

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

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In re the Application for a Certificate of Public Convenience and Necessity of Koshkonong Solar Energy Center LLC to Construct a Solar Electric Generation Facility in the Town of Christiana and the Town of Deerfield, Dane County, Wisconsin

Docket No: 5-BS-258

Public Service Commission of Wisconsin  
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**COMMENTS OF TOWN OF CHRISTIANA**

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**INTRODUCTION.**

The Town maintains that the April 30, 2021 joint application of Wisconsin Electric Power Company, Wisconsin Public Service Corporation (together, WEC), and Madison Gas and Electric Company (MGE) (all together, Utilities) to acquire ownership interests in the Koshkonong Solar Electric Generation and Battery Energy Storage Facilities (Koshkonong Solar) must be denied. The Applicant in the Koshkonong BESS Docket No: 9811-CE-100 (Invenergy), in coordination with the Utilities in Docket No: 5-BS-258 are attempting to abuse the merchant plant CPCN process to establish a facility contemplated from before any Docket was opened, to be owned and operated as a utility-owned facility, not a merchant plant.

**The Joint Application Must be Denied because Applicants have not Satisfied the Criteria for issuance of a CPCN for a Utility Plant Under Wis. Stat. § 196.491.**

Wholesale merchant plants are categorically different from utility facilities in that they are subject to lighter regulation. When deregulation was being advocated, the rationale for lighter regulation was that the risk of such plant's success or failure would not fall on the ratepayers, but

on the private investors. Regulatory requirements to protect the ratepayers were not needed because of context.

In this case, the Utilities are attempting a bait and switch scheme to purposely evade the pertinent regulatory requirements – presumably because they realize that these requirements could never be met. Wholesale merchant plants, unlike Utility plants, are exempted from showing need under Wis. Stat. § 196.491(3)(d):

3 (d) Except as provided under par. (e), the commission shall approve an application filed under par. (a) 1. for a certificate of public convenience and necessity only if the commission determines all of the following:

2. The proposed facility satisfies the reasonable needs of the public for an adequate supply of electric energy.

This subdivision does not apply to a wholesale merchant plant. Wholesale merchant plants are also exempted from the requirement that they be in the public interest considering i) alternative sources of supply (e.g., using existing parking lots instead of farmland preservation land to host solar panels), ii) engineering factors under Wis. Stat. § 196.491(3)(d)(3)

“...the commission may not consider alternative sources of supply or engineering or economic factors if the application is for a wholesale merchant plant.”

As to economic data, wholesale merchant plants are exempted from submitting their average energy production cost (Wis. Admin. Code § PSC 111.31(1) and their system dispatch cost. This means that a wholesale merchant plant can deprive the PSC of information the PSC needs to determine if competition “... if competition is contributing to the provision of sufficient capacity and energy at a reasonable price.” (See: comment to Wis. Admin. Code § PSC 111.31).

The general requirements in the statute translate into detailed PSC rules, particularly Wis. Admin. Code § PSC 111.53(1) which exempt wholesale merchant plants from providing information about

**(b)** The need for the proposed facility in terms of demand and energy.

**(c)** The economic aspects of the proposed facility, including all of the following:

1. The estimated capital cost of the generating facility and all related facilities, broken down by major plant accounts. All cost escalation factors used in the estimate shall be identified.

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3. The estimated annual production cost, calculated as operating, maintenance and fuel costs for the first year of operation and levelized in nominal terms over the life of the facility.

All cost escalation factors used and other significant supporting data shall be included.

4. The estimated annual total cost, calculated as capital and production costs for the first year of operation, in mills per net kWh generated, and levelized in nominal terms over the life of the facility. All cost escalation factors used and other significant supporting data shall be included.

5. The estimated useful life of facility, based on depreciation rates established by the commission.

**(d)** The alternative sources of supply considered, including information about all of the following alternatives:

1. Energy conservation and efficiency.

**\* \* \***

4. Purchased power.

Koshkonong Solar was never intended to be a merchant plant for any other purpose or any other time beyond what is necessary to evade the regulatory requirements that would apply to a

utility-owned facility. The proposed Koshkonong Solar Energy Center was announced in April 2021. The Utilities filed their Application (PSC Docket No. 5-BS-258) with the PSC just two weeks after Invenergy filed the CPCN Application. The Utilities goal is to evade the public interest requirements that accompany the advantages of a monopoly franchise by simply having a putative “merchant” obtain a token CPCN to build a turnkey generating facility with no intention to actually own and operate the facility and then take ownership at the end of the process. In so doing, the Utilities bypass the cumbersome utility CPCN process that would ultimately result in a denial of a CPCN for a utility plant. Accordingly, the Utilities’ Application must be denied – this Application should be refiled as a request for a CPCN to construct and operate a utility plant.

**At a Minimum, Joint Application Should be Held in Abeyance Pending a Decision in Dane County Circuit Court Case No. 22-CV-1273.**

The Town has filed a Petition for judicial review seeking reversal and vacation of the Commission’s Final Decision granting the CPCN for the Koshkonong Solar Electric Generation and Battery Energy Storage Facilities in Docket No. 9811-CE-100. If the Circuit Court reverses the Commission’s grant of the CPCN for the Koshkonong Solar after the Commission, in this Docket, grants the Utilities’ Application to acquire ownership interests in the Koshkonong Solar, the Utilities would be left with worthless ownership interests. The Utilities would have no authority to construct any facility. It would be in the interests of all parties to hold the decision in this docket in abeyance pending the judicial outcome in Case No. 22-CV-1273.

Dated this 7th day of March 2023.

MUNICIPAL LAW & LITIGATION GROUP, S.C.

**Electronically signed by H. Stanley Riffle**

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