applicant shall confer with Commission staff to determine if a new pre-construction noise study must be completed. The applicant shall file a copy of the post construction noise study report with the Commission.

- c. The applicant shall construct, maintain, and operate all applicable project facilities to comply with NEC or the National Electrical Safety Code and Wis. Admin. Code ch. PSC 114, as appropriate. In case of conflict or overlap between code requirements, the applicant shall construct, maintain, and operate all applicable project facilities to comply with whichever code has the more stringent requirements.
- d. Should the scope, design, or location of the project change significantly, the applicant shall notify the Commission within 30 days of becoming aware of possible changes. The applicant shall obtain approval from the Commission before proceeding with any substantial change in the scope, design, size, or location of the approved project.
- e. If the applicant cancels the project or enters into any arrangement with another party regarding ownership or operation of the proposed facilities, the applicant shall provide prior notice to the Commission.
- f. All commitments made by the applicant in its application, subsequent filings, and the provisions of the Final Decision, shall apply to the applicant, any agents, contractors, successors, assigns, corporate affiliates, and any future owners or operators of the project.
- g. The transfer of rights and obligations under this CPCN to a third party does not confer either additional rights or additional obligations upon that third party than what is afforded to the applicant at the time of application and as specified in this Final Decision. If a successor, assign, or future owner or operator of the project is a public utility, this CPCN is conditional upon the public utility waiving any rights it may otherwise have under Wis. Stat. §§ 32.02 and 32.075(2) for the project. This CPCN does not confer any “right to acquire real estate or personal property appurtenant thereto or interest therein for such project by condemnation” under Wis. Stat. §§ 32.02 or 32.075(2) as otherwise provided under Wis. Stat. § 32.03(5)(a).
- h. The applicant shall mitigate impacts to line-of-sight communications and landowners who can show disruption to broadcast communications post construction.
- i. Beginning with the quarter ending on a date to be determined by the Commission in the Final Decision, and within 30 days of the end of each quarter thereafter and continuing until the authorized facilities are fully operational, the applicant shall submit quarterly progress reports to the Commission that include all of the following:

- i. The date that construction commences;
 - ii. Major construction and environmental milestones, including permits obtained, by agency, subject, and date;
 - iii. Summaries of the status of construction, the anticipated in-service date, and the overall percent of physical completion; and
 - iv. The date that the facilities are placed in service
- j. The applicant and its selected contractors shall participate in a pre-construction meeting with DNR and Commission staff to discuss construction plans and/or final site designs, permits, and associated requirements and Best Management Practices. Plans shall be provided to Commission and DNR staff a minimum of 14 days prior to the meeting date to allow time for review.
- k. The applicant shall obtain all necessary federal, state, and local permits for the project prior to commencement of construction on the portion of the project requiring the permit.
- l. The applicant shall conduct an updated Endangered Resources Review closer to the start date of construction (no more than one year prior to construction start).
- m. The applicant may use the proposed or alternative array sites as needed to accommodate environmental, technical, and landowner issues as they arise during construction of the project, provided, however, that the project size shall remain at the maximum nameplate capacity approved in this Final Decision. If the situation arises where the applicant elects to use an alternative array area, the applicant shall provide written notice to the Commission identifying such alternative arrays within 30 days of the decision to use the alternative arrays.
- n. The applicant may propose minor adjustments to the approved locations of Solar Project facilities for the protection of environmental resources, landowner requests, or technical design changes that arise during final stages of engineering (up to the authorized nameplate capacity of each solar facility stated in the application), but any changes from the approved layout may not affect a type of resource not discussed in the EA, nor may they affect new landowners who have not been given proper notice and hearing opportunity or affect landowners who were given proper notice and hearing opportunity in a significantly different manner than was originally approved, nor may they include a unique occurrence not discussed in the EA of, for example, a particular human burial, archaeological site, or protected species. The applicant shall consult with Commission staff regarding whether a proposed change rises to the level at which Commission review and approval is appropriate. For each proposed adjustment for which Commission review is appropriate, the applicant shall submit for Commission review and approval a letter describing: the nature of the requested change; the reason for the requested change; the incremental difference in any environmental impacts; communications with all potentially affected landowners regarding the change; documentation of discussions with other agencies regarding the change; and a map showing the approved layout and the proposed modification, property

boundaries, relevant natural features such as woodlands, wetlands, waterways, and other sensitive areas. Approval of the requests is delegated to the Administrator of the Division of Energy Regulation and Analysis with advice and consent from the Administrator of the Division of Digital Access, Consumer, and Environmental Affairs.

- o. The CPCN is valid only if construction commences no later than one year after the latest of the following dates:
 - i. The date the Final Decision is served;
 - ii. The date when the applicant has received every federal and state permit, approval, and license that is required prior to commencement of construction by construction spread under the CPCN;
 - iii. The date when the deadlines expire for requesting administrative review or reconsideration of the CPCN and of the permits, approvals, and licenses described in par. (ii.); and
 - iv. The date when the applicant receives the Final Decision, after exhaustion of judicial review, in every proceeding for judicial review concerning the CPCN and the permits, approvals, and licenses described in par. (ii.).
 - p. If the applicant has not begun on-site physical construction of the authorized project within one year of the time period specified by the Final Decision, the certificate authorizing the approved project for which construction has not commenced shall become void unless the applicant:
 - i. Files a written request of an extension of time with the Commission before the effective date on which the Certificate becomes void; and
 - ii. Is granted an extension by the Commission.
 - q. If the applicant has not begun on-site physical construction of the authorized project and has not filed a written request for an extension before the date that this Certificate becomes void, the applicant shall inform the Commission of those facts within 20 days after the date on which the Certificate becomes void.
 - r. The Final Decision takes effect one day after the date of service; and,
 - s. Jurisdiction is retained.
 - t. The applicant shall report to the Commission on a quarterly basis:
 - i. Its efforts, and the efforts of its contractors, to recruit Wisconsin residents to fill employment opportunities created by the construction of the proposed project;
 - ii. Its efforts to collaborate with state registered apprenticeship programs; and
 - iii. The actual number of Wisconsin residents and out-of-state workers employed on-site to construct the proposed project.
5. The following project-specific conditions are necessary for the approval of this project:
- a. The applicant shall provide the Commission with final detailed engineering plans for the project, including the final designs and equipment plans for both the solar and Battery Energy Storage System (BESS) portion of the proposed project as soon as practicable after the project in service date. If Commission staff identifies

safety or reliability issues upon review of these plans, when considering safety and reliability, final location, individual hardships, and environmental factors, then the matter shall be returned to the Commission.

- b. The applicant shall construct, maintain, and operate the BESS facilities to follow best industry safety practices for ensuring battery fire safety.
- c. The applicant shall provide the results of all MISO DPP studies and facilities studies related to interconnection queue positions J1730 and J1528 and the Generator Interconnection Agreement related to the project when each of them have been completed.
- d. The applicant is authorized to construct the proposed solar PV electric generation facility, BESS facilities, generation tie line facilities, and all other associated facilities, as described in the application and data request responses and as modified by the Final Decision. The applicant is authorized to construct the project at a capacity of no greater than 324 MW AC for the solar PV electric generation facilities and no greater than 76.6 MW DC for the BESS facilities.
- e. The applicant shall, to the extent reasonably possible, avoid tree clearing activities during the period of April 1 through August 15.
- f. The applicant shall work with interested non-participating landowners that are adjacent to solar panel arrays on one or more sides of their property to create visual buffers and screening in order to mitigate visual impacts, to the extent reasonable and economically feasible, and not otherwise impeding solar operations or access to sunlight.
- g. Prior to commencement of operations, the applicant shall provide to the Commission a copy of the applicant's emergency response plan that includes discussion of what follow-up steps would occur for site treatment and materials disposal after a fire, thermal runaway, or storm damage event. This information would be provided to the Commission for informational purposes.
- h. The applicant shall provide reporting on any safety incident at the BESS that triggers reporting under any emergency response plans resulting from the Hazard Mitigation Analysis, and provide reporting on any alterations to the BESS that Elk Creek Solar reasonably believes will result in a change of best practices regarding the safety of the BESS. Such reporting shall be done within 60 days of the safety incident or alteration.
- i. Prior to construction, the applicant shall install signage at wetland and waterway boundaries to alert construction crews to avoid work within or access across these areas.
- j. Site-specific sediment and erosion control measures and devices should be installed prior to any construction activity and be inspected and maintained daily through all construction and restoration phases.
- k. The applicant shall provide copies of all plans and environmental documents to construction crews and inspectors. Plans should clearly label the locations of wetlands and waterways and include language stating vehicle access, storage of

materials, grading, and all other construction activities are not permissible within these areas. Plans should also clearly label where sediment and erosion control measures and devices should be installed to reduce the likelihood of sediment entering the resources.

- l. Where practicable, the applicant shall implement a construction sequencing plan that minimizes the amount of land disturbed or exposed (susceptible to erosion) at one given time across the project.
 - m. The applicant shall leave existing vegetative buffers in place and maximize their width in proximity to wetlands and waterways during construction.
 - n. Disturbed areas and areas of exposed soil shall be vegetated as soon as possible and seeded with a cover crop and/or native seed mix to minimize erosion potential and prevent the establishment of invasive species.
 - o. The applicant shall prepare and implement an invasive species management plan that identifies known areas of invasive species populations and includes specific protocols to minimize the spread of invasive species.
 - p. The applicant shall work with WDNR staff regarding necessary WDNR permits and erosion and sediment control practices.
 - q. If the applicant desires to include red fescue in its seed mix, the applicant shall work in good faith to reach an agreement with Commission and WDNR staff to implement a pilot program for the project that compares seed cover using red fescue with seed cover that does not. In the event that agreement between the applicant, Commission and WDNR staff cannot be reached on this pilot, the applicant shall not include red fescue in the project seed mix.
6. The Commission has complied with WEPA pursuant to Wis. Stat. § 1.11 and Wis. Admin. Code ch. PSC 4.
 7. The proposed project will not have undue adverse impact on other environmental values as provided under Wis. Stat. § 196.491(3)(d)4.
 8. The Commission has complied with WEPA pursuant to Wis. Stat. § 1.11 and Wis. Admin. Code ch. PSC 4.

The Commission directed the Division of Energy Regulation and Analysis to draft an order consistent with its discussion.

The Commission adjourned the meeting at 11:37 a.m.

A handwritten signature in black ink, appearing to read "L. Kelly". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Secretary to the Commission

DL:01965591