

SERVICE DATE
Apr 10, 2023

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application for a Certificate of Public Convenience and Necessity of
Portage Solar, LLC to Construct a Solar Electric Generation Facility in
the Towns of Grant and Plover, Portage County, Wisconsin

9810-CE-100

FINAL DECISION

On March 25, 2022, pursuant to Wis. Stat. § 196.491 and Wis. Admin. Code chs. PSC 4 and 111, Portage Solar, LLC (applicant) filed with the Public Service Commission of Wisconsin (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 nameplate capacity of up to 336 megawatts (MW) direct current (DC) and up to 250 MW alternating current (AC)¹. The application showed the proposed and alternative project arrays on approximately 2,580 acres of primarily agricultural land in the Towns of Grant and Plover in Portage County, Wisconsin. The project is expected to use approximately 1,730 acres of this land to generate 250 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 137.5 MW AC/550 megawatt-hours (MWh).

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

¹ The applicant subsequently requested, within the context of the language of a proposed Order Condition, and the Commission approved, a total maximum nameplate capacity of 252 MW AC for the purposes described and reflected in Order Condition 2 at the conclusion of this Final Decision.

Introduction

The Commission determined the application complete on April 21, 2022.

([PSC REF#: 435551](#).) The Commission issued a Notice of Proceeding on June 9, 2022.

([PSC REF#: 439923](#).) 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 16, 2022, the Commission Chairperson granted a 180-day extension. ([PSC REF#: 445380](#).) The Commission must take final action on or before April 17, 2023,² or the application is approved by operation of law. See Wis. Stat. § 196.491(3)(g).

The Administrative Law Judge (ALJ) issued a Scheduling Order on July 26, 2022.

([PSC REF#: 443937](#).) The ALJ granted the request to intervene received from RENEW Wisconsin (RENEW). All parties agreed to a schedule and other stipulations, obviating the need for a Prehearing Conference. 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). The Commission's action regarding a BESS is considered a Type II action under Wis. Admin. Code § PSC 4.10(2). The Commission prepared an Environmental Assessment (EA) for the proposed project.

Commission staff worked jointly with the Wisconsin Department of Natural Resources (DNR), and on May 6, 2022, issued an EA scoping letter to accept comments from the public to

² The extended 180-day deadline falls on Sunday, April 16, 2023. Pursuant to Wis. Admin. Code § PSC 2.05(2), the next day the Commission is open is considered the last day of the extended 180-day period for the Commission to take final action.

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help determine the scope of the EA. ([PSC REF#: 437844.](#)) On September 12, 2022, 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#: 447066.](#)) The Commission took comments on this preliminary determination, and on October 6, 2022, 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#: 448871.](#)) 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 October 21, 2022. ([PSC REF#: 450141.](#)) The Commission held technical hearing sessions over an audiovisual connection on November 30, 2022. At the technical sessions, expert witnesses offered testimony and exhibits on behalf of the applicant, RENEW, DNR staff, and Commission staff.³ ([PSC REF#: 459668.](#)) Public comment hearing sessions were held audio-only on November 30, 2022. At the public comment hearings, the Commission accepted oral testimony from members of the public.⁴ The Commission also accepted comments from members of the public through its website.⁵ The Commission conducted its hearings as Class 1 contested case proceedings, pursuant to Wis. Stat. §§ 196.491(3)(b), 227.01(3)(a) and 227.44.

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

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

³ [Tr. 1-55 Party Hearing Session - PSC REF#: 454770](#)

⁴ [Tr. 56-64 Public Hearing Session - PSC REF#: 454771](#)

⁵ [Ex.-PSC-Public Comments - PSC REF#: 454407](#)

The applicant filed its initial brief on January 10, 2023. ([PSC REF#: 456354.](#)) No other parties filed briefs.

The Commission discussed the record in this matter at its open meeting of March 2, 2023.

Findings of Fact

1. The applicant is a wholly-owned subsidiary of National Grid Renewables. The applicant proposes to construct a solar electric generation facility as a wholesale merchant plant as defined by Wis. Stat. § 196.491(1)(w), with a nameplate capacity of up to 336 MW DC and up to 250 MW AC. The proposed project also includes a BESS with a capacity of up to 137.5 MW AC/550 MWh.

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). The construction of a BESS is a Type II action under Wis. Admin. Code § PSC 4.10(2).

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 nameplate capacity of up to 336 MW DC and up to 250 MW AC. The proposed project also includes a BESS with a capacity of up to 137.5 MW AC. The proposed project would be located in the Towns of Grant and Plover, in Portage County, Wisconsin. The major components of the proposed project include the PV panels, BESS, inverters, collector circuits, and a collector substation.

The applicant considered three different solar panel technologies for this project, with two being based on monocrystalline technology and one on cadmium telluride. The applicant states that at the time of construction several PV modules will be evaluated, and a selection will

be made based on the most cost-effective option. The module selected may use bifacial technology, which, unlike a monofacial module, contains a backsheet 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. 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 25 miles, and the collector system for the project will be broken up into five separate circuits. The solar PV array would connect to a new 34.5 kV/115 kV project collector substation. An approximately 500-foot generator tie line would connect the new collector substation to the existing Plover 115 kV substation, which is owned by American Transmission Company LLC (ATC). The applicant may sell some or all of the site to utility ownership.⁶

The panel models considered by the applicant range from 485 watts per panel to 640 watts DC per panel, and the proposed facility area is designed for approximately 693,192 total panels with a total DC generating capacity of 336 MW DC, which for a designed 1.33 DC-to-AC ratio, translates to an AC generating capacity of 252 MW. This designed generating capacity is slightly higher than the 250 MW AC operational nameplate capacity of the project to account for losses in the collection system. The applicant states in their application that the maximum output of the project will be 250 MW AC at the point of interconnection.

⁶ See, Application at 1.2.

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 underwent a definitive planning phase (DPP) study. The applicant holds interconnection position J1573 in MISO's East ATC DPP-2020 cycle, requesting the interconnection of 250 MW of solar generation to the existing 115 kV ATC Plover Substation. The applicant stated in its application that it expected to execute a Large Generator Interconnection Agreement with MISO for the project in February 2023.

Applicable Statutory Criteria and Burden of Proof

The applicant may sell some or all of the site to utility ownership.⁷ Under this intended ownership arrangement, it remains appropriate to evaluate the proposed project as a wholesale merchant plant.

The Commission concludes that the applicant's application 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 construction of the project.⁸ Further, nothing in Wis. Stat. § 196.491 prohibits the transfer of rights granted under a CPCN.

⁷ See, Application at 1.3.6.1; Environmental Assessment at 2.1; Direct-Portage Solar-DeBlieck-7.

⁸ 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*,

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

The Commission has considered several applications for the construction of a utility-scale solar facility, and the evaluation of technical and complex projects, such as the one proposed in this docket, is an area in which the Commission has special expertise. Since 1907, the Commission has regulated public utilities to ensure that "reasonably adequate service and facilities" are available to the public at rates that are "reasonable and just." Wis. Stat. § 196.03(1). The Commission's expertise in administering Wis. Stat. § 196.491 to determine what proposed projects are appropriate additions and in the public interest has long been recognized by Wisconsin courts. *Wisconsin Power & Light Co. v. Pub. Serv. Comm'n of Wisconsin*, 148 Wis. 2d 881, 888, 437 N.W.2d 888, 891 (Ct. App. 1989); *see also Clean Wisconsin, Inc. v. Public Service Commission of Wisconsin*, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768 (recognizing the Commission's expertise in reviewing proposed construction projects under Wis. Stat. § 196.491).

Determining whether a proposed project is in the public interest often requires a high degree of discretion, judgment, and technical analysis. Such decisions involve intertwined legal, factual, value, and public policy determinations. The Commission, as the finder of fact, is

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](#)).

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.

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.⁹ The EPL instructs the

⁹ 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."

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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. It is uncontested that energy and capacity from the proposed project cannot be replaced by energy conservation and efficiency, the highest priority alternative. The EA for the proposed project concluded that “approval and construction of this project is unlikely to have a significant impact on the human environment.” ([PSC REF#: 448871](#) at 63.) Additionally, the objective of the law¹⁰ is to deploy environmentally preferable options first when meeting Wisconsin’s energy needs, not require that measures such as conservation or energy efficiency displace a project if not obviously technically feasible or more cost effective. This project aligns with that objective. Therefore, the proposed project satisfies the requirements of the Energy Priorities Law.

¹⁰ See also Wis. Stat. §§ 1.12(3)(b) and 196.377.

Siting Process

The Commission must consider alternative locations when determining whether a proposed generation facility is in the public interest. Wis. Stat. § 196.491(3)(d)3. A CPCN application must describe the siting process, identify the factors considered in choosing the alternative sites, and include specific site-related information for each site. Wis. Admin. Code § PSC 111.53(1)(e)-(f). The applicant's CPCN application complied 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 described how specific solar siting areas were selected and how the applicant confirmed the suitability of these locations. The record reflects examination of each of the solar siting areas. In addition, the applicant identified and provided information regarding 25 percent more siting areas on leased properties within the project area that meet all of its siting criteria.

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,¹¹ the Commission found that the project applicant met the requirement to offer site alternatives by identifying 25 percent more turbine locations than it proposed to develop. On appeal, the Dodge County Circuit Court affirmed this method of offering site alternatives for a wind farm.¹² 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 proposed 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 25 percent additional MW (63 MW) for solar panels beyond the minimum necessary for the desired project size of 250 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

¹¹ *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).

¹² *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).

unanticipated sub-surface conditions; accommodating governmental requests; addressing concerns that a landowner may have during the course of construction; taking advantage of opportunities to minimize construction costs; or, improving the levels of electric generation.

The applicant identified which of the array areas were proposed (also referred to as “primary”) and alternate in Appendix A to its application. ([PSC REF#: 433638.](#)) The proposed and alternate 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 central Wisconsin, in particular Plover, Stevens Point, Grant, Whiting, Wisconsin Rapids, Bancroft, and Linwood townships, that met these siting requirements. The applicant stated that the brownfield sites within five miles of the project point of interconnection are less than five acres. The applicant also stated that none of the sites are practicable locations to support large-scale utility solar projects. The Commission finds that the applicant’s siting criteria was reasonable, that a brownfield site is not practicable for the 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 and comments received relating to the conservation and habitat lands and associated work that has occurred for decades for wildlife adjacent to this project. 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 with the exception of Alternate Array A6. Alternate Array area A6 is adjacent to parcels that are part of the adjacent Buena Vista Wildlife Area and associated habitat. The applicant stated that the primary site is preferred because it is more compact, requires less underground collection line, has fewer adjacent non-participating property owners, and is located closer to the point of interconnection. 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, with the exception of Alternate Array A6, provided that the project size shall remain at the 252 MW AC maximum solar nameplate capacity and 137.5 MW AC/550 MWh 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, as applicable.

The project's proposed and alternate arrays total 2153 acres, with 1719 acres proposed as primary and approximately 434 acres proposed as alternate areas. The project is expected to use approximately 1733 acres of land to generate 250 MW AC. As discussed above, the primary array sites are preferred, the alternate array sites (excluding A6) are approved to provide additional flexibility and efficiency for placement of the solar facilities during construction, and the project size is capped at the 252 MW AC maximum solar nameplate capacity and 137.5 MW AC/550 MWh 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.

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

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assessed information from other sources including comments from individuals, state and federal 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 250 MW of noncombustible renewable energy to the state of Wisconsin, as well as up to 137.5 MW/550 MWh of energy storage facilities. Renewable generation projects such as this one promote public health and welfare by generally avoiding many of the impacts created by other types of electric generation. The applicant and supporting intervenor 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.

The applicant identified in its application the benefits to the local economy. In addition to the payments to the local communities made pursuant to Wis. Stat. § 79.29, the applicant stated that approximately 100-200 workers will be needed at peak construction to construct the project. Comments from Operating Engineers Local 139, Construction Business Group, and North Central States Regional Council of Carpenters provided recommendations to the

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Commission to encourage greater use of local laborers where feasible and to provide more transparency with respect to the employment impacts of utility projects. The Commission finds it reasonable to include a quarterly reporting requirement on the applicant's efforts, and the efforts of their contractors, to recruit Wisconsin residents to fill employment opportunities created by the construction, its efforts to collaborate with state registered apprenticeship programs, and the actual number of Wisconsin residents and out-of-state workers employed on-site to construct the proposed project.

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.

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.

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.

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.

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.

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 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

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solar-powered electric generation facility as a Type III action. Wisconsin Admin. Code ch. PSC 4, Table 2, identifies construction of a BESS as a Type II action, requiring the preparation of an Environmental Assessment.

An EA was prepared for the proposed project. The environmental review focused primarily on impacts to wildlife, including rare or endangered species, aesthetics, historic resources, wetlands and waterways, agricultural lands, 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#: 448871](#) at 63.) 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. The results of the cultural resources database review indicated that four previous archaeological surveys have been conducted with the project area. One archaeological site is within 0.25 mile of the proposed project and located within a participating parcel. There are no recorded cemeteries or burial sites

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within 0.25 mile of the project. One cataloged historic structure is located within 0.25 mile of the proposed project. The cataloged structure is located with a participating parcel.

The applicant also provided modeling that identified 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 pedestrian survey resulted in the identification of six historic period sites with artifacts dating from the late nineteenth to early/mid-twentieth centuries. None of these sites appear to provide information significant to national or local history. No prehistoric Native American archaeological sites were identified. 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.

The cultural resources investigations determined that there will likely be no adverse effects associated with the siting and construction of the proposed project on cultural resources listed in or eligible for either the National Register of Historic Places or the Wisconsin State Register of Historic Places. No significant cultural resources would be impacted by the proposed project.

Threatened and Endangered Species Review

A certified Endangered Resources (ER) review was completed for the project area. 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

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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 is one state special concern plant species, three state threatened and one special concern bird species, one state endangered and one special concern insect, one state threatened herptile, and one upland natural community located within the search buffer of the proposed project. Wisconsin Endangered Species Law requires that the applicant implement specific actions to avoid or 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, bird, or special concern insect or herptile species. Significant impacts to endangered, threatened, and special concern species are not expected as a result of this project.

The Portage Solar project is located adjacent to the Buena Vista Wildlife Area, a 12,700-acre State Wildlife Area. The Greater Prairie-chicken is a state-threatened bird species that historically was present within every county in Wisconsin. The chicken needs large grasslands to thrive and with the conversion of this type of habitat to agriculture, the prairie-chicken is now concentrated into four populations in the state with the largest centered around the Buena Vista Wildlife Area, located immediately south of the proposed project area. In addition, historic booming grounds for the bird have been documented within and immediately adjacent to the proposed arrays of this project, specifically Alternate Array A6. For this reason, the Commission finds it reasonable to preclude the use of Alternate Array A6 for development of this project.

Vegetation Management and Wildlife Movement

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#: 444481](#).)

The applicants proposed a combination of mowing strategies and timing in order to help establish their desired plant communities and keep them maintained and healthy after establishment. When creating the new habitat under and around the arrays of the project, the potential for wildlife, including ground-nesting birds, to use these areas would be possible. To account for this, an order condition was proposed to help screen for this wildlife prior to any mowing event between May 15 and August 1. The Commission finds it reasonable to include this condition as part of the project authorization:

- Prior to mowing within the fenced array areas between May 15 and August 1, the applicant shall consult with DNR staff, and if necessary, engage a qualified avian biologist to conduct walking surveys to identify ground-nesting birds present. Any areas found to contain nests shall be excluded from mowing operations. Data collected during the ground-nesting bird surveys shall be summarized in the Wildlife Protection Plan annual reporting. If, while mowing operations are

underway, an operator discovers a ground-nesting bird nest, or flushes a bird from its nest, the area shall be flagged and excluded from mowing.

This project, and others like it, require the fencing of thousands of acres of land, which can be a concern for both small and large wildlife movement. The use of “wildlife-permeable” fencing can mitigate some of the impacts associated with fencing the amounts of acres proposed. Wildlife-permeable fencing can refer to a range of design choices including raising a perimeter fence or ensuring openings are large enough for small wildlife to pass through. Several options of fencing methods and placement were discussed in the EA and testimony. In order to mitigate some of the impacts associated with this fencing, the Commission finds it reasonable to include the following order condition as part of project authorization:

- The applicant shall raise the height of the permanent array fencing proposed in the application a minimum of six inches off of the ground, or shall provide larger openings, of at least 7 inches by 12 inches, at 50 to 100-foot intervals throughout the perimeter fence, to accommodate small animal movement for specific areas in or adjacent to habitat areas where small wildlife is likely to be found, as determined in consultation with DNR and Commission staff to reduce impacts and barriers to small-animal movement in those proposed project areas.

DNR staff provided testimony on an order condition the Commission may wish to include relating to the applicant’s proposed seed mix for the project. Specifically, DNR staff testified that having dominant species in the seed mix will outcompete the native species and not allow them to persist. Native species take a couple of years to become fully established, whereas the more-aggressive species are able to establish sooner, which will out-compete the natives.

DNR staff further testified that additional native forb/flowering species will benefit the local pollinators, many of which are in decline across the county as a result of habitat loss, pesticide use, and other factors. The Commission finds it reasonable to include the following order condition as part of project authorization:

- The applicant shall:
 1. remove all non-native, aggressive species, specifically fescues and *Poa compressa/pratensis/trivialis*, from the Low Grow Native/Non-native graminoid seed mix proposed in its vegetation management strategy, and replace those species with less-aggressive species AND;
 2. increase the number of native forb/flowering species in the Low Grow Native/Non-Native Graminoid seed mix.

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 2020 and 2021 growing seasons. All desktop- and field-delineated waterways are assumed navigable waters of the state. There were four waterways and zero waterbodies identified within the project study area. None of the identified waterways would flow through project array areas.

Thirty-six wetlands totaling 21.57 acres were identified within the overall project study area, of which 3 wetlands totaling 1.43 acres are within the Primary PV Array fence lines and 6 wetlands totaling 0.78 acres are in the Alternate PV Array fence lines. The project would utilize the HDD installation method for collection lines that cross wetland. Collector circuits would cross one wetland within alternate array A4 and one wetland within alternate array A3

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using the HDD installation method to avoid impacting the resource. Construction activities associated with the collector circuits would occur in upland agricultural fields, outside of the identified wetland complexes. The applicant stated a 50-foot no disturbance buffer around wetland within fenced areas would be maintained during construction to minimize potential unintended impacts during construction. Panels and project boundary fences would be sited a minimum of 50 feet from wetland boundaries.

The project's impact to wetlands and waterways is expected to be avoided by siting project components outside of wetlands waterway and by utilizing construction practices that avoid wetland impact. The proposed site layout would avoid direct regulated wetland and waterway impacts for all project infrastructure.

DNR recommended the Commission order several best management practices (BMPs) to help ensure avoidance and minimization of impacts to nearby wetlands and waterways. The Commission finds it reasonable to require the applicants to implement the following BMP's as part of construction of the project:

- Prior to construction, the applicant shall install signage at wetland and waterway boundaries to alert construction crews to avoid work within or access across these areas.
- Site-specific sediment and erosion control measures and devices should be installed prior to any construction activity and be inspected and maintained daily through all construction and restoration phases.
- The applicant shall provide copies of all plans and environmental documents to construction crews and inspectors. Plans should clearly

label the locations of wetlands and waterways and include language stating vehicle access, storage of materials, grading, and all other construction activities are not permissible within these areas. Plans should also clearly label where sediment and erosion control measures and devices should be installed to reduce the likelihood of sediment entering the resources.

- The applicant shall implement a construction sequencing plan that minimizes the amount of land disturbed or exposed (susceptible to erosion) at one given time across the project.
- The applicant shall establish vegetative cover prior to land disturbance activities.
- The applicant shall leave existing vegetative buffers in place, where practicable.
- Disturbed areas and areas of exposed soil should be vegetated as soon as possible and seeded with a cover crop and/or native seed mix to minimize erosion potential and prevent the establishment of invasive species.
- The applicant shall prepare and implement an invasive species management plan that identifies known areas of invasive species populations and includes specific protocols to minimize the spread of invasive species.
- The applicant shall avoid the use of herbicide in wetlands and near waterways, or use herbicides approved for use in aquatic environments.

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 finds it reasonable to require the applicant to work with and 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 contact person to answer questions about construction. In addition, the applicant shall clearly post contact information at construction site entrances.

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

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would be subject to market mitigation measures and oversight of MISO's independent market monitor that restricts any ability to raise prices above competitive levels.¹³ As such, the Commission finds that the proposed project meets the requirements of Wis. Stat. § 196.491(3)(d)7.

Conditions Specific to Project

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

Battery Energy Storage System Safety Practices

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, while the Commission's Final Decision for Koshkonong Solar included language to require the applicant to comply with specific fire safety standards. Since the BESS electric generation facilities are eligible to be purchased by Wisconsin public utilities in the future, and to protect the safety of the public and the interests of both ratepayers and the utilities, the Commission finds it reasonable to require the applicant to construct, maintain, and operate the BESS facilities to follow good utility practice for ensuring battery fire safety.

¹³ *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.)

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 2020 Study Cycle. The applicant stated in their application that they expected to execute a Large Generator Interconnection Agreement with MISO for the project in February 2023, though as of the date of this Final Decision, the Commission has not yet received notice from the applicant of the completion of that process. The project is represented in MISO's interconnection process as 250 MW of solar as queue position J1573.

The Commission's Final Decisions for the Darien Solar and Koshkonong Solar projects included language to require the applicants to report an update on interconnection. The Commission finds it reasonable in this proceeding to require the applicant to provide the results of the MISO Phase 3 Final DPP System Impact Study and Network Upgrade Facilities Study related to interconnection queue position J1573 and the Generator Interconnection Agreement related to the project when each of them have been completed.

Final Engineering Plans

In its application,¹⁴ the applicant stated that the final PV module selection has not yet been made due to the continuous advancements in solar panel technology and the volatility of prices. In testimony, the applicant's witness Andrew Larson stated that specific equipment that will be used in the BESS has not yet been finalized. The Commission has jurisdiction under

¹⁴ See, Application at 2.2.1.

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Wis. Stat. § 196.491(3)(d)3. to ensure that the design of an electric generating facility is in the public interest considering safety and reliability factors.

The Commission finds it reasonable to require the applicant to provide the Commission with final detailed engineering plans for the project, including the final designs and equipment plans for both solar and BESS portion of the proposed project. If Commission staff identifies safety or reliability issues upon review of these plans, when considering safety and reliability issues upon review of these plans, when considering safety and matter shall be returned to the Commission.

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

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

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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 Summer of 2023 with site preparation and construction activities continuing through Summer of 2024. 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 15 months. 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 proposed or alternative array sites, except for Alternative Array A6, 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 a maximum generating capacity of 252 MW AC. If the situation arises where the applicant elects to use an alternative array site, the applicant shall provide written notice to the Commission identifying such alternative array sites within 30 days of the decision to use the alternative array sites.

3. 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, prior to construction and after the project is energized. The applicant shall work with the distribution utility and farm owner to rectify any 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.

4. The applicant and its selected contractor shall participate in a pre-construction meeting with Commission and Department of Natural Resources (DNR) staff to discuss construction plans and/or final site designs, permits, and associated requirements and Best

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Management Practices. The materials list must be provided to Commission and DNR staff 14 days prior to the meeting date to allow time for review.

5. 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.

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

7. 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.

8. The transfer of rights and obligations under this CPCN to a third party does not confer either additional rights or additional 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).

9. 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.

10. 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.

11. 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.

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

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

14. The applicant may propose minor adjustments to the approved locations of Solar Project facilities for the protection of environmental resources, landowner requests, or technical design changes that arise during final stages of engineering (up to a maximum generating capacity of 252 MW AC), but any changes from the approved layout may not affect a type of

resource not discussed in the EA, nor may they affect new landowners who have not been given proper notice and hearing opportunity or affect landowners who were given proper notice and hearing opportunity in a significantly different manner than was originally approved, nor may they include a unique occurrence not discussed in the EA of, for example, a particular human burial, archaeological site, or protected species. The applicant shall consult with Commission staff regarding whether a proposed change rises to the level at which 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.

15. Prior to construction, the applicant shall install signage at wetland and waterway boundaries to alert construction crews to avoid work within or access across these areas.

16. Site-specific sediment and erosion control measures and devices should be installed prior to any construction activity and be inspected and maintained daily through all construction and restoration phases.

17. The applicant shall provide copies of all plans and environmental documents to construction crews and inspectors. Plans should clearly label the locations of wetlands and waterways and include language stating vehicle access, storage of materials, grading, and all other construction activities are not permissible within these areas. Plans should also clearly label where sediment and erosion control measures and devices should be installed to reduce the likelihood of sediment entering the resources.

18. The applicant shall implement a construction sequencing plan that minimizes the amount of land disturbed or exposed (susceptible to erosion) at one given time across the project.

19. The applicant shall establish vegetative cover prior to land disturbance activities.

20. The applicant shall leave existing vegetative buffers in place, where practicable.

21. Disturbed areas and areas of exposed soil should be vegetated as soon as possible and seeded with a cover crop and/or native seed mix to minimize erosion potential and prevent the establishment of invasive species.

22. The applicant shall prepare and implement an invasive species management plan that identifies known areas of invasive species populations and includes specific protocols to minimize the spread of invasive species.

23. The applicant shall avoid the use of herbicide in wetlands and near waterways, or use herbicides approved for use in aquatic environments.

24. The applicant shall work with and 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 contact person to answer questions about construction. In addition, the applicant shall clearly post contact information at construction site entrances.

25. Prior to mowing within the fenced array areas between May 15 and August 1, the applicant shall consult with DNR staff, and if necessary, engage a qualified avian biologist to conduct walking surveys to identify ground-nesting birds present. Any areas found to contain nests shall be excluded from mowing operations. Data collected during the ground-nesting bird surveys shall be summarized in the Wildlife Protection Plan annual reporting. If, while mowing operations are underway, an operator discovers a ground-nesting bird nest, or flushes a bird from its nest, the area shall be flagged and excluded from mowing.

26. The applicant shall raise the height of the permanent array fencing proposed in the application a minimum of six inches off of the ground, or shall provide larger openings, of at least 7 inches by 12 inches, at 50- to 100-foot intervals throughout the perimeter fence, to accommodate small animal movement for specific areas in or adjacent to habitat areas where small wildlife is likely to be found, as determined in consultation with DNR and Commission staff to reduce impacts and barriers to small-animal movement in those proposed project areas.

27. The applicant shall:

a. remove all non-native, aggressive species, specifically fescues and *Poa compressa/pratensis/trivialis*, from the Low Grow Native/Non-native graminoid seed mix proposed in its vegetation management strategy, and replace those species with less-aggressive species; and

b. increase the number of native forb/flowering species in the Low Grow Native/Non-Native Graminoid seed mix.

28. The applicant shall report to the Commission on a quarterly basis:

- a. Its efforts, and the efforts of its contractors, to recruit Wisconsin residents to fill employment opportunities created by the construction of the proposed project;
- b. Its efforts to collaborate with state registered apprenticeship programs; and
- c. The actual number of Wisconsin residents and out-of-state workers employed on-site to construct the proposed project.

29. The applicant shall construct, maintain, and operate the BESS facilities to follow good utility practice for ensuring battery fire safety.

30. The applicant shall provide the results of the Midcontinent Independent System Operator (MISO) Phase 3 Final Definitive Planning Phase (DPP) System Impact Study and Network Upgrade Facilities Study related to interconnection queue position J1573 and the Generator Interconnection Agreement related to the project when each of them have been completed.

31. The applicant shall provide the Commission with final detailed engineering plans for the project, including the final designs and equipment plans for both the solar and BESS portion of the proposed project. If Commission staff identifies safety or reliability issues upon review of these plans, when considering safety and reliability, final location, individual hardships, and environmental factors, then the matter shall be returned to the Commission.

32. Beginning with the quarter ending on June 30, 2023 and within 30 days of the end of each quarter thereafter and continuing until the authorized facilities are fully operational, the applicant shall submit quarterly progress reports to the Commission that include all of the following:

- a. The date that construction commences;

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

33. 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. (b.); and
- d. The date when the applicant receives the Final Decision, after exhaustion of judicial review, in every proceeding for judicial review concerning the CPCN and the permits, approvals, and licenses described in par. (b.).

34. If the applicant has not begun on-site physical construction of the authorized project within one year of the time period specified by this Final Decision, the Certificate authorizing the approved project for which construction has not commenced shall become void unless the applicant:

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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.

35. 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.

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

37. Jurisdiction is retained.

Dated at Madison, Wisconsin, the 10th day of April, 2023.

By the Commission:

A handwritten signature in black ink, appearing to read "Cru Stublely", written in a cursive style.

Cru Stublely
Secretary to the Commission

CS:WAT:arw:dsa:DL:01931437

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.¹⁵ 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

¹⁵ See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

APPENDIX A

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