

<b>SERVICE DATE</b> <b>May 22, 2023</b>
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**PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application of Saratoga Solar Project, LLC for a Certificate of Public Convenience and Necessity to Construct a Solar Electric Generation Facility in the Town of Saratoga, Wood County, Wisconsin

9816-CE-100

**FINAL DECISION**

On May 11, 2022, pursuant to Wis. Stat. § 196.491 and Wis. Admin. Code chs. PSC 4 and 111, Saratoga Solar Project, 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 and battery electric storage system (BESS) (jointly, Project). 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 197.9 megawatts (MW) direct current (DC) and up to 150.5 MW alternating current (AC). The application showed the proposed and alternative project arrays on approximately 1,926 acres of primarily red pine plantation land in the Town of Saratoga in Wood County, Wisconsin. The Project is expected to use approximately 825 acres of this land to generate 150.5 MW AC. The major components of the proposed Project include the PV panels, inverters, collector circuits, a collector substation, and a BESS with a capacity of up to 50 MW AC/200 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 June 10, 2022. ([PSC REF#: 440041.](#)) The Commission issued a Notice of Proceeding on July 14, 2022. ([PSC REF#:](#)

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[442704](#).) 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 26, 2022, the Commission Chairperson granted a 180-day extension. ([PSC REF#: 446199](#).) The Commission must take final action on or before June 5, 2023, or the application is approved by operation of law. *See* Wis. Stat. § 196.491(3)(g).

All parties agreed to a schedule and other stipulations, obviating the need for a Prehearing Conference. On August 10, 2022, the Administrative Law Judge issued a Scheduling Order and granted RENEW Wisconsin's request to intervene. ([PSC REF#: 444991](#).)

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 construction of 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 July 5, 2022 issued an EA scoping letter to accept comments from the public to determine the scope of the EA. ([PSC REF#: 441923](#).) On October 19, 2022, Commission staff produced a preliminary determination that no significant environmental effects are expected to result from the proposed project. ([PSC REF#: 449869](#).) The preliminary determination letter summarized some of the environmental impacts. The Commission took comments on this preliminary determination, and November 11, 2022, issued the EA regarding the proposed

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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#: 452714.](#)) 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 November 22, 2022. ([PSC REF#: 453776.](#)) The Commission held technical hearing sessions over an audiovisual connection on January 6, 2023. At the technical sessions, expert witnesses offered testimony and exhibits on behalf of the applicant, RENEW, DNR staff, and Commission staff.<sup>1</sup> ([PSC REF#: 457130.](#)) Public comment hearing sessions were held audiovisual on January 4, 2023. At the public comment hearings, the Commission accepted oral testimony from members of the public.<sup>2</sup> The Commission also accepted comments from members of the public through its website.<sup>3</sup> The Commission conducted its hearings as Class 1 contested case proceedings, pursuant to Wis. Stat. §§ 196.491(3)(b), 227.01(3)(a), and 227.44.

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

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

The applicant filed an initial brief on January 27, 2023. ([PSC REF#: 457402.](#)) There were no reply briefs filed.

The Commission discussed the record in this matter at its open meeting of April 20, 2023.

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<sup>1</sup> [Tr. 29-63 Party Hearing Session - PSC REF#: 456704](#)

<sup>2</sup> [Tr. 1-28 Public Session - PSC REF#: 456703](#)

<sup>3</sup> [Ex.-PSC-Public Comments - PSC REF#: 456476](#)

### **Findings of Fact**

1. The applicant is a wholly owned subsidiary of Savion, LLC (Savion), a Delaware limited liability company. 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 197.9 MW DC and up to 150.5 MW AC. The proposed project also includes a BESS with a capacity of up to 50 MW AC/200 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 red pine plantation 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 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 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 generating capacity of up to 197.9 MW DC and up to 150.5 MW AC. The proposed project also includes a BESS with a capacity of up to 50 MW AC. The Project would be located in the Town of Saratoga, in Wood County, Wisconsin. The major components of the 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 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. Panel models will be evaluated closer to the time of construction and may range from 530 watts DC per panel to 550 watts DC per panel,

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requiring approximately 366,444 total panels for the 150.5 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 9.5 miles, and the collector system for the project will be broken up into approximately six separate circuits. The solar PV array would connect to a new 34.5 kV/138 kV project collector substation. An approximately 500-foot generator tie line would connect the new collector substation to the existing Petenwell to Saratoga 138kV transmission line, which is owned by American Transmission Company LLC (ATC). The applicant may sell some or all of the site to utility ownership.<sup>4</sup>

### **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 one interconnection position in the MISO 2020 cycle and one in the MISO 2021 cycle. In the MISO DPP 2020 cycle, interconnection position J1751 requests the interconnection of 150.5 MW of solar generation to the existing Petenwell to Saratoga 138kV transmission line. Interconnection position J2117 requests the interconnection of 0 MW of BESS to the existing Petenwell to

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<sup>4</sup> See Application at 1.2; Environmental Assessment at 2.1.

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Saratoga 138kV transmission line. According to the applicant, interconnection J2117 “is non-additive to the solar filing (J1751). ‘Nonadditive’ means that the Project’s Battery Energy Storage System (BESS) could dispatch up to 50 MW at the point of interconnection (POI), but the amount of energy at the POI will never exceed the amount proposed for J1751 (150.5 MW). Therefore, J2117 is effectively adding 0 MW to the J1751 filing at the POI.” ([PSC REF#: 456831](#); number 3.03.) 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 Wisconsin have 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 and increased deployment of natural gas and solar generation. ([PSC REF#: 451939](#) at 23-33.) The applicant’s proposed project would provide infrastructure to support this transition and further 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



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for an adequate supply of electric energy. Wis. Stat. § 196.491(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. § 196.491(3)(d)3.

The Commission concludes that Saratoga Solar's application has been appropriately reviewed and considered by this Commission as a wholesale merchant plant. While the applicant states it may sell some or all of the proposed solar facility for utility ownership, 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.<sup>5</sup> 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 merchant plant applications. 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,

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<sup>5</sup> See Application of Wisconsin Power and Light Company and Sheboygan Power, LLC for a Certificate of Public Convenience and Necessity for Construction of an Electric Generation Facility to be Located in Sheboygan County, Docket 6680-CE-168; Application of Wisconsin Power and Light Company for Approval of Affiliated Interest Agreements Comprising a Leased Generation Contract with Sheboygan Power, LLC, docket 6680-AE-108, May 18, 2005; [Final Decision signed and served 4-18-19 - PSC REF#: 364423](#); [Final Decision Signed and Served 04-18-19 - PSC REF#: 364425](#).

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 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.<sup>6</sup> 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

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<sup>6</sup> 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.”

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#: 452698](#) at 74.) Additionally, the objective of the law<sup>7</sup> 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 technically feasible or more cost-effective. This project aligns with that objective. Therefore, the proposed project satisfies the requirements of the Energy Priorities Law.

### **Siting Process**

The Commission must consider alternative locations when determining whether a proposed generation facility is in the public interest. Wis. Stat. § 196.491(3)(d)3. A CPCN application must describe the siting process, identify the factors considered in choosing the alternative sites, and include specific site-related information for each site. Wis. Admin. Code § PSC 111.53(1)(e)-(f). The applicant’s CPCN application complies with these requirements. It explains a process used to screen areas in Wisconsin based upon the solar resource, 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 approximately 25 percent more siting areas on leased properties within the project area that meet all of its siting criteria.

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<sup>7</sup> See also Wis. Stat. §§ 1.12(3)(b) and 196.377.

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A CPCN for a large electric generation facility requires the submittal of “site-related information for each of two proposed power plant sites.” Wis. Admin. Code § PSC 111.53(1)(f). The Commission’s standard for reviewing proposed siting areas is to determine whether each proposed site is “reasonable” (i.e., whether it is 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 Serv. Comm’n of Wisconsin and Wisconsin Dep’t of Natural Res.*, 2005 WI 93, ¶¶ 66-70.

In a previous docket concerning a wind farm,<sup>8</sup> 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.<sup>9</sup> 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 approximately 25 percent additional possible solar siting areas.

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<sup>8</sup> *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).

<sup>9</sup> *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).

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 approximately 25 percent additional MW (39.7 MW) for solar panels beyond the minimum necessary for the desired project size of 150.5 MW AC. The Commission requires these additional siting areas for two reasons:

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

The applicant identified which of the array areas were proposed (also referred to as “primary”) and alternative in Appendix A to its application. ([PSC REF#: 438015.](#)) 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. requires the Commission to determine that a CPCN generation project must be sited in a brownfield area “to the extent practicable.” The proposed

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project requires over 800 acres of nearly contiguous developable land in close proximity to existing transmission facilities. There were no brownfield sites identified in Wisconsin that met these siting requirements. The Commission therefore finds that the proposed project satisfies the requirement under Wis. Stat. § 196.491(3)(d)8.

### **Authorized Project Site**

The Commission authorizes the applicant to use any of the proposed and alternate solar array sites to construct a 150.5 MW AC solar electric generation facility.

The proposed and alternative arrays and other project facility locations meet the siting criteria of Wis. Stat. §§ 196.491(3)(d)3. or 4. and would not cause undue individual hardships or adverse impacts on the environment.

The proposed arrays are preferred by the developer. The Commission finds it reasonable to allow the developer flexibility to use the proposed or alternative array sites as needed to accommodate environmental, technical, and landowner issues as they arise during construction of the project, provided, however, that the project size shall remain at a maximum nameplate capacity of 150.5 MW AC. If the situation arises where the applicant would need to construct an alternative array area, the Commission finds it reasonable to require the applicant to inform the Commission of this in the form of a notification. Adjustments that alter the boundaries of the proposed or alternative arrays depicted in the application materials may impact resources not described in the application or EA, and are subject to further review as described in the Minor Siting Flexibility section of this Final Decision.

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. As the remainder of this Final Decision demonstrates, the Commission conducted a robust analysis of the potential impacts both to the surrounding landowners and community and to the environment. The Commission finds the design and location of the project is in the public interest considering alternatives and its assessment of individual hardship and environmental impacts. To the extent there are some impacts, these impacts can be mitigated through the conditions to be imposed by the Commission and further discussed below.

### **Impact on the Wholesale Electric Market**

Under Wis. Stat. § 196.491(3)(d)7., the Commission may only issue a CPCN for a project that “will not have a material adverse impact on competition in the relevant wholesale electric service market.” The proposed project would inject additional energy into the wholesale market and is anticipated to have a positive impact on the market. As the project is a wholesale merchant plant, concerns regarding horizontal market power are not an issue. If the solar facilities are purchased by Wisconsin utilities, the concern remains unchanged, as capacity and energy from the project would be subject to market mitigation measures and oversight of MISO’s independent market monitor that restricts any ability to raise prices above competitive levels. ([PSC REF#: 456439.](#)) As such, the Commission finds that the proposed project meets the requirements of Wis. Stat. § 196.491(3)(d)7.

### **Land Use and Development Plans**

Wisconsin Stat. § 196.491(3)(d)6. requires that a proposed generation facility not “unreasonably interfere with the orderly land use and development plans for the area involved.” A utility infrastructure project will have some impact on land use and development plans for the



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area involved. The question is whether the project will “unreasonably interfere,” and the analysis must also take into account the benefits of the proposed project. The land where the proposed project would be constructed is primarily red pine plantation, adjacent to farmland. The record in this docket suggests this is another project in which the developers were in communication with local decision-makers and members of the community to address potential impacts.

Further, the applicant is not a public utility and does not possess statutory eminent domain authority. The applicant must secure long-term lease agreements with landowners in the project area to acquire the property for the generation facility. The changes to land use are agreed to by the landowners that have signed leases with the applicant, and after decommissioning, the land may return to a use similar to its current use. The Commission recognizes that the proposed project will create impacts on the land use in the project area but finds that the proposed project will not unreasonably interfere with the orderly land use and development plans of the project area.

### **Public Health and Welfare**

As the Wisconsin Supreme Court has declared, issuing a CPCN is a legislative determination involving public policy and statecraft. *Clean Wisconsin, Inc. v. Pub. Serv. Comm’n of Wisconsin*, 2005 WI 93, ¶ 35, 282 Wis. 2d 250, 700 N.W.2d 768. Wisconsin Stat. § 196.491 assigns to the Commission the role of weighing and balancing many conflicting factors. In order to determine whether construction of a new electric generating facility is reasonable and in the public interest, the Commission must not just apply the priority list in Wis.

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Stat. § 1.12(4), but also must examine the conditions written into that law and consider the purpose of the legislation.

These statutes require that when the Commission reviews a CPCN application for a wholesale merchant plant generating facility, it must consider alternatives, individual hardships, safety, reliability, a host of environmental factors, any interference with orderly local land use and development plans, and potential impacts to wholesale electric competition. Ultimately, the Commission must determine whether granting or denying a CPCN applicant's request will promote the public health and welfare.

In preparing the EA for this project, Commission staff reviewed the information from Saratoga Solar's CPCN application, responses to Commission staff data requests, maps, GIS data, aerial imagery, and reports from consultants. Commission staff assessed information from other sources including comments from individuals, state and federal agency information, local officials, field visits, and scientific literature. Commission staff also coordinated review with DNR to assess wetland, waterway, and endangered resource impacts. The applicant agreed to incorporate a number of the recommendations from the Commission and DNR into its project to mitigate environment impacts, and the Commission imposed additional conditions as described in this decision.

The record before the Commission reflects an expectation that if these facilities are decommissioned in the projected 30-to 40-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 after construction. The facilities can be operated with, in addition to remote monitoring, three full-time equivalent employees on-site. The proposed

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project will not require any municipal water or sewer services and will not require any unique fire, police, or rescue services. There are no additional impacts to public health or welfare associated with the solar facilities identified in the record that are not otherwise mitigated or addressed by the conditions of this Final Decision such as noise studies, and other conditions.

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 300 workers will be needed to complete the project and indicated in its application that the majority of the workforce is expected to come from local sources, depending on the labor market and worker availability at the time of construction. Comments from the Engineers Local 139, Construction Business Group and North Central States Regional Council of Carpenters provided recommendations to the Commission to encourage greater use of local laborers where feasible and to provide more transparency with respect to the employment impacts of utility projects.

Approval of the proposed project will provide 150.5 MW of noncombustible renewable energy and 50 MW of BESS supply to the state of Wisconsin. The Commission has previously held that renewable generation projects promote public health and welfare by generally avoiding most of the impacts created by other types of electric generation.<sup>10</sup> After weighing all of these factors and all of the conditions it is imposing, the Commission finds, for the reasons set forth in this Final Decision and administrative record developed for this proceeding, that issuing a CPCN for the proposed project promotes the public health and welfare and is in the public interest.

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<sup>10</sup> *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](#).)

### **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.

### **BESS Code Compliance**

Previous Commission final decisions for Two Creeks Solar, Badger Hollow Solar, Point Beach Solar, Badger State Solar, and Koshkonong Solar have included language to require the applicants to adhere to Wisconsin electric safety code for public safety. Since Wisconsin public utilities could pursue the purchase of this docket's proposed solar and BESS electric generation facilities and the associated generator tie-line in the future, 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<sup>11</sup>. In addition, to address concerns regarding fire safety 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 condition for the construction and operation of the BESS project facilities:

- The applicant shall construct, maintain, and operate the BESS facilities to follow the best industry safety practices for ensuring battery fire safety.

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<sup>11</sup> 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 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.

### **Final Engineering Plans**

In the application, the applicant states that final PV module and other equipment selections have not been made, and instead uses information from one specific panel manufacturer to perform calculations for the purposes of estimating information for the project. The Commission has jurisdiction under Wis. Stat. § 196.491(3)(d)3. to ensure that the design of an electric generating facility is in the public interest considering engineering, safety, and reliability factors. Since final project details as they pertain to equipment selected are subject to change until later in the project development process, the Commission finds it reasonable to require the applicant to comply with the following project-specific condition pertaining to the final project design:

- 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.

### **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 (J1751) and 2021 (J2117) Study Cycles. The applicant stated in its application that it expected to execute a Large Generator Interconnection Agreement with MISO for the project in early 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 150.5 MW of solar as queue position J1751. As discussed above, queue position J2117 is "non-additive" (for 0 MW) to J1751. 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 to require the applicant to comply with the following project-specific condition pertaining to the MISO DPP studies and Generator Interconnection Request:

- The applicant shall provide the results of all MISO DPP studies and facilities studies related to interconnection queue positions J1751 and J2117 and the Generator Interconnection Agreements related to the project when each of them have been completed.

#### **Local Employment for the Project Construction Workforce**

The applicant identified in its application the benefits to the local economy. The applicant stated that approximately 300 workers will be needed to complete the project and indicated in its application that the majority of the workforce is expected to come from local sources, depending on the labor market and their availability at the time of construction. Based on comments from the Engineers Local 139, Construction Business Group and North Central States Regional Council of Carpenters, the Commission finds it reasonable to require the applicant to comply with the following project-specific quarterly reporting requirement:

- The applicant's efforts, and the efforts of its construction contractors, to recruit Wisconsin residents to fill employment opportunities created by the construction of the proposed project.

### **Post-Construction Noise Study**

There has been long-standing Commission precedent of requiring pre-construction and post-construction noise studies for any new proposed electric generation facility, for both renewable and conventional electric generation resources. Previous Commission decisions have included language that required noise studies by a project developer. The applicant completed and submitted an initial pre-construction noise study report. ([PSC REF#: 438054](#).)

The applicant stated that “If required, Saratoga Solar intends to complete a post-construction noise study.” However, based on the post-construction noise studies from previous solar projects, none have presented a noise concern. The applicant believes that a requirement to perform a post-construction is unnecessary and should not be included as an order condition in this docket. ([PSC REF#: 455956](#) at page 2; [PSC REF#: 462288](#) at page 11.)

Given the limited number of large solar facilities that have been placed in operation and have submitted post-construction noise studies, the Commission finds it reasonable that the applicant perform pre-construction and post-construction noise studies as described in the most current version of the Commission’s Noise Measurement Protocol. This will ensure that any noise created by the solar facilities will be identified and mitigated in accordance with the Commission’s standards. In the event of a substantial change to the proposed facility layout, the applicant should confer with Commission staff to determine if a new pre-construction noise study must be completed. The Commission finds it reasonable to require the applicant to comply with the following project-specific condition pertaining to the post-construction noise study:

- The applicant shall perform 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.

### **Environmental Review**

The project was reviewed by the Commission for environmental impacts, including the effects on aesthetics and landowners, changes in land use, wildlife including rare or endangered species, water resources, historic or cultural resources, as well as a variety of other topics. The detailed results of the Commission's environmental review for this project are described in the EA. Based on the analysis, the main environmental effects associated with constructing the Saratoga Solar project include:

- Changes to local aesthetics due to new visual impacts;
- Removal of land that could be used for other purposes; and
- Effects on plant and animal species active in the project area.

### **Construction Effects**

The project will cause mostly temporary effects during construction, such as increased traffic, noise, and air pollution. There will be increased traffic in the project area as employees and deliveries arrive at and leave the project work areas. The applicant has reviewed road conditions and has described plans to avoid major traffic impacts. Removal of topsoil and other construction actions could cause issues with water flows onto nearby areas. The applicant stated



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that it plans to follow stormwater and erosion control best management practices (BMPs) to reduce the risk of water runoff and soil damage during construction.

### **Aesthetic and Noise Impacts**

There will be impacts to developed land surrounding the solar facility, such as residential and commercial properties. The applicant plans to revegetate the project area with a seed mix that includes some native species, as well as several pollinator-friendly species. The applicant completed a noise study to measure the current sound levels around the project area and estimate the impact of the facility using the technical specifications of planned electric generation equipment. The results found that the facility would not likely increase noise in the area. The applicant is also required to conduct a post-construction noise study to measure actual sound levels during operation of the facility. The applicant plans to use several setback distances to create space between the facility and surrounding developed areas. It plans to leave in place existing trees within 50 feet of the facility's property line to help block the view of the facility. These commitments, as well as the generally forested landscape of the project area, should limit the project's aesthetic impacts.

### **Wildlife Impacts**

The applicant completed a certified endangered resources (ER) review with DNR to identify any protected species within the proposed project area. The ER review identified several animal species and one special concern plant species that may be impacted by the project, based on the initial database query. Based on this information as well as information available from DNR and U.S. Fish and Wildlife Service (USFWS), the solar facilities layouts, and planned activities as described in the application, this project is not expected to have a significant impact

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on endangered or threatened species or natural communities if the required actions are implemented. Further reductions of impacts could be achieved if the applicant also implements the ER review's recommended actions.

The applicant has several plans to reduce impacts and barriers to small-animal movement in specific areas or adjacent to habitat areas. It would either raise the height of the perimeter fencing, provide openings at intervals, or use a fence fabric to accommodate small-animal movement.

### **Vegetation Management Plan Seed Mixes**

One of the species listed in the applicant's proposed main project seed mix included Red Fescue grass species, which can have the tendency to be aggressive and out-compete other desirable species in the proposed seed mix for the panel array areas. Removing this species from the Graminoid Plus seed mix would aid establishment of this mix by reducing its potential to out-compete other target species in the mix. To prevent this potential, the Commission finds it reasonable to preclude the use of this species in the Graminoid Plus seed mix that is proposed for the panel/array areas. The Commission finds it appropriate to adopt the following Order Condition:

- The applicants shall not use any type of Red Fescue in its proposed Graminoid Plus Seed Mix for seeding in panel array areas of the project.

### **Federal, State, and Local Permits**

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

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

### **General Conditions**

Typically, in addition to the conditions discussed previously in this Final Decision, 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, except for the proposed Order Condition related to post-construction noise studies. The applicant stated that this Order Condition is not necessary for approval of the project. It stated that the Commission has significant experience with utility-scale solar generation projects and that experience shows that these projects do not present noise concerns, therefore a post-construction noise study is not necessary and should not be included in the Final Decision. As discussed above, the Commission finds it reasonable to require a post-construction noise study.

### **Compliance with the Wisconsin Environmental Policy Act**

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

The Commission finds that no EIS is required and that the environmental review conducted in this proceeding complies with the requirements of Wis. Stat. § 1.11 and Wis. Admin. Code ch. PSC 4.

### **Project Construction Schedule**

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

Construction is proposed to begin as early as the second Quarter of 2023, contingent on receipt of regulatory approvals. 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 24 months, from site mobilization to commercial operation. Some construction timelines could be affected by weather conditions, particularly winter weather conditions.

### **Assignment of Rights**

Pursuant to Wisconsin's CPCN law, the applicants's application was reviewed in accordance with those criteria applicable to Commission authorization for the construction of a wholesale merchant plant rather than a public utility plant. Wis. Stat. § 196.491(3)(d). Because the criteria applicable to review of CPCN applications by public utilities differs from that applicable to wholesale merchant plants, the rights granted under a CPCN issued to a wholesale merchant plant are also distinct from those granted to a public utility plant. Although public utilities may have particular statutory rights regarding their operations, upon its grant of a CPCN, the Commission may place conditions upon the CPCN such that, should the public utility utilize the rights granted by the Commission, the public utility's rights under the CPCN are thus limited. The Commission finds it reasonable in light of the future potential assignment of ownership and

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rights by the applicant to Wisconsin public utilities to include an order condition limiting the rights granted under the CPCN to those provided to the applicant as a wholesale merchant, and requiring any future owner or operator of the project to honor the commitments made by the applicant and accept the limitations placed upon the project as provided for in this Final Decision.<sup>12</sup>

### **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 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 installing any metal or conductive materials into the ground 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

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<sup>12</sup> The Commission notes that when there is potential for a sale of a project that requires a CPCN from a wholesale merchant applicant to a public utility, the applicant should expect a similar condition to be part of the Commission's decision granting the CPCN.

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.

3. The applicant shall perform 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.

4. The applicant shall not use any type of Red Fescue in its proposed Graminoid Plus Seed Mix for seeding in panel array areas of the project.

5. 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 ch. PSC 114, as appropriate. In case of conflict or overlap between code requirements, the applicant shall construct, maintain, and operate all applicable project facilities to comply with whichever code has the more stringent requirements.

6. The applicant shall construct, maintain, and operate the BESS facilities to follow the best industry safety practices for ensuring battery fire safety.

7. The applicant shall provide the results of all MISO DPP studies and facilities studies related to interconnection queue positions J1751 and J2117 and the Generator Interconnection Agreements related to the project when each of them have been completed.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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).

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 and its selected contractors shall participate in a pre-construction meeting with DNR and Commission staff to discuss construction plans and/or final site designs, permits, and associated requirements and Best Management Practices. Plans shall be provided to Commission and DNR staff a minimum of 14 days prior to the meeting date to allow time for review.

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

16. 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).

17. The applicant may use the proposed or alternative array sites as needed to accommodate environmental, technical, and landowner issues as they arise during construction of the project, provided, however, that the project size shall remain at the maximum nameplate capacity of 150.0 MW AC for the PV arrays and 50 MW AC for the BESS 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 Commission identifying such alternative arrays within 30 days of the decision to use the alternative arrays.

18. 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 the authorized nameplate capacity of each solar facility stated in the application), 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.

19. Beginning with the quarter ending on a date to be determined by the Commission in the Final Decision, and within 30 days of the end of each quarter thereafter and continuing until the authorized facilities are fully operational, the applicant shall submit quarterly progress reports to the Commission that include all of the following:

- 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; and
- e. The applicant's efforts, and the efforts of its construction contractors, to recruit Wisconsin residents to fill employment opportunities created by the construction of the proposed project.

20. 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.).

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21. If the applicant has not begun on-site physical construction of the authorized project within one year of the effective date of this Final Decision, the certificate authorizing the applicant 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.

22. 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.

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

24. Jurisdiction is retained.

Dated at Madison, Wisconsin, the 22<sup>nd</sup> day of May, 2023.

By the Commission:

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

Cru Stubley  
Secretary to the Commission

CS:JAK:dsa DL: 01926824

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.<sup>13</sup> 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

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<sup>13</sup> 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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