PUBLIC SERVICE COMMISSION OF WISCONSIN

Application for a Certificate of Public Convenience and Necessity of Ursa Solar, LLC to Construct the Langdon Mills Solar Electric Generation Facility in the Towns of Courtland and Springvale, Columbia County, Wisconsin	9818-CE-100

FINAL DECISION

On October 19, 2022, pursuant to Wis. Stat. § 196.491 and Wis. Admin. Code chs. PSC 4 and 111, Ursa Solar, LLC (applicant) filed with the Commission an application for a Certificate of Public Convenience and Necessity (CPCN) to construct a new solar photovoltaic (PV) electric generation facility. The applicant's proposed generation facility is a wholesale merchant plant as defined by Wis. Stat. § 196.491(1)(w) and would have a generating capacity of up to 260 megawatts (MW) direct current (DC) and up to 200 MW alternating current (AC). The application showed the proposed and alternative project arrays on approximately 1,201 acres of primarily agricultural land in the Towns of Springvale and Courtland in Columbia County, Wisconsin. The project is expected to use approximately 957 acres of this land to generate 200 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 50 MW AC/200 megawatt-hours (MWh), and an approximately 30 to 40-foot generator tie line (collectively, project).

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

Introduction

The Commission determined the application complete on November 18, 2022. (PSC REF#: 453594.) The Commission issued a Notice of Proceeding on December 22, 2022. (PSC REF#: 455154.) Wisconsin Stat. § 196.491(3)(g) requires that the Commission take final action within 180 days after it finds a CPCN application complete unless an extension of no more than 180 days is granted by the Commission Chairperson. On February 16, 2023, the Commission Chairperson granted a 180-day extension. (PSC REF#: 459448.) The Commission must take final action on or before November 13, 2023, or the application is approved by operation of law. See Wis. Stat. § 196.491(3)(g).

On January 17, 2023, the Administrative Law Judge (ALJ) issued a Notice of Prehearing Conference. (PSC REF#: 456667.) A first prehearing conference was held virtually with no physical location on January 25, 2023. The ALJ issued a Prehearing Conference Memorandum on February 8, 2023. (PSC REF#: 458966.) At the first prehearing conference, the ALJ reviewed intervention requests by Doug Smedema, Lauren Tonn (Tonn), Patricia Van Buren, and RENEW Wisconsin (RENEW). On January 26, 2023, Clean Wisconsin filed a Request to Intervene Out of Time. (PSC REF#: 457231.) On February 15, 2023 a second prehearing conference was held to consider Clean Wisconsin's intervention request. On January 25, 2023, the ALJ orally granted requests to intervene to Tonn and RENEW. (PSC REF#: 457343.) On February 15, 2023, the ALJ orally granted the request of Clean Wisconsin to permissive intervention but ruled to not allow a study[1] prepared by Clean Wisconsin as part of the record for the proceeding. (PSC REF#: 459669.) On February 15, 2023, Clean Wisconsin filed a motion requesting interlocutory review of the oral ruling to exclude the study. (PSC REF#: 459506.) In

[1] Clean Wisconsin prepared a study titled, "Corn Ethanol vs. Solar Land Use Comparison."

an order served on March 23, 2023, the Commission granted Clean Wisconsin's motion for interlocutory review allowing for the inclusion of the study in the proceeding. (PSC REF#: 462379.) 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 December 24, 2022, issued an EA scoping letter to accept comments from the public to determine the scope of the EA. (PSC REF#: 454764.) On March 10, 2023, 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#: 461588.) The Commission took comments on this preliminary determination, and on April 4, 2023, 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#: 463475.) As a result of the EA, the Commission determined that the preparation of an Environmental Impact Statement (EIS) was not required.

The Commission issued a Notice of Hearing on March 28, 2023. (PSC REF#: 462684.) The Commission held party hearing sessions virtually on May 19, 2023. At the party session, expert and lay witnesses offered testimony and exhibits on behalf of the applicant, Tonn,

RENEW, Clean Wisconsin, DNR staff, and Commission staff.[2] (PSC REF#: 472939.) Public comment hearing sessions were held at a physical location near the project site with a virtual attendance option on May 16, 2023. At the public comment hearings, the Commission accepted oral testimony from members of the public.[3] The Commission also accepted comments from members of the public through its website.[4] 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, Tonn, and Clean Wisconsin filed initial briefs on June 9, 2023. (PSC REF#: 470178, PSC REF#: 470171, PSC REF#: 470188.) On June 16, 2023, the same parties filed reply briefs. (PSC REF#: 470717, PSC REF#: 470694, PSC REF#: 470716.)

The Commission discussed the record in this matter at its open meeting of September 14, 2023. (PSC REF#: 479959.) The Commission delegated authority to Commission staff pursuant to Wis. Stat. § 15.02(4) to draft an order consistent with its discussion, and authorized the Secretary to the Commission to sign the Final Decision on behalf of the Commission.

Findings of Fact

1. The applicant is a wholly-owned subsidiary of Samsung Solar Energy 2, LLC, which in turn is a wholly owned subsidiary of Samsung C&T America (Samsung). 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 260 MW DC and

[2] Tr. 310-461 Party Hearing Session - PSC REF#: 469815
[3] Tr. 218-309 Public Hearing Session - PSC REF#: 469814
[4] Ex.-PSC-Public Comments - PSC REF#: 469535

up to 200 MW AC. The proposed project also includes a BESS with a capacity of up to 50 MW AC/200 MWh, and 30 to 40-foot generator tie line.

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 generating capacity of up to 260 MW DC and up to 200 MW AC. The proposed project also includes a BESS with a capacity of up to 50 MW AC. The proposed project would be located in the Towns of Springvale and Courtland in Columbia County, Wisconsin. The major components of the proposed project include the PV panels, BESS, inverters, collector circuits, a generator tie line, and a collector substation, and a 30 to 40 foot generator tie line.

The solar module used for a preliminary layout for the project are monocrystalline models with a monofacial design, the specific model of which is to be evaluated and selected closer to the time of construction. The preliminary solar module layout used 575 watts DC per panel, requiring approximately 452,400 high efficiency PV panels to generate the proposed 200 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 25 miles for the project primary arrays, with approximately 1.5 miles of collector circuits only serving the alternate arrays. The solar PV array would connect to a new

34.5 kV/345 kV project collector substation. An approximately 30-to-40-foot generator tie line would connect the new collector substation to the South Fond du Lac 345 kV switchyard, which is owned by American Transmission Company LLC (ATC).

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, with interconnection position J1629 which requests 200 MW of solar generation connecting to the existing Columbia to South Fond du Lac 345 kV ATC transmission line. DPP phase 1 and 2 studies have been completed, with phase 3 and a generator interconnection agreement to follow. The applicant must execute the generator interconnection agreement prior to operation of the proposed project.

Applicable Statutory Criteria and Burden of Proof

For a wholesale merchant plant, Wis. Stat. § 196.49(3)(d)3. requires that the design and location of the project be in the public interest considering alternative locations, individual hardships, safety, reliability, and environmental factors. As a wholesale merchant plant, the Commission does not consider whether the project will satisfy the reasonable needs of the public for an adequate supply of electric energy. Wis. Stat. § 196.491(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.

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 any of the potential buyers be co-applicants. As Wis. Stat. ch. 196 is currently written, the process by which the applicant seeks a CPCN in this docket is a lawful one, and the Commission may not impose additional requirements on the applicant that are not prescribed by the applicable legislation.

The Commission has considered several applications for the construction of a utility-scale solar facility, and the evaluation of technical and complex projects, such as the one proposed in this docket, is an area in which the Commission has special expertise.[5] 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

[5] *See*, *e.g., Application for a Certificate of Public Convenience and Necessity of Paris Solar Farm, LLC, to Construct a Solar Electric Generation Facility in the Town of Paris, Kenosha County, Wisconsin*, docket 9801-CE-100, Dec. 29, 2020, PSC REF#: 402226; *Application for a Certificate of Public Convenience and Necessity of Point Beach Solar, LLC to Construct a Solar Electric Generation Facility, to be Located in Manitowoc County, Wisconsin*, docket 9802-CE-100, Feb. 12, 2020, PSC REF#: 383720; *Application for Certificate of Public Convenience and Necessity of Wood County Solar Project, LLC to Construct a Solar Electric Generation Facility in the Town of Saratoga, Wood County, Wisconsin*, docket 9803-CE-100, March 4, 2021, PSC REF#: 406282; *Application for Grant County Solar, LLC to Construct a New Solar Electric Generation Facility located near Potosi and Harrison townships, in Grant County, Wisconsin*, docket 9804-CE-100, May 17, 2021, PSC REF#: 411529; *Application for a Certificate of Public Convenience and Necessity of Onion River Solar, LLC to Construct a Solar Electric Generation Facility in the Town of Holland, Sheboygan County, Wisconsin*, docket 9805-CE-100, June 18, 2021, PSC REF#: 413949; *Application for a Certificate of Public Convenience and Necessity of Darien Solar Energy Center, LLC to Construct a Solar Electric Generation Facility in the Town of Bradford, Rock County, and the Town of Darien, Walworth County, Wisconsin*, docket 9806-CE-100, Aug. 5, 2021, PSC REF#: 418117; *Application for a Certificate of Public Convenience and Necessity of Springfield Solar Farm, LLC to Construct a Solar Electric Generation Facility in the Town of Lomira and the Village of Lomira, Dodge County, Wisconsin*, docket 9807-CE-100, Oct. 12, 2021, PSC REF#: 422918; *Application for a Certificate of Public Convenience and Necessity of Apple River Solar, LLC to Construct a Solar Electric Generation Facility in the Towns of Clayton, Beaver, Apple River, and Lincoln, Polk County, Wisconsin*, docket 9808-CE-100, Oct. 15, 2021, PSC REF#: 423202.

the Commission's expertise in reviewing proposed construction projects under Wis. Stat. § 196.491).

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

With regard to evidentiary determinations, the applicable burden of proof functions in tandem with the applicable standard of proof. The CPCN law, Wis. Stat. § 196.491(3), unlike other provisions of Chapter 196, does not assign a burden of proof to any party with regard to any determination that the Commission must make.[6] Nor does the CPCN law itself specify a standard of proof (i.e., quantum of evidence) that must be found in order for the Commission to make one determination rather than another. This is contrasted with other sections of Wis. Stat. ch. 196, which require that certain determinations be made only upon "clear and convincing evidence" or "a preponderance of the evidence."[7]

The CPCN law provides that the Commission "shall approve an application…for a certificate of public convenience and necessity only if the commission determines…" that a proposed project will be free of specified adverse impacts and in the public interest. These determinations are fact-intensive, and the Commission's action in approving or denying an application ultimately depends on the facts found by the Commission. As such, the standard of

[6] *See, e.g.*, Wis. Stat. §§ 196.499(5)(am), 196.504(8), 196.54(2).
[7] See, *e.g.* Wis. Stat. §§ 196.499(5)(d), 196.64(2), 196.795(7)(c).

proof that the Commission must apply can be logically inferred from the standard of review set forth in Wis. Stat. § 227.57(6), which requires a court to remand a CPCN decision back to the Commission if its decision "depends on any finding of fact that is not supported by substantial evidence in the record."

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

In light of this standard of proof, for each finding that the CPCN law requires the Commission to make, the Commission focuses on weighing the evidence to identify the finding that is supported by substantial evidence. The standard of proof applicable to CPCN determinations renders the applicable burden of proof a subordinate consideration. A burden of proof consists of a burden of going forward and a burden of persuasion.[8] The import of a burden of proof is generally effectuated through the burden of persuasion, rather than the burden of going forward. Therefore, although in administrative hearings such as this one the common-law rule that the moving party has the burden of proof is generally observed,[9] observing this rule is

[8] *Hocgurtel v. San Felippo*, 78 Wis. 2d 70, 86, 253 N.W.2d 526 (1977).
[9] *Sterlingworth Condominium Ass'n Inc. v. Wis. Dept. of Natural Res.,* 205 Wis. 2d 710, 726, 556 N.W.2d 791 (Ct. App. 1995).

fulfilled by weighing the evidence to determine whether a finding is supported by substantial evidence.

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

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.[10] 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 and battery energy storage system. As such, it is a "noncombustible renewable energy resource" and is entitled to the highest priority of all energy generation resources under the EPL. No evidence was presented in the record that energy conservation and efficiency could be used to replace the energy and capacity from the proposed project in a cost-effective, technically feasible, and environmentally sound manner.

The Commission concludes that energy and capacity from the proposed project cannot be replaced by energy conservation and efficiency, the highest priority alternative. The EA for the

[10] 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."

proposed project concluded that "approval and construction of this project is unlikely to have a significant impact on the human environment." (PSC REF#: 463475 at 66.) Additionally, the objective of the law[11] is to deploy environmentally preferable options first when meeting Wisconsin's energy needs, not to require that measures such as conservation or energy efficiency displace a project if not obviously technically feasible or more cost effective. This project aligns with that objective. Therefore, the Commission finds that the proposed project satisfies the requirements of the EPL.

Siting Process

The Commission must consider alternative locations when determining whether a proposed generation facility is in the public interest. Wis. Stat. § 196.491(3)(d)3. A CPCN application must describe the siting process, identify the factors considered in choosing the alternative sites, and include specific site-related information for each site. Wis. Admin. Code § 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 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

[11] *See also* Wis. Stat. §§ 1.12(3)(b) and 196.377.

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,[12] 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.[13] In previous solar electric generation dockets, the Commission has applied a similar analysis, concluding that an applicant complies with this requirement by providing 25 percent additional siting areas with the proposed project as an alternative.

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

As part of the application and consistent with the alternative location requirement included in Wis. Stat. § 196.491(3)(d)3., the applicant included additional sites for 25 percent additional MW (50 MW) for solar panels beyond the minimum necessary for the desired project size of 200 MW AC. The Commission requires these additional siting areas for two reasons:

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[12] *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).

[13] *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).

- 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#: 449954.) 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. As part of it review under Wis. Stat. § 196.491(3)(d)3., the Commission may also consider individual hardships in determining whether the design and location is in the public interest. The Commission identified one proposed array area portion, described below, which is precluded from construction due to a specific individual hardship.

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 957 acres of developable land in close proximity to existing transmission facilities. There were no brownfield sites identified in southern Wisconsin, in particular Columbia, Adams, Dane,

Dodge, Green Lake, Marquette, and Sauk that met these siting requirements. The applicant stated that of these, Dane County has the most brownfield sites, with the largest just under 43 acres. The applicant also stated that none of the sites are sufficient to support the proposed project. Nowhere in the record is there any evidence that there exists any brownfield site, under either the state or federal definition, of a large enough size to accommodate the proposed project. The Commission finds that the applicant's siting criteria was reasonable, that a brownfield site is not practicable for the 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, expressed in testimony by one intervening landowner, and also in public comments, in particular the concerns related to the transfer of land use from agricultural to solar electric generation. As the record compiled for this proceeding reveals and the remainder of this Final Decision demonstrates, the Commission conducted a robust analysis of the potential impacts to the surrounding landowners, the community, and to the environment. The Commission is tasked with weighing and contrasting those impacts, balancing the competing interests of those for and against the project, and considering the benefits of the project.

The Commission authorizes the applicant to use any of the primary and alternative solar array sites, but precludes a specific portion of array 9 as described more fully below. The primary site is preferred because the applicant believes that the most efficient construction can be attained by constructing the project in uniform "power blocks" and otherwise had fewer

constraints compared to the alternate sites. The applicant stated that the project design configuration uses 57 "power blocks" centered on 4.2 MW inverters, with 2 other "power blocks" centered on 2.8 MW inverters.

The Commission finds it reasonable to allow the applicant the flexibility to use the proposed sites (primary and alternative) as needed to accommodate environmental, technical, and landowner issues as they arise during construction of the project and provided that the project size shall remain at the 200 MW AC maximum solar nameplate capacity and 50 MW BESS approved in this Final Decision. However, the Commission finds that it is reasonable to preclude construction in a portion of array 9. Intervenor Ms. Tonn testified that arrays and inverters would be located on surrounding hillsides in close proximity to her home and that such proximity may exacerbate alleged underlying medical issues. The applicant maintained that the proposed project layout would not cause Ms. Tonn individual hardship. The applicant did not support moving project infrastructure, but indicated that it would not oppose moving the 13,248 panels nearest Ms. Tonn's home consistent with Ex.-Ursa Solar-Zahner-2. Based upon the unique facts and circumstances demonstrated in the record, and the technical feasibility and non-opposition of the applicant to move certain arrays from close proximity to Ms. Tonn's residence, the Commission concludes it is reasonable to preclude the applicant from using arrays and inverters in array 9 to the south and east of Ms. Tonn's home to the extent they are on a hill slope that faces her property.

While applicant has the flexibility to use the proposed sites (primary and alternative except as described above relating to array 9) as needed to accommodate environmental, technical, and landowner issues as they arise during construction of the project, if the situation arises where the applicant elects to use an alternative array area, the applicant shall provide

written notice to the Commission within 30 days of identifying such alternative arrays and shall follow the procedures outlined in this Final Decision relating to Minor Siting Adjustments.

The project is expected to use approximately 957 acres of this land to generate 200 MW AC. As discussed above, the primary array sites are preferred, the approximately 244 acres of alternate array sites are approved subject to Minor Siting Adjustments procedures to provide additional flexibility and efficiency for placement of the solar facilities during construction, and the project size is capped at the 200 MW AC maximum solar nameplate capacity and 50 MW BESS. Capping the maximum capacity allowed for the solar facility and BESS is necessary to eliminate confusion[14] and ensure that the applicant does not construct facilities in excess of what has been proposed by the application and discussed in the record of this docket.

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

Setback Requirements

Several requests were received from members of the public for the Commission to order property-specific setbacks as a condition of approval.

The Commission finds that establishing property-specific setbacks for individual landowners is unsupported by the record. The record confirms the applicant's continuing efforts to work with landowners on a case-by-case basis to address their concerns to the extent practicable. The Commission encourages the applicant to continue these discussions.

[14] In the application, there was some ambiguity as to the size of the solar facilities being requested. The capacity was clarified to be 200 MW AC for the solar facilities and is discussed in the direct testimony of Commission staff witness Jeff Kitsembel. (Received Evidence – Revised – PSC REF#: 472939.)

Based upon the record in this proceeding, the Commission finds t property-specific setbacks from project facilities as requested by non-participating landowners are unnecessary for approval of the proposed project.

Public Health and Welfare

As the Wisconsin Supreme Court has declared, issuing a CPCN is a legislative determination involving public policy and statecraft. *Clean Wisconsin, Inc. v. Pub. Serv. Comm'n of Wisconsin*, 2005 WI 93, ¶ 35, 282 Wis. 2d 250, 700 N.W.2d 768. Wisconsin Stat. § 196.491 assigns to the Commission the role of weighing and balancing many conflicting factors. In order to determine whether construction of a new electric generating facility is reasonable and in the public interest, the Commission must not just apply the priority list in Wis. Stat. § 1.12(4), but also must examine the conditions written into that law and consider the purpose of the legislation.

These statutes require that when the Commission reviews a CPCN application for a wholesale merchant plant generating facility, it must determine whether the project is in the public interest when considering individual hardships, safety, interference with orderly local land use and development plans, environmental factors, reliability, and any potential impacts to wholesale electric competition. Ultimately, the Commission must determine whether granting or denying a CPCN will promote the public health and welfare. After weighing all of these factors and all of the conditions it is imposing, the Commission finds, for the reasons set forth in this Final Decision and administrative record developed for this proceeding, that issuing a CPCN is in the public interest considering its assessment of individual hardship, safety, reliability and environmental impacts.

In preparing the EA for this project, Commission staff reviewed the information from the applicant's CPCN application, responses to Commission staff data requests, maps, geographic information system data, aerial imagery, and reports from consultants. Commission staff assessed information from other sources including comments from individuals, state and federal 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-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 200 MW of noncombustible renewable energy to the state of Wisconsin, as well as up to 50 MW/200 MWh of energy storage facilities. Renewable generation projects such as this one promote public health and welfare by generally avoiding most of the impacts created by other types of electric generation. The applicant and supporting intervenors identified other positive environmental attributes of the proposed project such as improving air and water quality, reducing agricultural nutrient runoff, enhanced plant and wildlife habitat, and more soil carbon sequestration.

As demonstrated by intervenor Clean Wisconsin, the temporary replacement of row crop land by the project's solar arrays will help increase water quality in the area by decreasing harmful agriculturally related run off. (PSC REF#: 464266 at 11-12.) By temporarily replacing

the row crop land with perennial, native grasses and other beneficial vegetation, the amount of potentially harmful chemicals typically associated with agricultural impacts, such as phosphorous and nitrates, will likely decrease in local water sources. (*Id.*) Additionally, such beneficial vegetation replacing row crop land is likely to have a beneficial impact on numerous wildlife specific, including pollinators. (*Id*.)

The project will also generate economic benefits through job creation, landowner lease payments, tax revenue, and payments to Columbia County and hosting townships from the Shared Revenue Utility Aid Formula. To monitor the benefits created through job creation, the Commission concludes that it is reasonable to require that the applicant report quarterly on its efforts and success on recruiting and Wisconsin residents to fill employment opportunities.

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

Individual Hardships and Safety

In determining whether the proposed project meets the statutory standard for a CPCN, the Commission considered individual hardships and safety as required by Wis. Stat. § 196.491(3)(d)3. An opposing intervenor and several members of the public voiced concerns regarding the potential impacts of the facility being constructed in their area. As discussed above, Ms. Tonn offered specific evidence as to how the location of certain infrastructure would cause a unique impact to her. For those specific reasons and the willingness of the applicant to provide some accommodation to Ms. Tonn, the Commission finds that the arrays and inverters in array 9 to the south and east of Ms. Tonn's home to the extent they are on a hill slope facing her property create an individual hardship for Ms. Tonn. The Commission finds that precluding the

use of arrays and inverters in array 9 to the south and east of Ms. Tonn's home to the extent they are on a hill slope that faces her property ameliorates this individual hardship.

The other alleged impacts raised by others were less specific and were not supported by substantial evidence. The potential for changes in property values, increased noise, glare from the panels, water quality and drainage issues, impacts to wildlife, and the change of land use from a rural farmed landscape to many acres of panels and fencing were discussed in comments provided by landowners and reviewed by Commission staff in the EA for these proceeding.

In order to address individual hardship and safety concerns, the applicant began meeting with private landowners in 2020 and started public outreach and outreach to local governments in 2021. (PSC REF#: 449880 at 127-131; PSC REF#: 449927, PSC REF#: 449928, PSC REF#: 449929, PSC REF#: 449930, and PSC REF#: 449931 at Appendix S.) The applicant hosted an open house, held other meetings, sent multiple mailings, attended local public events, maintained an online presence regarding the project, and began discussions with state regulators in 2021. (*Id.*) Additionally, the applicant has offered to engage with non-participating landowners, including Ms. Tonn, to address those specific concerns including designating array areas as alternates, removing arrays from the certain views of non-participating landowners, increasing setbacks, offering visual buffers, and other measures.

Commission staff asked the applicant in a data request to describe measures it would offer, or that people could request, to reduce aesthetic impacts. The applicant responded that there would be aesthetic impacts to developed land surrounding the solar facility, such as residential and commercial properties. The applicant stated it plans to mitigate some aesthetic impacts by using setback distances to create space between the facility and surrounding developed areas. The applicant also plans to offer and implement reasonable aesthetic mitigation

strategies for neighboring residences that include the provision of natural visual barriers, such as hedges or small trees. (PSC REF#: 458282.)

The applicant indicated that discussions about potential Good Neighbor Agreements to five or six adjacent residential property owners have taken place, though no agreements have been finalized. (PSC REF#: 469815 at 356-357.) The applicant has stated in the record that it will continue communication during construction and operation of the project to try to offer potential solutions to reasonable concerns. (PSC REF#: 469788 at 14-15.) Moreover, the Commission finds that a number of conditions imposed in its approval of the project, as described in this Final Decision, will mitigate any individual hardships that may be experienced. Those conditions include, but are not limited to, requirements relating to use of visual buffers, noise and stray voltage testing, and ordering compliance with all applicable safety requirements and protocols relating to the design, construction, and operation of the facility.

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

Property Value

The Commission finds that no market data, including no Wisconsin-specific market data, demonstrates a negative impact on property values in the project's surrounding area. (PSC REF#: 464854 at 3-4.) The applicant provided a Market Impact Analysis which concluded that no market data indicated a negative impact on either rural residential or agricultural property values in the surrounding area. (PSC REF#: 464868 at 4.)

Noise

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

Noise-producing equipment to be employed during construction typically includes bulldozers, graders, excavators, trucks, vibratory post setters, and cranes. The Pre-Construction Noise Analysis shows that currently residences and other noise-sensitive receptors within the project boundary are experiencing between 40.0 and 54.5 A-weighted decibels (dBA) during morning and midday periods and between 36.2 and 60.6.5 dBA during evening and nighttime periods. Based on the Cadna-A® computer noise model used by the applicant, all residences and other noise-sensitive receptors within the project boundary are predicted to experience up to 56.9 dBA during operation, which is similar to the measured existing nighttime noise levels ranging from approximately 53.0 to 60.6 dBA. Refer to Appendix P of the application for this project for the complete noise analysis. (PSC REF#: 449909.) The applicant has stated that it would investigate and work with landowners to reach a reasonable solution to any sound complaint received.

Glint and Glare

A glare analysis for the proposed project was conducted by the applicant. The analysis looked at the potential of glare from PV panels at approximately 60 locations within the project area. The locations, or observation points, included residences and segments of nearby roads

frequently used by commuters. Appendix Q of the application for this project contains the completed glint and glare study. (PSC REF#: 449910, PSC REF#: 449911, and PSC REF#: 449912.) The applicant's consultant stated that its study used a conservative approach to represent the "worst-case scenario" for glare. Under this stated "worst-case scenario", visual impacts from project-related glare are expected to be mitigatable, minimal, or insignificant. Additionally, the applicant stated it may use fencing, vegetation, or other objects of obstructive nature to mitigate glint or glare effects if glint or glare prove to be problematic for an observer.

Safety

There were concerns regarding fire safety expressed by the public due to the newness of proposed utility-scale BESS developments in the state of Wisconsin. Regarding additional safety considerations for the BESS, the EA describes in more detail the analysis of risk and impact associated with use of lithium-ion batteries, as well as potential impacts to first responders. (PSC REF#: 463475.) Commission staff asked the applicant to provide details about any Hazard Mitigation Analysis and Emergency Response Plans being developed for the project and to include information about how the plans are formulated, what industry standards or safety regulations are being consulted for their development, how the analyses and plans will be shared with the local municipalities, and when such documents are expected to be finalized. (PSC REF#: 458948.)

The applicant indicated that a Hazard Mitigation Analysis and Emergency Response Plan (ERP) would be developed in conjunction with project engineers and consultants familiar with BESS technologies and industry standards, as well as in coordination with local first responders. A draft form of the ERP is anticipated to be available prior to final site design, which would likely occur in 2025. The applicant has also stated in the record that the project will be

constructed and operated in compliance with all applicable safety standards, including National Electric Code (NEC), National Electric Safety Code (NESC), National Fire Protection Association (NFPA) standards, and the Wisconsin State Electric Code. (PSC REF#: 464856 at 2, PSC REF#: 449880.) This includes coordination with local first responders and local fire departments to explain the site location and layout, identify potential hazards, explain fire suppression techniques, identify evacuation protocols, identify medical emergency protocols, and identify communication protocols. The Commission finds it reasonable to require that, prior to commencement of operations, the applicant shall provide to the Commission a copy of the applicant's emergency response plan that includes discussion of what follow-up steps would occur for site treatment and materials disposal after a fire, thermal runaway, or storm damage event for informational purposes.

As this technology is still rapidly developing and being placed into use in installations around the world, additional information on incidents, hazards, and best management practices is likely to develop. The Commission finds it reasonable to require reporting on any safety incident at the BESS that triggers reporting under any emergency response plans resulting from the Hazard Mitigation Analysis and provide reporting on any alterations to the BESS that the applicant reasonably believes will result in a change of best practices regarding the safety of the BESS. Such reporting shall be done within 60 days of the safety incident or alteration.

While the Commission recognizes and appreciates the concerns raised, it finds that, coupled with the BESS specific conditions imposed, the individual and safety concerns identified in the record do not warrant denial of the project. Such conditions include the required submittal of an emergency response plan, and a requirement that the applicant report on any safety incident at the BESS that triggers reporting under any emergency response plans resulting from Hazard

Mitigation Analysis and provide reporting on any alternations to the BESS that the applicant reasonable believes will result in a change of best practices regarding the safety of the BESS.

Stray Voltage Testing

Specific concerns about stray voltage were raised in previous Commission-authorized utility-scale solar CPCN dockets, specifically dockets 9696-CE-100, 9697-CE-100, 9800-CE-100, and 9802-CE-100. Wisconsin Admin. Code § PSC 128.17 deals with stray voltage testing associated with wind energy systems, but the Commission has also employed some language from the code to address stray voltage concerns in utility-scale solar CPCN dockets. Previous Commission final decisions, including those for Glacier Hills Wind Park,[15] Badger Hollow Solar,[16] Two Creeks Solar,[17] Point Beach Solar,[18] and Badger State Solar[19] have included language requiring stray voltage testing. Because stray voltage has the potential to cause adverse impacts on animals and because testing can be useful in determining stray voltage levels before and after construction of a project and assist in later evaluations of causation should stray voltage concerns arise, Commission staff suggested that any pre- and post-construction stray voltage testing requirements be consistent with the Commission's stray voltage protocol which is established by Wis. Admin. Code § PSC 128.17 and previous Commission decisions on solar electric generation facilities.

Commission staff proposed two alternative wordings for the proposed stray voltage condition to provide options for the Commission to consider.[20] These alternative wording

[15] *See* docket 6630-CE-302.
[16] *See* docket 9697-CE-100.
[17] *See* docket 9696-CE-100.
[18] *See* docket 9802-CE-100.
[19] *See* docket 9800-CE-100.
[20] See PSC REF#: 469113 at 7-8 and PSC REF#: 469815 at 444-445.

proposals were intended to allow the Commission flexibility to consider which order condition language would best ensure public safety given the conditions unique to this project.

To ensure public safety and to facilitate possible mitigation of any impacts from stray voltage on agricultural animals, the Commission finds it reasonable to require the applicant to 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 facilities, before any solar energy system construction activity that may interfere with the testing commences and after the project is energized. The applicant shall work with the distribution utility and farm owner to rectify any identified stray voltage problem arising from the construction or operation of the project, in compliance with the Commission's stray voltage protocol. Prior to testing, the applicant shall work with the applicable distribution utility and Commission staff to determine where and how it will conduct the stray voltage measurements. The applicant shall report the results of its testing to Commission staff in writing.

Battery Energy Storage System Code Compliance

Previous Commission final decisions for Two Creeks Solar, Badger Hollow Solar, Point Beach Solar, and Badger State Solar have included language to require the applicants to adhere to Wisconsin electric safety code for public safety. Safety requirements continue to evolve as more operational experience with BESS units is obtained. Also, various risks may come to be known as more BESS units are placed into operation. In addition, to address concerns regarding fire safety expressed by the public during environmental assessment scoping comment period and by one intervenor, and in part, due to the newness of proposed utility-scale BESS developments in the state of Wisconsin, the Commission finds it reasonable to require the

applicant to comply with the following project-specific conditions for the construction and operation of the BESS project facilities:

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

Land use and Development Plans

Wisconsin Stat. § 196.491(3)(d)6. requires that a proposed generation facility not "unreasonably interfere with the orderly land use and development plans for the area involved." A utility or wholesale merchant infrastructure project will have some impact on land use and development plans for the area involved. The question is whether the project will "unreasonably interfere" with land use and development plans, and must also take into account the benefits of the proposed project.

The land where the proposed project would be constructed is primarily agricultural land. Comments were received from members of the public during the EA scoping and during the public hearings that discussed the impacts to the land as a result of the proposed project. In testimony, Ms. Tonn argued that the proposed project is in conflict with the Townships of Courtland's and Springvale's, as well as Columbia County's, land use plans and the orderly, planned growth of the Townships of Courtland and Springvale. (PSC REF#: 468329 at 8-18.) Ms. Tonn argued that the project would create an industrial district involving thousands of agricultural acres repurposed to solar energy production, contrary to the rural nature of the townships and county envisaged in their planning documents. Other comments also raised concerns about the use of agricultural land and the placement of the project in a rural setting.

The applicant noted that the project is not contrary to zoning codes for the Township of Courtland and Columbia County. (PSC REF#: 470084 at 6-9.) The applicant's expert reviewed

Columbia County's and the Townships of Courtland's and Springvale's Comprehensive Land Plans and concluded that the project would not impede or unreasonably interfere with the overall directions of the plans of those entities. (PSC REF#: 470084 at 10.) The applicant also argued that instituting the project may make more agricultural land available for food production, as the project may produce energy more efficiently than growing corn for ethanol production. (PSC REF#: 469788 at 7-8.) The Commission was persuaded by the analysis presented by the applicant's witness.

Intervenor Clean Wisconsin provided an analysis of the agricultural land in Wisconsin currently being used to generate chemical energy from corn grown for ethanol and electric energy from solar farms. Clean Wisconsin's witness analyzed the total energy production on agricultural land, and stated that his analysis demonstrated that the project would be much more efficient at generating energy on agricultural land compared to growing corn for ethanol. (PSC REF#: 462421 at 5-6.) According to Clean Wisconsin's witness, Wisconsin is already using over one million acres for energy production in the form of corn grown for ethanol. Per the witness, his analysis quantified how much land would be needed for a solar farm like Langdon Mills to generate the same amount of energy as one million acres of corn grown for ethanol. *Id.* His analysis concluded that because solar farms, such as the Langdon Mills facility, require less land and generate energy on agricultural land far more efficiently than agricultural land used to produce ethanol, the proposed facility would open land currently being used to grow corn for ethanol for other purposes, such as more food production. *Id.*

A utility infrastructure project will have some impact on land use and development plans for the area involved. The Commission takes seriously that areas within the fenced solar arrays would likely be taken out of agricultural production for the life of the project, but must balance

those concerns with the right of individual landowners to use their properties in the manner they choose. The easements obtained by the applicant for the project are all voluntary agreements, and the Commission notes respecting the rights of landowners is an important consideration, and there was no argument that such transactions are or were inappropriate.

The applicant is not a public utility and does not possess statutory eminent domain authority. The applicant must secure long-term lease agreements with landowners in the project area to acquire the property for the generation facility. The changes to land use are agreed to by the landowners who have signed leases with the applicant, and after decommissioning, the land may return to a use similar to its current use. The Commission also notes that solar electric energy generation is not specifically precluded by the comprehensive land use plans in the record.

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 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.

An EA was prepared for the proposed project, due to the size and amount of land that would be covered by the proposed project, and the proposed BESS. The environmental review focused primarily on impacts to wildlife, including rare or endangered species, aesthetics, historic resources, wetlands and waterways, and local landowner impacts. Wisconsin Stat. § 196.491(3)(d)4. requires that the proposed project will not have an undue adverse impact on other environmental values such as, but not limited to, ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water, and recreational use. Provided the project is built as described, including modifications described in the data request responses, the EA does not indicate that significant adverse impacts are likely. The EA concluded that "approval and construction of this project is unlikely to have a significant impact on the human environment…" (PSC REF#: 463475 at 66.) 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 literature and archive research determined that no known archaeological sites or cemeteries would be within the proposed project boundary. The applicant has developed an Unanticipated Archaeological Discoveries Plan that would be implemented in circumstances where construction of the project identifies archaeological materials. Refer to Appendix M of the application for this project for the full historic resources review documentation. (PSC REF#: 449905 confidential, PSC REF#: 449906 public.)

During field investigations, one unrecorded resource was identified, the historical marker for the Zion Welch Church, which stood until 1930 when it was razed. Further field investigations have not been conducted to determine whether the resource would potentially be eligible for listing on state or federal registers of historic places. Instead, the applicant plans to avoid impacts to the resources by creating an approximately 1-acre buffer within the northeast corner of the intersection at which the marker is located. The marker and buffer would be avoided.

Aesthetics and Visual Screening

Several non-participating landowners near the project area voiced concerns about impacts to views of their residences. Implementing strategic screening vegetation could be preferable to an adjacent non-participating landowner over views of solar arrays. Commission staff asked the

applicant to describe measures it would offer, or that people could request, to reduce aesthetic impacts. The applicant stated that there would be aesthetic impacts to developed land surrounding the solar facility, such as residential and commercial properties. The applicant plans to mitigate some aesthetic impacts by using setback distances to create space between the facility and surrounding developed areas. The applicant also plans to offer and implement reasonable aesthetic mitigation strategies for neighboring residences that include the provision of natural visual barriers, such as hedges or small trees. (PSC REF#: 458282.)

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

Threatened and Endangered Species Review

A certified Endangered Resources (ER) review was completed for the project area. (PSC REF#: 449895 confidential, PSC REF#: 449896 public.) The review was checked and approved by DNR staff in the ER Review Program. The review is based on information from the Natural Heritage Inventory database, maintained by the DNR Bureau of Natural Heritage Conservation, to identify any endangered, threatened, or special concern species or natural communities in the project area. As in past dockets, the Commission finds it reasonable to require that 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).

The ER Review identified one special concern herptile species that would likely have habitat within the project area and may be negatively impacted during construction. The ER

Review's recommended actions are to avoid the species' habitat during the times of year where this species may be present unless herptile exclusion fencing has been installed. Therefore, the Commission may find it necessary to require the applicant to comply with the ER Review's recommended actions for the special concern herptile species, as it has been done in other cases. Based on the record in this docket, the Commission finds it reasonable to require that the applicant shall avoid construction work in suitable upland nesting habitat during the special concern herptile's nesting period (May 20–October 15) or install (between October 16 and May 19) and maintain exclusion fencing using the DNR Amphibian and Reptile Exclusion Fencing Protocol. Construction work can then be conducted within the fenced area at any time of year as long as the fencing is maintained.

To reduce potential impacts to tree-dwelling bird and bat species, the applicant plans to avoid any clearing of trees or branches greater than three inches in diameter between April 1 and September 30. They also state that if any tree clearing must occur during this period, additional coordination with a qualified environmental consultant, U.S. Fish and Wildlife Service, and/or DNR would occur prior to clearing, unless the tree/branch to be cleared is determined hazardous to human life or property.

Vegetation Management

The phased approach of the applicant's vegetation management strategy begins with site soil preparation and temporary cover crop seeding, followed by the establishment of a permanent low grow native/non-native grasses across most of the project and some areas of native pollinator refuge. This strategy is intended to reduce the risk that plantings will be overtaken by weedy plants, potentially leading to lower maintenance efforts in the long term. The applicant has stated that these plantings are intended to result in establishing ground cover with a greater

diversity of species while minimizing disturbance and maximizing weed control. Additional detail can be found in the applicant's vegetation management strategy. (PSC REF#: 449894.)

Commission and DNR staff have identified that significant erosion can occur during winter construction activities and proposed order condition language that would require the applicant to prepare a stabilization plan for the winter season. (PSC REF#: 462376.) The applicant agreed to this proposed order condition. The Commission finds it reasonable to require that the applicant shall submit a site-specific winter stabilization plan with the Storm Water Pollution Prevention Plan (SWPPP) that includes measures to stabilize bare soils during winter conditions. The applicant shall submit an initial progress report prior to land disturbing construction activities that indicate current site conditions as well as whether pre-seeding and subsequent cover crop establishment have taken place. The applicant shall submit a progress report near the end of the growing season to determine whether seeding, watering, and/or additional erosion control measures should be implemented before the growing season ends.

An important aspect of Best Management Practices (BMP) for erosion and sediment control is the use of appropriate vegetation to help achieve soil stabilization. There have been several instances of stormwater management and erosion control problems in previously approved solar construction projects. DNR staff suggested an order condition requiring the applicant to submit vegetation progress reports, on a quarterly basis, to track those efforts. Additionally, DNR suggested requiring another progress report near the end of each growing season to help determine if additional measures should be taken before the end of each growing season. (PSC REF#: 462376.) The applicant agreed with the general concept of supplying quarterly vegetative progress reports. The Commission finds it reasonable to require that the applicant shall provide vegetation progress reports documenting areas that have achieved

70 percent uniform vegetation density, on a quarterly basis. The applicant shall also submit a progress report near the end of each growing season to assist in determination of whether seeding, watering, or additional erosion controls should be implemented before the growing season ends.

Wetlands and Waterways

Wetlands within the project area were identified through wetland field delineation conducted in 2021 and 2022. Wetland field delineations were conducted within the "Delineation Area," which includes the proposed project construction footprint. The results of the wetland delineations are found in the Wetland and Waterway Delineation Report (Application Appendix T).

The project would not require permit authorization under Wis. Stat. § 281.36. The project was sited to avoid regulated impacts to wetlands. Underground collection lines would cross five wetland complexes in eight locations utilizing a trenchless construction method. Installation of collection lines using trenchless construction methods is not regulated under Wis. Stat. § 281.36.

Waterways were desktop determined using the 24k Hydrography layer found in the WDNR's Surface Water Data Viewer and during field reviews conducted by the applicant. Twenty-one jurisdictional waterways flow through the project area and seven waterbodies are mapped within the project area.

The project would not require permit authorization under Wis. Stat. ch. 30. Collector circuits would cross four waterways in five locations using the horizontal directional drilling installation method. Installation of collection lines using trenchless construction methods is not regulated under Wis. Stat. ch. 30.

The Commission finds it reasonable to require the applicant to comply with several BMPs as set forth in the Order points to help ensure avoidance and minimization of impacts to nearby wetlands and waterways during construction.

Wildlife Movement

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

Commission staff asked the applicant to describe the type of fencing that would be used around the solar arrays, as well as to discuss whether and where any wildlife permeable fencing, such as the kind used in other solar generation dockets, would be used to reduce impacts and barriers to small-animal movement. The applicant responded that the fencing will be 8 feet tall, non-barbed wire agricultural or deer fence. It stated that the present project plans call for a fixed-knot, woven wire agricultural fence made of Class 3 galvanized 12.5-gauge steel wire having a minimum 6-inch clearance for small animals at the base. (PSC REF#: 458282.)

Reliability

In determining whether the proposed projects meets the statutory standard for a CPCN, the Commission considered reliability as required by Wis. Stat. § 196.491(3)(d)3. The applicant has indicated its intent to comply with the applicable interconnection requirements to ensure the interconnection of the project will not result in adverse reliability impacts to the grid. The applicant has worked with ATC to determine the appropriate location and grounding methodology

for the proposed substation. Additionally, the BESS will enhance efficiency, reliability, and integration of the facility to the grid by facilitating a shift in solar generation output, which typically peaks at solar noon, to peak demand hours in the evening in addition to smoothing project intermittency on cloudy days. Therefore, the Commission concludes that the project, as conditioned by this Final Decision, will not adversely affect reliability consistent with Wis. Stat. § 196.491(3)(d)3.

MISO Studies

The transmission interconnection facility requirements for the proposed project are being determined through the MISO Generator Interconnection Queue study process. The transmission system upgrades required for the solar generation facility to be operational are being reviewed as a part of MISO's interconnection study process in the DPP 2020 Study Cycle. While the applicant expected to execute a Large Generator Interconnection Agreement (GIA) with MISO by early summer 2023, as of the date of this Final Decision, a GIA has not been executed. The project is represented in MISO's interconnection process as one queue position J1629 for 200 MW of solar, which is the Langdon Mills Solar project as proposed by the applicant. The Commission's Final Decision for the Darien Solar project, docket 9806-CE-100, included language to require the applicants to report an update on interconnection.

The Commission finds it reasonable to require the applicant to provide the results of all MISO DPP studies and facilities studies related to interconnection queue position J1629 and the Generator Interconnection Agreement related to the project once they are complete .

Final Engineering Plans

All of the information presented in the application materials pertaining to equipment was an approximation for design calculations and estimates for the submission of the application.

The applicant indicated that final equipment selection and design would take place at a later time, based on available equipment and pricing at the time of final engineering design. Starting in docket 9801-CE-100 and also imposed in dockets 9806-CE-100 and 9811-CE-100, particularly due to the novelty of BESS systems in Wisconsin, the Commission imposed language for the applicant to provide final designs and engineering plans for Commission staff to review. The Commission finds it reasonable for the applicant to perform the same requirement here. 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 portions of the proposed project as soon as practicable after the project in-service date. 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.

Project Sizing

The applicant states that the proposed project's nameplate capacity is 200 MW AC, while the planned capacity at the PV inverters would be 331.09 MW DC. In response to a request for clarification relating to the project sizing, the applicant indicated that the project's planned sizing would be 260 MW DC, with a nameplate rating of 200 MW AC. 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 safety and environmental factors. The Commission finds the following order condition to eliminate confusion and ensure the applicant does not construct facilities in excess of what has been proposed in the application and discussed in the record of this docket. The applicant is authorized to construct the proposed solar PV electric generation facility, BESS facilities, generation tie line facilities, and all other associated facilities, as described in the application and data request responses and as modified by the Final Decision, at a

capacity of no greater than 200 MW (AC) for the solar PV electric generation facilities and no greater than 50 MW (AC)/200 MWh for the BESS facilities.

Material Adverse Impact on the Wholesale Electric Market

Under Wis. Stat. § 196.491(3)(d)7., the Commission may only issue a CPCN for a project that "will not have a material adverse impact on competition in the relevant wholesale electric service market." As a wholesale merchant plant, concerns regarding horizontal market power are not an issue since the energy generated by the project will only be dispatched into the market if the price it charges for its generation is competitive. If the solar facilities are purchased by Wisconsin utilities, the concern remains unchanged as capacity and energy from the project would be subject to market mitigation measures and oversight of MISO's independent market monitor that restricts any ability to raise prices above competitive levels.[21] As such, the Commission finds that the proposed project meets the requirements of Wis. Stat. § 196.491(3)(d)7.

Other Conditions and Considerations

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

In reviewing this, and similar, dockets, the Commission must balance the need to maintain adequate, reliable, and economical electric service for the citizens of Wisconsin with the concerns of landowners and other interested individuals, while supporting the public policy

[21] *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.)

of greater access to renewable-based electric generation. The Commission recognizes the impact that large electric generation projects, including this project, place on all affected landowners and communities. Such impacts are often the unfortunate but a necessary result of the construction and operation of an electric generation system that is required to meet the needs of the public and support the public policy of introducing more renewable-based electric generation.

Intervenors, members of the public, and Commission staff proposed several order conditions, related to public safety, facility operational standards, individual hardships, and environmental impacts to non-participating residents near the project facilities, to avoid, minimize, and/or mitigate any potential or perceived impacts that may result from construction and operation of the project. As described above and in this Final Decision, the Commission adopts many of these conditions.

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.

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 fourth quarter of 2024. Major construction activities are expected to take place in 2025. The in-service date for this project is estimated to

be during the third quarter of 2026. The total construction duration is estimated to be approximately 18 to 24 months, from site mobilization to commercial operation. Some construction timelines could be affected by weather conditions, particularly winter weather conditions.

Certificate

The Commission grants the applicant a CPCN for construction of the proposed solar PV electric generation facility, BESS, and 30 to 40-foot generator tie line, 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 facility, BESS facilities, generation tie line facilities, and all other associated facilities, as described in the application and data request responses and as modified by the Final Decision.

2. 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.

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

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

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

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

7. The transfer of rights and obligations under this CPCN to a third party does not confer either additional rights or obligations upon that third party than what is afforded to the applicant at the time of application and as specified in this Final Decision. If a successor, assign, or future owner or operator of the project is a public utility, this CPCN is conditional upon the public utility waiving any rights it may otherwise have under Wis. Stat. §§ 32.02 and 32.075(2) for the project. This CPCN does not confer any "right to acquire real estate or personal property appurtenant thereto or interest therein for such project by condemnation" under Wis. Stat. §§ 32.02 or 32.075(2) as otherwise provided under Wis. Stat. § 32.03(5)(a).

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

9. 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 BMPs. Plans shall be provided to Commission and DNR staff a minimum of 14 days prior to the meeting date to allow time for review.

10. 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.

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

12. The applicant may use the proposed or alternative array sites as needed to accommodate environmental, technical, and landowner issues as they arise during construction of the project, provided however, that the project size shall remain at the maximum nameplate capacity approved in this 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.

13. 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.

14. The applicant shall work with the applicable distribution utility to make available stray voltage testing at each agricultural confined animal operation within one-half mile of the project facilities before any solar energy system construction activity that may interfere with the testing commences and after the project is energized. The applicant shall work with the distribution utility and farm owner to rectify any identified stray voltage problem arising from the construction or operation of the project, in compliance with the Commission's stray voltage protocol. Prior to testing, the applicant shall work with the applicable distribution utility and Commission staff to determine where and how it will conduct the stray voltage measurements. The applicant shall report the results of its testing to Commission staff in writing.

15. The applicant shall provide the Commission with final detailed engineering plans for the project, including the final designs and equipment plans for both the solar and BESS portions of the proposed project as soon as practicable after the project in-service date. 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.

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

17. The applicant shall provide the results of all MISO DPP studies and facilities studies related to interconnection queue position J1629 and the GIA related to the project once they are complete.

18. The applicant is authorized to construct the proposed solar PV electric generation facility, BESS facilities, generation tie line facilities, and all other associated facilities, as described in the application and data request responses and as modified by the Final Decision, at a capacity of no greater than 200 MW (AC) for the solar PV electric generation facilities and no greater than 50 MW (AC)/200 MWh for the BESS facilities.

19. Prior to commencement of operations, the applicant shall provide to the Commission a copy of the applicant's emergency response plan that includes discussion of what follow-up steps would occur for site treatment and materials disposal after a fire, thermal runaway, or storm damage event. This information would be provided to the Commission for informational purposes.

20. The applicant shall provide reporting on any safety incident at the BESS that triggers reporting under any emergency response plans resulting from the Hazard Mitigation Analysis and provide reporting on any alterations to the BESS that the applicant reasonably believes will result in a change of best practices regarding the safety of the BESS. Such reporting shall be done within 60 days of the safety incident or alteration.

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

22. The applicant shall:

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

b. 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.

c. 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.

d. Implement a construction sequencing plan that minimizes the amount of land disturbed or exposed (susceptible to erosion) at one given time across the project.

e. Establish vegetative cover prior to land disturbance activities.

f. Leave existing vegetative buffers in place, where practicable, and maximize their width in proximity to wetlands and waterways. If disturbance to vegetative buffers cannot be avoided, then disturbance should be limited to after the

construction phase of the project, once the site has reached required stabilization, minimizing the potential of sediment from project construction reaching a water resource.

g. 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.

h. 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.

i. Avoid the use of herbicide in wetlands and near waterways, or use herbicides approved for use in aquatic environments.

23. The applicant shall avoid construction work in suitable upland nesting habitat during the special concern herptile's nesting period (May 20–October 15) or install (between October 16 and May 19) and maintain exclusion fencing using the DNR Amphibian and Reptile Exclusion Fencing Protocol. Construction work can then be conducted within the fenced area at any time of year as long as the fencing is maintained.

24. The applicant shall submit a site-specific winter stabilization plan with the SWPPP that includes measures to stabilize bare soils during winter conditions. The applicant shall submit an initial progress report prior to land disturbing construction activities that indicate current site conditions as well as whether pre-seeding and subsequent cover crop establishment have taken place. The applicant shall submit a progress report near the end of the growing season to determine whether seeding, watering, and/or additional erosion control measures should be implemented before the growing season ends.

25. The applicant shall provide vegetation progress reports documenting areas that have achieved 70 percent uniform vegetation density, on a quarterly basis. The applicant shall also submit a progress report near the end of each growing season to assist in determination of whether seeding, watering, or additional erosion controls should be implemented before the growing season ends.

26. The applicant shall preclude the use of arrays and inverters in array 9 to the south and east of Ms. Tonn's home to the extent they are on a hill slope that faces her property.

27. The applicant shall report, 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.

28. Beginning with the quarter ending on March 31, 2025 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.

29. 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.);

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.).

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

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

b. Is granted an extension by the Commission.

31. 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.

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

33. Jurisdiction is retained.

Dated at Madison, Wisconsin, the 8th day of November, 2023.

By the Commission:

Cru Stubley
Secretary to the Commission

CS:DG:jlt:DL:01953088

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.[22] 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

[22] *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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