

<p>SERVICE DATE Jan 16, 2025</p>

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application for a Certificate of Public Convenience and Necessity of Vista Sands Solar LLC to Construct a Photovoltaic Electric Generating Facility, a Battery Energy Storage System, Collector and Project Substations, a 345 kV generator tie line, and 138 kV collector transmission lines (Vista Sands Solar Farm) in the Village of Plover and Towns of Plover, Buena Vista, and Grant, Portage County, Wisconsin

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FINAL DECISION

On January 5, 2024, pursuant to Wis. Stat. § 196.491 and Wis. Admin. Code chs. PSC 4 and 111, Vista Sands Solar LLC (applicant) filed with the Public Service Commission of Wisconsin (Commission) an application for a Certificate of Public Convenience and Necessity (CPCN) to construct a new solar photovoltaic (PV) electric generation facility with associated battery energy storage system (BESS), generator tie, and other infrastructure (collectively, project).¹ The applicant is a wholesale merchant plant as defined by Wis. Stat. § 196.491(1)(w). The proposed solar PV electric generation facility would have a nameplate generating capacity of up to 1,315.6 megawatts (MW) alternating current (AC) and up to 1,182 MW AC at the point of interconnection (POI) and the proposed BESS would have capacity of 300 MW/1,200 megawatt-hour (MWh) AC. The proposed project would span approximately 9,854 acres of primarily agricultural land in the Village of Plover and Towns of Grant, Plover, and Buena Vista in Portage County, Wisconsin, occupying approximately 7,110 acres. Due to concerns raised in this proceeding for the Greater Prairie-chicken (GRPC), a threatened grouse species in Wisconsin, the

¹ While the original application also included the construction of the transmission lines reflected in the docket caption, those lines were largely removed from the project design and only the generation tie line remains part of this CPCN. Direct-VSS-Baker-s ([PSC REF#: 504531](#)), Ex.-VSS-Baker-08 ([PSC REF#: 504533](#)).

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applicant's final proposal includes significant project design modifications and conservation commitments made by the applicant during the course of this proceeding.

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

Procedural Background

The Commission determined the application was complete on January 25, 2024. ([PSC REF#: 502447.](#)) The Commission issued a Notice of Proceeding on March 7, 2024. ([PSC REF#: 493459.](#)) 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. Given the scope of the project, the extensive list of other pending matters under Commission review, Commission staff requested a 180-day extension for good cause. On April 2, 2024, the Commission Chairperson granted a 180-day extension. ([PSC REF#: 495885.](#)) The Commission must take final action on or before January 21, 2025,² or the application is approved by operation of law. *See* Wis. Stat. § 196.491(3)(g).

Pursuant to Wis. Admin. Code § PSC 2.04(1), the Administrative Law Judge (ALJ) conducted a prehearing conference to establish the parties, issue, schedule, and other facilitating matters in this proceeding. On March 26, 2024, the ALJ issued a Notice of Prehearing Conference. ([PSC REF#: 494887.](#)) The ALJ held the prehearing conference virtually with no

² As noted in the extension memorandum, the extended 180-day deadline falls on Sunday, January 19, 2025, and so the next day the Commission is open is considered the last day of the extended 180-day period under Wis. Admin. Code § PSC 2.05(2). The extension memorandum erroneously stated that day was January 20, 2025. The Commission is not in fact open on that day. The next day the Commission is open after January 19, 2025 is January 21, 2025.

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physical location on April 5, 2024. ([PSC REF#: 496565.](#)) The ALJ issued a Prehearing Conference Memorandum on May 9, 2024. ([PSC REF#: 500926.](#)) The ALJ granted requests to intervene to Clean Wisconsin, Wisconsin Wildlife Federation (WWF), RENEW Wisconsin (RENEW), Town of Grant, and Town of Plover.³ The parties, for the purposes of review under Wis. Stat. §§ 227.47 and 227.53, are listed in Appendix A. The issue was identified as: “Does the proposed 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?”

This is a Type II action under Wis. Admin. Code § 4.10(2), requiring preparation of an environmental assessment (EA). Construction of a solar PV electric generation facility is considered a Type III action under Wis. Admin. Code § PSC 4.10(3), Table 3, and construction of the transmission facilities and BESS is considered a Type II action under Wis. Admin. Code § PSC 4.10(2), Table 2. Type II actions normally do not require the preparation of an environmental impact statement (EIS) under Wis. Stat. § 1.11. However, an evaluation of a specific Type II proposal may indicate that the preparation of an EIS is warranted for that proposal.

Commission staff worked jointly with Wisconsin Department of Natural Resources (DNR) staff and, on February 1, 2024, issued an EA scoping letter to accept comments from the public to help determine the scope of the EA and the potential impacts associated with the proposed project pursuant to Wis. Admin. Code § PSC 4.20. ([PSC REF#: 490308.](#)) In consideration of the unusual size of the project, its proximity to the Buena Vista Wildlife Area, DNR staff analysis, and the scoping comments received, Commission staff determined that an

³ The Towns of Grant and Plover each withdrew as intervenors in June 2024. ([PSC REF#: 506364](#), [PSC REF#: 506519.](#))

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EIS was warranted for this Type II action. An EIS preparation notification letter was issued on March 8, 2024. ([PSC REF#: 493574.](#))

On April 8 and 23, 2024, the applicant made modifications to its project design to address concerns relating to the GRPC. ([PSC REF#: 499001.](#))

Meanwhile, Commission and DNR staff prepared a draft EIS that described in detail the environmental impacts associated with the project pursuant to Wis. Stat. § 1.11 and Wis. Admin. Code §§ PSC 4.30 and NR 150.22. ([PSC REF#: 499546.](#)) On April 29, 2024, the Commission issued notice of availability of the draft EIS and requested public comments on the draft EIS. ([PSC REF#: 499570.](#)) Parties and members of the public made comments on the draft EIS.

The applicant offered direct testimony and exhibits on May 14, 2024. The applicant's direct testimony introduced modifications to the project design to mitigate impacts to the GRPC and related commitments. Direct-VSS-Baker-r ([PSC REF#: 515375](#)), Direct-VSS-Bub-r ([PSC REF#: 515373](#)). The applicant's exhibits on direct included a map of potential no-build areas and the Greater Prairie-Chicken Risk Assessment Strategy. Ex.-VSS-Baker-02 ([PSC REF#: 501469](#)), Ex.-VSS-Bub-02 ([PSC REF#: 501482](#)).

On June 7, 2024, the applicant offered supplemental direct testimony introducing a modification to the project design that eliminated most of the overhead transmission from the project design. Direct-VSS-Baker-s ([PSC REF#: 504531](#)), Ex.-VSS-Baker-08 ([PSC REF#: 504533](#)).

On June 18, 2024, DNR staff witness Lesa Kardash offered direct testimony discussing potential project impacts to GRPC flight corridors and recommending the following order conditions:

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1. Remove proposed project Primary Array Areas 17, 20, 21, 23, 37, 38, 43, 44, 50, (sometimes referred to as Alternate Array 50) and 51; and Alternate Array Areas 20, 32, 41, and 53.
2. Install bird markers on all proposed project fences within one mile of GRPC lek locations that DNR identified during 2021-2024 lek surveys and any lek locations identified in future surveys for the duration of the proposed project.

Direct-WDNR-Kardash-22:11-16 ([PSC REF#: 505688](#)).

The intervenors also offered direct testimony on June 18, 2024. WWF witnesses Lowell Suring and James R. Keir each recommended project setbacks. Lowell Suring advocated for setting the project back one mile from the Buena Vista Wildlife Area. Direct-WWF-Suring-r2-9:6-18:17 ([PSC REF#: 515268](#)). James Keir advocated for setting the project back one mile from GRPC lek locations and one-half mile from the Buena Vista Wildlife Area. Direct-WWF-Keir-r-4:21-5:2, 7:9-16:19 ([PSC REF#: 515387](#)).

Clean Wisconsin witness Paul Mathewson offered testimony discussing his review of studies on the impact of wind development (the closest available analog to solar development) on the GRPC. Direct-CW-Mathewson-r2-9-11 ([PSC REF#: 514593](#)). Paul Mathewson found that there was limited evidence of significant negative impacts of wind development on GRPC populations, and one population actually increased following the development. *Id.* Paul Mathewson did not recommend setbacks.

RENEW witness Andrew Kell offered testimony commenting on the potential benefits and advocating that the Commission approve the project including the voluntary exclusions. Direct-RENEW-Kell-28-32 ([PSC REF#: 505737](#)).

In consideration of the comments on the draft EIS and, to the extent feasible within a limited amount of time, taking into account the applicant's design changes made since the draft EIS was made available, Commission and DNR staff prepared a final EIS. ([PSC REF#: 508693](#).) On July 15, 2024, the Commission issued a letter advising on the availability of the final EIS. ([PSC REF#: 508734](#).) On June 19, 2024, the ALJ issued a Notice of Hearing scheduling both the party hearing session and public hearing sessions. ([PSC REF#: 505845](#).)

In surrebuttal testimony, filed August 12, 2024, Commission staff witness Ryan Haffele (DNR staff) revised DNR staff's recommended order conditions after taking additional time to review the applicant's revisions to its application and further considering of the project's potential impacts on GRPC movements from one patch of suitable habitat to another. Surrebuttal-WDNR-Haffele-4:1-2 ([PSC REF#: 512608](#)). DNR staff no longer recommended removal of Primary Arrays 23, 17 western ½ and northwestern ¼ of the eastern ½ of 37, 43, the northwest ½ of the western 18 ½ running on a diagonal line from the SW point to NE point of 44. *Id.* at lines 15-18. Ryan Haffele stated that those arrays were the periphery of GRPC habitat, and while flight corridors may be altered if developed, the impacts of the altered flight corridors were unlikely to cause significant negative impacts given surrounding land uses and suitable habitat to the east. *Id.* at lines 18-19.

Pursuant to due notice, on August 15, 2024, the ALJ conducted a public hearing in person and virtually for members of the general public. ([PSC REF#: 505845](#).) The public hearing included two sessions, one in the afternoon and one in the evening, and involved the opportunity for members of the public to submit written comments or oral testimony. ([PSC REF#: 514211](#).)

The ALJ held a party hearing session virtually on August 16, 2024. ([PSC REF#: 516483](#).) At the party session, witnesses offered testimony and exhibits on behalf of the applicant, Clean Wisconsin, RENEW, WWF, and Commission staff (including DNR staff). ([PSC REF#: 517695](#).) Received evidence included the final EIS, which was entered as an exhibit into the record pursuant to Wis. Stat. § 1.11, Wis. Admin. Code § PSC 4.30, chs. NR 150 and PSC 4, and public comments. In addition to comments received at the public hearing session, the Commission received 1,187 public comments through its website. Ex.-PSC-Public Comment-r ([PSC REF#: 526201](#)). The ALJ conducted the hearing as a Class 1 contested case proceeding, pursuant to Wis. Stat. §§ 196.491(3)(b), 227.01(3)(a), and 227.44.

On September 9, 2024, the applicant, Clean Wisconsin, RENEW, and WWF filed initial briefs. ([PSC REF#: 516397](#), [PSC REF#: 516410](#), [PSC REF#: 516448](#), [PSC REF#: 516377](#).) On September 23, 2024, the applicant, Clean Wisconsin, RENEW, and WWF filed reply briefs. ([PSC REF#: 517595](#), [PSC REF#: 517051](#), [PSC REF#: 517586](#), [PSC REF#: 517568](#).)

The Commission discussed the record in this matter at its open meeting of December 12, 2024. ([PSC REF#: 527738](#).) The Commission delegated authority to Commission staff, pursuant to Wis. Stat. § 15.02(4), to draft a final decision 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 an affiliate of Doral Renewables, LLC, an independent power producer.

2. The applicant proposes to construct a solar PV electric generation facility with a nameplate generating capacity of up to 1,315.6 MW AC and up to 1,182 MW AC at the POI; a 300 MW/1200 MWh AC BESS; an approximately 4,796 foot, 345 kilovolt (kV) generator tie line; and associated infrastructure that includes inverters, collector circuits, and a project substation.

3. The proposed project is a solar PV 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.

4. 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.

5. 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.

6. 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.

7. 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.

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8. A brownfield site for the applicant's proposed project is not practicable. Wis. Stat. § 196.491(3)(d)8.
9. The facilities approved by this Final Decision are primarily on agricultural land.
10. 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.
11. The design and location of the proposed project, including the removal of Alternative Array Area 20, 32, 41, and 53; Primary Array 50; the southernmost approximately 30 acres of Primary Array Area 20; and the westernmost approximately 32 acres of Primary Array Area 38 (as displayed in Ex.VSS-Baker-2 ([PSC REF#: 501469](#))), the design and location 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.
2. 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).
3. The proposed project is a wholesale merchant plant, as defined in Wis. Stat. § 196.491(1)(w).

4. The proposed project complies with the Energy Priorities Law (EPL) as required under Wis. Stat. §§ 1.12 and 196.025(1).

5. This is a Type II action under Wis. Admin. Code § PSC 4.10(3).

6. Commission and DNR staff prepared an EIS and finding that the construction and operation of the proposed facility would likely have a range of environmental effects, and identified some potential mitigation measures that may reduce the potential impacts.

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.

8. Pursuant to Wis. Stat. § 15.02(4), the Commission has authority to delegate and redelegate to any officer or employee of the Commission any function vested in by law.

Opinion

Project Description

The applicant proposes to construct a new solar electric generation facility as a wholesale merchant plant as defined by Wis. Stat. § 196.491(1)(w), with a nameplate generating capacity of up to 1,315.6 MW AC. This is the largest proposed solar electric generation facility in the state of Wisconsin to date. The maximum output of the project will be 1,182 MW AC at the POI. The applicant designed the project's nameplate capacity to be larger than the project's interconnection rights to account for losses in the PV arrays, inverters, and various other equipment. The project would also include a 300 MW/1200 MWh AC BESS; an approximately 4,796 foot, 345 kilovolt (kV) generator tie line; and inverters, collector circuits, and a project

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substation. The proposed project would be located in the Village of Plover and Towns of Grant, Plover, and Buena Vista in Portage County, Wisconsin.

The solar modules used for a preliminary layout for the project are a bifacial design, the specific model of which is to be evaluated and selected closer to the time of construction. The preliminary solar module layout used 650 watts (W) DC per panel, requiring approximately 2,340,660 high efficiency PV panels to generate approximately 1520 MW DC, which would then be inverted into the proposed 1,182 MW AC at the POI. 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 kV. The underground AC collector circuits would carry the power generated by the PV panels to the project substation. The collector circuits would total approximately 318.6 miles for the project primary arrays, with approximately 131.4 miles of collector circuits only serving the alternate arrays. The solar PV array would connect to a new 13.8kV/34.5 kV/345 kV project collector substation. A 300 MW/1200 MWh BESS facility would be constructed near the project substation. A generator tie line of approximately 4,800 feet would connect the new project substation to a new utility 345 kV switching station adjacent to the Rocky Run to Werner West 345 kV transmission line. The switching station will be constructed, owned, and operated by American Transmission Company LLC (ATC).

The transmission interconnection facility requirements for the proposed project have been or are being determined through the Midcontinent Independent System Operator, Inc. (MISO) Generator Interconnection Queue study process. The applicant filed three interconnection

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requests with MISO, queue numbers J2099, J2107, and J2185 in the MISO East Definitive Planning Phase (DPP)-2021-Cycle 1. As of April 2023, all three had been through phase 1 feasibility studies at MISO and the applicant expected to execute a large Generator Interconnection Agreement (GIA) with MISO in the third quarter of 2024, with the associated BESS seeking interconnection through a surplus interconnection request using the same three queue positions. At the time of the Commission's discussion of record, the applicant had not provided documentation of the GIAs. The applicant must execute the GIAs for all three interconnection requests prior to full operation of the proposed project.

Applicable Statutory Criteria and Standard 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. § 196.49(3)(d)2. The Commission is also precluded from considering alternative sources of supply, engineering or economic factors in a merchant plant proceeding like this one. Wis. Stat. § 196.49(3)(d)3. As a wholesale merchant plant, the Commission's review in this docket was appropriately limited to those statutory criteria applicable to merchant plants.

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

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proposed in this docket, is an area in which the Commission has special expertise.⁴ The Commission's expertise in administering Wis. Stat. § 196.491 to determine what proposed projects are appropriate additions and in the public interest has long been recognized by Wisconsin courts. *Wisconsin Power & Light Co. v. Pub. Serv. Comm'n of Wisconsin*, 148 Wis. 2d 881, 888, 437 N.W.2d 888, 891 (Ct. App. 1989); *see also Clean Wisconsin, Inc. v. Public Service Commission of Wisconsin*, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768 (recognizing the Commission's expertise in reviewing proposed construction projects under Wis. Stat. § 196.491).

Determining whether a proposed project is in the public interest often requires a high degree of discretion, judgment, and technical analysis. Such decisions involve intertwined legal, factual, value, and public policy determinations. The Commission, as the finder of fact, is charged with evaluating all of the information and applying the statutory criteria to reach a

⁴ *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](#); *Application for a Certification of Public Convenience and Necessity of Portage Solar, LLC to Construct a Solar Electric Generation Facility in the Towns of Grant and Plover, Portage County, Wisconsin*, docket 9810-CE-100, April 10, 2023, [PSC REF#: 463896](#); *Application for a Certificate of Public Convenience and Necessity of Koshkonong Solar Energy Center LLC to Construct a Solar Electric Generation Facility in the Towns of Christiana and Deerfield, Dane County, Wisconsin*, docket 9811-CE-100, May 5, 2022, [PSC REF#: 437761](#).

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.⁵ 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.”⁶

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 “[t]he proposed facility will not have undue adverse impact on other environmental values...”. Wis. Stat. § 196.491(3)(d)4. While the Wisconsin Environmental Policy Act (WEPA), Wis. Stat. § 1.11, requires consideration of those environmental impacts it does not prevent an agency from determining that other values outweigh the environmental costs. The Wisconsin Supreme Court has found that WEPA does not directly control agency discretion; rather, it represents an important procedural step agencies must take during their decision-making process. *Clean Wisconsin, Inc. v. Pub. Serv. Comm’n of Wisconsin*, 2005 WI 93, ¶ 188, 282 Wis. 2d 250, 375, 700 N.W.2d 768, 829. If the adverse environmental consequences of the proposed action are

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

⁶ See, e.g., Wis. Stat. §§ 196.499(5)(d), 196.64(2), 196.795(7)(c).

adequately evaluated, WEPA does not prevent an agency from determining that other values outweigh the environmental costs. *Id.*

These determinations are fact-intensive, and the Commission's action in approving or denying an application ultimately depends on the facts found by the Commission. As such, the standard of proof that the Commission must apply can be logically inferred from the standard of review set forth in Wis. Stat. § 227.57(6), which requires a court to remand a CPCN decision back to the Commission if its decision "depends on any finding of fact that is not supported by substantial evidence in the record."

As the courts have explained, "the substantial evidence test is not weighing the evidence to determine whether a burden of proof is met. Such tests are not applicable to administrative decisions." *Wisconsin Ass'n of Mfrs. & Commerce, Inc. v. Pub. Serv. Comm'n*, 94 Wis. 2d 314, 321, 287 N.W.2d 844, 847 (Ct. App. 1979). The substantial evidence test simply requires that there be enough evidence for a finding to be reasonable. *Kitten v. DWD*, 2002 WI 54, 252 Wis. 2d 561, 644 N.W.2d 649; *see also 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 evaluating the evidence to identify the finding that is supported by substantial evidence. The standard of proof applicable to CPCN determinations renders the question of an applicable burden of proof a subordinate consideration.

A burden of proof consists of a burden of going forward and a burden of persuasion.⁷ 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,⁸ observation of this rule is fulfilled by evaluating the evidence to determine whether a finding is supported by substantial evidence.

Party and Public Participation

The Commission's proceeding on this CPCN application developed an extensive record from the public and parties on all the issues that the Commission must consider in reviewing a project under Wisconsin law. Intervenors Clean Wisconsin, WWF, RENEW, and Grant requested discovery and provided evidence in this proceeding that included dozens of testimonies and over 120 exhibits. Additionally, 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. The Commission received 1,187 through its website alone, many of which pertained to concerns related to the potential impacts to the GRPC. 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.

In addition to the extensive participation by the parties, Commission and DNR staff, and the public, this record was also enhanced by the applicant's willingness to make concessions and

⁷ *Hocgurtel v. San Felippo*, 78 Wis. 2d 70, 86, 253 N.W.2d 526 (1977).

⁸ *Sterlingworth Condominium Ass'n Inc. v. Wis. Dept. of Natural Res.*, 205 Wis. 2d 710, 726, 556 N.W.2d 791 (Ct. App. 1995).

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modifications to the project during these proceedings. The Commission commends the applicant for its exemplary efforts and willingness to compromise.

Project Design and Location

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). 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 also 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.

Applicant’s Siting Process

The Commission’s Application Filing Requirements includes this information and in reviewing the application for completeness, the applicant’s CPCN application was found to comply with these requirements. Ex.-PSC-Completeness Determination ([PSC REF#: 502447](#)). The application explained a process used to screen areas in Wisconsin based upon the solar resource, proximity to transmission infrastructure, topography, ground cover, and community acceptance. It also described how specific solar siting areas were selected and how the applicant confirmed the suitability of these locations. The record reflects examination of each of the solar siting areas. In addition, the application identified and provided information regarding more than

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25 percent additional siting areas on leased properties within the project area that meet all of its siting criteria. The inclusion of at least 25 percent additional siting areas meeting the siting criteria has become a standard by which the Commission evaluates an applicant's compliance with the requirement that an applicant offer site alternatives in solar electric generation docket.^{9, 10}

The Commission's standard for reviewing proposed siting areas is to determine whether each proposed site is "reasonable" (i.e., is it a feasible location for the project that would not directly conflict with any of the statutory criteria for granting a CPCN), and whether the sites are sufficiently distinct to offer different packages of costs (including adverse environmental

⁹ In a previous docket concerning a wind project, 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. *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). On appeal, the Dodge County Circuit Court affirmed this method of offering site alternatives for a wind project. *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). 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.

¹⁰ See, e.g., *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](#) at 12; *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](#) at 12; *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](#) at 11-12; *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](#) at 12; *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](#) at 11-12; *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](#) at 10-11; *Application for a Certificate of Public Convenience and Necessity of Portage Solar, LLC to Construct a Solar Electric Generation Facility in the Towns of Grant and Plover, Portage County, Wisconsin*, docket 9810-CE-100, April 10, 2023, [PSC REF#: 463896](#) at 12; *Application for a Certificate of Public Convenience and Necessity of Koshkonong Solar Energy Center LLC to Construct a Solar Electric Generation Facility in the Towns of Christiana and Deerfield, Dane County, Wisconsin*, docket 9811-CE-100, May 5, 2022, [PSC REF#: 437761](#) at 21-22.

impacts) and 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.

The preferred and alternative siting areas that the applicant 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 to meet the minimum requirement of 25 percent additional MW (409.2 MW) for solar panels beyond the minimum necessary for the desired project size of 1,315.6 MW AC. The Commission requires these additional siting areas for two reasons:

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

The applicant identified which of the array areas were proposed (also referred to as “primary”) and alternative in Appendix A to its application. ([PSC REF#: 500596.](#)) The proposed and

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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.

The Buena Vista Wildlife Area and the Greater Prairie Chicken

Potential project impacts to the GRPC received significant attention in this proceeding, particularly in regard to the appropriateness of certain primary and alternative arrays proposed in the application, and the record contains a significant amount of background information about the Buena Vista Wildlife Area and the GRPC. Before reaching the discussion of the project's potential impacts to wildlife and what mitigation measures the Commission finds necessary, this section serves to summarize the general background that aided in the Commission's review, largely drawing from the Final EIS. Final EIS ([PSC REF#: 508693](#), incorporated by Ex.-PSC-FEIS, [PSC REF#: 517032](#)) at Sections 2.7.1. and 3.22.

The Greater Prairie-chicken (*Tympanuchus cupido pinnatus*, GRPC), is a state-threatened species that requires large areas of grassland with predominantly open, unforested, undeveloped landscape. Leks, or booming grounds, are important focal areas for GRPC habitat management. Leks are areas where male GRPC gather in the spring to display and attract females for breeding. Males display high site fidelity to leks, typically returning year after year. The Buena Vista Wildlife Area, as well as several privately-owned agricultural lands nearby, contains several leks.

Since the time of European settlement, the GRPC has moved to different parts of the state in response to human impacts to the environment. Shortly after the time of European settlements in the mid-1800s, the GRPC occurred commonly in prairies and savannas in the southern and

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western portions of the state and in the late 1800s, the GRPC expanded its range north in response to the creation of new habitat created by timber harvesting, agriculture, and fire. By the early 1930s, the GRPC was present in every county in the state. In subsequent years, the new habitat created in the north was lost to forest regeneration, abandonment of farms, and fire suppression, and habitat in the south was lost from conversion of grass-based to intensive row-crop agriculture. By the mid-1900s, GRPC were primarily restricted to parts of Central Wisconsin.

Great concern over declines in GRPC and its habitat led to several key individuals and conservation organizations acquiring nearly 14,000 acres of land in the 1950s-1970s to manage for grassland in Central Wisconsin.**Error! Bookmark not defined.** The same concerns also led to GRPC being listed as state-threatened in 1979. Despite continued declines in GRPC through the 1960s, the acquisition and management of land for grassland eventually stabilized the population and eventually resulted in an increase in the early 1980s. The GRPC population has had considerable fluctuations over the past 40 years with an overall trend of decline in both numbers of males counted during annual lek surveys and in number of identified leks and occupied range.

The range contraction and population concentration of GRPC is largely attributable to habitat loss and fragmentation driven by land use changes, a pattern that has been noted for decades. ([PSC REF#: 508693](#) at Appendix B Figure 1.) The loss and fragmentation of grassland habitat due to conversion to, or encroachment of, forest, intensive-row crop agriculture, residential development, and energy/resource extraction is the primary cause of GRPC decline and range contraction in Wisconsin.**Error! Bookmark not defined.** Grassland fragmentation

and the general fragmentation of the open landscape contribute towards greater isolation of GRPC across its range in central Wisconsin, making them more vulnerable to genetic constraints, such as inbreeding, loss of genetic diversity, and vulnerability to catastrophic events. Due to its small, geographically restricted population, the GRPC is especially vulnerable to severe weather events associated with climate change, such as heavy rains, flooding, or prolonged drought that can adversely impact recruitment.**Error! Bookmark not defined.**

Currently, the GRPC population is concentrated in and around four wildlife areas in central Wisconsin that are managed by DNR primarily for grassland habitat. In the north, GRPC are centered mostly around the Paul J. Olson Wildlife Area and to a very limited extent around the southern portion of the George W. Mead Wildlife Area. *Id.* at Figure 2. In the south, GRPC are centered around the Leola Wildlife Area and Buena Vista Wildlife Area. *Id.* at Figure 3.

The GRPC require large areas of grassland and have specialized requirements for different stages of their life cycles. GRPC are selected for making grassland conservation decisions in central Wisconsin because protecting them indirectly conveys protection to many other grassland birds and other species (referred to as the umbrella effect). Conservation strategies that benefit GRPC are likely to encompass the needs of many other grassland species that spend at least a portion of their life cycle where GRPC are found year-round.

The GRPC and other grassland birds may be especially sensitive to large-scale solar energy projects because they require large open landscapes, have large home ranges and specialized habitat requirements tied to their annual life cycles, and use leks for communal displays and breeding. Avoidance behaviors to different structures may place prairie-chickens at high risk for habitat loss and fragmentation effects, leading to population declines as grasslands

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and the areas surrounding them become more developed. GRPC life cycles, GRPC and other prairie grouse species exhibit seasonal variation in habitat use that is associated with their annual life cycles.

Buena Vista Wildlife Area is located near southern portion of the proposed project and borders Array Areas 12, 20, 21, 38, 41, 44, and 53. This property is owned and managed by DNR. The wildlife area is one of the four wildlife areas in central Wisconsin where the GRPC is concentrated and is managed primarily for grassland habitat.

At the time of the original application, portions of the project were proposed to be located adjacent to or within close proximity to the northern and western portions of Buena Vista Wildlife Area lands, which harbors the largest concentration of GRPC among the four wildlife areas. *Id.* at Figure 4.

The applicant later agreed to various project design and location modifications to avoid impacts to the GRPC. The applicant agreed to exclude the array areas within 1,000 feet of known GRPC lek locations as identified by DNR 2021-2024 lek surveys. Direct-VSS-Baker-r-15 ([PSC REF#: 515375](#)). The applicant also agreed not to construct aboveground electric transmission lines within one mile of GRPC leks that DNR identified during its 2021-2024 lek surveys. *Id.* at 16. The applicant agreed to avoid maintenance stage mowing between April 15 (or May 10, depending on proximity to GRPC leks) and August 1 to avoid impacting nesting grassland birds per the Project Vegetation Management Plan. The plan states, “management of array vegetation should avoid mowing from May 10 through August 1 of each year.” Because the GRPC begin nesting earlier than most other grassland birds, the applicant also agreed to extend the vegetation mowing avoidance period to April 15-August 1 in areas within one mile of

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known lek locations. If GRPC are observed to nest within the paneled areas, then the mowing avoidance period of April 15 to August 1 would also be extended to Project areas within 2 miles of leks. *Id.* at 17. The applicant also agreed to refrain from using shrubs or trees as a visual buffer within one mile of all known prairie-chicken habitat, including leks DNR identified during its 2021-2024 surveys. An exception remains for properties of adjacent landowners where, by mutual agreement, the applicant plants shrubs or trees in the vicinity of their residence to serve as a visual buffer. *Id.*

Individual Hardships and Safety

In determining whether the proposed project design and location meets the statutory standard for a CPCN, the Commission considered individual hardships as required by Wis. Stat. § 196.491(3)(d)3. Opposing intervenors and several members of the public voiced concerns regarding the potential impacts of the facility being constructed in their area. The potential for increased noise, glare from the panels, water quality and drainage issues, and the change of land use from a rural farmed landscape to many acres of panels and fencing were discussed in comments provided by members of the public and intervenors and reviewed by Commission staff in the EIS for this proceeding. The Commission reviewed and considered these concerns in arriving at its Final Decision.

To address individual hardship and safety concerns, the applicant conducted outreach to members of the public and local governments throughout 2023. ([PSC REF#: 487839](#), [PSC REF#: 488065](#).) The applicant held a number of virtual and in-person meetings, open houses, attended local public events, maintained an online presence regarding the project, and began discussions with state regulators that same year. The applicant offered to install additional

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vegetative buffering to mitigate visual impacts for affected landowners. Commission staff recommended that these visual buffers not be installed within one mile of all known GRPC habitat, including 2021-2024 lek locations, to mitigate impacts to the species. ([PSC REF#: 508693.](#))

Having reviewed these concerns as described in the EIS, the Commission finds that the project will not create undue individual hardships or safety risks that either cannot be addressed or mitigated.

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 for the proposed project substation that would interconnect to the transmission system. 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.

The transmission interconnection facility requirements for the proposed project are being determined through the MISO Generator Interconnection Queue study process. The project is represented in MISO's interconnection process as three queue positions, J2099, J2107, and J2185. All three queue positions are currently being reviewed in the DPP study phase and, as of the date of the Commission's discussion, a GIA has not been executed for any of the queue positions. In addition, the applicant stated that it anticipated submitting a Surplus

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Interconnection Request for the BESS, which may result in an additional GIA. Consistent with the Commission's Final Decisions for the Darien Solar project, docket 9806-CE-100, and Koshkonong Solar project, docket 9811-CE-100, the Commission finds it reasonable here to require the applicant to provide the results of all MISO DPP studies and facilities studies related to interconnection queue positions J2099, J2107, and J2185 and the GIAs related to the project once they are complete.

Authorized Project Site

When deciding siting for a wholesale merchant plant, the relevant inquiry is whether the proposed project site will be in the public interest considering alternative locations, individual hardships, safety, reliability, and environmental factors or undue adverse impact on other environmental values. *See* Wis. Stat. § 196.491(3)(d)3. To address these considerations, the Commission may modify the design or location to mitigate or minimize impacts to non-participating landowners or address other environmental factors.

As the record compiled for this proceeding reveals and this Final Decision demonstrates, the Commission conducted a robust analysis of the potential impacts to the surrounding landowners, the community, and to the environment, and considered all of those impacts in determining the authorized project site. DNR staff, WWF, and the applicant each proposed different exclusions of array areas to mitigate impacts to the GRPC. DNR staff and WWF each proposed significant setbacks. The applicant did not agree to either setback proposal but indicated it would be willing to make certain modest exclusions, if the Commission found it necessary.

In considering siting alternatives, the Commission considers the different packages of benefits offered by each alternative. DNR staff's final recommended siting alternative was to remove Primary Array Areas 17, 20, 21, the southern ½ of the eastern ½ of 37, 38, the southeast ½ of the western ½ running on a diagonal line from the SW point to NE point and the entire eastern ½ of 44, 50, and 51; and Alternate Array Areas 20, 32, 41, and 53. Surrebuttal-WDNR-Haffele-4: 8-11 ([PSC REF#: 512608](#)). According to applicant witness Chris Pekar, this alternative would eliminate approximately 266.8 MW of the solar facility's primary array capacity. Tr. 307: 15-18 ([PSC REF#: 516483](#)). WWF's recommended siting alternative was to remove arrays constructed within one-half mile of Buena Vista Wildlife Area lands (owned or leased), or within one mile from known GRPC leks. Direct-WWF-Keir-r-4:21-5:2, 7:9-16:19 ([PSC REF#: 515387](#)). According to Chris Pekar, this siting alternative would have eliminated 360.8 MW. Tr. 307: 15-18 ([PSC REF#: 516483](#)), Rebuttal-VSS-Pekar-r-2:21-3:5 ([PSC REF#: 515367](#)) (referring to the WWF Setback as the "James Keir Setback").

The applicant opposed these setback proposals, asserting that implementing any of these setbacks would decrease the project's capacity to generate clean electricity by an amount similar to or greater than the capacity of the largest solar project previously proposed in Wisconsin, Elk Creek Solar. Rebuttal-VSS-Pekar-r-3:8-10 ([PSC REF#: 515367](#)). The applicant asserted that this reduction in capacity would likely substantially reduce the positive impacts of the project including avoided emissions and corresponding public health, environmental, and economic benefits. Rebuttal-VSS-Howard-r-5:16-6:2 ([PSC REF#: 515368](#)). The applicant asserted that none of the recommended setbacks were based on empirical evidence that the GRPC was likely to avoid the project by a distance requiring the setbacks, and that there was no empirical

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evidence that the project should be setback a distance more than 1,2000 feet from GRPC leks. Rebuttal-VSS-r-8:19-22 ([PSC REF#: 515369](#)). The applicant argued that the setbacks were based on speculation and assumptions, rather than substantial evidence. *Id.* at 8:23-9:1.

RENEW did not directly comment on the setbacks but asserted that the project, at its full capacity, represented the single largest step in Wisconsin could take towards a carbon-free electric generation in 2050. Direct-RENEW-Kell-30:21-22 ([PSC REF#: 505737](#)). Andrew Kell asserted that some of the project's environmental benefits at full capacity—including local agricultural application reductions, planting native plants and grasses among solar panels, and creating new conservation lands to be managed by the DNR—would benefit the GRPC. *Id.* at 32:10-19.

The Commission finds that it is reasonable to authorize the project site as proposed by the applicant and with the voluntary exclusions. While it is possible that the setbacks proposed by DNR staff or those proposed by WWF could further mitigate impacts to GRPC, the evidence presented is speculative. *See* Direct-CW-Mathewson-r2 ([PSC REF#: 514593](#)). In light of the many concessions offered by the applicant and the lack of evidence supporting the proposed setbacks, it is not reasonable to so greatly diminish the capacity of this project as the setbacks would require. In comparing the different packages of costs and benefits offered by each siting alternative proposed in this record, it is clear that the applicant's proposal (with voluntary exclusions) is the most reasonable. In addition, the applicant's proposed project design and location better aligns with the EPL than the proposed setbacks because it allows for the generation of more renewable energy generation and storage. The EPL is discussed further in the following section.

WWF suggested that the Endangered Species Act, Wis. Stat. 29.604(1), mandated the preservation and protection of the GRPC above other concerns. This was not an accurate statement of the law. That law establishes that person may “take, transport, possess, process or sell within this state” endangered and threatened species including the GRPC and requires that DNR enforce this prohibition. It does not bind the Commission to prioritize the protection of the GRPC in this proceeding. As reviewed above in the discussion of the applicable statutory criteria and standard of proof, the Commission is tasked with balancing competing interests and balancing potential impacts and benefits when contrasting those alternative proposals, and making its decision based on sufficient evidence in the record.

The applicant’s approach in this proceeding has been exemplary and facilitated a reasoned final project design and location that is mutually beneficial to the applicant, the hosting municipalities, and conservation efforts. As discussed further in this opinion, the applicant began community engagement in 2023 and reached joint development agreements (JDA) with the project’s hosting municipalities. ([PSC REF#: 488065](#), [PSC REF#: 506219](#).) To address environmental concerns, the applicant eliminated all proposed overhead transmission lines, one project substation, all collector substations, agreed not to build in areas of GRPC use, and developed a conservation strategy. Ex.-VSS-Bub-02 ([PSC REF#: 501482](#)), [PSC REF#: 504534](#). The applicant made over 20 voluntary concessions, including a \$2.1 million toward DNR’s GRPC plan, the creation of a 160-acre conservation area, funding for two university graduate fellowships, and a collaborative process to enhance habitat. Direct-VSS-Baker-r ([PSC REF#: 515375](#)), Direct-VSS-Bub-r ([PSC REF #: 515373](#)). This collaborative approach should be standard practice for all entities building energy infrastructure in Wisconsin. The applicant’s

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proposed siting alternative, with the voluntary exclusions, which allows the project to meet its full capacity without undue adverse impact to the GRPC, is reasonable and in the public interest.

The Commission authorizes the applicant to use any of the primary and alternative solar array sites with the exception of Alternative Array Areas 20, 32, 41, 53; Primary Array Area 50; the southernmost approximately 30 acres of Primary Array Area 20; and the westernmost approximately 32 acres of Primary Array Area 38.

The Commission finds it reasonable to allow the applicant the flexibility to use the authorized primary and alternative arrays 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 1,315.6 MW AC installed capacity for the solar PV electric generation facility approved in this Final Decision, as well as an installed capacity of 300 MW AC for the project BESS. 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.

The project is expected to use approximately 7,110 acres of this land to generate up to 1,315.6 MW AC from the solar PV electric generation facility. As discussed above, the applicant would prefer to use the primary array sites. The approximately 2,684 acres of alternate array sites are approved to provide additional flexibility and efficiency for placement of the solar facilities during construction. The project size is capped at an installed capacity of 1,315.6 MW AC for the solar PV electric generation facility and 300 MW for the BESS. Capping the maximum capacity allowed for the solar facility is necessary to eliminate confusion 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.¹¹

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, as outlined more fully in this Final Decision. 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.

Energy Priorities Law

When reviewing a CPCN application, the Commission also 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:

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.

Wis. Stat. § 1.12(4).

¹¹ The application consistently refers to an installed capacity of 1,315.6 MW AC with a limit of 1,182 MW AC at the POI.

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.¹² The EPL instructs the Commission to implement the energy priorities to the extent they are environmentally sound, and the Commission must assess the environmental impacts of a wholesale merchant plant under Wis. Stat. § 196.491(3)(d)3.

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

The proposed project will be a new solar electric generation facility. As such, it is a “noncombustible renewable energy resource” and is entitled to the highest priority of all energy generation resources under the EPL. 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 EIS for the proposed project concluded that “construction and operation of the solar generation facility

¹² 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.”

would be likely to have a range of environmental effects. This evaluation includes suggested mitigation measures from Commission staff, DNR staff, and public comments to reduce potential impacts of this proposed project.” ([PSC REF#: 508693](#) at 117.) Additionally, the objective of the law 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.¹³ This project aligns with that objective. Therefore, the Commission finds that the proposed project satisfies the requirements of the EPL.

Wisconsin Environmental Policy Act Compliance and Environmental Review

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, 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. However, Wis. Admin.

¹³ See also Wis. Stat. §§ 1.12(3)(b) and 196.377.

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Code § PSC 4.10(2) allows for the preparation of an EIS if “the Commission decides an EIS is necessary.”

An EIS was prepared for the proposed project, due to the size, scope, potential environmental impacts, and the amount of land that would be covered by the proposed project. The environmental review focused primarily on impacts to wildlife, including rare or endangered species, aesthetics, historic resources, wetlands and waterways, and local landowner impacts. 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. Commission staff used the application and data request response materials provided by the applicants including text, photographs, maps, and land use plan documents. Commission staff also reviewed any written or oral comments provided by government officials, the public, or other interested persons. Additionally, various websites were used to review information related to the project and any potential impacts. DNR staff authored portions of the EIS relating to impacts to wetlands and waterways, endangered species, GRPC concerns, and other DNR responsibilities.

The Commission concluded that an EIS was 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, it has complied with WEPA pursuant to Wis. Stat. § 1.11 and Wis. Admin. Code ch. PSC 4, and that the project will have no undue adverse

impacts on the environment as required by Wis. Stat. § 196.491(3)(d)4, and therefore satisfies the CPCN statutory criteria, as described more fully below. To the extent there are some environmental impacts, the Commission finds that these impacts can be mitigated by conditions imposed by this Final Decision.

Main Environmental Effects of the Project

The results of the staff environmental review for this project are described in the EIS. Based on Commission and DNR staff analysis, the main environmental effects associated with constructing the proposed project include:

- Disturbance of vegetation and removal of several acres of trees;
- Disturbance of wildlife due to fencing and land use changes;
- Disturbance to wetland and waterways;
- Removal of land that could be used for other purposes;
- Aesthetic changes resulting from new visual impacts to the area; and
- Changes in plant species compositions in the project area due to removal of vegetation, construction processes, and new plantings.

As previously discussed, one unique environmental project concern is this project's potential impact to the GRPC, a native grouse species in Wisconsin. The species has been declining in population size, largely as a result of grassland habitat loss and is currently a state threatened species. The GRPC population is concentrated in and around four wildlife areas in central Wisconsin that are managed by DNR primarily for grassland habitat, including the Buena Vista Wildlife Area, which is within close proximity of the project area.

The GRPC as well as other grassland birds may be especially sensitive to large-scale solar energy projects because they require large open landscapes, have large home ranges and specialized habitat requirements tied to their annual life cycles, and use leks for communal displays and breeding. Avoidance behaviors to different structures may place the GRPC at high risk for habitat loss and fragmentation effects, leading to population declines as grasslands and the areas surrounding them become more developed. The GRPC and other prairie grouse species exhibit seasonal variation in habitat use that is associated with their annual life cycles.

Commission staff received a significant amount of comments discussing the potential impacts of this project on the GRPC. WWF discussed impacts to the GRPC and made recommendations to mitigate for impacts to the species. Commission and DNR staff and intervenors made several recommendations to mitigate for impacts to the species.

To mitigate for impacts to GRPC habitat and habitat near the Buena Vista Wildlife area while accounting for design challenges and the need for flexibility that may arise during the construction process, the Commission imposes the project-specific order conditions discussed later in this Final Decision and incorporated in Order Conditions 16-39.

WWF also proposed two wildlife corridor order conditions not adopted by this Final Decision. Witness Tom Hauge proposed a condition requiring that the applicant provide a corridor management plan. Surrebuttal-WWF-Hauge-r-3, 10-13 ([PSC REF#: 515386](#)). Witness Hauge also proposed a condition for fencing designs to allow for additional wildlife movement within the project area. Direct-WWF-Hauge-r2-17, 20-22 ([PSC REF#: 515383](#)). The applicant did not agree with the WWF proposed order conditions and asserted that they were not supported by evidence and that they were unnecessary. Rebuttal-VSS-Pekar-r-6-7 ([PSC REF#: 515367](#));

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Sur-Sur-Surrebuttal-VSS-Pekar-1-5 ([PSC REF#: 515611](#)). The applicant agreed that its Wildlife Management Plan prior to construction would include a section on protocols for responding to large wildlife trapped within the fence, and stated that it was willing to expand the Wildlife Management Plan to also review the wildlife corridor plan. Sur-Sur-Surrebuttal-VSS-Pekar-5 ([PSC REF#: 515611](#)). That applicant also stated it would work with local safety officials to reduce the likelihood of wildlife / vehicle collisions if concentrated wildlife crossings emerge after construction, via additional signage. *Id.* The DNR witnesses testifying for Commission staff did propose corridor conditions or indicate that the WWF-proposed order conditions were necessary. In consideration of the available evidence and in light of the other concessions made by the applicant and other conditions imposed by the Commission, the Commission finds it is not reasonable or necessary to impose the WWF proposed condition regarding wildlife corridors, which could lead to uncertainty and unpredictability for project development.

Construction and Post-Construction Impacts

The project would cause temporary effects during construction, such as increased traffic, noise, and air pollution. There would be increased traffic in the project area as employees and deliveries arrive at and leave the project work areas.

Removal of topsoil and other construction actions could cause issues with water flows onto nearby areas. The applicant would be required to meet Wisconsin Pollutant Discharge Elimination System stormwater regulations administered by DNR. The applicant plans to follow stormwater and erosion control best management practices (BMP) to reduce the risk of water runoff and soil damage during construction.

DNR witness Samantha Whitens testified regarding the erosion problems that can occur on utility-scale solar construction sites during the winter season and during winter construction activities. Samantha Whitens proposed order condition language that would have required the applicant to prepare a stabilization plan for the winter season.

The Commission must balance competing priorities when determining whether or not to grant a CPCN. The Commission finds that DNR witness Samantha Whitens' condition relating to providing winter stabilization plans is not necessary for approval of the project, with the assumption that the applicant is operating in good faith and seeks to have a successful project that is in the public interest. The Commission finds the proposed suggestion unreasonable as it will likely increase project costs and negatively impact the construction schedule. The benefits of the proposed suggestion do not outweigh the benefits of timely construction of the project. The Commission has the authority to check on developers throughout the application, construction, and post-construction processes and does so pursuant to a number of other order conditions within this Final Decision.

Commissioner Nieto dissents and would have required the applicant to submit a site-specific winter stabilization plan with the Storm Water Pollution Prevention Plan.

An additional consideration 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. Samantha Whitens suggested an order condition requiring the applicant to submit vegetation progress reports to track those efforts.

A project of this size is likely to have multiple drainage areas that may warrant different BMPs depending on the characteristics of each drainage area. Priority should be given to erosion control practices, such as establishing vegetation, mulching, and placement of erosion control mat. These practices reduce the potential for runoff to move sediment and should be supplemented by sediment control practices.

As noted above in the discussion of construction and post-construction impacts, to properly implement DNR stormwater BMPs, DNR staff recommend the applicant be required report on its progress to stabilize the ground with a vegetated landscape, which could help reduce stormwater runoff from the project site. The Commission finds it reasonable to require that the applicant submit vegetation progress reports documenting areas that have achieved 70 percent uniform vegetation density.

Tree-Clearing

A map of proposed forested land impacts was uploaded to the application as an attachment to the response to data request PSC-Grant-1.18. ([PSC REF#: 512064.](#)) There are 11 forested areas greater than 4 acres that could be impacted as a result of the project. Six of these areas would be located within the proposed array areas and would total approximately 43 acres of forested land clearing. The remaining 5 of these areas totaling more than 4 acres would be located in the alternative array areas and would total 135 acres of forested clearing. The applicant stated that the 21 percent of the proposed forest clearing would be associated with the proposed array areas and 71 percent would be associated with the alternative array areas. In addition to these 11 areas of over 4 acres of tree clearing, there are 161 small slivers of anticipated forested land impacts. Each of these areas would be under 4 acres in size. The

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proposed primary array areas would include 102 small sections of tree clearing (less than 4 acres), totaling 62 acres. The alternative array areas would include 74 small sections of tree clearing (less than 4 acres), totaling 22 acres.

The applicant agreed to avoid tree clearing between April 1 to August 15 to avoid roosting bats and nesting birds. This timeframe is to account for birds protected by the Migratory Bird Treaty Act as well as federally-listed bat species. Birds such as owls and raptors do nest early in the year and this timeframe would account for some (although not all) of those nests should they be present. Many songbirds will also nest later into August should their second nest fail. The U.S. Fish and Wildlife Service has suggested a similar date range to avoid bat impacts after their maternity roost season when they are migrating to their hibernacula and swarming nearby those locations. April 1 also coincides with DNR staff's recommended Oak Wilt avoidance period start date. This would further reduce the risk of inadvertent impacts to various bird and bat species potentially utilizing those tree habitats. In addition, these dates align with the recommendations made within the Migratory Bird Concentration Site in the project area. Similar previously proposed solar projects have included the April to August time of year restriction on tree clearing as a recognized and effective way of mitigating impacts to animal and plant species.

Impacts to Historic Properties

The Wisconsin Historic Preservation Database (WHPD) and other documentation were used to identify and determine whether any recorded historic properties within or adjacent to the project area might be physically or visually impacted by the project, known as the Area of Potential Effect (APE). ([PSC REF#: 488797](#), [PSC REF#: 488814](#), [PSC REF#: 488809](#).)

The applicant determined the boundaries, historic significance, and integrity of each WHPD property within the APE, including archaeological sites and historic buildings or districts. Eight WHPD Archaeological Sites Inventory (ASI) properties were identified in the APE that may satisfy the historic property criteria established in Wis. Stat. § 36(2)(a)5., as the properties are “Yielding, or likely to yield, information important in prehistory or history.”

On March 13, 2024, the Commission sent a letter to the Wisconsin State Historic Preservation Office (SHPO) requesting review and comment in accordance with Wis. Stat. § 44.40 and the PSC-SHPO Interagency Programmatic Agreement. ([PSC REF#: 513346.](#)) SHPO completed the Wis. Stat. § 44.40 review of the project by providing recommended measures the Commission could utilize to mitigate impacts to potentially significant historic properties within the APE.

Impacts to Non-Participating Landowners

The Commission finds that the proposed project facilities are to be built in an area that is largely agricultural and is under voluntary contracts with landowners. To the degree that there are non-participating landowners, the Commission’s EIS determined that potential impacts to these non-participating landowners would not be significant. These findings combined with the outreach efforts within and commitments to the local community give the Commission confidence that the impacts to non-participating landowners have been thoroughly investigated and addressed by the applicant and Commission staff.

Landowner participation in this project is entirely voluntary and the applicant has secured the required lease, easement, and/or purchase options on all acreage required for the project

facilities. Communication with non-participating neighbors is expected to continue throughout the development process.

Noise

The applicant completed a noise study using the technical specifications of planned equipment to measure the current sound levels around the project area and estimate the noise impact of the facility (application Appendix Q). ([PSC REF#: 511172.](#)) No county or town noise ordinances exist; therefore the facility would not violate any known county or town noise ordinances. Consistent with the approach taken in other solar dockets approved by the Commission, the applicant adopted the Commission's wind energy system noise regulations under Wis. Admin. Code § PSC 128.14. The results of the noise study show the highest predicted noise level of in excess of 50 A-weighted decibels (dBA) at 35 receptors during the day and 45 dBA at 112 receptors during the nighttime, which exceeds the criteria of Wis. Admin. Code § PSC 128.14 for both daytime and nighttime periods. The applicant indicated that the noise sources causing these exceedances were the BESS facilities and substation power transformers, and that these noise levels could be further mitigated by the selection of quieter equipment and the placement of noise barriers adjacent to the BESS facility.

The Commission finds 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

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completed. The applicant shall file a copy of the post-construction noise study report with the Commission.

Glint and Glare

The applicant conducted a Glare Study (application Appendix O, parts 1-2) ([PSC REF#: 488133, PSC REF#: 488134](#)) to analyze the potential for glare from the arrays throughout the day and yearly seasons to structures near the proposed arrays. Forty-six public road segments or routes near the arrays were also assessed, as well as railroad tracks running adjacent to some of the arrays. The applicant also used Federal Aviation Administration (FAA) guidelines to assess glare to flight paths, public road segments or routes, and Air Traffic Control Towers. According to the results of the Glare Study, glare was not predicted at 30 of 32 runways at 12 of 14 airports studied. Glare was also not predicted for 38 of 46 road segments studied, or at 303 of 309 structures reviewed.

The applicant stated that the project is expected to produce varying levels of green level glare, while noting that the FAA does not consider green or yellow level glare to be problematic, being similar to what pilots may see reflected off of glass buildings. Several road segments were noted to have the potential for extended segments of yellow level glare which could adversely impact drivers, while the remaining road segments with glare impacts would have relatively low amounts of green and yellow level glare. Six residences were predicted to receive glare, with some residences receiving both green and yellow level glare in the fall and winter, approximately 200 to 230 minutes per day, while other residences could receive green level glare at approximately 100 minutes or more per day during portions of the year. This model does not include existing visual screening between the arrays and the observation points, which may

further reduce any visible glare. If concerns regarding glare arise after the project is operational, the applicant plans to investigate complaints and potentially offer mitigation options including installing vegetation, fencing, or other screening and adjusting the resting angle of the panels.

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 analyzing and evaluating many competing 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 EIS 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 staff to assess wetland, waterway, and endangered resource impacts. The applicant agreed to incorporate some recommendations from Commission and DNR staff into its project to mitigate environment impacts, and the Commission imposes additional conditions as described in this Final Decision.

The record before the Commission reflects an expectation that if these facilities are decommissioned after the projected 30-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 1,182 MW of noncombustible renewable energy to the state of Wisconsin at the POI. 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 likely improve water quality in the area by decreasing

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harmful agriculture-related runoff. Direct-CW-Mathewson-r2 ([PSC REF#: 514593](#)). 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. Additionally, such beneficial vegetation replacing row crop land is likely to have a beneficial impact on numerous wildlife specific, including pollinators. Supporting intervenors and Commission staff also recognized that the proposed project is a renewable energy project expected to deliver a significant amount of energy to the electric grid without emitting any greenhouse gas emissions and could offset the need for additional carbon-emitting sources.

The project will also generate economic benefits through job creation, landowner lease payments, and payments to Portage County and the Towns of Grant, Buena Vista, and Plover 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, efforts to collaborate with state registered apprenticeship programs, and the actual number of Wisconsin residents and out-of-state workers employed on-site to construct the proposed project.

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

Land Use and Development Plans

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

The project areas within the Towns of Plover and Buena Vista are within A1 Exclusively Agricultural; A2 Agricultural Transition; A3 Low Density Agricultural zoning; small portions of C4 Highway Commercial; and a small portion of CON Conservancy zoning. The project area within the Town of Grant is within A-1 Exclusive Agricultural/Farmland Preservation Overlay District; A-2 Transitional Agricultural; A-3 General Agricultural. The land use plans in Appendix E of the application include goals such as the “protection of economically productive areas, including farmland and forest” in the Portage County Comprehensive Plan. ([PSC REF#: 487965.](#)) The fenced solar PV arrays, collector substation, interconnection switchyard, operation and maintenance building, and laydown area would not be in agricultural use while the facility is operational, which would not be using those acres as active farmland.

However, utility use (which includes this project) is compatible with Wis. Stat. ch. 91 (Farmland Preservation) provided several conditions are met, and can also be compatible with agricultural zoning, as long as it can meet local approvals. The land could also be returned to agricultural use after the decommissioning of the solar farm (approximately 30-35 years). As

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such, the use of the leased properties for the solar facilities does not appear to be in conflict with the current land use plans of the towns or county.

On June 24, 2024, the applicant submitted documentation to the ERF system that indicated a JDA was signed between the Towns of Plover and Grant. ([PSC REF#: 506219.](#)) The document was finalized and is effective as of June 20, 2024. The JDA includes obligations regarding training for emergency first responders, construction notification timelines, roadway impacts, drainage tile repair, shared revenue payments, decommissioning financial assurance, road repairs, setbacks, equipment height, vegetation, fencing, and other agreements.

The Commission finds that the record of evidence did not demonstrate that there is unreasonable interference with land use and development goals; rather the Commission finds that it demonstrates that all the land for the project was obtained voluntarily and may be returned to agricultural use after decommissioning. Further, the project provides benefits, both ecologically and towards overall renewable energy goals, and is not prohibited or in direct contravention of any plans or ordinances of the Towns of Grant, Buena Vista, and Plover. 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.

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

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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 levels¹⁴. As such, the Commission finds that the proposed project meets the requirements of Wis. Stat.

§ 196.491(3)(d)7.

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 9,854 acres of developable land in close proximity to existing transmission facilities. The applicant evaluated existing brownfield sites in Portage County. The applicant identified 71 open or closed contaminated sites and 42 closed remediation sites within a 2-mile radius of the proposed project. The applicant stated that none of the sites are sufficiently large enough 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.

¹⁴ *Application of Wisconsin Electric Power Company for a Certificate of Public Convenience and Necessity to Construct a Wind Electric Generation Facility and Associated Electric Facilities, to be located in the Towns of Randolph and Scott, Columbia County, Wisconsin*, docket 6630-CE-302 (January 22, 2012). ([PSC REF#: 126124](#) at 20.)

Project Construction Schedule

At the time of the application, the applicant proposed to begin construction in the first quarter of 2025. Major construction activities were expected to take place in the first quarter of 2025 through the second quarter of 2028. The in-service date for this project was estimated to be during the fourth quarter of 2028. The total construction duration was estimated to be approximately 3 years and 9 months, from site mobilization to commercial operation. The application noted that some construction timelines could be affected by weather conditions, particularly winter weather conditions.

Discussion of Order Conditions

The Commission considered various order conditions that were presented in the record. In reviewing CPCNs, the Commission must balance the need to maintain adequate, reliable, and economical electric service for the citizens of Wisconsin with the concerns of landowners and other interested individuals, while supporting the public policy of greater access to renewable-based electric generation. The Commission recognizes the impact that large solar generation projects, including this project, place on all affected landowners and communities. Such impacts are often the unfortunate but 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.

Standard Order Conditions

In testimony, Commission staff identified various conditions relating to the authorized construction, reporting, and communication that it considered to be standard order conditions for electric construction projects. The applicant agreed to the inclusion of all of the standard order

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conditions suggested by Commission staff. *See* Rebuttal-VSS-Baker-3:4-9 ([PSC REF#: 509888](#)). The Commission finds it reasonable to impose the standard conditions, as described in Order Conditions 1-14 and 25-34 of this Final Decision.

Minor Siting Adjustment Order Condition

While it was the applicant's obligation to minimize the need for minor siting flexibility by rigorously analyzing its proposed project, the Commission recognizes that detailed engineering is not complete prior to authorization of a project and that minor siting flexibility may be needed to accommodate the final design of the project. Situations may be discovered in the field that were not apparent based on the information available to the applicant in development of the proposed project or to the Commission in making its authorization. Therefore, the Commission typically includes an order condition that allows for minor siting flexibility when authorizing a project.

The applicant may propose minor adjustments to the approved locations of project facilities for the protection of environmental resources, landowner requests, or technical design changes that arise during final stages of engineering (up to the authorized nameplate capacity the solar facility stated in the application), but any changes from the approved layout may not affect a type of resource not discussed in the EIS, 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 EIS 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

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review and approval is appropriate. The Commission finds it reasonable to require that the applicant implement the procedure described in Order Condition 15 if minor siting adjustments are needed for this project.

Project-Specific Order Conditions

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. The construction and authorization of the proposed project is likely to have a range of environmental effects which can be mitigated by precluding the use of certain arrays and through the imposition of various mitigation conditions.

Project area array fencing could impact GRPC movement and the likelihood of fence collisions. Lower fence heights could reduce collisions with the fence, especially during their lekking where the GRPC have the greatest amount of flight activity. DNR staff witness Stacy Rowe made recommendations in the record to keep fence heights within certain distances of GRPC leks to a maximum height for these reasons, which the applicant agreed to. Surrebuttal-WDNR-Rowe-r-2: 15-18 ([PSC REF#: 514541](#)); Tr. 308: 3-6 ([PSC REF#: 516483](#)). The Commission adopts this proposed condition with a modification. If, in future years, new lek locations are identified, according to the proposed wording, the applicant might have to change existing fences to meet this standard. To avoid unduly burdening the applicant, the Commission finds it is reasonable to modify the proposed condition as follows. Fence height shall be no more than 2.1 meters (7 feet) from the ground within one mile of DNR-identified 2021-2024 GRPC leks. If future surveys conducted during the project's commercial operation identify any new

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leks within one mile any project fences, those shall also be made no more than 2.1 meters (7 feet) to the extent reasonably possible. This is Order Condition 16.

Project fencing could impact wildlife movement in and around the project area, which could lead to habitat fragmentation concerns and reduced capacity for small wildlife species to move throughout the project area. Additionally, project fences could impact the GRPC and other grassland bird movement throughout the project area if they decide to use the array areas for habitat purposes. Stacy Rowe proposed order condition language to address these concerns, which the applicant supported. Surrebuttal-WDNR-Rowe-r-3: 3-6 ([PSC REF#: 514541](#)), Tr. 308: 7-11 ([PSC REF#: 516483](#)). The Commission finds it reasonable to require bottom apertures of project fences around solar array areas shall be a minimum of 8 inches high by 12 inches wide (or even 1 foot by 1 foot to allow most but not all fully grown herptiles) at least every 100 feet along the fence where rare and non-game species may be present as determined by DNR after array design is finalized, as stated in Order Condition 17. The applicant is encouraged to consider 1 foot by 1 foot apertures but may use a minimum of 8 inch by 12 inch apertures to meet the above requirement.

Red fescue was one component of the Graminoid Plus seed mix proposed for this project. When non-native fescue becomes established in these plantings, it is likely to outcompete the native and more desirable species, thereby reducing many of the benefits of having these plants on the landscape. In addition, non-native fescues are typically very difficult to eradicate once established. Including a non-native fescue species in the seed mixes could jeopardize the applicant's investment in a seed mix meant to establish a diverse habitat of grasses and forbs. As long as the applicant follows their proposed Vegetation Management Plan with the required

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mowings and spot herbicide treatments through establishment, the seed mix without the non-native, aggressive fescue species should have the best opportunity to become established and meet the project goals. Stacy Rowe proposed order condition language to address this concern, which was supported by the applicant and intervenor WWF. Surrebuttal-WDNR-Rowe-r-4: 18-2 ([PSC REF#: 514541](#)). The Commission finds it reasonable to require that red fescue be removed from the Graminoid Plus seed mix proposed in its vegetation management strategy for all arrays and replaced with less-aggressive native species. Native fescues may be considered so long as they are, in total, less than 4 percent of the total seed weight in the mix. This is Order Condition 18.

As noted above in the discussion of construction and post-construction impacts, the Commission finds it reasonable to require that the applicant submit vegetation progress reports documenting areas that have achieved 70 percent uniform vegetation density. This condition is Order Condition 19.

Several wetlands and waterways will be impacted as a result of this project. DNR staff witness Geri Radermacher recommended conditions to mitigate for the impacts to wetlands and waterways as a result of the project, apart from any required DNR permits for the project. Direct-WDNR-Radermacher-6-7: 9- 24, 1-11 ([PSC REF#: 505694](#)). The applicant agreed with Geri Radermacher's proposed conditions. Rebuttal-VSS-Baker-3 ([PSC REF#: 509888](#)). The Commission finds it reasonable to require that the applicant take the following actions related to wetlands and waterways:

- a) Prior to construction, install signage at wetland and waterway boundaries to alert construction crews to not work within or access across these areas.

- b) Develop and implement a Storm Water Erosion Control Plan and a Stormwater Management Plan that meet or exceed the standards found in Wis. Admin. Code chs. NR 216 and 151. Implement the technical standards developed per Subchapter V of Wis. Admin. Code ch. NR 151.
- c) Install all site-specific sediment and erosion control measures and devices prior to any construction activities commencing and regularly inspect and maintain them through all construction and restoration phases.
- d) 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 need to be installed if working adjacent to wetlands and waterways.
- e) Implement a construction sequencing plan that minimizes the amount of land disturbed or exposed (susceptible to erosion) at one given time across the project.
- f) Vegetate disturbed areas and areas of exposed soil as soon as possible and seed with a cover crop and/or native seed mix to minimize erosion potential and prevent the establishment of invasive species.
- g) 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.

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- h) Leave existing vegetative buffers in place.
- i) Avoid the use of herbicide in wetlands and near waterways, or utilizing herbicides approved for use in aquatic environments.

These requirements are incorporated as Order Condition 20.

Markers on the fences within the project area, especially nearby known GRPC habitat such as lek locations, would help reduce GRPC and grassland bird collisions with the fence.

Commissions staff witness Stacy Rowe (DNR staff) provided proposed order condition language to mitigate this concern, which was supported by the applicant and intervenor WWF.

Surrebuttal-WDNR-Rowe-r-2: 15-18 ([PSC REF#: 525124](#)). The Commission finds it reasonable to require that the applicant install bird markers on all proposed project fences within one mile of GRPC lek locations that DNR identified during 2021-2024 lek surveys and any lek locations identified in future surveys for the duration of the project's commercial operation, as stated in Order Condition 21. The number and placement of bird fence markers shall be determined in collaboration with DNR, as also stated in Order Condition 21.

As described above, SHPO has reviewed the potential impacts this project may have on historic properties and recommended measures the Commission could utilize to mitigate impacts to potentially significant historic properties within the APE. The Commission finds it reasonable to require that, if the project is planned to be built in the exclusion area described by SHPO in Ex.-PSC-Craft-1 ([PSC REF#: 513345](#) confidential, [PSC REF#: 513346](#) public), the applicant shall perform additional Phase I investigations to determine the extent to avoid potential sensitive areas and provide relevant reports on the results to Commission staff and SHPO, as stated in Order Condition 22. If additional cultural resources are found during further Phase I

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efforts, the applicant shall coordinate appropriately and adhere to restrictions established by the Office of the State Archaeologist and SHPO, as stated in Order Condition 22.

The applicant indicated that it was willing to work with conservation groups on an effort to explore expansion of grassland habitat and GRPC range in the project area. The applicant recommended that a collaborative stakeholder process be initiated to advance grassland habitat. ([PSC REF#: 512644.](#)) The Commission finds it reasonable to require that the applicant, no later than six months after the start of construction, initiate a collaborative process with interested stakeholders on advancing the increase of GRPC grassland habitat in Wisconsin, as stated in Order Condition 23. As also stated in Order Condition 23, the applicant shall report back to the Commission no later than December 31 of the first year the collaboration starts, and for the next four years on the same schedule, on the status and progress of the collaborative's efforts.

In addition, the applicant shall comply with all of the conditions and commitments agreed to in the record for this proceeding. Those commitments include, but are not limited to: designating a project conservation area, avoiding construction activities during the GRPC breeding season, and funding two graduate fellowships at the University of Wisconsin Stevens Point to study the relationship between wildlife and solar electric generation facilities. This is incorporated as Order Condition 24.

Certificate

The Commission grants the applicant a CPCN for construction of the proposed solar PV electric generation facility, BESS facility, associated generator tie line, and other associated facilities as described in the application and the record for this proceeding and as modified by this Final Decision.

Order

1. The applicant is authorized to construct the proposed solar PV electric generation facility, 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. The applicant is authorized to construct the project at an installed capacity of no greater than 1,315.6 MW AC for the solar PV electric generation facilities and no greater than 300 MW AC for the BESS facilities.

2. The applicant shall provide the Commission with final detailed as-built engineering plans for the project, including the final designs and equipment plans for 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.

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

4. Prior to commencement of operations, the applicant shall provide 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.

5. 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.

6. The applicant shall update the Commission with a report on all MISO DPP studies and facilities studies related to interconnection queue positions J2099, J2107, and J2185, and the GIAs related to the project when each of them have been completed.

7. 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.

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

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

10. 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, prior to commencing any construction activity that may interfere with testing 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.

11. 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.

12. 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.

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

14. 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, with the exception of Alternative Array Areas 20, 32, 41, and 53; Primary Array Area 50; the southernmost approximately 30 acres of Primary Array

Area 20; and the westernmost approximately 32 acres of Primary Array Area 38. 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.

15. The applicant may propose minor adjustments to the approved locations of project facilities for the protection of environmental resources, landowner requests, or technical design changes that arise during final stages of engineering (up to the authorized nameplate capacity the solar facility stated in the application), but any changes from the approved layout may not affect a type of resource not discussed in the EIS, 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 EIS 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:

- a. The nature of the requested change;
- b. The reason for the requested change;
- c. The incremental difference in any environmental impacts;
- d. Communications with all potentially affected landowners regarding the change;

- e. Documentation of discussions with other agencies regarding the change; and,
- f. A map showing the approved layout and the proposed modification(s) of all facilities proposed to be modified, property boundaries, relevant natural features such as woodlands, wetlands, waterways, and other sensitive areas.

Regarding item c., provide a table with incremental changes in acreage for all the land acres contained within the perimeter fences and the land acres that blocks of arrays/subarrays occupy, changes in length of all collector lines, access roads, and tie lines, and changes in distances to adjacent landowner buildings for all inverters/Power Conditioning Units and substations where there is a shift in the originally approved location. Identify each change using the infrastructure identification used in the application (i.e. array 1A, inverter 22).

Regarding item d., provide documentation of communications with any landowner, participating or nonparticipating, related to proposed changes wherein any project facility (including perimeter fences as well as items within those fences such as Direct-PSC-Edmunds-12 inverters or panels) is proposed to be relocated closer to an inhabited residence than the location that was approved in the Commission's Final Decision. Documentation should include all the information provided to the landowner regarding changes, include any feedback provided by the landowner, identify any way in which landowner feedback has informed the changes proposed, and whether the landowner agrees to the proposed changes. 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.

16. To minimize bird collisions with fences, fence height shall be no more than 2.1 meters (7 feet) from the ground within one mile of DNR-identified 2021-2024 GRPC lek locations. If future surveys conducted during the project's commercial operation identify any new leks within one mile any project fences, those shall also be made more than 2.1 meters (7 feet) to the extent reasonably possible.

17. Bottom apertures of project fences around solar array areas shall be a minimum of 8 inches high by 12 inches wide (or even 1 foot by 1 foot to allow most but not all fully grown herptiles) at least every 100 feet along the fence where rare and non-game species may be present as determined by DNR after array design is finalized.

18. The non-native, aggressive species red fescue shall be removed from the Graminoid Plus seed mix proposed in its vegetation management strategy for all arrays and replaced with less-aggressive native species. Native fescues may be considered so long as they are in total, less than 4 percent of the total seed weight in the mix.

19. The applicant shall submit vegetation progress reports documenting areas that have achieved 70 percent uniform vegetation density.

20. To reduce construction and post-construction impacts, the applicant shall:

a. Prior to construction, install signage at wetland and waterway boundaries to alert construction crews to not work within or access across these areas;

b. Develop and implement a Storm Water Erosion Control Plan and a Stormwater Management Plan that meet or exceed the standards found in Wis. Admin. Code chs. NR 216 and 151. Implement the technical standards developed per Subchapter V of Wis. Admin. Code ch. NR 151;

c. Install all site-specific sediment and erosion control measures and devices prior to any construction activities commencing and regularly inspect and maintain them through all construction and restoration phases;

d. 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 need to be installed if working adjacent to wetlands and waterways;

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

f. Vegetate disturbed areas and areas of exposed soil as soon as possible and seed with a cover crop and/or native seed mix to minimize erosion potential and prevent the establishment of invasive species;

g. 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;

h. Leave existing vegetative buffers in place; and

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

21. The applicant shall install bird markers on all proposed project fences within one mile of the GRPC lek locations that DNR identified during 2021-2024 lek surveys, as well as

any leaks identified in future surveys for the duration of project's commercial operation. The number and placement of bird fence markers shall be determined in collaboration with DNR.

22. If the project is planned to be built in the exclusion area described by SHPO in Ex.-PSC-Craft-1 ([PSC REF#: 513345](#) confidential, [PSC REF#: 513346](#) public), the applicant shall perform additional Phase I investigations to determine the extent to avoid potential sensitive areas and provide relevant reports on the results to Commission staff and SHPO. If additional cultural resources are found during further Phase I efforts, the applicant shall coordinate appropriately and adhere to restrictions established by the Office of the State Archaeologist and SHPO.

23. No later than six months after the start of construction, the applicant will initiate a collaborative process with interested stakeholders on advancing the increase of GRPC grassland habitat in Wisconsin. The applicant shall report back to the Commission no later than December 31 of the first year the collaboration starts, and for the next four years on the same schedule, on the status and progress of the collaborative's efforts.

24. The applicant shall comply with all of the conditions and commitments it agreed to in the record for this proceeding.

25. 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.

26. 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.

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

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

29. Beginning within 30 days after the end of the quarter during which the Final Decision is signed and served, 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;

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

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

- a. The date the Final Decision is served;
- b. The date when the applicant has received every federal and state permit, approval, and license that is required prior to commencement of construction by construction spread under the CPCN;
- c. The date when the deadlines expire for requesting administrative review or reconsideration of the CPCN and of the permits, approvals, and licenses described in par. (b.); and
- d. The date when the applicant receives the Final Decision, after exhaustion of judicial review, in every proceeding for judicial review concerning the CPCN and the permits, approvals, and licenses described in par. (b.).

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

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

b. Is granted an extension by the Commission.

32. 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.

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

34. Jurisdiction is retained.

Dated at Madison, Wisconsin, the 16th day of January, 2025.

By the Commission:

A handwritten signature in black ink, appearing to read "Cru Stublely", with a long horizontal flourish extending to the right.

Cru Stublely
Secretary to the Commission

CS:DG:jlt:DL:02044683

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN
4822 Madison Yards Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.¹⁵ The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013

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

APPENDIX A

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(Not a party but must be served per Wis. Stat. § 227.53)
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