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PUBLIC SERVICE COMMISSION OF WISCONSIN

Application for a Certificate of Public Convenience and Necessity of
Badger Hollow Solar Farm, LLC to Construct an Electric Tie Line to
Connect a Solar Electric Generation Facility to the Existing Transmission
System, to be Located in Iowa County, Wisconsin

9697-CE-101

FINAL DECISION

On June 19, 2018, pursuant to Wis. Stat. § 196.491 and Wis. Admin. Code chs. PSC 4 and 111, Badger Hollow Solar Farm, LLC (Badger Hollow) filed with the Commission an application for a Certificate of Public Convenience and Necessity (CPCN) to construct a new 138 kilovolt (kV) generation tie line to connect a 300 megawatt (MW) alternating current (AC) photovoltaic (PV) solar electric generation facility to the existing electric transmission grid.¹ The proposed project will be approximately 5.7 miles in length, and extend from the solar generation facilities collector substation to the proposed New Eden Substation. The proposed project would be located in Iowa County, Wisconsin.

The CPCN application is APPROVED subject to conditions and as modified by this Final Decision.

Introduction

The Commission found the application in this docket to be complete on September 4, 2018. ([PSC REF#: 349672](#).) A Notice of Proceeding was issued on October 4, 2018. ([PSC REF#: 351180](#).) Wisconsin Stat. § 196.491(3)(g) requires that the Commission take final action within 180 days after it finds a CPCN application complete unless an extension of no

¹ In addition to the tie line, Badger Hollow is also proposing to construct a new 300 MW solar generation facility. The Commission is reviewing the solar generation facility in docket 9697-CE-100.

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more than 180 days is granted by the Commission Chairperson. On December 20, 2018, the Commission Chairperson granted a 180-day extension. ([PSC REF#: 355907.](#)) The Commission must take final action on or before August 30, 2019, or the application is approved by operation of law. *See* Wis. Stat. § 196.491(3)(g).

A Prehearing Conference was held on November 9, 2018. ([PSC REF#: 353180.](#)) Requests to intervene were granted to American Transmission Company LLC, Dairyland Power Cooperative, ITC Midwest LLC, Wisconsin Industrial Energy Group, Richard and Patricia Jinkins, Alan and Marcia Jewell, and Wade Wendhausen.² ([PSC REF#: 351838](#), [PSC REF#: 352603](#), [PSC REF#: 353838.](#)) The parties, for the purposes of review under Wis. Stat. §§ 227.47 and 227.53, are listed in Appendix A.

This is a Type II action under Wis. Admin. Code § PSC 4.10(2). It requires the preparation of an environmental assessment (EA) to determine if an environmental impact statement (EIS) is necessary under Wis. Stat. § 1.11. Commission staff from the Division of Energy Regulation completed an environmental review of the proposed project routes and prepared an EA to determine if an EIS is necessary.³ A notification of the Commission's intent to prepare an EA, including a solicitation for comments on the environmental aspects of this project, was mailed to landowners, local and regional media, affected municipal entities, the

² Richard and Patricia Jinkins, Alan and Marcia Jewell, and Wade Wendhausen collectively refer to themselves and will be referred to herein as the Jewell Jinkins Intervenors.

³ As part of the Commission's review of the project, it performed a consolidated EA for both the generation (9697-CE-100) and the tie line (9697-CE-101) proceedings. The solar electric generation facility is considered a Type III action under Wis. Admin. Code § PSC 4.10(3) which normally do not require preparation of an EA. However, as permitted by Wis. Admin. Code § PSC 4.10(3), the Commission determined that due to the novelty, size, and amount of land that would be covered by the proposed generating facilities, the Commission would prepare an EA. The Commission prepared the EA to cover both the solar generation facility and tie line in one environmental review document.

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regional planning commission, and area legislators along the proposed routes on September 27, 2018. ([PSC REF#: 350792.](#))

Commission staff worked jointly with the Wisconsin Department of Natural Resources (DNR), and on December 12, 2018, produced a preliminary determination that no significant environmental effects are expected to result from the proposed project. The preliminary determination letter summarized some of the environmental impacts analyzed in the EA.

([PSC REF#: 355120.](#)) The Commission took comments on this preliminary determination and on January 14, 2019, issued the final EA regarding the proposed project as an exhibit into the record, pursuant to Wis. Stat. § 1.11 and Wis. Admin Code chs. NR 150 and PSC 4.

([PSC REF#: 357520.](#)) After completing the EA, the Commission determined that the preparation of an EIS was not required.

The Commission issued a Notice of Hearing on December 7, 2018. ([PSC REF#: 354870.](#)) The Commission held technical hearing sessions in Madison on January 16, 2019. At the technical sessions, expert witnesses offered testimony and exhibits on behalf of Badger Hollow, Jewell Jinkins Intervenors, and Commission staff.⁴ Public comment hearing sessions were held in the project area on January 24, 2019, in Dodgeville, Wisconsin. At the public comment hearings, the Commission accepted both oral and written testimony from members of the public.⁵ The Commission also accepted comments from members of the public through its

⁴ Ex.-PSC-Public Comments ([PSC REF#: 359871](#)); Tr. 235-316, Public Hearing Sessions ([PSC REF#: 358554](#), [PSC REF#: 358556](#)).

⁵ [PSC REF#: 359030](#).

website. The Commission conducted its hearings as Class 1 contested case proceedings, pursuant to Wis. Stat. §§ 196.491(3)(b), 227.01(3)(a), and 227.44.

The issue for hearing, as determined at the November 9, 2018, prehearing conference, was:

Does the project comply with the applicable standards under Wis. Stat. §§ 1.11, 1.12, 196.025, 196.49, and 196.491, and Wis. Admin. Code chs. PSC 4 and 111?

Initial and reply briefs were filed on January 30, 2019, and February 6, 2019, respectively. An initial brief supporting the proposed project, was filed by Badger Hollow. ([PSC REF#: 358875.](#)) An initial brief opposing the project, or aspects of it, was filed by Jewell Jinkins Intervenors. ([PSC REF#: 358600.](#)) Reply briefs were filed by Badger Hollow and Jewell Jinkins Intervenors. ([PSC REF#: 359108](#), [PSC REF#: 359110.](#))

The Commission discussed the record in this matter at its open meeting of April 11, 2019.

Findings of Fact

1. Badger Hollow is an affiliate of Invenergy LLC. Badger Hollow proposes to construct a new 138 kV generation tie line as a wholesale merchant plant as defined by Wis. Stat. § 196.491(1)(w), to connect to the existing transmission system a new solar electric generation facility with a generating capacity of up to 300 MW AC.
2. Energy conservation, renewable resources, or other energy priorities listed in Wis. Stat. §§ 1.12 and 196.025, or their combination, are not cost-effective, technically feasible, or environmentally sound alternatives to the proposed project.
3. The approved transmission line route utilizes priority siting corridors listed in Wis. Stat. § 1.12(6) to the greatest extent feasible, consistent with economic and engineering considerations, reliability of the electric system, and protection of the environment.

4. The facility design, location, and route approved by this Final Decision are in the public interest considering locations or routes, individual hardships, safety, reliability, and environmental factors. Wis. Stat. § 196.491(3)(d)3.

5. The facilities approved by this Final Decision will not have undue adverse impacts on environmental values including ecological balance, public health and welfare, historic sites, geological formations, aesthetics of land and water, and recreational use. Wis. Stat. § 196.491(3)(d)4.

6. The facilities approved by this Final Decision will not unreasonably interfere with the orderly land use and development plans for the area. Wis. Stat. § 196.491(3)(d)6.

7. The facilities approved by this Final Decision will not have a material adverse impact on competition in the relevant wholesale electric service market. Wis. Stat. § 196.491(3)(d)7.

8. The facilities approved by this Final Decision will affect local farmland, but Badger Hollow does not have condemnation authority. As there will be no potential to acquire farmland through eminent domain for the project, the Wisconsin Department of Agriculture, Trade and Consumer Protection did not issue an agricultural impact statement.

9. The facilities approved by this Final Decision will affect state highways and will require permits from the Wisconsin Department of Transportation.

10. The facilities approved by this Final Decision will affect waterways and wetlands, and will require permits from DNR for construction in waterways and wetlands, construction site erosion control, and storm water handling.

11. The facilities approved by this Final Decision may affect endangered and threatened species, and Badger Hollow will need to consult with the DNR Bureau of Natural Heritage Conservation to ensure compliance with the state's endangered species law.

12. The facilities approved by this Final Decision will require the Badger Hollow to obtain permits from, provide notifications to, and coordinate with various federal agencies, *e.g.*, U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service.

13. Critical proposed facilities that could be damaged by flooding are not located in the 100-year flood plain. Consequently, there is no flood risk to the project per 1985 Executive Order 73.

Conclusions of Law

1. The Commission has jurisdiction under Wis. Stat. §§ 1.11, 1.12, 44.40, 196.02, 196.025, 196.395, and 196.491, and Wis. Admin. Code chs. PSC 4 and 111, to issue a CPCN authorizing Badger Hollow to construct and place in operation the proposed electric generation tie line facilities, as described in this Final Decision and to impose the conditions specified in this Final Decision.

2. The Badger Hollow generation tie line will be a wholesale merchant plant, as defined in Wis. Stat. § 196.491(1)(w).

3. The proposed generation tie line complies with the Energy Priorities Law as required under Wis. Stat. § 1.12 and 196.025(1).

4. In issuing a CPCN, the Commission has the authority under Wis. Stat. § 196.491(3)(e) to include such conditions as are necessary to comply with the requirements of Wis. Stat. § 196.491(3)(d).

5. This is a Type II action under Wis. Admin. Code § PSC 4.10(2), and an EA was produced to evaluate whether an EIS was necessary under Wis. Stat. § 1.11.

6. The Commission prepared an EA and made a finding that no significant impacts to the environment would result from construction of the generation tie line.

Opinion

Project Description

Badger Hollow proposes to construct a new 138 kV generation tie line to connect a solar electric generating facility to the existing electric transmission grid. The Badger Hollow generation tie line will be a wholesale merchant plant as defined by Wis. Stat. 196.491(1)(w), and would connect the proposed Badger Hollow solar generation facility to the transmission grid. The proposed project will be approximately 5.7 miles in length, and extend from the solar generation facilities collector substation to the New Eden Substation. The proposed project would be located in Iowa County, Wisconsin.

If approved, two Wisconsin public utilities propose to purchase portions of the Badger Hollow solar generation facility and the associated generation tie line. The Commission is reviewing the proposed acquisitions in docket 5-BS-228.

Interconnection of the Facility to the Existing Electric Transmission System

The transmission interconnection facilities requirements for the solar electric generating facility are being determined through the Midcontinent Independent System Operator, Inc. (MISO) Generator Interconnection Queue study process. Badger Hollow filed Interconnection Requests with MISO and is in the MISO August 2017 DPP Study Cycle, with the assigned queue

position of J870 and J871. For each queue position, Badger Hollow requested 200 MW and 100 MW, respectively. At the time of this Final Decision, the reviews of queue positions J870 and J871 are not far enough along in the study process to provide specific answers from MISO or the transmission owner about what transmission or interconnection facilities upgrades are required. The Phase I study results were completed on January 22, 2019, and a signed generator interconnection agreement will be forthcoming.

The status of the study process does not, however, preclude Commission action in this docket. *See, e.g.* Wis. Stat. § 196.491(3)(a)2m. The robust record in this proceeding provides all of the necessary evidence upon which the Commission can assess whether the statutory criteria for the issuance of a CPCN is in the public interest.

Material Adverse Impact on the Wholesale Electric Market

Under Wis. Stat. § 196.491(3)(d)7, the Commission may only issue a CPCN for a project that “will not have a material adverse impact on competition in the relevant wholesale electric service market.” The transmission network is under MISO operational control. The tie line is needed to connect the solar generation facility. The interconnection of the proposed generation facility to the transmission grid via this tie line would inject additional energy into the wholesale market and is anticipated to have a positive impact on the market. As such, the Commission finds that proposed tie line project meets the requirements of Wis. Stat. § 196.491(3)(d)7.

The Jewell Jinkins Intervenors speculate that uncertainties regarding the generation project may affect the wholesale market. However, the Jewell Jinkins Intervenors do not present any evidence as to the degree of any adverse impact on competition, and the relevant inquiry is whether the project will have a *material* adverse impact on competition in the relevant wholesale electric

service market. The tie line is needed to connect the generation project which proposes to add 300 MW, a small fraction of the overall MWs available in the MISO wholesale market, to the transmission grid. The Commission finds the project will not have a material adverse impact on competition in the relevant wholesale electric service market.

Energy Priorities Law

When reviewing a CPCN application, the Commission considers Wis. Stat. § 1.12 and 196.025(1), known as the Energy Priorities Law, which establishes the preferred means of meeting Wisconsin's energy demands. The Energy Priorities Law creates the following priorities:

- 1.12 State energy policy. (4) PRIORITIES.** In meeting energy demands, the policy of the state is that, to the extent cost effective and technically feasible, options be considered based on the following priorities, in the order listed:
- (a) Energy conservation and efficiency.
 - (b) Noncombustible renewable energy resources.
 - (c) Combustible renewable energy resources.
 - (cm) Advanced nuclear energy using a reactor design or amended reactor design approved after December 31, 2010, by the U.S. Nuclear Regulatory Commission
 - (d) Nonrenewable combustible energy resources, in the order listed:
 - 1. Natural gas.
 - 2. Oil or coal with a sulphur content of less than 1%.
 - 3. All other carbon based fuels.

In addition, Wis. Stat. § 196.025(1) declares that the Commission shall implement these priorities in making all energy-related decisions to the extent they are cost-effective, technically feasible and environmentally sound. Badger Hollow does not dispute that the Energy Priorities Law applies in this case, and as discussed below, there is ample evidence to show the project satisfies the requirements of the Energy Priorities Law.

The Commission has an obligation to consider these priorities in all energy-related decisions including construction of new electric transmission facilities.⁶ In the Commission's Final Decision in the Glacier Hills docket⁷ the Commission concluded that it "must implement state energy policy when reviewing any application." While it is true that the limited inquiry into cost and alternatives mandated by the CPCN law for wholesale merchant plant applications does not allow the Commission to make a finding regarding the cost-effectiveness of a proposed merchant plant relative to other energy priority alternatives, the Commission is still tasked with determining whether the proposed project is in the public interest. Inherent in this inquiry is an assessment of how the project fits in with the state's energy policy, which is a statement of the public priorities for meeting the state's electric generation and transmission needs. The Energy Priorities Law instructs the Commission to implement the energy priorities to the extent they are environmentally sound, and the Commission must assess the environmental impacts of a wholesale merchant plant under Wis. Stat. § 196.491(3)(d)3. Therefore, the Commission still must assess whether a proposed wholesale merchant plant project that ranks high on the energy priorities list is environmentally sound. Therefore, it is appropriate for the Commission to assess how the proposed project fits within the state's preferred means of meeting Wisconsin's energy needs as listed in the Energy Priorities Law.

⁶ Wis. Stat. § 196.025(1)(ar) provides:

To the extent cost-effective, technically feasible and environmentally sound, the commission shall implement the priorities under s. 1.12(4) in making all energy-related decisions and orders, including advance plan, rate setting and rule-making orders.

⁷ *Application of Wisconsin Electric Power Company for a Certificate of Public Convenience and Necessity to Construct a Wind Electric Generation Facility and Associated Electric Facilities, to be located in the Towns of Randolph and Scott, Columbia County, Wisconsin*, docket 6630-CE-302 (January 22, 2012). ([PSC REF#: 126124.](#))

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The proposed project will be a tie line to connect a new solar electric generation facility, which places it in the first tier of new generation alternatives. It is uncontested that energy and capacity from the proposed solar generation facility cannot be replaced by energy conservation and efficiency, the highest priority alternative. While the Jewell Jinkins Intervenors vaguely asserted that the Energy Priorities Law has not been satisfied on the grounds that the proposed generation facility is speculative, the Commission, in docket 9697-CE-100 has authorized construction of that facility. Accordingly, it is no longer speculative.

There are no energy conservation and efficiency and load response options that would reduce, alter, or eliminate the need for this project in light of the Commission's authorization in docket 9697-CE-100. There is no other more viable option to connect that facility to the grid than the tie line. Therefore, the project satisfies the requirements of the Energy Priorities Law.

Routing

Generation Tie Line Route Alternatives

Badger Hollow proposed four possible transmission line routes. The Red Route is 5.7 miles long and would connect to a new "New Eden" Substation. The White Route is 6.0 miles long, shares much of the same path with the Red Route, and would also connect to a new "New Eden" Substation. The Pink Route is 5.2 miles long and would be double-circuited with existing transmission lines for part of its path to the existing Eden Substation. The Yellow Route is 5.4 miles long and parallels the same existing transmission lines as the Pink Route for part of its path to the existing Eden Substation.

Authorized Project Route

The Commission authorizes the preferred project (Red) route proposed by Badger Hollow. The preferred route has fewer woodland impacts. Otherwise, there are no appreciable differences between the proposed routes in terms of environmental or aesthetic concerns. The Commission finds the design and location is in the public interest considering alternatives. To the extent there are some negative impacts, these impacts can be mitigated through the conditions imposed by the Commission that are further discussed below.

Land Use and Development Plans

Wisconsin Stat. § 196.491(3)(d)6 requires that a proposed transmission facility not “unreasonably interfere with the orderly land use and development plans for the area involved.” A utility infrastructure project will have some impact on land use and development plans for the area involved. The question is whether the proposed project will “unreasonably interfere” and must also take into account the benefits of the proposed project. The land where the proposed project would be constructed is classified as agricultural in local land use plans. Comments were received from members of the public that discussed the impacts to farmland as a result of the proposed project.

The Jewell Jinkins Intervenors asserted without supporting evidence that the proposed project would unreasonably interfere with the orderly land use development plans for the area. In contrast, Badger Hollow provided substantial evidence demonstrating that the proposed project is consistent with Wisconsin’s Farmland Preservation Law, Iowa County’s Comprehensive Land Use

Plan, and each affected town's land use plan, all of which focus on the agricultural nature of the land. Further, the towns of Eden and Linden have confirmed compliance in writing.

Badger Hollow is not a public or investor-owned utility and does not possess statutory eminent domain authority. Badger Hollow must secure long-term lease agreements with landowners in the project area to acquire the property for the generating facility and the associated electric generator tie line. The changes to land use are agreed to by the landowners that have signed leases with Badger Hollow. Further, as discussed below, the proposed project complies with the Wisconsin Siting Priority Laws. The Commission recognizes that the proposed project will create some impacts on the land use in the project area but finds that the proposed project will not unreasonably interfere with the orderly land use and development plans of the project area.

Public Health and Welfare

As the Wisconsin Supreme Court has declared, issuing a CPCN is a legislative determination involving public policy and statecraft. *Clean Wisconsin, Inc. v. Pub. Serv. Comm'n of Wisconsin*, 2005 WI 93, ¶ 35, 282 Wis. 2d 250, 700 N.W.2d 768. Wisconsin Stat. § 196.491 assigns to the Commission the role of weighing and balancing many conflicting factors. Applying Wisconsin's Siting Priority Laws requires a similar weighing and balancing. In order to choose a transmission line route that is reasonable and in the public interest, the Commission must not just apply the priority list in Wis. Stat. § 1.12(4), but also must examine the conditions written into that law and consider the purpose of the legislation.

These statutes require that when the Commission reviews a CPCN transmission line application, it must consider alternatives, individual hardships, safety, reliability, a host of

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environmental factors, any interference with orderly local land use and development plans, and potential impacts to wholesale electric competition. Ultimately, the Commission must determine whether granting or denying a CPCN applicant's request will promote the public health and welfare. After weighing all of these factors and all of the conditions it is imposing, the Commission finds that issuing a CPCN for the proposed project promotes the public health and welfare and is in the public interest. The final EA confirmed that the proposed project is "unlikely to have a significant impact on the human environment as defined in Wis. Stat. § 1.11" and that "[c]ommission staff has not identified any potential environmental effects of the proposed project that could be considered significant." ([PSC REF#: 357519](#) at 68.) The proposed project is needed to connect the proposed solar generation facilities authorized in docket 9697-CE-100 which, for the reasons articulated in the Final Decision and administrative record in that docket promotes public health and welfare and is in the public interest.⁸

In preparing the EA for this project, Commission staff reviewed the information from Badger Hollow's CPCN application, responses to Commission staff data requests, maps, Geographic Information Systems data, aerial imagery, and reports from consultants. Commission staff assessed information from other sources including comments from individuals, state and federal agency information, local officials, field visits, and scientific literature. Commission staff also coordinated review with DNR to assess wetland, waterway, and endangered resources impacts. Badger Hollow agreed to incorporate recommendations from the

⁸ The Commission takes official notice of the evidence received in docket 9697-CE-100 pursuant to Wis. Stat. § 227.45(2).

Commission and DNR into their project to mitigate environmental impacts, and the Commission intends to impose additional conditions as described in this Final Decision.

Conditions Related to Project Construction

Commission staff reviewed the proposed project and developed suggested order conditions related to the proposed project construction. For the reasons discussed below, the Commission finds that many of these conditions are reasonable and in the public interest.

Decommissioning Plan

The Badger Hollow project is one of the first solar electric generation and generation tie line facilities of its size proposed in the state of Wisconsin. While Badger Hollow generally described decommissioning activities in its application, Commission staff suggested that Badger Hollow develop a decommissioning plan and submit this plan to Commission staff for review. Such a plan would provide further detail regarding the time, steps, and conditions to which the site would be restored. The Commission finds it reasonable to require Badger Hollow to submit a proposed decommissioning plan for the Commission's review and approval.

Electric Code Compliance

In general, the National Electrical Code (NEC) applies to non-supply facilities owned by non-utility entities, and the National Electrical Safety Code (NESC) applies to supply facilities owned by utilities. Commission staff requested clarification from Badger Hollow regarding whether and which NEC and NESC code requirements apply to the proposed project. Based on Badger Hollow's response, it is unclear which NEC or NESC code requirements apply to solar wholesale merchant plants and associated electrical transmission facilities. Since Wisconsin

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public utilities are pursuing the purchase of a portion of the proposed solar electric generation facility and the associated generation tie line in docket 5-BS-228, it is reasonable to clarify that the appropriate electrical codes be followed to protect the safety of the public, and the interests of both ratepayers and the utilities.

The Commission finds it reasonable to require Badger Hollow to construct, maintain, and operate all applicable project facilities to comply with the National Electrical Code or the National Electrical Safety Code and Wis. Admin. Code ch. PSC 114, as appropriate. In case of conflict or overlap between code requirements, Badger Hollow shall construct, maintain, and operate all applicable project facilities to comply with the more stringent requirement. This will ensure public safety. Absent such a condition, as a wholesale merchant facility the applicable codes and enforcement necessary to ensure public safety would be unclear. Further, this condition will ensure that if Wisconsin public utilities do purchase the facilities such facilities will not require additional code upgrades that could be an unnecessary cost.

Stray Voltage Testing

Specific concerns about stray voltage were raised during the joint environmental scoping meeting for this docket and the associated docket 9697-CE-100. These concerns came in the form of both oral comments and questions at the scoping meeting. Wisconsin Admin. Code § PSC 128.17 deals with stray voltage testing associated with wind energy systems, but the language of the code could also be employed to address stray voltage concerns the public raised about the proposed project. Previous Commission decisions have included language requiring stray voltage testing. Commission staff suggested that any order language requiring pre- and post-construction stray voltage testing be consistent with Wis. Admin. Code § PSC 128.17.

The Commission finds it reasonable to require Badger Hollow to work with the applicable distribution utility to test for stray voltage at each agricultural confined animal operation within the project area, prior to construction and after the project is energized. Badger Hollow 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. Prior to testing, Badger Hollow shall work with the applicable distribution utility and Commission staff to determine where and how it will conduct the stray voltage measurements. Badger Hollow shall report the results of its testing to Commission staff.

Environmental Review

The proposed electric transmission project was reviewed by the Commission for environmental impacts. The environmental review focused primarily on impacts to wildlife, including rare or endangered species, aesthetics, historic resources, wetlands and waterways, and local landowner impacts.

Archeological and Historic Resource Review

A search of the Wisconsin Historical Society's Wisconsin Historic Preservation database revealed no previously documented archaeological resources that would be impacted by proposed project development. Four historic structures were identified within or adjacent to the project boundary, but there would be no impact to these structures. No known cemeteries or burial sites are located within the project boundaries. The Commission finds that construction of the proposed facilities is not expected to affect any historic properties under Wis. Stat. § 44.40.

Cultural and Socio-economic Impacts

The project was reviewed for the possible occurrence of archaeological resources. The review has identified no archaeological, cemetery, or burial sites within the project area. In addition, the proposed project will not have adverse effect on architectural/historic properties in the area.

Threatened and Endangered Species Review

A certified Endangered Resources (ER) Review was conducted for this project, which included a review of the DNR's Natural Heritage Inventory (NHI) database for endangered and threatened species, and species of special concern. The NHI database is updated regularly and as construction of the proposed project would not start until after a year from the date of the ER Review, the Commission finds it reasonable to require Badger Hollow to conduct an updated review closer to the construction start date, and no more than one year prior to commencement of construction.

The ER Review determined there is one rare reptile which may be present in areas of suitable habitat. DNR made recommendations to avoid impacts to this species. Badger Hollow does not expect to impact the area identified as suitable rare reptile habitat; and if it does, it would assess the suitability of the habitat within the area. If suitable habitat is identified, Badger Hollow would conduct presence surveys, and if presence is determined, Badger Hollow would coordinate with DNR to avoid impact to this species

The construction of the proposed facilities as described in the application and subsequent data requests is not expected to affect any endangered or threatened species under Wis. Stat. § 29.604(6r).

Vegetation Management

Vegetation management in a transmission line right-of-way (ROW) consists of clearing vegetation to allow for construction, and maintaining vegetation over time to allow for safe operation of the electric facilities. With the primary land use of the proposed routes being agricultural, there are limited areas of vegetation that would need to be cleared for construction. The ongoing management of vegetation in the ROW could consist of cutting, mowing, or, if agreed to by landowners, herbicide treatments. Similar to vegetation management in the solar arrays, avoiding the cutting of vegetation in more natural habitats, including grasslands, during the bird nesting season would reduce impacts to those species.

Wetlands and Waterways

DNR participated in the review process with the Commission as required under Wis. Stat. § 30.025. As part of its review, DNR determines if the proposed project is in compliance with applicable state water quality standards (Wis. Admin. Code chs. NR 102, 103, and 299). If the proposed project is found to be in compliance with state standards, DNR issues a waterway permit to Badger Hollow, as promulgated under Wis. Stat. ch. 30, and/or a wetland permit, as promulgated under Wis. Stat. § 281.36.

Temporary wetland fill is proposed for the placement of construction matting. Up to six waterway crossings would require the installation of Temporary Clear Span Bridges to accommodate equipment access for construction and site restoration. It is anticipated that this project, as currently proposed, would qualify for permit coverage under Wis. Stat. § 30.025.

Compensatory wetland mitigation is not required for this project, per Wis. Stat. § 281.36 (3n)(d)2.

Aesthetic Impacts

Because the new 138 kV generation tie line would be taller than the project's solar arrays, it may be visible over a greater distance, but would not cover as much area. The arrays would be more noticeable to most nearby viewers.

Line of Sight and Broadcast Communications

Applicants in transmission line dockets typically review the risk of impacts to line-of-sight and broadcast communications from new facilities. If impacts occur, the Commission finds it reasonable to require Badger Hollow to mitigate impacts to line-of-sight communications and landowners that can show disruption to broadcast communications post construction.

Agricultural Impacts

The proposed routes cross land that is almost entirely used for agricultural row crop production. Potential construction-related impacts could consist of crop losses, damage to drainage tiles, soil mixing, or soil compaction along equipment access routes and around structure installation sites. Impacts to fencing could also occur along the route if access along the ROW came into areas with agricultural fencing. Use of agricultural best management practices for construction can reduce these impacts or make them short-term in nature.

No center pivot irrigation systems or aerial spraying operations were identified in the project area. Badger Hollow is working with landowners to place transmission structures in locations that would minimize impacts to agricultural operations.

Flood Hazard Review

The proposed project was reviewed for potential flood hazard exposure per Wisconsin Executive Order 73. As no flood-sensitive facilities are to be located in or near any designated floodplain or flood prone areas, there is no significant flood risk to the proposed project.

Federal, State, and Local Permits

A list of all anticipated permits is included in the application and the EA. As described in the EA, the DNR participated in the environmental review of this project, and it is anticipated that this project, as currently proposed, would meet permit requirements. The Commission frequently requires in orders authorizing construction projects that Badger Hollow obtain all necessary federal, state, and local permits prior to commencement of construction. Commission staff suggested a similar condition in this docket, and the Commission finds it reasonable to include such a condition in any order authorizing the proposed project.

Badger Hollow stated that it will obtain all necessary federal, state, and local permits prior to commencing construction of the proposed project.

Minor Routing Flexibility

The Commission recognizes that minor routing adjustments (MRA) may be needed for any approved route for the protection of social, cultural, or environmental resources based on the final design of the project, subsequent to Commission review and authorization. Situations may be discovered in the field that were not apparent based on the information available to Badger Hollow in development of the proposed routes or to the Commission in making its decision. When Badger Hollow identifies such situations which involve a change in the authorized centerline of the project, it shall consult with Commission staff regarding whether the change

rises to the level where Commission review and approval is appropriate. If Commission review as an MRA is appropriate, Badger Hollow shall request MRA authorization. A request for MRA authorization shall take the form of a letter to the Commission describing:

1. The nature of the requested change;
2. The reason for the requested change;
3. The incremental difference in any environmental impacts;
4. Communications with potentially affected landowners regarding the change;
5. Documentation of discussions with other agencies regarding the change; and
6. A map showing the approved route and the proposed modification, property boundaries, relevant natural features such as woodlands, wetlands, waterways, and other sensitive areas.

The requests will be reviewed by Commission staff knowledgeable about the project.

Approval of the requests is delegated to the Administrator of the Division of Energy Regulation.

The requested change may be granted if the proposed change:

1. Does not affect new landowners on the selected route who have not been given proper notice and hearing opportunity;
2. Does not impact new resources or cause additional impacts that were not described in the EA; and
3. Is agreed to by affected landowners, and agreement is affirmed in writing.

Changes that do not meet all three of the criteria listed above would require reopening of the docket.

The Commission finds that it is reasonable that Badger Hollow be granted minor routing flexibility. The Commission spends considerable time reviewing and selecting a route, and it is therefore of utmost importance that if the chosen route must be changed, the Commission must

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receive appropriate notification. Badger Hollow shall follow the described process to obtain authorization for any MRAs.

Compliance with the Wisconsin Environmental Protection Act (WEPA)

Under Wis. Stat. § 196.491(3)(d)3, the Commission must find that the proposed project is in the public interest considering environmental factors. Similarly, under Wis. Stat. § 196.491(3)(d)4, before issuing a CPCN, the Commission must find that the proposed project will not have an undue adverse impact on environmental values.

Without substantive support, the Jewell Jenkins Intervenors asserted that an EIS was required but do not substantiate this argument. As previously discussed, an EIS was not required by the applicable regulations or based upon the findings of the EA. The Commission finds that no EIS is required and that the environmental review conducted in this proceeding complies with the requirements of Wis. Stat. § 1.11 and Wis. Admin. Code ch. PSC 4.

Project Construction Schedule

Construction is expected to begin in the middle of 2019 with completion by the end of 2020.

Assignment of Rights

Pursuant to Wisconsin's CPCN law, Badger Hollow's application was reviewed in accordance with those criteria applicable to Commission authorization for the construction of wholesale merchant plant rather than public utility plant. Wis. Stat. § 196.491(3)(d). Because the criteria applicable to review of CPCN applications by public utilities differs from that applicable to

wholesale merchant plants, the rights granted under a CPCN issued to a wholesale merchant plant are also distinct from those granted to a public utility. Accordingly, the Commission finds it reasonable in light of the potential assignment of ownership and rights by Badger Hollow to Wisconsin public utilities to include an order condition limiting the rights granted under the CPCN to those provided to Badger Hollow as a wholesale merchant, and requiring any future owner or operator of the project to honor the commitments made by Badger Hollow.

Certificate

The Commission grants Badger Hollow a CPCN for construction of a new 138 kV generation tie line to connect a proposed solar PV electric generating facility to the existing transmission grid, as described in the application and as modified by this Final Decision.

Order

1. Badger Hollow is authorized to construct a new 138 kV generation tie line to connect a proposed solar PV electric generating facility to the existing transmission grid, as described in the application and as modified by this Final Decision.

2. Badger Hollow shall notify and obtain approval from the Commission before proceeding with any substantial change in the scope, design, size and location of the approved project.

3. If Badger Hollow cancels the project or enters into any arrangement with another party regarding ownership or operation of the proposed facilities, Badger Hollow shall provide prior notice to the Commission.

4. Badger Hollow shall obtain all necessary federal, state, and local permits prior to commencement of construction.

5. Badger Hollow shall work with the applicable distribution utility to test for stray voltage at each agricultural confined animal operation along the approved route, prior to construction and after the project is energized. Badger Hollow 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. Prior to testing, Badger Hollow shall work with the applicable distribution utility and Commission staff to determine where and how they will conduct the stray voltage measurements. Badger Hollow shall report the results of their testing to Commission staff.

6. Beginning with the quarter ending June 30, 2019, and within 30 days of the end of each quarter thereafter and continuing until the authorized facilities are fully operational, Badger Hollow shall submit quarterly progress reports to the Commission that include all of the following:

- a. The date that construction commences.
- b. Major construction and environmental milestones, including permits obtained, by agency, subject, and date.
- c. Summaries of the status of construction, the anticipated in service date, and the overall percent of physical completion.
- d. The date that the facilities are placed in service.

7. Badger Hollow may propose MRAs in the approved route for the protection of social, cultural, or environmental resources, but any changes in alignment from the approved

centerline may not affect resources or cause impacts not discussed in the EA, nor may they affect new landowners who have not been given proper notice and hearing opportunity. Badger Hollow shall consult with Commission staff regarding whether the change rises to the level where Commission review and approval is appropriate. For each proposed MRA for which Commission review is appropriate, Badger Hollow shall submit for Commission staff review and approval a letter describing: the nature of the requested change; the reason for it; the incremental cost; environmental impact differences based on the approved route; Badger Hollow's communications with the affected landowners; documentation of discussions with other agencies regarding the change; and a map showing the approved route and the proposed modification, property boundaries, relevant natural features such as woodlands, wetlands, waterways, and other sensitive areas.

8. Badger Hollow shall work with property owners to take advantage of access opportunities that further reduce potential impacts to waterways and wetlands to the extent practicable, provided that the landowner voluntarily grants access to Badger Hollow.

9. Badger Hollow shall conduct an updated Endangered Resources Review closer to the start date of construction (no more than one year prior to construction start).

10. Badger Hollow shall mitigate impacts to line-of-sight communications and landowners that can show disruption to broadcast communications post construction.

11. Badger Hollow shall work with all landowners, to the extent practicable, regarding the timing and placement of facilities, including off-ROW access roads, on their properties to minimize impacts to agricultural production.

12. Badger Hollow shall develop a decommissioning plan and submit this plan to Commission staff for review and approval.

13. Badger Hollow shall comply with the National Electrical Code or the National Electrical Safety Code and Wis. Admin. Code ch. PSC 114, as appropriate. In case of conflict or overlap between code requirements, Badger Hollow shall comply with the more stringent code requirement.

14. Badger Hollow shall identify the location of each transmission structure using global positioning system technology and transfer this data to a geographic information systems database, using software compatible with state government standards. Badger Hollow shall provide this data to the Commission as soon as it becomes available.

15. The CPCN is valid only if construction commences no later than one year after the latest of the following dates:

- a. The date this Final Decision is served.
- b. The date when Badger Hollow has received every federal and state permit, approval, and license that is required prior to commencement of construction by construction spread under the CPCN.
- c. 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. (b.)
- d. The date when Badger Hollow 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. (b.)

16. If Badger Hollow does not begin on-site physical construction of the authorized project within one year of the effective date of this Final Decision, the Certificate authorizing the approved project for which construction has not commenced shall become void unless Badger Hollow:

- a. files a written request for an extension of time with the Commission before the effective date on which the Certificate becomes void, and
- b. is granted an extension by the Commission.

17. If Badger Hollow 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, Badger Hollow shall inform the Commission of those facts within 20 days after the date on which the Certificate becomes void.

18. All commitments made by Badger Hollow in its application, subsequent filings, and the provisions of this Final Decision shall apply to Badger Hollow, any agents, contractors, successors, assigns, corporate affiliates and any future owners or operators of the project.

19. The transfer of rights and obligations under this CPCN to a third-party does not confer either additional rights or obligations upon that third-party than what is afforded to Badger Hollow 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 §§ 32.02 or 32.075(2) as otherwise provided under Wis. Stat. § 32.03(5)(a).

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20. This Final Decision takes effect one day after the date of service.

21. Jurisdiction is retained.

Dated at Madison, Wisconsin, this 18th day of April, 2019.

By the Commission:

A handwritten signature in black ink, appearing to read 'SPC' followed by a flourish and the word 'bar' written in a smaller, cursive script to the right.

Steffany Powell Coker
Secretary to the Commission

SPC:PRR:jar:jlt:pc DL: 01674617

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN
4822 Madison Yards Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.⁹ The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013

⁹ See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

APPENDIX A

CONTACT LIST FOR SERVICE BY PARTIES

AMERICAN TRANSMISSION COMPANY
PATRISHA A SMITH
W234 N2000 RIDGEVIEW PARKWAY COURT
WAUKESHA WI 53188
USA
PSMITH@ATCLLC.COM

AMERICAN TRANSMISSION COMPANY
TOM MALANOWSKI
W234 N2000 RIDGEVIEW PARKWAY COURT
WAUKESHA WI 53188
USA
TMALANOWSKI@ATCLLC.COM

BADGER HOLLOW SOLAR FARM LLC
REINHART BOERNER VAN DEUREN SC
22 EAST MIFFLIN STREET STE 600 PO BOX 2018
MADISON WI 53701
USA
BNOWICKI@REINHARTLAW.COM

BADGER HOLLOW SOLAR FARM LLC
REINHART BOERNER VAN DEUREN SC
22 EAST MIFFLIN STREET STE 600 PO BOX 2018
MADISON WI 53701
USA
PGARDON@REINHARTLAW.COM

DAIRYLAND POWER COOPERATIVE
JESSE BECKENDORF
3200 EAST AVENUE SOUTH PO BOX 817
LA CROSSE WI 54602
USA
JESSE.BECKENDORF@DAIRYLANDPOWER.COM

DAIRYLAND POWER COOPERATIVE
WHEELER VAN SICKLE AND ANDERSON SC
44 EAST MIFFLIN STREET STE 1000
MADISON WI 53703
USA
JCHASCO@WHEELERLAW.COM

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DAIRYLAND POWER COOPERATIVE
WHEELER VAN SICKLE AND ANDERSON SC
44 EAST MIFFLIN STREET STE 1000
MADISON WI 53703
USA
JLANDSMAN@WHEELERLAW.COM

DAN LITCHFIELD
BADGER HOLLOW SOLAR FARM LLC
1 S WACKER DR STE 1800
CHICAGO IL 60606-4630
USA
DLITCHFIELD@INVENERGYLLC.COM

ITC
TIM IANNETTONI
217175 ENERGY WAY
NOVI MI 48377
USA
TIANNETTONI@ITCTRANSCO.COM

ITC MIDWEST LLC
BRIGGS AND MORGAN PA.
2200 IDS CENTER 80 SOUTH 8TH STREET
MINNEAPOLIS MN 55402
USA
VHERRING@BRIGGS.COM

ITC MIDWEST LLC
TIM TESSIER
100 EAST GRAND AVENUE STE 230
DES MOINES IA 50309
USA
TTESSIER@ITCTRANSCO.COM

JEWELL JINKINS INTERVENORS
LEGALECTRIC
1110 WEST AVENUE
RED WING MN 55066
USA
OVERLAND@LEGALECTRIC.ORG

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PUBLIC SERVICE COMMISSION OF WISCONSIN
MARK RUSZKIEWICZ
4822 MADISON YARDS WAY PO BOX 7854
MADISON WI 53707
USA
MARK2.RUSZKIEWICZ@WISCONSIN.GOV

PUBLIC SERVICE COMMISSION OF WISCONSIN
PAUL RAHN
4822 MADISON YARDS WAY PO BOX 7854
MADISON WI 53707
USA
PAUL.RAHN@WISCONSIN.GOV

WISCONSIN INDUSTRIAL ENERGY GROUP
HEINZEN LAW SC
2 EAST MIFFLIN STREET STE 402
MADISON WI 53703
USA
STEVE.HEINZEN@HEINZENLAW.COM

WISCONSIN INDUSTRIAL ENERGY GROUP
KM ENERGY CONSULTING INC
961 NORTH LOST WOODS ROAD
OCONOMOWOC WI 53066
USA
KMAINI@VISI.COM

WISCONSIN INDUSTRIAL ENERGY GROUP
TODD STUART
10 EAST DOTY STREET STE 800
MADISON WI 53703
USA
TSTUART@WIEG.ORG