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PUBLIC SERVICE COMMISSION OF WISCONSIN

Application for a Certificate of Public Convenience and Necessity of
Onion River Solar, LLC to Construct a Solar Electric Generation Facility
in the Town of Holland, Sheboygan County, Wisconsin

9805-CE-100

FINAL DECISION

On June 9, 2020, pursuant to Wis. Stat. § 196.491 and Wis. Admin. Code chs. PSC 4 and 111, Onion River Solar, LLC (applicant) filed with the Commission an application for a Certificate of Public Convenience and Necessity (CPCN) to construct a new solar photovoltaic (PV) electric generation facility. The applicant's proposed generation facility would be a wholesale merchant plant as defined by Wis. Stat. § 196.491(1)(w), and would have a generating capacity of up to 210 megawatts (MW) direct current (DC) and up to 150 MW alternating current (AC). The application showed the proposed and alternative project arrays on approximately 1,900 acres of primarily agricultural land in the Town of Holland, in Sheboygan County, Wisconsin. The project is expected to use less than 1,400 acres of this land to generate 150 MW AC. The major components of the proposed project include the PV panels, inverters, collector circuits, and a collector substation.

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

Introduction

The Commission determined that the applicant's application was complete on July 2, 2020. ([PSC REF#: 393103](#).) The Commission issued a Notice of Proceeding on August 7, 2020. ([PSC REF#: 394973](#).) Wisconsin Stat. § 196.491(3)(g) requires that the Commission take final

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action within 180 days after it finds a CPCN application complete unless an extension of no more than 180 days is granted by the Commission Chairperson. On September 30, 2020, the Commission Chairperson granted a 180-day extension. ([PSC REF#: 397515](#).) The Commission must take final action on or before June 26, 2021, or the application is approved by operation of law. See Wis. Stat. § 196.491(3)(g).

The Administrative Law Judge (ALJ) issued a Scheduling Order on September 17, 2020. ([PSC REF#: 396902](#).) All parties agreed to a schedule and other stipulations, obviating the need for a Prehearing Conference. The ALJ granted requests to intervene to Clean Wisconsin, RENEW Wisconsin, Ellen Hudovernik, and Robert Hudovernik. ([PSC REF#: 396473](#), [PSC REF#: 398533](#).) At the time of the party hearing in this docket, Robert Hudovernik requested to withdraw as a party and instead participate as a member of the public. The ALJ granted the request to withdraw. The parties, for the purposes of review under Wis. Stat. §§ 227.47 and 227.53, are listed in Appendix A.

The Commission's action regarding a solar electric generation facility is considered a Type III action under Wis. Admin. Code § PSC 4.10(3). Type III actions normally do not require preparation of an environmental assessment (EA) or an environmental impact statement (EIS) under Wis. Admin. Code § PSC 4.10(3). However, an evaluation of a specific Type III proposal may indicate that the preparation of an EA or EIS is warranted for that proposal. The Commission prepared an EA for the proposed project due to the size and amount of land that would be covered by the proposed project and the ability to use the EA process to seek public comments on the proposal.

Commission staff worked jointly with the Wisconsin Department of Natural Resources (DNR), and on July 28, 2020, issued an EA scoping letter to accept comments from the public to determine the scope of the EA. ([PSC REF#: 394355.](#)) On November 11, 2020, Commission staff 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. ([PSC REF#: 399870.](#)) The Commission took comments on this preliminary determination, and on December 18, 2020, issued the EA regarding the proposed project, which is entered as an exhibit into the record pursuant to Wis. Stat. § 1.11 and Wis. Admin. Code chs. NR 150 and PSC 4. ([PSC REF#: 401913.](#)) As a result of the EA, the Commission determined that the preparation of an EIS was not required.

The Commission issued a Notice of Hearing on January 20, 2021. ([PSC REF#: 403173.](#)) The Commission held technical hearing sessions over an audio/visual connection on March 10, 2021. At the technical sessions, expert witnesses offered testimony and exhibits on behalf of the applicant, Clean Wisconsin, Ellen Hudovernik, DNR staff, and Commission staff.¹ Public comment hearing sessions were held audio only on March 10, 2021. At the public comment hearings, the Commission accepted oral testimony from members of the public.² The Commission also accepted comments from members of the public through its website.³ 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.

¹ Tr. 1-149 Party Hearing Session. ([PSC REF#: 407061.](#))

² Tr. 150-171 Public Hearing Session. ([PSC REF#: 406785.](#))

³ Ex.-PSC-Public Comment. ([PSC REF#: 407726.](#))

The issue for hearing, as agreed by the parties, was:

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

The applicant, Clean Wisconsin, and Ellen Hudovernik filed initial briefs on April 5, 2021. ([PSC REF#: 408399](#), [PSC REF#: 408409](#), [PSC REF#: 408413](#).) The applicant and Ellen Hudovernik filed reply briefs on April 12, 2021. ([PSC REF#: 408942](#), [PSC REF#: 408943](#), [PSC REF#: 408944](#).)

The Commission discussed the record in this matter at its open meeting of May 20, 2021.

Findings of Fact

1. The applicant is controlled by D. E. Shaw Renewable Investments, LLC, a Delaware limited liability company. Ranger Power LLC, is developing the proposed project on behalf of the applicant. The applicant proposes to construct a solar electric generation facility as a wholesale merchant plant as defined by Wis. Stat. § 196.491(1)(w), with a generating capacity of up to 210 MW DC and 150 MW AC.

2. The proposed project is a solar electric generation facility and a “noncombustible renewable energy resource” under Wis. Stat. §§ 1.12 and 196.025 and is entitled to the highest priority of all energy generation resources under the priorities listed. It is uncontested that energy and capacity from the proposed project cannot be replaced by energy conservation and efficiency.

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

4. 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.

5. 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.

6. 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.

7. A brownfield site for the applicant's proposed project is not practicable. Wis. Stat. § 196.491(3)(d)8.

8. The facilities approved by this Final Decision are primarily on agricultural land.

9. The facilities approved by this Final Decision are not expected to affect endangered and threatened species protected by the state's endangered species law, and additional consultation with DNR Bureau of Natural Heritage Conservation is not expected to be necessary.

10. 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.

11. Approval of the proposed project is in the public interest.

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 the applicant to construct and place in operation the proposed electric generation facilities described in this Final Decision and to impose the conditions specified in this Final Decision.

2. The Onion River Solar electric generation facility is a wholesale merchant plant, as defined in Wis. Stat. § 196.491(1)(w).

3. The proposed electric generation facility 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. The construction of a solar electric generation facility is a Type III action under Wis. Admin. Code § PSC 4.10(3), and typically requires neither an EIS under Wis. Stat. § 1.11 nor an EA; however, an evaluation of this specific Type III action indicated that an EA was warranted for the proposed project

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

Opinion

Project Description

The applicant proposes to construct a new solar electric generation facility as a wholesale merchant plant as defined by Wis. Stat. § 196.491(1)(w), with a generating capacity of up to 210 MW DC and up to 150 MW AC. The proposed project would be located in the Town of

Holland, in Sheboygan County, Wisconsin. The major components of the proposed project include the PV panels, inverters, collector circuits, and a collector substation.

The proposed project would use either polycrystalline, monocrystalline, or bi-facial PV modules, the specific model of which is to be evaluated and selected closer to the time of construction. The preliminary engineering for this project was conducted assuming a 410-watt panel. Panel models will be evaluated closer to the time of construction and may range from 390 watts per panel to potentially beyond 450 watts per panel, requiring approximately 475,000 total panels for the 150 MW AC. The selected panels would connect to a single-axis tracking system that would allow the PV panels to follow the sun from east to west throughout the day. Inverters and pad-mounted transformers would be required to convert the generated DC power into AC power and step-up the voltage to 34.5 kilovolts (kV). The underground AC collector circuits would carry the power generated by the PV panels to the collector substation. The collector circuits would total approximately 19.4 miles, and the collector system for the project will be broken up into seven separate circuits. The solar PV array would connect to a new 34.5 kV/138 kV project collector substation. A short 200- to 300-foot generator tie line would connect the new collector substation to an existing American Transmission Company LLC (ATC) substation.

Wisconsin Power and Light Company (WP&L) has proposed to purchase the Onion River Solar facility. The Commission has reviewed and approved the proposed acquisition in docket 6680-CE-182. Based upon the application in this docket, WP&L will acquire the Onion River Solar facility prior to the completion of construction with the assumption that the

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Commission's Final Decisions in this docket and docket 6680-CE-182 are issued, and other conditions precedent to closing are satisfied.

The Commission concludes that the applicant's application has been appropriately reviewed and considered by this Commission as a wholesale merchant plant. The acquisition of the Onion River Solar facility by WP&L was considered and approved at the Commission's open meeting of April 22, 2021. While acquisition of the solar facility has been approved, as of the date of this Final Decision, there has been no sale. Therefore, it remains appropriate to evaluate the proposed project as a merchant plant. This is consistent with previous Commission decisions authorizing the transfer of a merchant CPCN to a public utility prior to completion of construction of the project.⁴ Further, nothing in Wis. Stat. § 196.491 prohibits the transfer of rights granted under a CPCN.

As a wholesale merchant plant, the Commission's review in this docket was appropriately limited to those statutory criteria applicable to merchants. The fact that a project may be acquired by a public utility at some point in the future does not transform the project into a non-merchant plant, nor does it require that the potential would-be buyers be co-applicants.

The Commission has considered several applications for the construction of a utility-scale solar facility, and the evaluation of technical and complex projects, such as the one proposed in this docket, is an area in which the Commission has special expertise. Since 1907, the Commission has regulated public utilities to ensure that "reasonably adequate service and

⁴ See *Application of Wisconsin Power and Light Company and Sheboygan Power, LLC for a Certificate of Public Convenience and Necessity for Construction of an Electric Generation Facility to be Located in Sheboygan County*, docket 6680-CE-168; *Application of Wisconsin Power and Light Company for Approval of Affiliated Interest Agreements Comprising a Leased Generation Contract with Sheboygan Power, LLC*, docket 6680-AE-108, May 18, 2005; [Final Decision signed and served 4-18-19 - PSC REF#: 364423](#); [Final Decision Signed and Served 04-18-19 - PSC REF#: 364425](#).

facilities” are available to the public at rates that are “reasonable and just.” Wis. Stat. § 196.03(1). The Commission’s expertise in administering Wis. Stat. § 196.491 to determine what proposed projects are appropriate additions and in the public interest has long been recognized by Wisconsin courts. *Wisconsin Power & Light Co. v. Pub. Serv. Comm’n of Wisconsin*, 148 Wis. 2d 881, 888, 437 N.W.2d 888, 891 (Ct. App. 1989); *see also Clean Wisconsin, Inc. v. Public Service Commission of Wisconsin*, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768 (recognizing the Commission’s expertise in reviewing proposed construction projects under Wis. Stat. § 196.491).

Determining whether a proposed project is in the public interest often requires a high degree of discretion, judgment, and technical analysis. Such decisions involve intertwined legal, factual, value, and public policy determinations. The Commission, as the finder of fact, is charged with evaluating all of the information and applying the statutory criteria to reach a well-reasoned decision. In doing so, the Commission uses its experience, technical competence, and specialized knowledge to determine the credibility of each witness and the persuasiveness of the highly technical evidence presented on each issue.

Interconnection of the Facility to the Existing Electric Transmission System

The transmission interconnection facilities requirements for the proposed project are being determined through the Midcontinent Independent System Operator, Inc. (MISO) Generator Interconnection Queue study process. The applicant filed an interconnection request with MISO and is in the MISO April 2018 East (ATC) definitive planning phase Study Cycle, with the assigned queue position of J1153.

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 percent.
 - 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.

The Commission has an obligation to consider these priorities in all energy-related decisions including construction of new electric generation facilities.⁵ 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.

⁵ 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."

The proposed project will be a new solar electric generation facility. As such, it is a “noncombustible renewable energy resource” and is entitled to the highest priority of all energy generation resources under the Energy Priorities Law. It is uncontested that energy and capacity from the proposed project cannot be replaced by energy conservation and efficiency, the highest priority alternative. The EA for the proposed project concluded that “approval and construction of this project is unlikely to have a significant impact on the human environment...” ([PSC REF#: 401900](#) at 104.) Additionally, the objective of the law⁶ is to deploy environmentally preferable options first when meeting Wisconsin’s energy needs, not require that measures such as conservation or energy efficiency displace a project if not obviously technically feasible or more cost-effective. This project aligns with that objective. Therefore, the proposed project satisfies the requirements of the Energy Priorities Law.

Siting Process

The Commission must consider alternative locations when determining whether a proposed generation facility is in the public interest. Wis. Stat. § 196.491(3)(d)3. A CPCN application must describe the siting process, identify the factors considered in choosing the alternative sites, and include specific site-related information for each site. Wis. Admin. Code §§ PSC 111.53(1)(e)-(f). The applicant’s CPCN application complies with these requirements. It explains a process used to screen areas in Wisconsin based upon the solar resource, land area, and access to electric transmission infrastructure. It also describes how specific solar siting areas were selected and how the applicant confirmed the suitability of these locations. The record reflects examination of each of the solar siting areas. In addition, the applicant identified and

⁶ See also Wis. Stat. §§ 1.12(3)(b) and 196.377.

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provided information regarding 25 percent more siting areas on leased properties within the project area that meet all of its siting criteria.

A CPCN for a large electric generation facility requires the submittal of “site-related information for each of two proposed power plant sites.” Wis. Admin. Code § PSC 111.53(1)(f). The Commission’s standard for reviewing proposed siting areas is to determine whether each proposed site is “reasonable” (i.e., is it a feasible location for the project that would not directly conflict with any of the statutory criteria for granting a CPCN), and whether the sites are sufficiently distinct to offer different packages of benefits that present the Commission with a choice. The Wisconsin Supreme Court affirmed this standard in *Clean Wisconsin et al. v. Public Service Commission of Wisconsin and Wisconsin Department of Natural Resources*, 2005 WI 93, ¶¶ 66-70.

In a previous docket concerning a wind farm,⁷ the Commission found that the project applicant met the requirement to offer site alternatives by identifying 25 percent more turbine locations than it proposed to develop. On appeal, the Dodge County Circuit Court affirmed this method of offering site alternatives for a wind farm.⁸ In previous solar electric generation dockets, the Commission has applied a similar analysis, concluding that an applicant complies with this requirement by providing 25 percent additional siting areas with the proposed project as an alternative.

⁷ *Application of Forward Energy LLC for a Certificate of Public Convenience and Necessity to Construct a Wind Electric Generation Facility and Associated High Voltage Electric Transmission Facilities, to be Located in Dodge and Fond du Lac Counties*, docket 9300-CE-100 (July 14, 2005).

⁸ *Horicon Marsh Systems Advocates and Joe M. Breaden v. Public Service Commission of Wisconsin and Forward Energy LLC*, Dodge County Case No. 05-CV-539; “Memorandum Decision and Order” of Circuit Judge John R. Storck (March 23, 2006).

The preferred and alternative siting areas that the applicant has identified meet both of these standards. The areas provide differing environmental and participant impacts, and the alternative areas offer more than 25 percent additional possible solar siting areas.

As part of the application and consistent with the alternative location requirement included in Wis. Stat. § 196.491(3)(d)3., the applicant included additional sites for more than 25 percent additional MW for solar panels beyond the minimum necessary for the desired project size of 150 MW AC. The Commission requires these additional siting areas for two reasons:

- To provide flexibility such that, in the event that during the Commission’s review some of the applicant’s preferred siting areas become undesirable or unusable, those areas may be avoided and alternative siting areas be used instead.
- To resolve unforeseen problems that could arise during the construction process, such as: protecting social, cultural, or environmental resources; avoiding unanticipated sub-surface conditions; accommodating governmental requests; addressing concerns that a landowner may have during the course of construction; taking advantage of opportunities to minimize construction costs; or, improving the levels of electric generation.

The applicant identified which of the array areas were proposed (also referred to as “preferred”) and alternative in Appendix A to its application. ([PSC REF#: 390453.](#)) The proposed and alternative arrays are siting areas that the applicant has identified meet its siting criteria, and the applicant has secured land rights to these areas. The different arrays provide differing environmental and participant impacts.

Authorized Project Site

The Commission authorizes the applicant to use any of the primary and alternative solar array sites. The proposed sites meet the siting criteria of Wis. Stat. §§ 196.491(3)(d)3. or 4. and would not cause undue individual hardships or adverse impacts on the environment. The primary site is preferred by the applicant because its environmental impacts and construction costs would be less than the alternative site. The primary site provides a more cost-effective layout and is likely to be more energy efficient. However, the alternative site provides additional flexibility for placement of the solar facilities during construction with similar, limited environmental impacts. The Commission finds it reasonable to allow the applicant the flexibility to use the proposed sites (primary and alternative) as needed, provided that the project size shall remain at the maximum nameplate capacity approved in this Final Decision, to accommodate environmental, technical, and landowner issues as they arise during construction of the project. If the situation arises where the applicant elects to use an alternative array area, the applicant shall provide written notice to the Commission within 30 days of identifying such alternative arrays.

The relevant inquiry is whether the proposed project site will cause undue individual hardships or undue adverse impact on other environmental values. The Commission appreciates the expressed concerns of some landowners, in particular the concerns related to the transfer of land use from farming to solar electric generation. Many other comments the Commission received from landowners are addressed by the conditions the Commission intends to adopt. As the remainder of this Final Decision demonstrates, the Commission conducted a robust analysis of the potential impacts both to the surrounding landowners and community and to the

environment. The applicant committed to a number of requirements to address landowner impacts, such as implementing a complaint process, conducting noise studies, and minimizing communication and broadcast disruptions. Further, the conditions recommended by Commission staff that the Commission intends to adopt will mitigate or address the majority of environmental concerns identified including conducting stray voltage testing, and other requirements addressed below. The Commission finds that the design and location is in the public interest considering alternatives and its assessment of individual hardship and environmental impacts. To the extent there are some impacts, these impacts can be mitigated through the conditions to be imposed by the Commission and further discussed below.

Brownfield Sites

Wisconsin Stat. § 196.491(3)(d)8. provides that a CPCN generation project must be sited in a brownfield area “to the extent practicable.” The proposed project requires approximately 1,400 acres of nearly contiguous developable land in close proximity to existing transmission facilities. There were no brownfield sites identified in Wisconsin that met these siting requirements. The Commission therefore finds that the proposed project satisfies the requirement under Wis. Stat. § 196.491(3)(d)8.

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 proposed project would inject additional energy into the wholesale market and is anticipated to have a positive impact on the market. As a wholesale merchant plant, concerns regarding horizontal market power are not an issue. If the solar facilities are purchased

by Wisconsin utilities, the concern remains unchanged as capacity and energy from the project would be subject to market mitigation measures and oversight of MISO's independent market monitor that restricts any ability to raise prices above competitive levels.⁹ As such, the Commission finds that the proposed project meets the requirements of Wis. Stat. § 196.491(3)(d)7.

Land Use and Development Plans

Wisconsin Stat. § 196.491(3)(d)6. requires that a proposed generation 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 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 primarily agricultural land. Comments were received from members of the public during the EA scoping and during the public hearings that discussed the impacts to the land as a result of the proposed project. The Commission takes seriously that areas within the fenced solar arrays would be taken out of agricultural production for the life of the project, but must balance those concerns with the right of individual landowners to use their properties in the manner they choose.

Further, the applicant is not a public utility and does not possess statutory eminent domain authority. The applicant must secure long-term lease agreements with landowners in the project area to acquire the property for the generation facility. The changes to land use are

⁹ *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](#) at 20.)

agreed to by the landowners who have signed leases with the applicant, and after decommissioning, the land may return to a use similar to its current use. The Commission recognizes that the proposed project will create 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. In order to determine whether construction of a new electric generating facility 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 application for a wholesale merchant plant generating facility, it must consider alternatives, individual hardships, safety, reliability, 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.

In preparing the EA for this project, Commission staff reviewed the information from the applicant's CPCN application, responses to Commission staff data requests, maps, geographic

information system 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 resource impacts. The applicant agreed to incorporate recommendations from the Commission and DNR into its project to mitigate environment impacts, and the Commission imposed additional conditions as described in this Final Decision.

The record before the Commission reflects an expectation that if these facilities are decommissioned in the projected 30- to 35-year life span of the project, the land could be returned to agricultural use. Because of the passive nature of solar energy generation, operations activities at the site will be minimal. The proposed project will not require any municipal water or sewer services and will not require any unique fire, police, or rescue services. There are no additional impacts to public health or welfare associated with the solar facilities identified in the record that are not otherwise mitigated or addressed by the conditions of this Final Decision, such as noise studies and other conditions.

Approval of the proposed project will provide 150 MW of noncombustible renewable energy to the state of Wisconsin. The Commission has previously held that renewable generation projects promote public health and welfare by generally avoiding most of the impacts created by other types of electric generation.¹⁰

¹⁰*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.](#))

After weighing all of these factors and all of the conditions it is imposing, the Commission finds, for the reasons set forth in this Final Decision and administrative record developed for this proceeding, that issuing a CPCN for the proposed project promotes the public health and welfare and is in the public interest.

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.

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. Based on response from testimony by Sergio Trevino for the applicant, the project will comply with NEC or NESC, as appropriate. (Rebuttal-Onion River Solar-Trevino-5, [PSC REF#: 404493](#).) Previous Commission final decisions, including for Glacier Hills Wind Park,¹¹ Badger Hollow Solar,¹² Two Creeks Solar,¹³ Point Beach Solar,¹⁴ Badger State Solar,¹⁵ Paris Solar,¹⁶ and Wood County Solar¹⁷ have included language with compliance of NEC or NESC, as appropriate.

¹¹ See docket 6630-CE-302.

¹² See docket 9697-CE-100.

¹³ See docket 9696-CE-100.

¹⁴ See docket 9802-CE-100.

¹⁵ See docket 9800-CE-100.

¹⁶ See docket 9801-CE-100.

¹⁷ See docket 9803-CE-100.

The Commission finds it reasonable to require the applicant to construct, maintain, and operate all applicable project facilities to comply with NEC or NESC 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 the more stringent code 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 when WP&L does 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 in previous Commission-authorized, utility-scale solar CPCN dockets, specifically dockets 9696-CE-100, 9697-CE-100, 9800-CE-100, and 9802-CE-100. Wisconsin Admin. Code § PSC 128.17 deals with stray voltage testing associated with wind energy systems, but the Commission has also employed the language of the code to address stray voltage concerns in utility-scale solar CPCN dockets. Previous Commission final decisions, including for Glacier Hills Wind Park,¹⁸ Badger Hollow Solar,¹⁹ Two Creeks Solar,²⁰ Point Beach Solar,²¹ and Badger State Solar²² have included language requiring stray voltage testing. Stray voltage has the potential to cause adverse impacts on agricultural property. Commission staff suggested that any final decision language requiring pre- and post-construction stray voltage testing be consistent with Wis. Admin. Code

¹⁸ See docket 6630-CE-302.

¹⁹ See docket 9697-CE-100.

²⁰ See docket 9696-CE-100.

²¹ See docket 9802-CE-100.

²² See docket 9800-CE-100.

§ PSC 128.17 and previous Commission decisions on solar electric generation facilities. These previous decisions required that stray voltage testing be offered to agricultural properties with confined animal operations within 0.5 miles of project facilities.

In response to the testimony of Commission witness David Hansen ([PSC REF#: 401909](#)), the applicant stated that it has no objection to an order condition requiring it to conduct stray voltage testing. (Rebuttal-Onion River Solar-Trevino-5, [PSC REF#: 404493](#).)

To ensure public safety and to facilitate possible mitigation of any impacts from stray voltage on agricultural animals, the Commission finds it reasonable to require the applicant to conduct pre- and post-construction stray voltage testing at any agricultural facility located within 0.5 miles of the project site, consistent with Wis. Admin. Code § PSC 128.17, and in coordination with the local distribution utility and Commission staff.

Post-Construction Noise Study

There has been long-standing Commission precedent of requiring pre-construction and post-construction noise studies for any new proposed electric generation facility, for both renewable and conventional electric generation resources. Previous Commission decisions have included language that required noise studies by a project developer. The applicant completed and submitted an initial pre-construction noise study report.

The Commission finds it reasonable that the applicant perform pre-construction and post-construction noise studies as described in the most current version of the Commission's Noise Measurement Protocol. This will ensure that any noise created by the solar facilities will be identified and mitigated in accordance with the Commission's standards. In the event of a substantial change to the proposed facility layout, the applicant should confer with Commission

staff to determine whether 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.

Environmental Review

The proposed electric generation project was reviewed by the Commission for environmental impacts. Wisconsin Admin. Code ch. PSC 4, Table 3, identifies construction of a solar-powered electric generation facility as a Type III action. However, Wis. Admin. Code § 4.10 specifically provides that while Type III actions do not normally require preparation of an EA or an EIS, “[a]n evaluation of a specific Type III proposal, however, may indicate that preparation of an EA or EIS is warranted for that proposal.”

An EA was prepared for the proposed project, due to the size and amount of land that would be covered by the proposed project. The environmental review focused primarily on impacts to wildlife, including rare or endangered species, aesthetics, historic resources, wetlands and waterways, and local landowner impacts. The EA concluded that “approval and construction of this project is unlikely to have a significant impact on the human environment...” ([PSC REF#: 401900](#) at 104.)

Archeological and Historic Resource Review

The applicant conducted an initial cultural resources database review, created an archaeological site probability model, and conducted field investigations in high-probability areas to identify any cultural resources present within the project area. The desktop review found no recorded archaeological sites, cemeteries, or historic structures are within the project footprint. The desktop review found five historic structures within 0.3 miles of the proposed project footprint. All five structures are currently screened by either landscape trees near the

historic structure or treelines and forested parcels between the historic structure and the proposed project. These five historic structures are not expected to be impacted by the proposed project.

A field survey conducted in the spring of 2020 by the applicant consisted of a pedestrian survey of 236 acres with high potential for prehistoric Native American and Historic period Euro-American archaeological sites. This survey identified 11 new archaeological sites within the proposed project footprint. None of these new sites would be eligible for listing on the National Register of Historic Places. Therefore, the project is not expected to impact any historic properties.

Local Landowner Impacts

Some non-participating landowners voiced concerns regarding the potential impacts of the facility being constructed in their area. The potential for changes in property values, increased noise, glare from the panels, wildlife, water quality, and the change of land use from a rural farmed landscape to many acres of panels and fencing were discussed in comments provided by landowners.

While some landowners expressed concerns that construction of the proposed project would reduce their property values, these concerns were not substantiated with credible evidence. As discussed in the EA, noise and visual impacts could negatively impact property value. However, unlike fossil-fueled electric generation facilities, the proposed facilities would have no emissions and minimal anticipated noise impacts to adjacent land uses during operations. The EA also indicated that a review of the literature found no research specifically aimed at quantifying impacts to property values based solely on the proximity to utility-scale solar facilities.

The applicant conducted pre-construction ambient noise studies. The studies were conducted in accordance with the Commission's Noise Measurement Protocol. The studies recorded noise levels that would be typical for a rural environment, with sources including vehicular traffic and farm machinery during daytime periods and insect noise during nighttime periods. As a result, the studies concluded that construction and operation of the proposed project would not result in any significant adverse noise impacts. The EA reviewed and confirmed these findings, noting that "sound resulting from the operation of the solar facility is anticipated to have minimal impact on nearby residences."

The applicant also performed a glint and glare analysis for the proposed project. The results showed no predicted glare from the solar arrays for aircraft making approaches at any of the nearby airport, airstrip, or heliport, and none for cars with an estimated viewing height of 5 feet, large trucks with an estimated viewing height of 9 feet, or residents with an estimated second-story viewing height of 25 feet. The EA also noted that the solar panels are designed to absorb light and have an anti-reflective coating that reduces the risk of glint or glare to vehicles or residents.

In previous Commission dockets for solar generation facilities, as well as in this docket, non-participating landowners adjacent to project sites have voiced concerns regarding the proximity of arrays and fences to their properties. Concerns include increased vehicles in the area, aesthetic impacts, potential for noise and/or glare from panels, risks to wildlife, change in the rural/agricultural character of the community, and potential impacts to property values, just to name a few. Setback analyses at distances of 50, 100, 150, 200, 250, and 300 feet between the fence of the solar array areas and residences were included in the EA as a way to understand how

many acres of proposed solar array areas would be within these distances if a specific setback distance was required by the Commission. Generally, applicants identify a proposed setback distance that would be associated with its proposed project; however, the distances, facilities, and number of residences affected by these setbacks vary significantly from docket to docket.

The applicant, along with the Town Holland and Sheboygan County, has developed a joint development agreement that established setbacks for this project that exceed local zoning requirements, including: (1) 150-foot setbacks to non-participating residences; and (2) 200-foot setbacks to non-participating residences bordered on two or more sides by above-ground components. The Commission does not find it necessary to require anything additional in this docket related to setbacks, beyond what has already been established and agreed to in the established joint development agreement.

Aesthetics and Fencing

The applicant will have some impact to the aesthetics of the area with the addition of hundreds of acres of solar panels, grouped in arrays that are fenced off for security requirements. The applicant proposed 7- to 8-foot deer fencing (otherwise known as agricultural fencing) with no barbed wire to surround the array sites. The use of this type of fencing would mitigate the change to the aesthetics of the area, is less hazardous to wildlife than barbed wire, and meets the necessary requirements of electric codes under both NEC and NESC for the array sites. The applicant proposed that 7- to 8-foot chain-link fence, including 1 foot of barbed wire on top, would still be necessary around the collector substation to meet applicable code requirements. The Commission finds the dimensions and types of fencing proposed by the applicant to be reasonable for approval.

Heat Island Effect

Some studies, briefly discussed in the EA, have found that solar panels can create a heat island effect, which alters the temperature of the air near and around the panels. However, no studies have examined the heat island effect in the environment of the Upper Midwest. Therefore, it is unknown whether this effect will occur and to what degree it will change the local temperature near the facility. The scientific literature reviewed in the EA found that temperatures close to the panels only rose slightly by a few degrees at those facilities, and temperatures mostly dissipated overnight. This facility's proposed design, particularly the smaller PV array blocks, promotes air circulation and evapotranspiration, which should mitigate any heat island effect.

The Commission finds that there is insufficient evidence in the record to require the applicant to conduct a study of the heat island effect at this facility. However, the Commission directs its staff to reach out to research institutions including the University of Wisconsin–Madison to explore whether a Wisconsin research institution might conduct a study of this nature somewhere in the state on any existing solar facility or facilities. The Commission directed staff to inform the Commission of the results of its inquiries, including information related to costs of such studies at various levels of scope.

Vegetation Management

Vegetation management plans for solar PV facilities are important documents that have the potential to create an effective vegetative ground cover that ensures maximum energy efficiency, reduces operational costs, minimizes environmental harm, and maximizes environmental benefits associated with water infiltration, local pollinator populations, wildlife

movement, species diversity, aesthetics, soil health, and adjacent pollinator-dependent crop yields when implemented correctly and thoughtfully. Depending on the implementation of proposed activities, the types, quantities, and locations of specific seed mixes utilized, and the successful establishment and management of certain plant species in strategic project areas, the vegetation management practices implemented could have several different economic, ecological, and aesthetic implications and outcomes.

The Commission finds it reasonable to require the applicant to work cooperatively with Commission and DNR staff on the development of a practicable site-specific vegetation management plan that minimizes environmental impacts and encourages the establishment of pollinator-friendly species for the Onion River Solar facility. The pollinator-friendly species chosen should include a variety of species that ensure blooms over course of the three seasons of spring, summer, and fall. Seeds treated with neonicotinoids should be avoided to protect local bee species. This vegetation management plan should also include the strategic use and placement of vegetative buffers. Commissioner Nowak dissents in part.

Avian Impact Study

Utility-scale solar PV facilities are a relatively new addition to temperate landscapes, and research is ongoing to determine potential impacts to avian resources. Direct effects to birds or bird populations may include mortality from construction, collision, and predation as well as sub-lethal effects such as injury and energetic costs. Indirect effects to birds or bird populations may include habitat loss, habitat fragmentation, and habitat degradation. The types and magnitude of impacts on birds and bird populations can be related to project-specific factors such as location, size, and technology. There have been few scientific studies of avian interactions

and mortality at solar facilities that would be comparable to the utility-scale solar facilities being proposed in Wisconsin. As the number of utility-scale solar PV facilities increases across Wisconsin, the potential for impacts to birds and bird populations also increases.

The Commission determined that requiring an avian impact study, or other possible research-gathering mechanisms at this time, was not necessary as a condition of granting a CPCN authorizing the construction of the Onion River Solar facility. Commissioner Huebner dissents in part.

Threatened and Endangered Species Review

A search and review of DNR's Natural Heritage Inventory database for endangered species, threatened species, and species of special concern was conducted for the project. Commission staff verified that the map of the project area in the final application matched the area submitted for review and that no new species were found in a review of the Natural Heritage Inventory database. A check in the Natural Heritage Inventory database found that there were no endangered, threatened, or special concern species within the project area and one- and two-mile buffers. Therefore, there were no DNR-required or -recommended actions for endangered resources (ER) listed in the ER Review for the proposed project. No impacts to rare species are expected from construction of the project.

Wetlands and Waterways

The majority of wetlands within the proposed project facilities are considered to have overall low functional value as they are within or in proximity to agricultural fields, have generally low vegetative diversity, and are dominated by non-native and invasive species. A

higher-quality forested wetland is located primarily outside of fenced array areas in the perimeter areas of the project. Some wetland and waterway impacts will occur as a result of the project.

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

Federal, State, and Local Permits

Under Wis. Stat. § 196.491(3)(e), before issuing a CPCN, the Commission must determine that DNR can grant the permits that have been identified under Wis. Stat. § 196.49(3)(a)3.a. as required for the construction or operation of the facility. The Commission has no jurisdiction over DNR permits, but it remains aware of the status of DNR permits that are required before any construction may begin and those that are of significant importance to the ability of the plant to operate if it receives a CPCN. As described in the EA, DNR participated in the environmental review of this project, and it is anticipated that this project, as currently proposed, will require permit authorization under Wis. Stat. § 30.123 for the placement of one culvert structure within a navigable waterway, and a wetland fill permit under Wis. Stat. § 281.36.

A list of all anticipated permits is included in the project application and EA. DNR participated in the environmental review of this project, and it is anticipated that the currently proposed project will meet permit requirements. The Commission finds it reasonable to require the applicant to obtain all necessary federal, state, and local permits prior to commencement of

construction on the portion of the project requiring the permit. The applicant has also stated that it will obtain all necessary permits prior to commencing construction on the portion of the project requiring the permit.

Pre-Construction Meeting

There are a number of topics that require additional documentation subsequent to the Commission's decision, including the final design layout, the status of any permit conditions, and the provision of construction plan details. Final engineering for projects often will establish the details of construction and mitigation methods that will actually be instituted by the applicants. The applicant agreed to meet with Commission and DNR staff once project designs and construction plans are complete, and prior to construction, in order to review planned actions and ensure its compliance with permit and order conditions. The Commission finds it reasonable to require the applicant and its selected contractor to participate in a pre-construction meeting with Commission and DNR staff to discuss construction plans and/or final site designs, permits, and associated requirements, and best management practices (BMP). Plans shall be provided to Commission and DNR staff before the meeting to allow time for review, a minimum of 14 days prior to the meeting.

Minor Siting Flexibility

The Commission recognizes that detailed engineering is not complete prior to authorization of a project, and that minor siting flexibility may be needed to accommodate the final design of the project. Situations may be discovered in the field that were not apparent based on the information available to the applicant in development of the proposed project or to the Commission in making its authorization. The Commission typically includes an order

condition that allows for minor siting flexibility when authorizing a project. Therefore, the applicant shall be given flexibility to use minor siting flexibility for adjusting projections locations (up to the nameplate capacity of 150 MW AC) in the event the applicant needs to use a location other than the locations identified for the proposed or alternative arrays during final design.

The minor siting flexibility order condition requires that the applicant consult with Commission staff when proposing a change in siting beyond the use of the proposed and alternative arrays as discussed above. If the review determines that the proposed change requires Commission approval, the applicant must request authorization in the form of a letter containing details on the following items:

1. Scope of the change;
2. Reason for the change;
3. Incremental differences in any environmental impacts;
4. Communications with potentially affected landowners;
5. Documentation of discussions with other agencies regarding the change;
and
6. Maps of the approved route and the proposed change, including property boundaries and natural features.

Minor siting flexibility requests are reviewed by Commission staff. Approval is delegated to the Administrator of the Division of Energy Regulation and Analysis with the advice and consent of the Administrator of the Division of Digital Access, Consumer, and Environmental Affairs.

The requested change may be granted if the proposed change:

1. Does not affect new landowners 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 will require reopening of the docket.

For any minor siting adjustment, the Commission typically also requires that the applicant:

- Obtain all necessary permits;
- Comply with all requirements included in agreements with local units of government, such as joint development agreements;
- Comply with all landowner agreements;
- Avoid of any part of the project area that the Commission finds unacceptable; and,
- Comply with the applicant's own environmental siting criteria.

The Commission finds that it is reasonable that the applicant be granted minor siting flexibility for adjusting project locations (up to the authorized nameplate capacity of 150 MW AC) during final design. The Commission spends considerable time reviewing and selecting areas for a generation project layout, and it is therefore of utmost importance that if the chosen project layout must be changed, the Commission must receive appropriate notification.

The applicant shall follow the described process to obtain authorization for any minor siting changes.

Compliance with the Wisconsin Environmental Policy Act

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.

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

Onion River Solar provided a construction schedule as part of its application, which is summarized as follows:

Construction is proposed to begin in July 2021. PV panels will begin to be installed starting in April 2022, and installation would likely continue until October 2022, just before the start of commercial operations. The in-service date for this project is estimated to be in November 2022. The total construction duration is estimated to be approximately one-and-a-half years, from site mobilization to commercial operation. Some construction timelines could be affected by weather conditions, particularly winter weather conditions.

Activity	Start	End
Start of Construction	July 2021	
Workforce Mobilized	July 2021	
Vegetation Removal and Localized Grading	August 2021	September 2021
Staging and Laydown Areas Established	September 2021	October 2021
Access Roads Installed	September 2021	October 2021
Posts Driven	October 2021	April 2022
Tracking System Racks Installed	October 2021	April 2022
Inverter Pads Installed	October 2021	April 2022
Solar Modules Installed	April 2021	October 2022
Project Substation Built	March 2022	August 2022
Generation Tie-Line Built	April 2022	July 2022
Commissioning	October 2022	November 2022
In-Service Date		November 2022

Assignment of Rights

Pursuant to Wisconsin's CPCN law, the applicant's application was reviewed in accordance with those criteria applicable to Commission authorization for the construction of wholesale merchant plants rather than public utility plants. 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. Although public utilities may have particular statutory rights regarding their operations, upon its grant of a CPCN, the Commission may place conditions upon the CPCN such that, should the public utility utilize the rights granted by the Commission, the public utility's rights under the CPCN are thus limited. The project may be sold or otherwise transferred to a public utility, such as WP&L.

The Commission finds it reasonable in light of the potential assignment of ownership and rights by the applicant to Wisconsin public utilities to include an order condition limiting the

rights granted under the CPCN to those provided to the applicant as a wholesale merchant, and requiring any future owner or operator of the project to honor the commitments made by the applicant and accept the limitations placed upon the project as provided for in this Final Decision.²³

Certificate

The Commission grants the applicant a CPCN for construction of the proposed solar PV electric generation facility, as described in the application and as modified by this Final Decision.

Order

1. The applicant is authorized to and shall construct the proposed 150 MW solar PV electric generation facility, as described in the application, data requests, and as modified by this Final Decision.

2. 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 project scope, design, size, or location.

3. 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 order. If the situation arises where the applicant elects to use an

²³ The Commission notes that when there is potential for a sale of a project that requires a CPCN from a wholesale merchant applicant to a public utility, the applicant should expect a similar condition to be part of the Commission's decision granting the CPCN.

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.

4. If the applicant cancels the project or enters into any arrangement with another party, other than WP&L, regarding ownership or operation of the proposed facilities, the applicant shall provide prior notice to the Commission.

5. The applicant shall obtain all necessary federal, state, and local permits prior to commencement of construction on the portion of the project requiring the permit.

6. The applicant shall conduct an updated ER Review closer to the start date of construction (no more than one year prior to construction start).

7. The applicant shall mitigate impacts to line-of-sight communications and landowners who can show disruption to broadcast communications post construction.

8. The applicant and its selected contractor 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 BMPs. Materials must be provided to DNR and Commission staff 14 days prior to the meeting date to allow time for review.

9. Beginning with the quarter ending September 30, 2021, 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:

- 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; and

- d. The date that the facilities are placed in service.

10. 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 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.

- 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 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. b.

11. If the applicant 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 the applicant:

- 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.

12. 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.

13. The applicant may propose minor adjustments in the approved project layout for the protection of social, cultural, or environmental resources (up to the authorized nameplate capacity of 150 MW), but any changes from the approved layout 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. The applicant shall consult with Commission staff regarding whether the change rises to the level where Commission review and approval is appropriate. For each proposed adjustment for which Commission review is appropriate, the applicant shall submit for Commission staff 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 potentially affected landowners regarding the change; documentation of discussions with other agencies regarding the change; and a map showing the approved site 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.

14. The applicant shall perform post-construction noise studies as described in the current version of the PSC Noise Measurement Protocol. When the project is operational, and in

accordance with the steps described in the Protocol, the applicant shall repeat the noise measurements conducted as the pre-construction noise study, shall measure the maximum noise created at the solar facility with all equipment and inverters on and while the panels auto-rotate, and shall measure the noise at the site with all units off. The applicant shall report its findings to the Commission using the same format as the pre-construction noise studies.

15. The applicant shall conduct pre-construction and post-construction stray voltage testing at any agricultural facility located within 0.5 miles of the project site consistent with Wis. Admin. Code § PSC 128.17, and in coordination with the local distribution utility and Commission staff.

16. The applicant shall comply with NEC or NESC and Wis. Admin. Code ch. PSC 114, as appropriate. In case of conflict or overlap between code requirements, the applicant shall comply with the more stringent code requirement.

17. The applicant shall work cooperatively with Commission and DNR staff on the development of a practicable site-specific vegetation management plan as set forth in this Final Decision. The pollinator-friendly species chosen should include a variety of species that ensure blooms over course of the three seasons of spring, summer, and fall. Seeds treated with neonicotinoids should be avoided to protect local bee species. This vegetation management plan should also include the strategic use and placement of vegetative buffers.

18. All commitments made by the applicant in its application, subsequent filings, and the provisions of this Final Decision shall apply to the applicant, 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 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).

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

21. Jurisdiction is retained.

Dissent

Dated at Madison, Wisconsin, the 18th day of June, 2021.

By the Commission:

A handwritten signature in black ink that reads "Steffany Powell Coker". The signature is written in a cursive, flowing style.

Steffany Powell Coker
Secretary to the Commission

SPC:JAK:cmb:pc DL: 01804455

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.²⁴ 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

²⁴ See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

APPENDIX A

PUBLIC SERVICE COMMISSION OF WISCONSIN

(Not a party but must be served per Wis. Stat. § 227.53)

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Docket 9805-CE-100

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