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PUBLIC SERVICE COMMISSION OF WISCONSIN

Application for a Certificate of Public Convenience and Necessity of
Springfield Solar Farm, LLC to Construct a Solar Electric Generation
Facility in the Town of Lomira and the Village of Lomira, Dodge
County, Wisconsin

9807-CE-100

FINAL DECISION

On October 2, 2020, pursuant to Wis. Stat. § 196.491 and Wis. Admin. Code chs. PSC 4 and 111, Springfield Solar Farm, 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 135 megawatts (MW) direct current (DC) and up to 100 MW alternating current (AC). The application showed the proposed and alternative project arrays on approximately 720 acres of primarily agricultural land in the Town of Lomira and the Village of Lomira, in Dodge County, Wisconsin. The project is expected to use approximately 570 acres of this land to generate 100 MW AC. The major components of the proposed project include the PV panels with their associated access roads, inverters, collector circuits, an operations and maintenance building, 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 November 4, 2020. ([PSC REF#: 399473](#).) The Commission issued a Notice of Proceeding on December 10, 2020. ([PSC REF#: 401492](#).) 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 more than 180 days is granted by the Commission Chairperson. On February 12, 2021 the Commission Chairperson granted a 180-day extension. ([PSC REF#: 405040](#).) The Commission must take final action on or before November 1, 2021,¹ or the application is approved by operation of law. See Wis. Stat. § 196.491(3)(g).

The Administrative Law Judge (ALJ) issued a Notice of Prehearing Conference on January 12, 2021. ([PSC REF#: 402782](#).) A Prehearing Conference was held on Tuesday, February 2, 2021.² The ALJ issued a Prehearing Conference Memorandum on February 9, 2021. ([PSC REF#: 404448](#).) Requests to intervene were granted to Dodge County, RENEW Wisconsin (RENEW), Town of Lomira, Village of Brownsville, and Village of Lomira. 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

¹ The extended 180-day deadline falls on a Saturday, October 30, 2021. Pursuant to Wis. Admin. Code § PSC 2.05(2), the next day the Commission is open is considered the last day of the extended 180-day period for the Commission to take final action.

² Tr. 1-20 Prehearing Conference ([PSC REF#: 404234](#)).

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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.

Commission staff worked jointly with the Wisconsin Department of Natural Resources (DNR), and on December 17, 2020 issued an EA scoping letter to accept comments from the public to determine the scope of the EA. ([PSC REF#: 401853](#).) On March 24, 2021 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#: 407407](#).) The Commission took comments on this preliminary determination, and April 26, 2021, 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#: 410061](#).) 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 May 7, 2021. ([PSC REF#: 411180](#).) The Commission held technical hearing sessions over an audiovisual connection on June 15, 2021. At the technical sessions, expert witnesses offered testimony and exhibits on behalf of the applicant, RENEW, Town of Lomira, Village of Brownsville, Village of Lomira, DNR staff, and Commission staff.³ ([PSC REF#: 415431](#).) Public comment hearing sessions were held, audio-only, on June 16, 2021. During the public comment hearings, the Commission accepted oral testimony from members of the public.⁴ The Commission also accepted comments from

³ Tr. 21-99 Party Hearing Session ([PSC REF#: 414299](#)).

⁴ Tr. 100-191 Public Hearing Session ([PSC REF#: 413925](#)).

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members of the public through its website.⁵ 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 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 and the Village of Lomira filed their initial briefs on July 6, 2021. ([PSC REF#: 415234](#) and [PSC REF#: 415223](#), respectively.) The applicant and the Village of Lomira filed their reply briefs on July 13, 2021. ([PSC REF#: 415882](#) and [PSC REF#: 415880](#), respectively.) No other parties filed briefs.

The Commission discussed the record in this matter at its open meeting of September 9, 2021.

Findings of Fact

1. The applicant is a wholly-owned subsidiary of National Grid Renewables. 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 135 MW DC and 100 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.

⁵ Ex.-PSC-Public Comments ([PSC REF#: 414166](#)).

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. 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.

10. 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 proposed 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 135 MW DC and up to 100 MW AC. The proposed project would be located in the Town of Lomira and the Village of Lomira, in Dodge County, Wisconsin. The major components of the

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proposed project include the PV panels with their associated access roads, inverters, collector circuits, an operations and maintenance building, and a collector substation.

The proposed project would use either polycrystalline or monocrystalline, or bi-facial PV modules, the specific model of which is to be evaluated and selected closer to the time of construction. Panel models will be evaluated closer to the time of construction and may range from 425 watts per panel to potentially 450 watts per panel, requiring approximately 300,000 total panels for the 100 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 13 miles, and the collector system for the project will be broken up into five separate circuits. The solar PV array would connect to a new 34.5 kV/138 kV project collector substation. A 453-foot generator tie line would connect the new collector substation to Butternut substation.

Wisconsin Power and Light Company (WP&L) has proposed to purchase the proposed project. The Commission is reviewing the proposed acquisition in docket 6680-CE-183. Based upon the application in this docket, WP&L will acquire the proposed project prior to the completion of construction, with the assumption that the Commission's Final Decisions in this docket and in docket 6680-CE-183 are issued, and other conditions precedent to closing are satisfied.

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The Commission concludes that the applicant's application has been appropriately reviewed and considered by this Commission as a wholesale merchant plant. While acquisition of the solar facility has been proposed, 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.⁶ 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 utility-scale solar facilities, 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 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

⁶ 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; *Application for Certificate of Public Convenience and Necessity of Two Creeks Solar, LLC to Construct a Solar Electric Generation Facility to be Located in Manitowoc and Kewaunee Counties, Wisconsin*, docket 9696-CE-100, April 18, 2019 ([PSC REF#: 364423](#)); *Application for a Certificate of Public Convenience and Necessity of Badger Hollow Solar Farm, LLC to Construct a Solar Electric Generation Facility, to be Located in Iowa County, Wisconsin*, docket 9697-CE-100, April 18, 2019 ([PSC REF#: 364425](#)).

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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 facility 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 undergoing a definitive planning phase study in queue position J1171, and expects to execute a generator interconnection agreement in December 2021.

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.⁷ 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.

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

⁷ 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.”

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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#: 410061](#) at 55.) Additionally, the objective of the law⁸ is to deploy environmentally preferable options first when meeting Wisconsin’s energy needs, not to 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 provided information regarding 25 percent more siting areas on leased properties within the project area that meet all of its siting criteria.

⁸ See also Wis. Stat. §§ 1.12(3)(b) and 196.377.

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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,⁹ 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.¹⁰ 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.

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.

⁹ *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).

¹⁰ *Horicon Marsh Systems Advocates and Joe M. Breden 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).

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 25 percent additional MW for solar panels beyond the minimum necessary for the desired project size of 100 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 “primary”) and alternative in the revised Appendix B to its application. ([PSC REF#: 404059.](#)) 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.

During the hearing in this case, the Village of Lomira argued that swapping 265 acres of the primary site (amounting to approximately 42 MW) with 146.4 acres from the alternative sites (25 MW) could be accomplished without causing detriment to the project. The Commission finds that approving the primary site as proposed as by the applicant is preferable to that hypothetical, as the scenario suggested by the Village of Lomira would reduce the project's nameplate capacity by approximately 17 MW, thereby lowering the total output of the facility. The primary site area can produce more energy because it is larger and includes a denser organization of panels, so more MW can be produced, and the energy does not need to travel as far. The primary site thus provides a more cost-effective layout. The Commission recognizes, however, that the alternative site provides additional flexibility for placement of the solar facilities during construction with similar, limited environmental impacts. The Commission therefore 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 advance written notice to the Commission identifying such alternative arrays.

When the Commission examines whether a proposed project complies with Wis. Stat. § 196.491(3)(d)4, the relevant inquiry is whether the proposed project site will cause undue individual hardships or undue adverse impact on other environmental values. The Commission

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appreciates the expressed concerns of the public and noted strong opposition to the project. The Commission encourages developers to be good neighbors and to work with communities. There were public concerns related to the transfer of land use from agricultural to solar electric generation, set-backs of nearby landowners, and the proximity to natural gas pipelines. 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. Further, the conditions recommended by Commission staff that the Commission intends to adopt will mitigate or address the majority of environmental concerns identified, and 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 720 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

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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.¹¹ 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.” The project’s compliance with this statute was a key issue in this case.

The land where the proposed project would be constructed is primarily agricultural land. Some members of the public commented that approving the project would close off growth opportunities for new housing or new businesses, while others suggested that the project should be denied so that farmland could be preserved. RENEW supported a finding that the project would not unreasonably interfere with orderly land use and development. The Village of Lomira argued that the project does not comply with Wisconsin Stat. § 196.491(3)(d)6, citing the 2005 Comprehensive Plan for the Village and Village growth area under Wisconsin Stat. § 66.1001.¹² ([PSC REF#: 414317](#), [PSC REF#: 414318](#), [PSC REF#: 415223](#), and [PSC REF#: 415880](#).) The

¹¹ *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.)

¹² Tr. 62, Party Hearing Session ([PSC REF#: 414299](#)).

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applicant argued that the project meets zoning laws and the Dodge County development plan, noted that the Village of Lomira's plan is out of date, and argued that even if the Village's plan was not out of date, the project would still comply with the plan. ([PSC REF#: 407709](#), [PSC REF#: 411628](#), [PSC REF#: 411633](#), [PSC REF#: 411616](#), [PSC REF#: 411625](#), [PSC REF#: 414299](#), [PSC REF#: 415234](#), and [PSC REF#: 415882](#).)

The Commission recognizes that the project was proposed as exactly 100 MW, and if it had been below that threshold, the Commission would not have had jurisdiction, and that local approval would have been required. In cases such as this, which are so close to the jurisdictional cut-off, the Commission urges developers to be especially cognizant of local concerns, and to work cooperatively with the communities in which they plan to develop the project.

During its review of the public comments and party positions, the Commission found this to be a complex issue. 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 Commission takes seriously the concern 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 local benefits that will come to the community during construction and operation, and the right of individual landowners to use their properties in the manner they choose. The Commission also recognizes that after decommissioning, the land may return to a use similar to its current use.

Notably, the applicant is not a public utility and does not possess statutory eminent domain authority. The applicant plans to purchase the land in the project area to acquire the property for the generation facility. The record reflects that the landowner selling the 200 acres

at issue has not received any other serious offers for the purchase of their property. ([PSC REF#: 411626](#).) There is no support in the record that would demonstrate that some other industrial use is imminently on the horizon that would be better for the community.

The Commission recognizes that the proposed project may not be what the Village of Lomira would have expected as an industrial development, but finds that the Village of Lomira's plan does not explicitly state or exclude energy generation facilities. This may in part be because the Village of Lomira's plan is substantially, and statutorily, out of date.¹³ It was approved in 2005, when projects like this one might not yet have been contemplated. The Commission encourages municipalities to frequently update their comprehensive plans to take into account changing circumstances and development possibilities. Moreover, although the Village of Lomira objects to 265 acres of the project area, only 65 acres of the 884 total acres of the project area are within the Village of Lomira. The additional 200 acres that the Village of Lomira purports to have a development interest in, are located in the Town of Lomira, which the Village of Lomira argues it intends to acquire at some point in the future, but there is no evidence in the record that annexation is imminent. The Commission does not find the argument that the Village extended a sewer line to the area to be compelling; that was a risk the Village chose to take. The potential future development opportunities or future infrastructure the Village of Lomira alludes to in its testimony are largely hypothetical. This project, and the economic and public benefits it will bring to the community, is not.

¹³ Wisconsin Stat. § 66.1101(2)(i) requires that a comprehensive plan must be updated at least once every 10 years.

For these reasons, the Commission finds that the proposed project would not unreasonably interfere with the orderly land use and development plans for the area involved, and thus complies with Wis. Stat. § 196.491(3)(d)(6).

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

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agency information, local officials, and scientific literature. Commission staff also coordinated review with DNR to assess wetland, waterway, and endangered resource impacts. The applicant agreed to incorporate some recommendations from the Commission and DNR into its project to mitigate environment impacts, and the Commission imposes additional conditions as described in this Final Decision.

The record before the Commission reflects an expectation that if these facilities are decommissioned after 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 100 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.¹⁴

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

¹⁴ *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, 2010). ([PSC REF#: 126124.](#))

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 a number of conditions, as discussed below, are reasonable and in the public interest.

General Conditions

Typically, the Commission's Final Decision for electric construction projects includes general conditions relating to the authorized construction, reporting, communication, and minor siting adjustments. Commission staff proposed that the Commission might wish to consider imposing similar conditions in this case. The applicant supported the imposition of the conditions suggested by Commission staff, with one modification that Commission staff also found to be acceptable, which would adjust the condition requiring prior notice of any arrangement regarding ownership or operation of the proposed facilities, so that such notice would only be required for arrangements with another party other than Alliant Energy, as the Commission already has notice of the intended Alliant Energy arrangement. The Village of Brownsville and the Village of Lomira also supported the imposition of the conditions. The Commission finds it to be reasonable and necessary to adopt each of the general conditions imposed by Commission staff, with the modification requested by the applicant regarding the prior notice of ownership or operation changes. The Commission notes that the Village of Lomira requested that the Commission further condition its approval with a requirement that the

applicant “shall comply with all federal and state law at all times.” The Commission does not find it reasonable or necessary to add such a condition, as the laws themselves require such compliance. Thus, the Commission finds it reasonable and necessary to condition its approval of the project of the imposition of the following general conditions:

a. The applicant is authorized to construct the proposed solar PV electric generation facility, as described in the application, and data request responses, and as modified by the Final Decision.

b. 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 alternative array, the applicant shall provide advance written notice to the Commission identifying such alternative arrays.

c. The applicant may propose minor adjustments in the approved applicant project layouts for the protection of social, cultural, or environmental resources, or for other purposes (up to the authorized nameplate capacity for the applicant’s project), but any changes from the approved layouts 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

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

d. 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 best management practices. Materials must be provided to DNR and Commission staff 14 days prior to the meeting date to allow time for review.

e. Should the scope, design, or location of the project change significantly, the applicant shall notify the Commission within 30 days of becoming aware of possible changes. The applicant shall obtain approval from the Commission before proceeding with any substantial change in the scope, design, size, or location of the approved project.

f. If the applicant cancels the project or enters into any arrangement with another party other than Wisconsin Power and Light Company (d/b/a Alliant Energy) regarding ownership or operation of the proposed facilities, the applicant shall provide prior notice to the Commission.

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

h. 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).

i. 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.

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

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

l. Beginning with the quarter ending on a date to be determined by the Commission in the Final Decision, and within 30 days of the end of each quarter

thereafter and continuing until the authorized facilities are fully operational, the applicant shall submit quarterly progress reports to the Commission that include all of the following:

1. The date that construction commences;
2. Major construction and environmental milestones, including permits obtained, by agency, subject, and date;
3. Summaries of the status of construction, the anticipated in-service date, and the overall percent of physical completion;
4. The date that the facilities are placed in service.

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

1. The date the Final Decision is served;
2. 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;
3. 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. (2.);
4. 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. (2.).

n. If the applicant has not begun on-site physical construction of the applicant's authorized project within one year of the effective date of this Final Decision, the Certificate authorizing the applicant's approved project for which construction has not commenced shall become void unless the applicant:

1. Files a written request of an extension of time with the Commission before the effective date on which the Certificate becomes void; and
2. Is granted an extension by the Commission.

o. 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.

- p. The Final Decision takes effect one day after the date of service.
- q. Jurisdiction is retained.

In addition to the above general conditions, Commission staff also suggested a number of more specific conditions for the Commission to consider with respect to this project, a discussion of which follows below.

Electrical Code Compliance

Commission staff suggested that the Commission might wish to include a condition relating to the National Electrical Code (NEC), which generally applies to non-supply facilities owned by non-utility entities, and relating to the National Electrical Safety Code (NESC), which generally applies to supply facilities owned by utilities, and with Wis. Admin. Code ch. PSC 114. Previous Commission final decisions, including those for Glacier Hills Wind

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Park,¹⁵ Badger Hollow Solar,¹⁶ Two Creeks Solar,¹⁷ Point Beach Solar,¹⁸ Badger State Solar,¹⁹ Paris Solar,²⁰ Wood County Solar,²¹ Grant County Solar,²² Onion River Solar,²³ and Darien Solar²⁴ have included language requiring compliance with the NEC or NESC, and with Wis. Admin. Code ch. PSC 114, as appropriate. Testimony from applicant witness Brett Schneider states that the project will comply with the NEC or NESC, as appropriate. (Rebuttal-Springfield Solar Farm, LLC-Schneider-r-2-3, [PSC REF#: 414074](#).)

The Commission finds it reasonable to require the applicant to construct, maintain, and operate all applicable project facilities to comply with the 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 whichever code has the more stringent requirements. 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 when public utilities do purchase the facilities, such facilities will not require additional code upgrades that could result in further costs.

¹⁵ See docket 6630-CE-302.

¹⁶ See docket 9697-CE-100.

¹⁷ See docket 9696-CE-100.

¹⁸ See docket 9802-CE-100.

¹⁹ See docket 9800-CE-100.

²⁰ See docket 9801-CE-100.

²¹ See docket 9803-CE-100.

²² See docket 9804-CE-100.

²³ See docket 9805-CE-100.

²⁴ See docket 9806-CE-100.

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 those for Glacier Hills Wind Park,²⁵ Badger Hollow Solar,²⁶ Two Creeks Solar,²⁷ Point Beach Solar,²⁸ Badger State Solar,²⁹ and Onion River Solar³⁰ have included language requiring stray voltage testing. Stray voltage has the potential to cause adverse impacts on agricultural property. Commission staff suggested that the Commission may wish to include in any final decision approving this project, language requiring pre- and post-construction stray voltage testing consistent with Wis. Admin. Code § PSC 128.17 and previous Commission decisions on solar electric generation facilities. Previous Commission decisions required that the utility must offer stray voltage testing to agricultural properties with confined animal operations within a certain distance of the project area. For a solar electric generating facility, establishing the boundary of the project area may vary depending on the definitions or language used by the applicant. Instead of using the project area as a boundary to measure the distance in which stray voltage testing is offered, the Commission has found it appropriate for the starting point for the distance measured to be from any project infrastructure.

²⁵ See docket 6630-CE-302.

²⁶ See docket 9697-CE-100.

²⁷ See docket 9696-CE-100.

²⁸ See docket 9802-CE-100.

²⁹ See docket 9800-CE-100.

³⁰ See docket 9805-CE-100.

In response to the testimony of Commission witness Dave Hansen ([PSC REF#: 410130](#)), the applicant stated that it does not anticipate any stray voltage issues and did not object to the condition proposed by Commission staff. (Rebuttal-Springfield Solar Farm, LLC-Schneider-r-3, [PSC REF#: 414074](#).)

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

Post-Construction Noise Study

There is 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 include language that required noise studies by a project developer. In this docket, the applicant completed and submitted an initial pre-construction noise study report. Commission staff suggested that the Commission may wish to require the applicant to submit a post-construction noise study, as it has in prior approvals of solar generation projects. The applicant supported the imposition of such a condition.

The Commission finds it reasonable to require 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.

Natural Gas Pipeline Safety

Specific concerns about natural gas pipeline safety and the proximity of natural gas pipelines to the project were received. There is an interstate transmission pipeline owned by Guardian Pipeline LLC (Guardian), located diagonally through the southern portion of the project, and a WP&L high-pressure distribution pipeline in the northern portion of the project. The Commission does not have pipeline safety authority over Guardian; interstate transmission pipelines fall under the jurisdiction of the Pipeline and Hazardous Materials Safety Administration. The Commission does have pipeline safety jurisdiction over WP&L's facilities in Wisconsin, however, and conducts routine inspections of WP&L's procedures, records, and field work to confirm compliance with state and federal pipeline safety regulations. The application states that the panels and associated facilities would not encroach on the easements, but would require crossing of the Guardian Pipeline for its underground collector system. The proposed project may also require crossing of pipelines owned by Alliant Energy.

Wisconsin Stat. § 182.0175 requires persons who engage in excavation to notify Diggers Hotline before starting work. Excavation, according to the law, "means any operation in which earth, rock or other material in or on the ground is moved, removed or otherwise displaced by means of any tools, equipment or explosives and includes grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing and driving and means any operation by which a structure or mass of material is wrecked, razed, rended, moved or

removed.” In addition, Federal Pipeline Safety regulations, including 49 CFR Part 192 and the pipeline operator’s company policies may require a company representative to be physically on site to observe, inspect, or monitor excavation activities occurring near their pipelines and pipeline facilities to prevent damage to the pipeline from the excavation activities and to verify the integrity of the pipeline. It is expected that the applicant would comply with the Wisconsin One-Call Law and would work with the pipeline operators to allow company personnel to observe, inspect or monitor excavation activities which may occur near their pipelines.

Once in operation, the new electrical facilities could cause interference with the cathodic protection systems that protect the steel pipelines from galvanic corrosion. Upon the completion of the proposed project, the pipeline operators may be required to perform additional tests, surveys, and maintenance activities depending on the proximity of the proposed facilities to the pipelines. The applicant states that corrosion and interference risks related the project and natural gas pipelines in the area are very small, and reimbursement will be addressed in every instance by crossing and proximity agreements entered into between the applicant and the pipeline operator.

Commission staff proposed three potential order conditions the Commission could impose, that could help to mitigate potential risks relating to the presence of natural gas pipelines in the project area. The applicant supported the imposition of two of the three proposed conditions, but commented that a third condition, which would have required the applicant to work with pipeline operators before, during, and after construction to investigate potential electrical interference risks to the pipelines from the project, and to reimburse pipeline operators for related surveys or upgrades, would not be necessary. The applicant noted that

reimbursements for such expenses would be addressed in crossing and proximity agreements entered into by the applicant and the pipeline owners. No other party commented on the proposed conditions.

The Commission recognizes the public comments regarding set-backs and safety concerns regarding the natural gas pipelines. The Commission also recognizes, however, that it has limited jurisdiction over pipeline operators, and that is in the best interest of pipeline operators, and it is the responsibility of those pipeline operators, to ensure the safe operation of their pipelines. The Commission concludes that the third proposed condition is not necessary in this case, and finds it reasonable to adopt the following conditions proposed by Commission staff:

- The applicant shall comply with the one-call law, Wis. Stat. § 182.0175, and must have a pipeline operator representative present when excavating within 25 feet of the pipelines, unless agreed to by the applicant and the pipeline operator in writing; and
- The applicant shall ensure aboveground facilities such as fencing and arrays are not built on pipeline right-of-way (ROW), to the extent feasible. In circumstances in which such avoidance is not feasible, the applicant shall work with the pipeline operators to develop a plan to construct and maintain facilities in a manner that does not interfere with the pipeline operators' ability to access their pipelines and ROWs.

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 project was reviewed by the Commission for environmental impacts, including the effects on aesthetics and landowners, changes in land use, wildlife including rare or endangered species, water resources, and historic or cultural resources, as well as a variety of other topics. The detailed results of the Commission’s environmental review for this project are described in the EA, which concluded that “approval and construction of this project is unlikely to have a significant impact on the human environment...” ([PSC REF#: 410061](#).) Based on the analysis, the main environmental effects associated with constructing the project include:

- Temporary noise, dust, and traffic during construction;
- Changes to local aesthetics due to new visual impacts;
- Removal of land that could be used for other purposes; and
- Changes to plant and animal species active in the project area.

Construction Impacts

Increases in noise and dust will occur due to construction activities and traffic around the project area. There will be an increased risk of soil erosion and stormwater runoff during any excavation or grading activities, including minor surface leveling, due to greater exposure of soils. Appendix M of the application includes an Erosion Control Plan that, if properly implemented, will likely decrease the amount of loose dirt and debris during construction and therefore lead to less dust creation, erosion, and water runoff. No significant noise, dust, erosion, water runoff, or traffic impacts will be expected after construction is complete and the project is operational. The pre-construction meeting, which will be required as one of the general conditions discussed above, will provide an opportunity for the applicant and its selected contractor to discuss construction details and best management practices with DNR and Commission staff, which could help to minimize construction impacts.

Water and Erosion Impacts

Public comments provided in response to the CPCN application demonstrate that the surrounding community has significant concerns regarding water and erosion impacts associated with this project.

Sites with large areas of site disturbance have the potential to discharge significant amounts of sediment to water resources when erosion and sediment control measures are inadequately installed or maintained. For this project, the design largely avoids direct impacts to waterways and wetlands, therefore a Chapter 30 individual permit is not required. However, DNR staff suggested that the risk of impacting wetlands and waterways may still be high due to the extent of the proposed site disturbance, recent experiences with large solar facilities under construction, and the

proximity of wetlands and waterways to the project boundaries. Therefore, DNR staff suggested that an Independent Environmental Monitor (IEM), focusing on potential impacts related to stormwater and erosion, and reporting to the regulatory agencies, could identify concerns early to reduce or prevent impacts.

While construction conditions specified in the Commission's orders and DNR permits can avoid, minimize, and mitigate the potential adverse impacts of an approved project, the Commission has in the past, typically in large high-voltage transmission projects and certain generation projects, found it useful to employ an IEM to assist the regulatory agencies in ensuring compliance with regulatory requirements.

The Commission recognizes that concerns about potential water and erosion impacts have been raised. Where the Commission has previously required an IEM, however, it has generally been for very large projects. The Commission also has concerns about who might ultimately have to pay the costs associated with the IEM, and does not find DNR staffing shortages to be a compelling reason for requiring an IEM in this case. The Commission believes that the stated concerns can and should be addressed through pre-construction meetings and best management practices, and does not find it necessary to require that an IEM be retained to monitor stormwater and erosion practices during construction of the project.

Visual Impacts

During and after construction, the project will change the aesthetics of the area from a rural agricultural setting to more of a high-tech electric infrastructure setting. The project will create new visual impacts that will be experienced most intensely by the people using the area frequently or living nearby. The current landscape is mostly comprised of open agricultural land

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next to developed residential neighborhoods and isolated homes. Many homes will be in fairly close proximity to the project on two or more sides. While the project will mostly be within the Town of Lomira, more homes and neighborhoods in the Village of Brownsville and Village of Lomira will be affected by visual impacts from the project. On the east side of the project area, there will be two apartment complexes that will be across the street from the project. An existing neighborhood of homes will be located to the west of the project area, and a new neighborhood of homes are under construction in an area to the south of the project. The project plans comply with the set-back requirements described in the joint development agreement between the applicant and Dodge County, which states that the project's aboveground facilities (excluding fences and access roads) must be at least 100 feet from nonparticipating inhabitable buildings. The applicant completed an analysis of the potential glare that may be created by the solar panels. The study predicts that no increased glare will occur for planes, drivers, or individuals living in nearby residences.

The presence of the facility would increase an industrial/electrical infrastructure aesthetic and reduce the rural/agricultural aesthetic in the area, which could impact individual residences and the existing traditional community aesthetic. Once constructed, there would not be a significant amount of existing vegetation to shield views of the facility from surrounding viewers. The applicant plans to use agricultural or deer fencing to surround the solar arrays, which may be considered less intrusive than industrial chain-link fencing.

Many public comments expressed concern for the change in aesthetics that the project would cause. While individual opinion may vary on whether these changes will be seen positively or negatively, the majority of the comments received stated that they would consider

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the changes to be negative. The applicant has stated that it is willing to work with nonparticipating landowners and municipalities to reasonably mitigate visual impacts and is taking direct visual mitigation requests.

Commission staff suggested that the Commission could consider imposing a requirement that the applicant work with the Village of Lomira and the Village of Brownsville to create visual buffers and screening for neighborhoods that are adjacent to solar panel arrays in order to mitigate visual impacts, as feasible. Commission staff further suggested that the Commission could consider requiring, as a condition of approval, that the applicant must work with landowners that are adjacent to solar panel arrays on one or more sides of their property to create visual buffers and screening in order to mitigate visual impacts, if feasible. The Village of Brownsville supported the imposition of these order conditions, while the applicant expressed that it did not believe the suggested conditions are necessary, given its willingness to work with nonparticipating landowners and municipalities on reasonable mitigation requests. The applicant further suggested that if the Commission were to impose the suggested conditions, that they be modified requiring that the mitigation only be required “to the extent reasonable and economically feasible, and not otherwise impeding solar operations or access to sunlight.”

The Commission recognizes the public concerns regarding visual impacts and set-backs raised by nearby landowners, and encourages the applicant to minimize impacts from the project and to work with adjacent nonparticipating landowners. The Commission does not, however, find it necessary to impose the additional conditions suggested by Commission staff, particularly given the joint development agreements that have been put into place relating to the project, the

local discussions and efforts that have been made by the developer, and the developer's willingness to work with individual landowners on mitigation requests.

Commissioner Valcq dissents and would have imposed the conditions, as modified to require mitigation to be completed "to the extent reasonable and economically feasible, and not otherwise impeding solar operations or access to sunlight."

Noise Impacts

The applicant completed a noise study that included measuring the current sound levels around the project area. The applicant used the technical specifications of solar facility components to estimate the noise impacts of the solar equipment once in operation. The applicant's study stated that operation of the facility will not increase noise experienced by residences surrounding the project facility. The condition requiring a post-construction noise study, discussed above, will be useful to assess any noise impacts caused by the project.

Line-of-Sight Communications Impacts

The applicant states that due to the relatively low height of the project components that will be similar to existing structures in the project area, the facility will not be expected to affect line-of-sight communications. The Commission's general condition relating to line-of-sight communications, discussed above, would require mitigation of any that might occur.

Wildlife Impacts

The project will convert the current vegetation, consisting of row-crop agriculture and plants adapted to that ecosystem, to grassland planted as part of the project's vegetation restoration plan. The applicant plans to plant low-growth seed mixes within the solar panel areas, and pollinator refuge prairie seed mixes for select buffer areas. The new vegetation will

form a more open grassland ecosystem when compared to the existing row-crop agriculture. New species of animals could be attracted to the area that were not present when the landscape was under agricultural use, with small mammals, reptiles, birds, and insect species potentially residing within the new grassland.

Ground-nesting birds and other animals living within the grassland could be disturbed or killed when regular mowing occurs during operation of the facility. Commission staff proposed an order condition that could reduce impact to ground-nesting animal species. The applicant requested that the proposed order condition be modified, and proposed particular language for the Commission's consideration. The Commission finds that the language proposed by the applicant is similar to that proposed by Commission staff, and that either way the condition is stated could accomplish the Commission's intent. For this particular case, the Commission finds it reasonable to approve the condition as modified at the applicant's request, and to require:

The applicant shall provide the Commission and DNR staff with an updated vegetation management plan prior to commencing project operation. Prior to mowing within the fenced array areas between May 15 and August 1, the applicant shall consult with DNR staff, and if necessary, engage a qualified avian biologist to conduct walking surveys to identify ground-nesting birds present. Any areas found to contain nests shall be excluded from mowing operations. Data collected during the ground-nesting bird surveys shall be summarized in the Wildlife Protection Plan annual reporting.

Trees and small patches of forest within the project area will be cleared during construction of the project. Although no protected bird or bat species are currently known to be inhabiting these places, several landowners have commented about the existence of a potentially active bald eagle nests in the project vicinity, and the species could be present once construction commences. Commission staff proposed a potential condition that could mitigate impacts to tree-dwelling

animal species. The applicant was supportive of an order condition, but proposed alternative language because no bald eagle nests were observed during 2020 field surveys.

The Commission finds the language suggested by the applicant to be sufficient to achieve the goal of mitigating impacts to tree-dwelling animal species, and thus finds it reasonable to require the following conditions:

- The applicant shall conduct tree-clearing activities outside the roosting and nesting seasons for the northern long-eared bat and any identified potentially affected migratory birds of concern;
- Prior to the start of construction, the applicant shall conduct field investigation for bald eagle nests. If one or more bald eagle nests are found within 660 feet of the construction boundary (fenced arrays or collection lines), the applicant shall follow U.S. Fish and Wildlife Service (USFWS) guidelines regarding acceptable dates for tree/vegetation clearing in Wisconsin, including guidance related to bald eagle disturbance/avoidance during construction; and
- If clearing cannot be completed outside active roosting/nesting seasons, the applicant shall coordinate with the USFWS, Commission staff, and DNR to discuss appropriate surveys prior to construction to avoid impacts to active roosts or nests.

ER Review

An ER Review of the project area identified no known protected animal species that could be affected by the project. The database used for the ER Review is regularly updated by DNR when new records of species are discovered or previous records of species are changed. To determine which species could be present when the project will be constructed, the order condition

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that requires the applicant to conduct an updated ER Review within one year of the project construction start date, which the Commission typically includes in solar facility construction dockets, and has found reasonable to impose in this case, as discussed above in the section relating to general conditions, will ensure that the information regarding endangered resources is accurate.

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

The applicant provided a construction schedule as part of its application, which is summarized as follows.

Construction is proposed to begin in the fall of 2021. PV panels will begin to be installed in the spring of 2022, and installation is estimated to continue for 6 months, until just before the start of commercial operations. The in-service date for this project is estimated to be at the end of 2022. The total duration of construction is estimated to be approximately 13 months, from site mobilization to commercial operation. Some construction timelines could be affected by weather conditions, particularly winter weather conditions.

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 100 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 alternative array area, the applicant shall provide advance written notice to the Commission identifying such alternative arrays.

4. If the applicant cancels the project or enters into any arrangement with another party other than Wisconsin Power and Light Company (d/b/a Alliant Energy), 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 best management practices. 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 December 31, 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 100 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 information 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 layout and the proposed modification, property boundaries, relevant natural features such as woodlands, wetlands, waterways, and other sensitive areas. Approval of the requests is delegated to the Administrator of the Division of Energy Regulation and Analysis with advice and consent from the Administrator of the Division of Digital Access, Consumer, and Environmental Affairs.

14. The applicant shall perform post-construction noise studies as described in the most current version of the PSC Noise Measurement Protocol. In the event of a substantial change to the proposed facility layout, the applicant shall confer with Commission staff to determine if a new pre-construction noise study must be completed. The applicant shall file a copy of the post-construction noise study report with the Commission.

15. The applicant shall work with the applicable distribution utility to make available stray voltage testing at each agricultural confined animal operation within 0.5 miles of the project infrastructure, prior to construction and after the project is energized. The applicant shall work with the distribution utility and farm owner to rectify any identified stray voltage problem arising from the construction or operation of the project. Prior to testing, the applicant shall work with the applicable distribution utility and Commission staff to determine where and how it will conduct the stray voltage measurements. The applicant shall report the results of its testing to Commission staff.

16. The applicant shall comply with the 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 whichever code has the more stringent requirements.

17. The applicant shall provide the Commission and DNR staff with an updated vegetation management plan prior to commencing project operation. Prior to mowing within the fenced array areas between May 15 and August 1, the applicant shall consult with DNR staff, and if necessary, engage a qualified avian biologist to conduct walking surveys to identify ground-nesting birds present. Any areas found to contain nests shall be excluded from mowing operations. Data collected during the ground-nesting bird surveys shall be summarized in the Wildlife Protection Plan annual reporting.

18. The applicant shall conduct tree-clearing activities outside the roosting and nesting seasons for the northern long-eared bat and any identified potentially affected migratory birds of concern. Prior to the start of construction, the applicant shall conduct field investigation for bald

eagle nests. If one or more bald eagle nests are found within 660 feet of the construction boundary (fenced arrays or collection lines), the applicant shall follow USFWS guidelines regarding acceptable dates for tree/vegetation clearing in Wisconsin, including guidance related to bald eagle disturbance/avoidance during construction. If clearing cannot be completed outside active roosting/nesting seasons, the applicant shall coordinate with the USFWS, Commission staff, and DNR to discuss appropriate surveys prior to construction to avoid impacts to active roosts or nests.

19. The applicant shall comply with the one-call law, Wis. Stat. §182.0175, and must have a pipeline operator representative present when excavating within 25 feet of the pipelines, unless agreed to by the applicant and the pipeline operator in writing.

20. The applicant shall ensure aboveground facilities such as fencing and arrays are not built on pipeline ROW, to the extent feasible. In circumstances in which such avoidance is not feasible, the applicant shall work with the pipeline operators to develop a plan to construct and maintain facilities in a manner that does not interfere with the pipeline operators' ability to access their pipelines and ROWs.

21. 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.

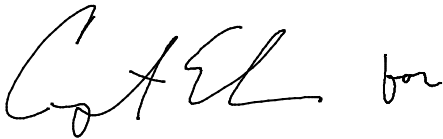
22. The transfer of rights and obligations under this CPCN to a third party does not confer either additional rights or obligations upon that third party than what is afforded to the applicant at the time of application and as specified in this Final Decision. If a successor, assign, or future owner 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)

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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).

23. This Final Decision takes effect one day after the date of service.
24. Jurisdiction is retained.

Dated at Madison, Wisconsin, this 12th day of October, 2021.

A handwritten signature in black ink, appearing to read 'Coker' followed by a small flourish.

Steffany Powell Coker
Secretary to the Commission

SPC:JLH:cmb:jlt:DL: 01830935

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.³¹ 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

³¹ See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

APPENDIX A

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