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PUBLIC SERVICE COMMISSION OF WISCONSIN

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

9811-CE-100

FINAL DECISION

On April 15, 2021, pursuant to Wis. Stat. § 196.491 and Wis. Admin. Code chs. PSC 4 and 111, Koshkonong Solar Energy Center 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 is a wholesale merchant plant as defined by Wis. Stat. § 196.491(1)(w) and would have a generating capacity of up to 387 megawatts (MW) direct current (DC) and up to 300 MW alternating current (AC). The application showed the proposed and alternative project arrays on approximately 4,600 acres of primarily agricultural land in the Towns of Christiana and Deerfield in Dane County, Wisconsin. The project is expected to use approximately 2,349 acres of this land to generate 300 MW AC. The major components of the proposed project include the PV panels, inverters, collector circuits, a collector substation, and a Battery Energy Storage System (BESS) with a capacity of up to 165 MW AC/660 megawatt-hours (MWh).

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

Introduction

The Commission determined the application complete on May 14, 2021. ([PSC REF#: 411465](#).) The Commission issued a Notice of Proceeding on June 24, 2021. ([PSC REF#: 414242](#).) 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 August 25, 2021, the Commission Chairperson granted a 180-day extension. ([PSC REF#: 419394](#).) The Commission must take final action on or before May 9, 2022, or the application is approved by operation of law. See Wis. Stat. § 196.491(3)(g).

On July 16, 2021, the Administrative Law Judge (ALJ) issued a Notice of Prehearing Conference. ([PSC REF#: 416198](#).) The prehearing conference was held virtually with no physical location on August 4, 2021. The ALJ issued a Prehearing Conference Memorandum on August 17, 2021. ([PSC REF#: 418913](#).) On July 16, 2021, and December 16, 2021, the ALJ granted requests to intervene to Barnes, Danielson, Engelstad-Lovell, Klopp, RENEW Wisconsin (RENEW), the School District of Cambridge, the Town of Christiana, Vasby, the Village of Cambridge, and Clean Wisconsin. ([PSC REF#: 416196](#), [PSC REF#: 427383](#).) 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.

Commission staff worked jointly with the Wisconsin Department of Natural Resources (DNR), and on May 26, 2021, issued an EA scoping letter to accept comments from the public to determine the scope of the EA. ([PSC REF#: 412142.](#)) On October 18, 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#: 423249.](#)) The Commission took comments on this preliminary determination, and November 11, 2021, issued the EA regarding the proposed project, which was 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#: 425368.](#)) 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 December 9, 2021. ([PSC REF#: 427054.](#)) The Commission held technical hearing sessions over an audiovisual connection on January 19, January 20, and January 24, 2022. At the technical sessions, expert witnesses offered testimony and exhibits on behalf of the applicant, Barnes, Danielson, Engelstad-Lovell, Klopp, RENEW, the School District of Cambridge, the Town of Christiana, Vasby, the Village of Cambridge, Clean Wisconsin, DNR staff, and Commission staff.¹ ([PSC REF#: 431483.](#)) Public comment hearing sessions were held audio-only on January 20, 2022. 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

¹ [Tr. 441-582 Party Hearing Session - PSC REF#: 430520, Tr. 179-440 Party Hearing Session - PSC REF#: 430570, Tr. 673-944 Party Hearing Session - PSC REF#: 430571](#)

² [Tr. 583-616 Public Hearing Session - PSC REF#: 429952, Tr. 617-672 Public Hearing Session - PSC REF#: 429953](#)

³ [Ex.-PSC-Public Comments - PSC REF#: 430062](#)

Docket 9811-CE-100

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, Barnes, Danielson, Engelstad-Lovell, Klopp, the School District of Cambridge, the Town of Christiana, Vasby, the Village of Cambridge, and Clean Wisconsin filed initial briefs on February 9, 2022. ([PSC REF#: 430826](#), [PSC REF#: 430838](#), [PSC REF#: 430848](#), [PSC REF#: 430854](#), [PSC REF#: 430855](#), [PSC REF#: 430856](#), [PSC REF#: 430857](#), [PSC REF#: 430858](#), [PSC REF#: 430865](#), [PSC REF#: 430866](#), [PSC REF#: 430876](#).) On February 23, 2022, the same parties filed reply briefs. ([PSC REF#: 431433](#), [PSC REF#: 431466](#), [PSC REF#: 431478](#), [PSC REF#: 431501](#), [PSC REF#: 431502](#), [PSC REF#: 431503](#), [PSC REF#: 431507](#), [PSC REF#: 431509](#), [PSC REF#: 431510](#), [PSC REF#: 431526](#).)

The Commission⁴ discussed the record in this matter at its open meeting of April 7, 2022, and approved this Final Decision at its open meeting of May 5, 2022.

Findings of Fact

1. The applicant is a wholly-owned subsidiary of Invenergy, LLC (Invenergy). 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 387 MW DC and up to 300 MW AC. The proposed project also includes a BESS with a capacity of up to 165 MW AC/660 MWh.

⁴ Commission Huebner recused himself from participation in this proceeding and therefore did not participate in the Commission's discussion or review.

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. The 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, 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.

7. The proposed project, as conditioned by this Final Decision, satisfies the requirements of Wis. Stat. § 196.491(3)(d)3., will not have an undue adverse impact as defined in Wis. Stat. § 196.491(3)(d)4, and satisfies the other applicable CPCN criteria for approval.

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 387 MW DC and up to 300 MW AC. The proposed project also includes a BESS with a capacity of up to 165 MW AC. The proposed project would be located in the Towns of Christiana and Deerfield, in Dane County, Wisconsin. The major components of the proposed project include the PV panels, BESS, inverters, collector circuits, and a collector substation.

All solar modules under consideration for the project are monocrystalline models, the specific model of which is to be evaluated and selected closer to the time of construction. The module selected may use bifacial technology, which, unlike a monofacial module, contains a backsheets that is clear, rather than opaque, allowing the solar cells to absorb light entering from the back as well as from the front side of the cells. Panel models will be evaluated closer to the time of construction and may range from 350 watts per panel to 600 watts DC per panel, requiring approximately 645,000 to 1,105,715 total panels for the 300 MW AC. The selected panels would connect to a horizontal 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 75 miles, and the collector system for the project will be broken up into 10 to 15 separate circuits. The solar PV array would connect to a new 34.5 kV/345 kV project collector

Docket 9811-CE-100

substation. An approximately 0.84-mile generator tie line would connect the new collector substation to the existing Rockdale 345 kV substation, which is owned by American Transmission Company LLC (ATC). The applicant may sell some or all of the site to utility ownership.⁵

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 (DPP) study. The applicant has two interconnection positions in the MISO 2019 cycle and one in the MISO 2020 cycle. In the MISO DPP 2019 cycle, interconnection position J1214 requests the interconnection of 300 MW of solar generation to the existing Rockdale 345 kV ATC substation and interconnection position J1410 requests the interconnection of 75MW of BESS to the existing Rockdale 345 kV ATC substation. In the MISO DPP 2020 cycle, interconnection queue position J1779 may be used to support a 165 MW BESS. The applicant must execute the generator interconnection agreement prior to operation of the proposed project.

Applicable Statutory Criteria and Burden of Proof

The Commission has a responsibility to ensure that Wisconsin receives adequate, reliable, and economical electric service, now and in the future. Wisconsin's electricity sector is in the midst of a clean energy transition. Each of the five largest investor-owned utilities in

⁵ See, Application at 2.5.2; Environmental Assessment at 1.0.

Docket 9811-CE-100

Wisconsin has established goals to reduce carbon emissions 100 percent by 2050, and four of the five have established interim goals to achieve reductions of 80 percent or more by 2030. As documented in the Commission's most recent Strategic Energy Assessment, utilities' anticipated plans for achieving these goals include retirement of coal facilities, increased deployment of natural gas and solar generation, procurement of increased zero-carbon generation from MISO, and increased energy efficiency. ([PSC REF#: 397611](#) at 77-81.) The applicant's proposed project would provide infrastructure to support this transition and the public policy of greater access to renewable-based electric generation.

For a wholesale merchant plant, Wis. Stat. § 196.49(3)(d)3. requires that the design and location of the project be in the public interest considering alternative locations, individual hardships, safety, reliability and environmental factors. As a wholesale merchant plant, the Commission does not consider whether the project will satisfy the reasonable needs of the public for an adequate supply of electric energy. Wis. Stat. § 196.49(3)(d)2. The Commission is also precluded from considering alternative sources of supply, engineering or economic factors in a merchant plant proceeding like this one. Wis. Stat. § 196.49(3)(d)3.

Certain intervenors argued that this project is not or should not be treated as a wholesale merchant facility because, at some point in the future the applicant may sell some or all of the project to a public utility. The Commission disagrees and finds that that the applicant's project has been appropriately reviewed and considered by this Commission as a wholesale merchant plant. While there may be an acquisition of the solar facility in the future, 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

Docket 9811-CE-100

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. To the extent that certain intervenors find fault with this framework, their argument is with the Legislature and not with the Commission. As Wis. Stats. ch. 196 is currently written, the process by which the applicant seeks a CPCN in this docket is a lawful one, and the Commission may not impose additional requirements on the applicant that are not prescribed by the applicable legislation.

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.⁷

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](#).

⁷ See, e.g., *Application for a Certificate of Public Convenience and Necessity of Paris Solar Farm, LLC, to Construct a Solar Electric Generation Facility in the Town of Paris, Kenosha County, Wisconsin*, docket 9801-CE-100, Dec. 29, 2020, [PSC REF#: 402226](#); *Application for a Certificate of Public Convenience and Necessity of Point Beach Solar, LLC to Construct a Solar Electric Generation Facility, to be Located in Manitowoc County, Wisconsin*, docket 9802-CE-100, Feb. 12, 2020, [PSC REF#: 383720](#); *Application for Certificate of Public Convenience and Necessity of Wood County Solar Project, LLC to Construct a Solar Electric Generation Facility in the Town of Saratoga, Wood County, Wisconsin*, docket 9803-CE-100, March 4, 2021, [PSC REF#: 406282](#); *Application for Grant County Solar, LLC to Construct a New Solar Electric Generation Facility located near Potosi and Harrison townships, in Grant County, Wisconsin*, docket 9804-CE-100, May 17, 2021, [PSC REF#: 411529](#); *Application for a Certificate of Public Convenience and Necessity of Onion River Solar, LLC to Construct a Solar*

Docket 9811-CE-100

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.

With regard to evidentiary determinations, the applicable burden of proof functions in tandem with the applicable standard of proof. The CPCN law, Wis. Stat. § 196.491(3), unlike other provisions of ch. 196, does not assign a burden of proof to any party with regard to any

Electric Generation Facility in the Town of Holland, Sheboygan County, Wisconsin, docket 9805-CE-100, June 18, 2021, [PSC REF#: 413949](#); *Application for a Certificate of Public Convenience and Necessity of Darien Solar Energy Center, LLC to Construct a Solar Electric Generation Facility in the Town of Bradford, Rock County, and the Town of Darien, Walworth County, Wisconsin*, docket 9806-CE-100, Aug. 5, 2021, [PSC REF#: 418117](#); *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*, docket 9807-CE-100, Oct. 12, 2021, [PSC REF#: 422918](#); *Application for a Certificate of Public Convenience and Necessity of Apple River Solar, LLC to Construct a Solar Electric Generation Facility in the Towns of Clayton, Beaver, Apple River, and Lincoln, Polk County, Wisconsin*, docket 9808-CE-100, Oct. 15, 2021, [PSC REF#: 423202](#).

determination that the Commission must make.⁸ Nor does the CPCN law itself specify a standard of proof (i.e., quantum of evidence) that must be found in order for the Commission to make one determination rather than another. This is contrasted with other sections of Wis. Stat. ch. 196, which require that certain determinations be made only upon “clear and convincing evidence” or “a preponderance of the evidence.”⁹

The CPCN law provides that the Commission “shall approve an application...for a certificate of public convenience and necessity only if the commission determines...” that a proposed project will be free of specified adverse impacts and in the public interest. These determinations are fact-intensive, and the Commission’s action in approving or denying an application ultimately depends on the facts found by the Commission. As such, the standard of proof that the Commission must apply can be logically inferred from the standard of review set forth in Wis. Stat. § 227.57(6), which requires a court to remand a CPCN decision back to the Commission if its decision “depends on any finding of fact that is not supported by substantial evidence in the record.”

As the courts have explained, “the substantial evidence test is not weighing the evidence to determine whether a burden of proof is met. Such tests are not applicable to administrative decisions.” *Wisconsin Ass’n of Mfrs. & Commerce, Inc. v. Pub. Serv. Comm’n*, 94 Wis. 2d 314, 321, 287 N.W.2d 844, 847 (Ct. App. 1979). The substantial evidence test simply requires that there be enough evidence for a finding to be reasonable. *Kitten v. DWD*, 2002 WI 54, 252 Wis. 2d 561, 644 N.W.2d 649; and *Gateway City Transfer Co. v. Pub. Serv. Comm’n*, 253 Wis. 397, 405, 34 N.W.2d 238, 242, 1948 WL 60150 (1948). In other words, a court must determine

⁸ See, e.g., Wis. Stat. §§ 196.499(5)(am), 196.504(8), 196.54(2).

⁹ See, e.g. Wis. Stat. §§ 196.499(5) (d), 196.64(2), 196.795(7)(c).

whether the Commission used its technical competence and specialized knowledge to determine the persuasiveness of the evidence and reach a well-reasoned decision.

In light of this standard of proof, for each finding that the CPCN law requires the Commission to make, the Commission focuses on weighing the evidence to identify the finding that is supported by substantial evidence. The standard of proof applicable to CPCN determinations renders the applicable burden of proof a subordinate consideration. A burden of proof consists of a burden of going forward and a burden of persuasion.¹⁰ The import of a burden of proof is generally effectuated through the burden of persuasion, rather than the burden of going forward. Therefore, although in administrative hearings such as this one the common-law rule that the moving party has the burden of proof is generally observed¹¹, observing this rule is fulfilled by weighing the evidence to determine whether a finding is supported by substantial evidence.

Regarding several of the findings that the CPCN law requires the Commission to make, some opposing intervenors argued that the applicant had not met its burden of proof. To the extent that those opposing intervenors mean this argument to say that there is not substantial evidence to make the findings for which the applicant has advocated, the Commission addresses those concerns in the applicable sections that follow. To the extent that those opposing intervenors mean this argument to say that the CPCN law calls for the Commission to decline to make a finding where substantial evidence supports that finding, the Commission rejects the argument.

¹⁰ *Hocgurtel v. San Felippo*, 78 Wis. 2d 70, 86, 253 N.W.2d 526 (1977).

¹¹ *Sterlingworth Condominium Ass'n Inc. v. Wis. Dept. of Natural Res.*, 205 Wis. 2d 710, 726, 556 N.W.2d 791 (Ct. App. 1995).

The Commission's proceeding on this CPCN application developed an extensive record from the public and parties on all of the issues that the Commission must consider in reviewing a project under Wisconsin law. Members of the public commented both in writing and through appearances at the public hearings about the impact that this project may have on them and their communities. Parties, as noted in the Introduction section above, ranging from interest groups to individual landowners, intervened in the proceeding to present expert and lay testimony on range of issues. The Commission acknowledges the thoughtful and helpful testimony from both the public and intervenors in this proceeding. This information assisted the Commission in its review of the application, in understanding the different perspectives toward the project, and in making its determinations on the application.

Motions to Deny or Dismiss the Application

During the course of this proceeding two motions were filed purporting to seek some sort of denial or dismissal of the application. On August 17, 2021, intervenors the Town of Christiania and Engelstad-Lovell filed a "Motion for an Order Denying the Application". ([PSC REF#: 418942](#).) In that motion, the intervenors asserted that the applicant's CPCN application should be denied because of the applicant's use of concurrent construction proceedings in this docket, and the utilities' buy/sell applications related to the project in a separate docket (5-BS-258). They argued the project could not be considered as a wholesale merchant plant pursuant to Wis. Stat. § 196.492(1)(w) because of the applicant's plans to sell the project to utilities in docket 5-BS-258.

On February 16, 2022, these same intervenors filed a “Motion to Dismiss.” ([PSC REF#: 431251](#).) In that motion, intervenors argued that the project violates Wis. Const. art. 1, § 14.

The Constitutional provision at issue states:

Feudal tenures; leases; alienation. Section 14. All lands within the state are declared to be allodial, and feudal tenures are prohibited. Leases and grants of agricultural land for a longer term than fifteen years in which rent or service of any kind shall be reserved, and all fines and like restraints upon alienation reserved in any grant of land, hereafter made, are declared to be void.

The intervenors argued that because the solar lease agreement between the applicant and the private owners of the land upon which the project will be sited exceeds fifteen years in duration, it is unconstitutional, and therefore the Commission may not grant a CPCN for its construction.

Both motions were procedurally and substantively flawed and therefore were not addressed at the time of filing. There is no provision in the Wisconsin Statutes or Administrative Code which creates a path for the summary dismissal of a CPCN application that has been deemed complete. The Commission may reject an application within 30 days of its filing for failure to meet the criteria specified in Wis. Admin. Code § PSC 111.53. However, once a completeness determination is made, the Commission is required to follow specific procedures and must issue a CPCN if it makes the determinations specified in Wis. Stat. § 196.491(3)(d).

In their August 2021 motion, intervenors requested that the Commission “deem the determination of completeness to have been improvidently granted and deny the CPCN application” because the project should be considered not as it is proposed in the application—as a merchant plant—but rather as it is “intended to be.” As discussed above, the relief requested is not procedurally available and the issues around developers’ and utilities’ use of this method have been thoroughly addressed and explicitly rejected by the Commission in previous

Docket 9811-CE-100

dockets.¹² Although the Commission finds that the intervenors' February 2022 Motion to Dismiss is likewise not contemplated by the statutes and code establishing CPCN procedure, the nature of the argument requires some response in order to inform the parties in this and future cases of the Commission's analysis and position.

It is undisputed that the Commission's actions must comply with the Wisconsin Constitution. However, the intervenors' filings reflect a lack of diligence in researching the Wisconsin Constitution and applicable case law, and are unsupported by legal authority. The novel argument presented by the intervenors is based on a reading of the Wisconsin Constitution that takes the "leases and grants" language out of both its historical context and its context in the Constitution. Moreover, the intervenors attempt to employ this provision in a way that runs counter to the core purpose of Section 14 as it has been ruled upon by Wisconsin and other courts.

The Wisconsin Supreme Court has stated that section 14 "was added to the Wisconsin Constitution for the purpose of establishing that ancient principles of feudal property law are inapplicable within this state." *Mutual Fed. S & L Ass'n. v. Wisconsin Wire Works*, 58 Wis. 2d 99, n.1 (1973); *see also Black v. State*, 113 Wis. 205, 89 N.W. 522, 530 (1902), stating that feudalism "cannot have any place in our constitutional system" and "is plainly rejected by our state constitution." (Marshall, J., concurring.) To date, no Wisconsin court has addressed the application of the specific language at issue here. However, Wisconsin courts' application of other parts of sec. 14 reveal a pattern of interpretation consistent with the clear goal of the section: to establish a system of land ownership in Wisconsin that is free of restraints on

¹² See, e.g., *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*, Dkt. No. 9697-CE-100; *Application for a 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*, Dkt. No. 9696-CE-100.

Docket 9811-CE-100

alienation, and to ensure the rights of landowners to convey property in the manner they choose.

Provision of the Wisconsin Constitution Regarding Feudal Tenures.

Courts in other states that adopted similar constitutional provisions based on New York's have consistently and uniformly rejected arguments like the ones made by the intervenors here. In a recent case interpreting a similar provision, *Iowa Arboretum, Inc. v. Iowa 4-H Foundation*, 886 N.W.2d 695, 697 (2016), the Iowa supreme court surveyed applicable case law from New York, Michigan, Montana, North and South Dakota, and Iowa, and concluded that its constitution, like those states', did not restrict leases of land suitable for agricultural purposes but used by the lessee for nonagricultural purposes, even if the lessee engaged in incidental agricultural use. *Id.* at 701-04. A historical Wisconsin Attorney General Opinion evinces a longstanding reading of Wisconsin's constitution that is consistent with Iowa's and other states' interpretation. ([4 Op. Atty. Gen. 908 \(1915\).](#)) The opinion states that "[t]his provision does not prohibit the leasing of agricultural land for other than agricultural purposes for longer than the term limited, if the lease precludes their use for agricultural purposes." *Id.* at 911. While an AG opinion is not binding precedent, it is an indication that Wisconsin's constitutional provision has long been interpreted in step with the way similar or identical provisions in other states have been interpreted: as not barring long-term leases for agricultural land used for non-agricultural purposes.

The sole document cited in the intervenors' motion in support of this constitutional argument is titled "Wisconsin Agricultural Lease Primer" authored by former University of Wisconsin professor Phillip E. Harris. ([PSC REF#: 431197.](#)) That document, undated and without citation to any authority, adds no persuasive weight to the intervenors' novel argument.

The entirety of relevant case law and other authority, as discussed above, is in favor of the applicant's interpretation. That interpretation is also harmonious with the purpose of section 14, which is to confirm ownership of agricultural land in fee simple, along with all of the rights appurtenant to that ownership, including the right to lease or sell that land to others. For these reasons, the Commission declines to adopt the intervenors' reading here.

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 (EPL), which establishes the preferred means of meeting Wisconsin's energy demands. The EPL 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.¹³ The EPL 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.

As this is a merchant plant, the Commission does not consider whether the plant will satisfy the reasonable needs of the public for an adequate supply of electric energy or alternative sources of supply, engineering or economic factors. Wis. Stat. §§ 196.491(3)(d)2., 196.491(3)(d)3. Accordingly, there are no alternative sources of supply and need for the Commission to consider.

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 EPL. Parties in this proceeding presented testimony stating that energy conservation and efficiency “deliver superior monetary, energy, capacity and CO2 reduction benefits”. The applicant presented testimony in which it stated that “no EPL alternatives exist that are cost-effective, technically feasible, and environmentally sound alternatives to the proposed project.” Further, the applicant stated that it “is not technically feasible” for them to offer an energy efficiency program as an alternative to the proposed project.

The Commission finds the parties’ testimony that energy conservation and efficiency “deliver superior monetary, energy, capacity and CO2 reduction benefits” unpersuasive because

¹³ Wisconsin 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.”

it was not based on area specific studies of the technical feasibility of demand response and energy efficiency programs as alternatives to the project. Certain parties also argued for the benefits of efficiency programs and the reduction in CO₂ emissions. However, the Commission does not regulate CO₂ emission rates, cannot compel customers to participate in energy efficiency and demand response programs as those are voluntary, and does not control the amount of available funding for the statewide energy efficiency program (Focus on Energy) as that is established by the Legislature.

The Commission concludes 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#: 425347](#) at 40.) Additionally, the objective of the law¹⁴ 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 Commission finds that the proposed project satisfies the requirements of the EPL.

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

¹⁴ See also Wis. Stat. §§ 1.12(3)(b) and 196.377.

Docket 9811-CE-100

§ 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, proximity to transmission infrastructure, topography, ground cover and community acceptance. 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 43 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,¹⁵ 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

¹⁵ *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).

method of offering site alternatives for a wind farm.¹⁶ 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.

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 43 percent additional MW (129 MW) for solar panels beyond the minimum necessary for the desired project size of 300 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.

¹⁶ *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 applicant identified which of the array areas were proposed (also referred to as “primary”) and alternative in Appendix B to its application. ([PSC REF#: 409318.](#)) 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.

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 2,349 acres of developable land in close proximity to existing transmission facilities. There were no brownfield sites identified in southern Wisconsin, in particular Dane, Columbia, Dodge, Green, Jefferson, Rock, Sauk and Iowa Counties, that met these siting requirements. The applicant stated that of these, Dane County has the most brownfield sites and that all but three sites are less than five acres, with the largest just under 43 acres. The applicant also stated that none of the sites are sufficient to support the proposed project. A number of the parties stated that the applicant did not evaluate Wis. Stat. § 238.13(1)(a) brownfields, but rather limited potential alternative brownfield sites by considering only sites meeting the U.S. Environmental Protection Agency (EPA) definition instead of the Wisconsin statute’s brownfields definition, thus excluding from consideration available statutory brownfields. However, nowhere in the record is there any evidence that there exists any brownfield site, under either the state or federal definition, of a large enough size to accommodate the proposed project. The Commission finds that the applicant’s siting criteria was reasonable, that a brownfield site is not practicable for the

Docket 9811-CE-100

applicant's proposed project, and that the requirement under Wis. Stat. § 196.491(3)(d)8 has been satisfied.

Authorized Project Site

When deciding siting, 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 agricultural to solar electric generation. As the record compiled for this proceeding reveals and the remainder of this Final Decision demonstrates, the Commission conducted a robust analysis of the potential impacts to the surrounding landowners, the community, and to the environment. The Commission is tasked with weighing and contrasting those impacts, balancing the competing interests of those for and against the project, and considering the benefits of the project.

The Commission authorizes the applicant to use any of the primary and alternative solar array sites. The primary site is preferred because the applicant believes that the most efficient construction can be attained by constructing the project in uniform "power blocks." The applicant stated that an ideal configuration from a constructability standpoint for 4.2 MW inverters would be rectangles with an inverter in the center and the surrounding acres being used for PV modules on the tracking system that feed electricity to that inverter. The applicant requested approval to place project facilities on any of the participating project land, primary or alternative, that is approved by the Commission because the alternative site provides additional flexibility and efficiency for placement of the solar facilities during construction.

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 300 MW AC maximum solar nameplate capacity and 165 MW BESS 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 and shall follow the procedures outlined in this Final Decision relating to Minor Siting Adjustments.

The Commission's authorization does not mean that 6,000 acres of currently farmed land will be displaced or used for the project as some of the opposing intervenors have suggested. The project's proposed and alternate arrays total 3,355 acres, with 2,349 acres proposed as primary and approximately 1,006 acres proposed as alternate areas. The project is expected to use approximately 2,349 acres of this land to generate 300 MW AC. As discussed above, the primary array sites are preferred, the alternate array sites are approved to provide additional flexibility and efficiency for placement of the solar facilities during construction, and the project size is capped at the 300 MW AC maximum solar nameplate capacity and 165 MW BESS.

As described more fully below, the proposed sites meet the siting criteria of Wis. Stat. §§ 196.491(3)(d)3. and 4. and will not cause undue individual hardships or adverse impacts on the environment. To the extent there are some impacts, these impacts can be mitigated through the conditions imposed by the Commission in its authorization as identified in this Final Decision.

Setback Requirements

Members of the public and certain intervenors expressed concerns regarding the proximity of solar generation and BESS facilities to roadways, schools, residences, and other buildings and properties in the surrounding area. Several requests were received for the Commission to order general setbacks across the project as a condition of approval. Additionally, property-specific setback requests were brought to the Commission for consideration by certain intervenors and members of the public. A public comment also mentioned relocating the BESS further away from the Cambridge Elementary School.

The Commission finds that delineating a standard setback requirement is unsupported by the record and would not account for different projects, different properties, and different areas of a project's proposed site and surrounding areas. Under the record established in this proceeding, the Commission finds that a standard setback requirement would require the Commission to choose an arbitrary number that does not account or allow for ongoing discussions between developers and landowners and any specific accommodations that could arise from such discussions. As to the specific requests of individual landowners for setbacks from their properties, the record confirms the applicant's continuing efforts to work with landowners on a case-by-case basis to address their concerns to the extent practicable. The Commission encourages the applicant to continue these discussions.

Based upon the record in this proceeding, the Commission finds that neither a standard setback requirement nor property-specific setbacks from project facilities as requested by non-participating landowners is necessary for approval of the proposed project.

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 determine whether the project is in the public interest when considering individual hardships, safety, interference with orderly local land use and development plans, environmental factors, reliability, and any potential impacts to wholesale electric competition. Ultimately, the Commission must determine whether granting or denying a CPCN will promote the public health and welfare. 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 is in the public interest considering its assessment of individual hardship, safety, reliability and environmental impacts.

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

Docket 9811-CE-100

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 35- to 50-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.

Approval of the proposed project will provide 300 MW of noncombustible renewable energy to the state of Wisconsin, as well as up to 165 MW/660 MWh of energy storage facilities. Renewable generation projects such as this one promote public health and welfare by generally avoiding most of the impacts created by other types of electric generation. The applicant and supporting intervenors identified other positive environmental attributes of the proposed project such as improving air and water quality, reducing agricultural nutrient runoff, enhanced plant and wildlife habitat, and soil revitalization for future agricultural use.

As demonstrated by intervenor Clean Wisconsin, the temporary replacement of row crop land by the project's solar arrays will help increase water quality in the area by decreasing harmful agriculturally related run off. ([PSC REF#: 425276](#) at 4-5, 8.) By temporarily replacing the row crop land with perennial, native grasses and other beneficial vegetation, the amount of potentially harmful chemicals typically associated with agricultural impacts, such as phosphorous and nitrates, will likely decrease in local water sources. (*Id.*) Additionally, such

Docket 9811-CE-100

beneficial vegetation replacing row crop land is likely to have a beneficial impact on numerous wildlife specific, including pollinators. (*Id.* at 9-12.)

The project will also generate economic benefits through job creation, landowner lease payments, tax revenue, and payments to Dane County and hosting townships from the Shared Revenue Utility Aid Formula.

For these and the other reasons identified in the record and highlighted in this Final Decision, the Commission finds that the project is in the public interest and satisfies the CPCN statutory requirements.

Individual Hardships and Safety

In determining whether the proposed project meets the statutory standard for a CPCN, the Commission considered individual hardships and safety as required by Wis. Stat.

§ 196.491(3)(d)3. Opposing intervenors and several members of the public 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, water quality and drainage issues, 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 and reviewed by Commission staff in the EA for these proceeding.

In order to address individual hardship and safety concerns, the applicant began public outreach and outreach to local governments in 2019. ([PSC REF#: 429875](#) at 21-22; [PSC REF#: 422320](#); [PSC REF#: 429924](#) at Appendix S.) The applicant hosted an open house, held other meetings, sent multiple mailings, attended local public events, maintained an online presence regarding the project, and began discussions with state regulators that same year. (*Id.*)

Docket 9811-CE-100

Additionally, the applicant engaged with or attempted to engage with several individuals, including multiple intervenors, to address those individuals' specific concerns including designating array areas as alternates, removing arrays from the certain views of non-participating landowners, increasing setbacks, offering visual buffers, and other measures including offering Good Neighbor Agreements to 74 adjacent residential property owners. ([PSC REF#: 422322](#) at 14-15, 27.) The applicant has stated in the record that it will continue communication during construction and operation of the project, including allowing community members to directly communicate with on-site personnel. (*Id.* at 26.) Moreover, the Commission finds that a number of conditions imposed in its approval of the project, as described in this Final Decision, will mitigate any individual hardships that may be experienced. Those conditions include, but are not limited to, requirements relating to use of visual buffers, noise and stray voltage testing, and ordering compliance with all applicable safety requirements and protocols relating to the design, construction and operation of the facility.

Having reviewed these concerns as described below, the EA prepared, and the environmental review, the Commission finds that the project will not create undue individual hardships or safety risks that either cannot be addressed or mitigated.

Property Value

The Commission finds that no market data, including no Wisconsin-specific market data, demonstrates a negative impact on property values in the project's surrounding area. ([PSC REF#: 427519](#) at 5-6.) The applicant provided a Market Impact Analysis which concluded that no market data indicated a negative impact on either rural residential or agricultural property values in the surrounding area. ([PSC REF#: 429924](#) at Appendix AA; [PSC REF#: 422337](#) at 4.) Testimony offered by the applicant also tracked the sale of four properties in the project's

Docket 9811-CE-100

surrounding area which were sold after the application for the project was filed. (See [PSC REF#: 427519](#) at 5-6.) No negative impact on the value of those properties was shown. (*Id.*)

Noise

A pre-construction noise analysis was conducted on behalf of the applicant. The analysis consisted of determining the location of all noise-sensitive receptors located near the project (primarily houses), measuring existing noise levels within the project boundary, and predicting both construction and operational noise levels. The analysis was carried out in accordance with the PSC's Measurement Protocol for Sound and Vibration Assessment of Proposed and Existing Electrical Power Plants. The application includes additional data regarding potential noise levels.

Noise-producing equipment to be employed during construction typically includes bulldozers, graders, excavators, trucks, vibratory post setters, and cranes. The Pre-Construction Noise Analysis shows that all residences and other noise-sensitive receptors within the project boundary are predicted to experience for the nearest residents could reach as high as 74 dBA during construction. The worst-case noise level during operation is predicted to up to 41 dBA, which is lower than the measured existing nighttime noise levels ranging from approximately 43 to 54 dBA. Refer to Appendix P of the application for this project for the complete noise analysis. ([PSC REF#: 409393](#).) The applicant has stated that it would investigate and work to mitigate or resolve any reasonable sound complaint submitted by landowners.

Glint and Glare

A glare analysis for the proposed project was conducted by the applicant. The analysis looked at the potential of glare from PV panels at approximately 150 locations within 500 feet of the project area. The locations, or observation points, included residences and segments of nearby roads frequently used by commuters. Appendix Q of the application for this project

Docket 9811-CE-100

contains the completed glint and glare study. ([PSC REF#: 409394.](#)) Visual impacts from project-related glare are expected to be mitigatable, minimal, or insignificant. Additionally, the applicant stated it may use fencing, vegetation, or other objects of obstructive nature to mitigate glint or glare effects if glint or glare prove to be problematic for an observer.

Safety

The proposed project will not require any municipal water or sewer services and will not require any unique fire, police, or rescue services. There were concerns regarding fire safety expressed by the public and by intervenors due, in part, to the newness of proposed utility-scale BESS developments in the state of Wisconsin. The BESS, comprised of lithium-ion batteries, will be housed inside outdoor enclosures that have a power management system, climate control, fire suppression system, and other related components. The design of the BESS would not allow for people to enter the structure, but would require they conduct any work or emergency response from outside. This would reduce one element of risk should a thermal runaway or fire event occur, as opposed to housing batteries in an enclosed structure where gasses may build up and be explosively released if an external door is opened and staff or responders enter. Fire suppression canisters and HVAC modules are incorporated into the storage unit according to the supplier's designs. The choice of battery chemistry for the BESS would result in a lower risk for thermal runaway or fire and a fire retardant foam, approximately 2.5 millimeters thick, would be placed between battery cells to mitigate self-heating and further reduce thermal runaway potential. The applicant will provide a fire safety protocol for the project site to local authorities, which would outline procedures, safety drills, and training with local first responders.

The applicant has stated in the record that the project will be constructed and operated in compliance with all applicable safety standards, including the National Electric Code (NEC), National Electric Safety Code (NESC), and the Wisconsin State Electric Code. ([PSC REF#: 427487](#) at 4.) Safety features incorporated into the project include grounding, fencing around all arrays, and NESC-compliant fencing around the substation. (*Id.* at 7-8; [PSC REF#: 429924](#) at 35.) The applicant addressed potential concerns related to hazardous materials, electromagnetic fields, electric shock, arc flash, and fire and has stated that it will work with local first responders to develop an emergency response plan and ensure appropriate access. ([PSC REF#: 422322](#) at 16; [PSC REF#: 422327](#) at 12.) Some intervenors raised objections to the project's, or any similar project's, ability to meet applicable codes. ([PSC REF#: 430441](#) at 18; [PSC REF#: 430571](#) at 796:6-10.) However, the Commission does not find such evidence to be credible, and some such evidence is directly contradicted by the Commission's prior review and approval of many utility-scale solar projects.¹⁷

While the Commission recognizes and appreciates the concerns raised, it finds that, coupled with the conditions imposed, the individual and safety concerns identified in the record do not warrant denial of the project.

¹⁷ See, e.g., *Application for a Certificate of Public Convenience and Necessity of Paris Solar Farm, LLC, to Construct a Solar Electric Generation Facility in the Town of Paris, Kenosha County, Wisconsin*, docket 9801-CE-100, Dec. 29, 2020, [PSC REF#: 402226](#); *Application for a Certificate of Public Convenience and Necessity of Point Beach Solar, LLC to Construct a Solar Electric Generation Facility, to be Located in Manitowoc County, Wisconsin*, docket 9802-CE-100, Feb. 12, 2020, [PSC REF#: 383720](#); *Application for Certificate of Public Convenience and Necessity of Wood County Solar Project, LLC to Construct a Solar Electric Generation Facility in the Town of Saratoga, Wood County, Wisconsin*, docket 9803-CE-100, March 4, 2021, [PSC REF#: 406282](#); *Application for Grant County Solar, LLC to Construct a New Solar Electric Generation Facility located near Potosi and Harrison townships, in Grant County, Wisconsin*, docket 9804-CE-100, May 17, 2021, [PSC REF#: 411529](#); *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*, docket 9805-CE-100, June 18, 2021, [PSC REF#: 413949](#); *Application for a Certificate of Public Convenience and Necessity of Darien Solar Energy Center, LLC to Construct a Solar Electric Generation Facility in the Town of Bradford, Rock County, and the Town of Darien, Walworth County, Wisconsin*, docket 9806-CE-100, Aug. 5, 2021, [PSC REF#: 418117](#);

Docket 9811-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 some language from the code to address stray voltage concerns in utility-scale solar CPCN dockets. Previous Commission final decisions, including those 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. Because stray voltage has the potential to cause adverse impacts on animals and because testing can be useful in determining stray voltage levels before and after construction of a project and assist in later evaluations of causation should stray voltage concerns arise, Commission staff suggested that any pre- and post-construction stray voltage testing requirements be consistent with the Commission's stray voltage protocol which is established by Wis. Admin. Code § PSC 128.17 and previous Commission decisions on solar electric generation facilities.

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

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, docket 9807-CE-100, Oct. 12, 2021, [PSC REF#: 422918](#); Application for a Certificate of Public Convenience and Necessity of Apple River Solar, LLC to Construct a Solar Electric Generation Facility in the Towns of Clayton, Beaver, Apple River, and Lincoln, Polk County, Wisconsin, docket 9808-CE-100, Oct. 15, 2021, [PSC REF#: 423202](#).

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.

Docket 9811-CE-100

work with the applicable distribution utility to make available stray voltage testing at each agricultural confined animal operation within one-half mile of the project area, pursuant to the stray voltage protocol established by the Commission, 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, in compliance with the Commission's stray voltage protocol. Prior to testing, the applicant shall work with the applicable distribution utility and Commission staff to determine where and how it will conduct the stray voltage measurements. The applicant shall report the results of its testing to Commission staff in writing.

Battery Energy Storage System Code Compliance

Previous Commission final decisions for Two Creeks Solar, Badger Hollow Solar, Point Beach Solar, and Badger State Solar have included language to require the applicants to adhere to Wisconsin electric safety code for public safety. Since Wisconsin public utilities are pursuing the purchase of this docket's proposed solar and BESS electric generation facilities and the associated generator tie-line in docket 5-BS-258, the Commission finds it reasonable to clarify the appropriate electrical codes to be followed to protect the safety of the public, and the interests of both ratepayers and the utilities. In addition, to address concerns regarding fire safety expressed by the public during environmental assessment scoping comment period and by intervenors, and in part, due to the newness of proposed utility-scale BESS developments in the state of Wisconsin, the Commission finds it reasonable to require the applicant to comply with the following project-specific conditions for the construction and operation of the BESS project facilities:

- a. The applicant shall construct, maintain, and operate all applicable BESS project facilities to comply with the International Fire Code 2018, as appropriate.
- b. The applicant shall construct, maintain, and operate all applicable BESS project facilities to comply with the National Fire Protection Association (NFPA) 855 Standard for the Installation of Stationary Energy Storage Systems, as appropriate. All battery enclosures should be constructed, maintained, and operated as remote, outdoor, non-occupiable or cabinet type design, pursuant to NFPA 855. The applicant shall construct, maintain, and operate all applicable BESS project facilities to comply with the National Electrical Code (NEC) NFPA 70, as appropriate.
- c. The applicant shall construct, maintain, and operate all applicable BESS project facilities to comply with the safety standards including UL 1973, UL 1741, UL 9540, UL 9540A, and UN 38.3 as appropriate.
- d. The applicant shall construct, maintain, and operate all applicable BESS project facilities to include an automatic fire suppression system that complies with the U.S. EPA-approved fire suppression agents with meeting all applicable fire suppression codes and regulations, in accordance with NFPA 855.
- e. The applicant shall develop a site-specific emergency response program. The emergency response program shall include training and emergency procedures for fire, medical emergencies, and other situations.
- f. 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.

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 or wholesale merchant 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” with land use and development plans, 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. In testimony, parties Barnes, Danielson, Engelstad-Lovell, Klopp, School District of Cambridge, the Town of Christiana, and the Village of Cambridge argued that the proposed project is in conflict with the Town of Christiana’s land use plan and the orderly, planned growth of the Village of Cambridge and the School District of Cambridge. Notably, solar electric energy generation is compatible with Dane County’s agricultural land use plan.

The Town of Christiana argued that the project does not comply with Wis. Stat. § 196.491(3)(d)6 because, they argued, the project conflicts with the Town of Christiana Comprehensive Plan and the Dane County Farmland Preservation Plan. ([PSC REF#: 425251](#); [PSC REF#: 429757](#); [PSC REF#: 429720](#).) The Town argued that the project is inconsistent with the cited plans because the project will displace farming land with the siting of solar arrays. ([PSC REF#: 425251](#) at 3.) The Town’s Comprehensive Plan indicates that the “land use goals, objectives, and policies . . . are designed to ensure the long term quality of life in the Town by preserving farmland, protecting environmental resources, and respecting the property rights and

Docket 9811-CE-100

responsibilities of landowners.” ([PSC REF#: 429757](#) at 35.) The record also contained discussion of the age of the Town of Christiana’s Comprehensive Plan and Town of Christiana witness Jason Valerius stated that pursuant to Wis. Stat. § 66.1001(2)(i), comprehensive plans must be updated no less than once every 10 years, and that the Town’s current Comprehensive Plan was authored in 2009. ([PSC REF#: 425251](#); [PSC REF#: 429757](#).)

The Village of Cambridge argued that the project does not comply with Wis. Stat. § 196.491(3)(d)6. because, they argue, the project conflicts with their Proposed Land Use Map set forth in their Comprehensive Plan. ([PSC REF#: 429893](#) at 14; [PSC REF#: 425314](#); [PSC REF#: 425312](#).) The Village argued that the vertical growth is not realistic for the Village of Cambridge, and that horizontal growth, beyond its borders, will be necessary in the future—claiming that currently developable land within Village boundaries will be exhausted in six years. ([PSC REF#: 429893](#) at 18; [PSC REF#: 429890](#) at 10, 18.) The Village further argued that future growth areas for the Village are limited to the areas west and northwest of the Village, and that without the ability to expand into such areas, the regional demand for land will be satisfied by other communities—noting that the project area is magnitudes larger than the amount of new land developed by the Village over the last 20 years. ([PSC REF#: 429893](#) at 17; [PSC REF#: 425315](#); [PSC REF#: 425316](#); [PSC REF#: 425318](#).) The School District of Cambridge echoed these concerns and argued that the location of the project could impact future residential development and lead to a decline in enrollment. ([PSC REF#: 425166](#) at 4-5.)

The applicant noted that the project is not proposed on any land within the Village of Cambridge, and extends along only 2.2 percent of the Village’s border. ([PSC REF#: 422338](#) at 17.) The applicant’s expert reviewed the Village’s Comprehensive Land Plan and concluded that the project would not impede growth for the Village, and further noted that the Village has not

Docket 9811-CE-100

exercised extraterritorial jurisdiction, has taken no actions to enact territorial zoning, has not sought a property interest in any implicated project areas, nor has it discussed or taken steps towards annexation. ([PSC REF#: 422338](#) at 19; [PSC REF#: 430571](#) at 756:13-759:24.)

A utility infrastructure project will have some impact on land use and development plans for the area involved. The Commission takes seriously that areas within the fenced solar arrays would likely 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. The easements obtained by the applicant for the project are all voluntary agreements, and the Commission notes that the preamble to the Town of Christiana's goals in its Comprehensive Plan included respecting the rights of landowners, and there was no argument that such transactions are or were inappropriate.

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 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 also notes that solar electric energy generation is not specifically precluded by the Town of Christiana's land use plan.

While the Commission recognizes that the proposed project will create impacts on the land use in the project area, it finds that the proposed project will not unreasonably interfere with the orderly land use and development plans of the project area. The Commission notes that the proposed project impacts approximately 11 percent of the land in the Town of Christiana and finds this does not rise to the level of unreasonable interference. Further, while the Town of Christiana argued that the project does not align with its Comprehensive Plan, the project does

Docket 9811-CE-100

limit residential and commercial development—such as the development proposed and argued for by the Village and School District of Cambridge—and appears to align more with the Town’s Plan than other alternatives discussed in the record.

The Commission notes that the Village of Cambridge’s Comprehensive plan is at odds with the Town of Christiana’s Comprehensive Plan and Dane County’s Farmland Preservation Plan. In contrast, the project allows for the return of the land in question to agriculture use at some point, and also aligns with Dane County’s goals of hosting solar generation. While the Village of Cambridge may desire that the lands implicated by the project area remain available for potential future development, it is clear that no such plans are in active or immediate implementation. As noted above, all of the easements for the project are voluntary transactions, thus the Village of Cambridge requests that the Commission interrupt these voluntary transactions, involving property owners using their own property, and a renewable energy project based on hypothetical plans. The Commission does not find that the alleged interference with the Village of Cambridge’s hypothetical plans rises to the level of being unreasonable.

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.

Wisconsin Environmental Policy Act Compliance and Environmental Review

The Wisconsin Environmental Policy Act (WEPA) requires all state agencies to consider the environmental impacts of “major actions” that could significantly affect the quality of the human environment. Wis. Stat. § 1.11. Additionally, before granting a CPCN for the proposed project, the Commission must also determine that the project is in the public interest when considering environmental factors, and that the project will not have an undue adverse impact on

Docket 9811-CE-100

environmental values such as, but not limited to ecological balance, public health and welfare (discussed above), historic sites, geological formations, the aesthetics of land and water, and recreational use. Wis. Stat. § 196.491(3)(d)3. and 4.

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 § PSC 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#: 425347](#) at 70.) The Commission concluded that no EIS is required and finds that the environmental review conducted in this proceeding complies with the requirements of Wis. Stat. § 1.11 and Wis. Admin. Code ch. PSC 4.

The Commission also finds that based upon environmental review and the record developed in this proceeding, as described herein, that the project will have no undue adverse impacts on the environment and therefore satisfies the CPCN statutory criteria. To the extent there are some environmental impacts, the Commission finds that these impacts can be mitigated by conditions imposed by this Final Decision.

Archeological and Historic Resource Review

A review of the Wisconsin Historic Preservation Database was performed by the applicant, in compliance with Wis. Stat. §§ 44.40 and 157.70, to identify any impacts on previously recorded historic structures, archaeological sites, or human burials. One human burial and thirteen previously recorded inventoried historic structures were identified within one mile of the project study area. The review also identified two resources listed on the National Register of Historic Places located within one mile of the project study area.

The report prepared as a result of the review asserts that the recorded archaeological or human burial sites would not be physically impacted by the project design as proposed. However, the report also asserts that structures could potentially incur visual impacts from the project. Subsequently, an architectural history evaluation and impact assessment on historic structures was completed on behalf of the applicant and found that all effects from the project would be mitigated.

The applicant also provided modeling that identified several high potential areas where unrecorded archaeological or human burial sites may likely be present. The applicant then completed field surveys to identify any resources within the identified high potential areas that would incur ground disturbance during construction of the project. The 59-acre field survey identified no archaeological resources. If the applicant encounters grave markers or human skeletal remains during construction, all activities in the area would cease and the State of Wisconsin Burial Sites Preservation Office would be contacted for further instructions.

Aesthetics and Visual Screening

Several non-participating landowners near the project area voiced concerns about impacts to views of their residences. Implementing strategic screening vegetation could be preferable to

Docket 9811-CE-100

an adjacent non-participating landowner over views of solar arrays. Based upon discussion in the records of other recent utility-scale solar dockets 9805-CE-100 and 9808-CE-100, the Commission required the applicant in those dockets to work cooperatively with Commission and DNR staff to develop a practicable site specific vegetation management plan, which would provide a variety of benefits, one of which was the strategic placement of visual buffers and screening.

Based on the record in this docket, the Commission finds it reasonable to require the applicant to work with interested non-participating landowners that are adjacent to solar panel arrays on one or more sides of their property to create visual buffers and screening in order to mitigate visual impacts, to the extent reasonable and economically feasible, and not otherwise impeding solar operations or access to sunlight.

Threatened and Endangered Species Review

A certified Endangered Resources (ER) review was completed for the project area. ([PSC REF#: 409954](#) confidential, [PSC REF#: 409955](#) public.) The review was checked and approved by DNR staff in the ER Review Program. The review is based on information from the Natural Heritage Inventory database, maintained by the DNR Bureau of Natural Heritage Conservation, to identify any endangered, threatened, or special concern species or natural communities in the project area.

The ER Review determined that there are one state and federally listed and three special concern plant species, one federally listed and state special concern as well as one state special concern bumble bee species, one upland natural community, and one special concern herptile species potentially located within the search buffer of the proposed project. Wisconsin Endangered Species Law requires that the applicant implement specific actions to avoid or

Docket 9811-CE-100

mitigate potential impacts to endangered and threatened species. However, avoidance and mitigation measures for non-listed species recommended by DNR in the ER Review or EA are not required for any plant species, natural community, or special concern insect or herptile species. DNR recommended the Commission order the applicant to implement the actions associated with the unprotected species outlined in the ER Review and EA, specifically the herptile species. Implementation of the recommended actions is left to the discretion of the applicant.²³

Vegetation Management

The phased approach of the applicant's vegetation management strategy begins with site soil preparation and temporary cover crop seeding, followed by the establishment of a permanent low grow native/non-native grasses across most of the project and some areas of native pollinator refuge. This strategy is intended to reduce the risk that plantings will be overtaken by weedy plants, potentially leading to lower maintenance efforts in the long term. The applicant has stated that these plantings are intended to result in establishing ground cover with a greater diversity of species while minimizing disturbance and maximizing weed control. Additional detail can be found in the applicant's vegetation management strategy. ([PSC REF#: 409957.](#))

Wetlands and Waterways

Wetlands and waterways within the overall project boundary were identified using DNR Surface Water Data Viewer and field identification within the proposed project during the 2021 growing season. All desktop- and field-delineated waterways are assumed navigable waters of the state. There were 23 waterways and zero waterbodies identified within the project study

²³ Chairperson Valcq dissents and would have required the applicant to comply with the DNR-recommended actions.

Docket 9811-CE-100

area. Nine of the identified waterways are located within the proposed array areas, and one is located within the alternative array areas. Collector circuits could cross up to six waterways, five in proposed array areas, and one in alternative array areas. However, installation would be performed using horizontal directional drilling. Therefore, none of them are expected to be impacted by the project construction.

A total of 259.2 acres of wetland were identified within the project study area, of which 26.76 acres are within the proposed array areas and 1.01 acres are in the proposed alternative array areas. Desktop review determined wetlands within the project study area are mostly comprised of seasonally flooded basins located in farmed fields, wet meadows, and floodplain forests. The field delineated wetlands in the project study area, as defined by their predominant type, consist primarily of seasonally flooded basins and wet meadows. The project area contains smaller amounts of shallow marsh, shrub-carr and floodplain forest. The majority of wetland within the proposed project facilities are considered to have overall low functional value as they are within or in proximity to agricultural fields and have generally low vegetative diversity and are dominated by non-native and invasive species.

The project's impact to wetlands is expected to be avoided by siting project components outside of wetlands and by utilizing construction practices that avoid wetland impact. The proposed site layout would avoid direct regulated wetland impacts for all inverter pads, solar arrays, substation, driveways, fencing, and buildings. No forested wetland clearing would occur.

Docket 9811-CE-100

DNR recommended the Commission order several best management practices (BMPs) to help ensure avoidance and minimization of impacts to nearby wetlands and waterways. Implementation of the recommended BMPs is left to the discretion of the applicant.²⁴

Wildlife Movement

Concerns have been raised by DNR, intervenors, and members of the public regarding movement of wildlife (including endangered resources) through the proposed project area during operation. The open grid style fence with 6-inch by 6-inch openings is not large enough to allow many small animals to move throughout the arrays. In particular, turtles (including the special concern species that is likely present) cannot constrict themselves to fit to that size. In previous solar generation dockets 9696-CE-100, 9697-CE-100, and 9802-CE-100, the Commission has found it reasonable to order conditions related to array fencing style to mitigate aesthetic and potential wildlife impacts.

Based on the record in this proceeding, the Commission finds it reasonable to require the applicant raise the array fences a minimum of 6 inches off the ground or provide larger openings (roughly 1 foot by 1 foot) at intervals throughout the perimeter fence to allow for small animal movement.

Independent Environmental Monitor (IEM)

In testimony, multiple intervenors provided requests for an IEM to monitor and report on drain tile damage and remediation, impacts to natural resources and non-participating landowners as well as their mitigation, and general construction and decommissioning activities.

²⁴ Chairperson Valcq dissents and would have required compliance with the recommended BMPs.

The Commission finds that the construction conditions specified in this Final Decision and the DNR's permitting process can avoid, minimize, and mitigate the potential adverse impacts of an approved project. As such, the Commission concludes that an IEM is not necessary for approval of the proposed project.

Reliability

In determining whether the proposed projects meets the statutory standard for a CPCN, the Commission considered reliability as required by Wis. Stat. § 196.491(3)(d)3. The applicant has indicated its intent to comply with the applicable interconnection requirements to ensure the interconnection of the project will not result in adverse reliability impacts to the grid. Additionally, the BESS will enhance efficiency, reliability and integration of the facility to the grid.

The Commission finds that none of the reliability concerns raised by intervenors in this proceeding are credible or supported by evidence in the record. In contrast, there is substantial evidence in the record that the BESS proposed with this project will positively affect reliability by lessening the impact of variation in solar production. ([PSC REF#: 428544](#) at 5.) The BESS can provide other positive effects on reliability such as frequency response and voltage support. (*Id.*) Additionally, the record confirms “that the incremental contribution to . . . renewable energy penetration on the MISO grid” by this project is “about 0.0001%” and that a significant number of projects of this size would need to be built to reach a point of concern to the grid. Therefore, the Commission concludes that the project, as conditioned by this Final Decision, will not adversely affect reliability consistent with Wis. Stat. § 196.491(3)(d)3.

MISO Studies

The transmission interconnection facility requirements for the proposed project are being determined through the MISO Generator Interconnection Queue study process. The transmission system upgrades required for the solar generation facility to be operational are being reviewed as a part of MISO's interconnection study process in the DPP 2019 and 2020 Study Cycles. As of the date of this Final Decision, a Large Generator Interconnection Agreement with MISO has not been executed. The project is represented in MISO's interconnection process as three projects, which together form the Koshkonong project as proposed by the applicant. These MISO interconnection projects are:

- 300 MW of solar as J1214 in MISO DPP 2019 cycle;
- 75 MW of BESS as J1410 in MISO DPP 2019 cycle;
- 165 MS of BESS as J1779 in MISO DPP 2020 cycle.

The Commission's Final Decision for the Darien Solar project, docket 9806-CE-100, included language to require the applicants to report an update on interconnection.

The Commission finds it reasonable to require the applicant to provide a report when any MISO studies on the inclusion of the BESS are complete. The applicant shall update the Commission with a report on all MISO Definitive Planning Phase studies and shall provide the Commission with final detailed engineering plans for the BESS. If Commission staff identifies safety or reliability issues upon review of the plans and report, when considering safety and reliability, final location, individual hardships, and environmental factors, then the matter shall be returned to the Commission.

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.” As a wholesale merchant plant, concerns regarding horizontal market power are not an issue since the energy generated by the project will only be dispatched into the market if the price it charges for its generation is competitive. 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 levels²⁵. As such, the Commission finds that the proposed project meets the requirements of Wis. Stat. § 196.491(3)(d)7.

Other Conditions and Considerations

In addition to the conditions discussed previously in this Final Decision, the Commission reviewed other proposed project-specific and general conditions and concerns that were presented in the record by Commission staff, parties and members of the public.

In reviewing this, and similar, dockets, the Commission must balance the need to maintain adequate, reliable, and economical electric service for the citizens of Wisconsin with the concerns of landowners and other interested individuals, while supporting the public policy of greater access to renewable-based electric generation. The Commission recognizes the impact that large electric generation projects, including this project, place on all affected landowners and

²⁵ *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.)

communities. Such impacts are often the unfortunate but a necessary result of the construction and operation of an electric generation system that is required to meet the needs of the public and support the public policy of introducing more renewable-based electric generation.

Intervenors, members of the public, and Commission staff proposed several order conditions, related to public safety, facility operational standards, wildlife and pollinator monitoring during the operational phase, and environmental impacts to non-participating residents near the project facilities, to avoid, minimize, and/or mitigate any potential or perceived impacts that may result from construction and operation of the project. As described above and in this Final Decision, the Commission adopts many of these conditions. Many other of the proposed conditions relate to or are redundant with standard and proposed conditions ordered by the Commission in this Final Decision, or with already existing law. In some cases, the proposed conditions were redundant with prior Commission orders that are already underway. In all cases, the record in this docket does not contain evidence supportive of the Commission ordering the duplicative, redundant, or specific proposed conditions or modifications to conditions that are not imposed by the Commission in this Final Decision. As such, other than the conditions identified previously in this Final Decision and below, the Commission concludes that additional conditions or modifications are not required for approval of the project.

General Conditions

Typically, the Commission's Final Decision for electric construction projects includes general conditions relating to the authorized construction, reporting, and communication. 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

Docket 9811-CE-100

Commission staff. The Commission finds that the imposition of such general conditions as described in the Order Conditions of this Final Decision are reasonable.

Minor Siting Adjustments

The Commission has recognized that final, detailed engineering is not complete prior to it authorizing a project, and that minor siting flexibility may be needed to accommodate the final design specifics of the project. Therefore, the Commission has consistently imposed a specific order condition allowing for such flexibility in every utility-scale solar generation approval. For this proceeding, the Commission finds it reasonable to require the applicant to use the minor site adjustment procedure set out below.

The applicant may propose minor adjustments to the approved locations of project facilities for the protection of environmental resources, landowner requests, or technical design changes that arise during final stages of engineering (up to the authorized nameplate capacity of 300 MW), but any changes from the approved layout may not affect resources 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 all potentially affected landowners regarding the change; documentation of discussions with other agencies regarding the change; and a map showing the approved layout and the proposed modification, property boundaries, relevant natural features such as woodlands, wetlands, waterways, and other sensitive areas. Approval of the requests is delegated to the

Docket 9811-CE-100

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.

Notice of Construction

During construction activities, there will be increased noise and vibration in the construction areas. The use of pile drivers in particular may be a source of relatively loud noise for sustained periods of time based on the location of activities and nearby residences. The time of day that pile driving or other construction noise occurs, and proximity to residences, may influence the level of perceived disturbance. These impacts are a typical concern raised in comments during review of solar projects by members of the public, especially nearby residents. Providing advanced notification to nearby residents regarding the timing of construction activities may decrease the amounts of disturbance caused by noise and vibration from machinery. The Commission has found it reasonable to order this condition in recent PV solar electric generating facility authorizations.²⁶

The Commission finds it reasonable to require the applicant to provide notice of construction to all properties adjacent to the project prior to the commencement of construction. The notice shall include the contact information for a dedicated project contact person to answer questions about construction. In addition, the applicant shall clearly post contact information at construction site entrances.

Battery Energy Storage System Decommissioning

At the end of the useful life of the project, the applicant will determine whether it will decommission the facility or replace equipment to extend the life of the project. The applicant

²⁶ See docket 9808-CE-100.

stated that it anticipates needing about twelve months to complete decommissioning of all facilities at the site and provided a list of activities that would take place in the process of decommissioning. The lithium-ion batteries in the BESS would be evaluated for second-life operations, and batteries that could not be reused would be recycled or safely disposed of.

The Commission finds it reasonable to require the applicant decommission the proposed BESS facilities in a manner that is consistent with best practices in the industry in a manner to which it's being disposed of, as recommended by the U.S. Energy Storage Association, American Clean Power, or similar successor organization.

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 not require permit authorization under Wis. Stat. §§ 30.12 or 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.

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 Spring of 2022. PV panels are expected to begin to be delivered in the second half of 2022. The in-service date for this project is estimated to be at the end of 2024. The total construction duration is estimated to be approximately 18 to 24 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 and BESS, as described in the application and as modified by this Final Decision.

Order

1. The applicant is authorized to construct the proposed solar PV electric generation and BESS facilities, as described in the application, and data request responses, and as modified by the Final Decision.
2. The applicant may use the authorized proposed or alternative array sites as needed to accommodate environmental, technical, and landowner issues as they arise during construction of the project, provided however, that the project size shall remain at the maximum nameplate capacity approved in this Final Decision. If the situation arises where the applicant elects to use an alternative array area, the applicant shall provide written notice to the

Docket 9811-CE-100

Commission identifying such alternative arrays within 30 days of the decision to use the alternative arrays.

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

4. 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.

5. If the applicant cancels the project or enters into any arrangement with another party or parties other than Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and Madison Gas and Electric Company regarding ownership or operation of the proposed facilities, the applicant shall provide prior notice to the Commission.

6. 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.

7. 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).

8. 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.

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

10. The applicant shall construct, maintain, and operate all applicable project facilities to comply with NEC or the National Electrical Safety Code and Wis. Admin. Code § 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.

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

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

13. The applicant may propose minor adjustments to the approved locations of project facilities for the protection of environmental resources, landowner requests, or technical design changes that arise during final stages of engineering (up to the authorized nameplate capacity of

300 MW), but any changes from the approved layout may not affect resources 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 all potentially affected landowners regarding the change; documentation of discussions with other agencies regarding the change; and a map showing the approved layout and the proposed modification, property boundaries, relevant natural features such as woodlands, wetlands, waterways, and other sensitive areas. Approval of the requests is delegated to the Administrator of the Division of Energy Regulation and Analysis with advice and consent from the Administrator of the Division of Digital Access, Consumer, and Environmental Affairs.

14. The applicant shall work with the applicable distribution utility to make available stray voltage testing at each agricultural confined animal operation within one-half mile of the project area, pursuant to the stray voltage protocol established by the Commission, 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, in compliance with the Commission's stray voltage protocol. Prior to testing, the applicant shall work with the applicable distribution utility and Commission staff to determine where and how it will conduct the stray voltage measurements. The applicant shall report the results of its testing to Commission staff in writing.

15. The applicant shall provide notice of construction to all properties adjacent to the project prior to the commencement of construction. The notice shall include the contact information for a dedicated project contact person to answer questions about construction. In addition, the applicant shall clearly post contact information at construction site entrances.

16. The applicant shall work with interested non-participating landowners that are adjacent to solar panel arrays on one or more sides of their property to create visual buffers and screening in order to mitigate visual impacts, to the extent reasonable and economically feasible, and not otherwise impeding solar operations or access to sunlight.

17. The applicant shall raise the array fences a minimum of 6 inches off the ground or provide larger openings (roughly 1 foot by 1 foot) at intervals throughout the perimeter fence to allow for small animal movement.

18. The applicant shall provide a report when any MISO studies are complete on the inclusion of a BESS. The applicant shall update the Commission with a report on all MISO DPP studies and shall provide the Commission with final detailed engineering plans for the BESS. If Commission staff identifies safety or reliability issues upon review of the plans and report, when considering safety and reliability, final location, individual hardships, and environmental factors, then the matter shall be returned to the Commission.

19. The applicant shall comply with the following project-specific conditions relating to the construction and operation of the BESS project facilities:

a. The applicant shall construct, maintain, and operate all applicable BESS project facilities to comply with the International Fire Code 2018, as appropriate.

b. The applicant shall construct, maintain, and operate all applicable BESS project facilities to comply with the NFPA 855 Standard for the Installation of Stationary

Energy Storage Systems, as appropriate. All battery enclosures should be constructed, maintained, and operated as remote, outdoor, non-occupiable or cabinet type design, pursuant to NFPA 855. The applicant shall construct, maintain, and operate all applicable BESS project facilities to comply with the NEC NFPA 70, as appropriate.

c. The applicant shall construct, maintain, and operate all applicable BESS project facilities to comply with the safety standards including UL 1973, UL 1741, UL 9540, UL 9540A, and UN 38.3 as appropriate.

d. The applicant shall construct, maintain, and operate all applicable BESS project facilities to include an automatic fire suppression system that complies with the U.S. EPA approved fire suppression agents with meeting all applicable fire suppression codes and regulations, in accordance with NFPA 855.

e. The applicant shall develop a site-specific emergency response program. The emergency response program shall include training and emergency procedures for fire, medical emergencies, and other situations.

f. 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.

20. The applicant shall decommission the proposed BESS facilities in a manner that is consistent with best practices in the industry in a manner to which it's being disposed of, as recommended by the U.S. Energy Storage Association, American Clean Power, or similar successor organization.

21. Beginning with the quarter ending on June 30, 2022 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;
- d. The date that the facilities are placed in service.

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

- a. The date the 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. (ii.);
- 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. (ii.).

23. If the applicant has not begun on-site physical construction of the applicant's authorized project within one year of the time period specified by the Final Decision, the

Docket 9811-CE-100

certificate authorizing the approved project for which construction has not commenced shall become void unless the applicant:

- a. Files a written request of 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.

24. 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.

25. The Final Decision takes effect one day after the date of service.

26. Jurisdiction is retained.

Abstention

Commissioner Huebner abstained and did not participate in the Commission's deliberations or decision.

Dated at Madison, Wisconsin, the 5th day of May, 2022.

By the Commission:



Cru Stublely
Secretary to the Commission

CS:dsa:jlt:DL: 01861714

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.²⁷ 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

²⁷ 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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