BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application for a Certificate of Public Convenience and Necessity of Badger Hollow Solar Farm, LLC to Construct an Electric Tie Line to Connect a Solar Electric Generation Facility to the Existing Transmission System, to be Located in Iowa County, Wisconsin	Docket No. 9697-CE-101

APPLICANT'S RESPONSE IN OPPOSITION TO REQUEST FOR INTERVENTION OUT-OF-TIME

Pursuant to Wis. Admin. Code § PSC 2.23 and the Notice of Proceeding issued in this matter (PSC REF#:351180), Badger Hollow Solar Farm, LLC ("Badger Hollow") provides its response to the request of Richard and Patricia Jinkins, Alan and Marcia Jewell, and Wade Wendhausen (collectively "JJW") to intervene in this proceeding. For the following reasons, JJW's request should be denied.

INTRODUCTION

In this proceeding, Badger Hollow seeks a Certificate of Public Convenience and Necessity ("CPCN") to construct an electric tie line ("GenTie") to connect a solar farm to Wisconsin's existing transmission system.[1] JJW seeks to intervene out of time in this docket. In their intervention request, JJW appears to copy-and-paste much of their "Statement of Interest" submitted in the Solar Farm Docket, and mix in references to the "inter-tie line," but fail to address the distinct characteristics of this GenTie docket. JJW describes their purported interest in this docket in the most generic terms, for example:

[1] The solar farm is the subject of Commission Docket No. 9697-CE-100 (the "Solar Farm Docket").

> Generally, [JJW] are concerned about the extreme close proximity of this project to their land and homes, the removal of agricultural land from production, and the health and safety impacts on the land, water, livestock and property values."

The facts belie these assertions. Intervention out of time by JJW is inappropriate under the law and would only serve to complicate these proceedings. JJW's request for intervention should be denied.

ARGUMENT

JJW lacks the requisite interest or basis to intervene in this proceeding, and their involvement will only impede the timely completion of this proceeding. Accordingly, their request for intervention out of time should be denied.

In its Notice, the Commission stated that "[a]ny person desiring to become a party shall file a request pursuant to Wis. Stat. § 227.44(2m) and Wis. Admin. Code § PSC 2.21, not later than 14 days from the date of service of this notice," i.e., October 18, 2018. (Notice at 2). The statutory provision governing intervention states:

> Any person whose substantial interest may be affected by the decision following the hearing shall, upon the person's request, be admitted as a party.

Wis. Stat. § 227.44(2m).

The Administrative Code recognizes two forms of intervention: intervention "by right" and "permissive intervention." Intervention by right is governed by Wis. Admin. Code § PSC 2.21(1):

> (1) Intervention By Right. A person whose substantial interests may be affected by the commission's action or inaction in a proceeding shall be admitted as an intervenor.

Permissive intervention is governed by Wis. Admin. Code § PSC 2.21(2):

> (2) Permissive Intervention. A person not satisfying the criteria of sub. (1) may nevertheless intervene in a proceeding or docket if the person's participation likely will promote the proper disposition of the issues to be

> determined in the proceeding or docket and if the person's participation will not impede the timely completion of the proceeding or docket.

Here, JJW filed their request for intervention "out of time," *i.e.*, after the due date set by the Commission. When the request for intervention is made out of time, certain additional considerations apply:

> (4) Intervention out of time.
>
> > (a) If a person fails to request intervention within the time prescribed in sub. (3), the person must request to intervene out of time. In acting on such a request, the commission or administrative law judge may consider all of the following:
> >
> > 1. Whether the requestor had good cause for failing to file the request within the prescribed time.
> >
> > 2. Whether any disruption of the proceeding or docket may result from permitting intervention.
> >
> > 3. If any prejudice to, or additional burdens upon, the existing parties may result from permitting the intervention.

Wis. Admin. Code § PSC 2.21(4).

JJW fail to demonstrate a basis for intervention by right or permissive intervention and fail to satisfy the criteria for intervention out of time.

I. JJW IS NOT ENTITLED TO INTERVENTION BY RIGHT

JJW lacks a substantial interest sufficient to merit intervention by right. Wis. Admin. Code § PSC 2.21(1). In determining whether a person has a right to intervene, the Commission applies a two-part test: (1) whether the petitioner demonstrated that it has or will suffer an injury in fact; and (2) whether that injury to an interest the law seeks to regulate or protect. *Application of Wisconsin Power and Light Company for a Certificate of Public Convenience and Necessity to Build an Approximately 650 Megawatt Natural Gas-Fueled Power Plant at its Riverside Energy*

Center Facility in the Town of Beloit, Rock County, Wisconsin, Docket 6680-CE-176 (PSC REF#:273536) at 3. JJW does not satisfy this test.

First, JJW's land is not nearly as proximate to or affected by the GenTie line as JJW claims. Based on information gathered since JJW's intervention in the Solar Farm Docket, and contrary to JJW's representations, it appears that Mr. and Mrs. Jewell do not own land within the project area. (*See* Attachment A). The Jewells' land, assuming it is the Oakdale Farms LTD or Jewell Revocable Trust property identified on Attachment A, is at least six miles east of the Badger Hollow Solar Farm's project boundary.

Similarly, and again contrary to JJW's representations, the land owned by Mr. and Mrs. Jinkins and Mr. Wendhausen is not "surrounded" by the proposed solar generation facility and is not affected by the GenTie line. Rather, their land overlaps slightly onto the extreme southern portion of the Badger Hollow Solar Farm Project Area. (*See* Attachment A). They are over a mile away from any solar panels to the north and there are no solar panels to the east or south of their properties. As it relates to the GenTie line itself, their properties lie about 2 miles from any of the proposed GenTie routes.

Second, JJW fail to specify their status, and therefore fail to demonstrate any possible injury in fact. JJW rely solely on their general status as "long time local residents and landowners with generational ties to the community" and claim they are concerned with "big picture issues." JJW, however, fail to describe how this concern could be impacted by the GenTie line in a specific way. Consequently, JJW can only describe their concerns in general terms, relating to removing agricultural land from production and health and safety impacts. Merely listing such general potential impacts, and stating that JJW is "concerned" about them,

does not demonstrate that JJW has a substantial interest in this proceeding. If mere concerns about generally stated potential impacts were sufficient, then intervention would have no limit.

Third, the only specific concerns identified by JJW are not at issue in this docket. The only concerns that JJW's counsel identified at the joint prehearing conference for the Solar Farm Docket and this docket are glare and noise.[2] (Prehearing Conf. Tr. 21) (PSC REF#: 353179). Those concerns have nothing to do with the GenTie line and are not reasonably considered as a source of injury that JJW will potentially suffer due to the GenTie line. Based on these limited areas of concern alone, intervention into the GenTie docket would be inappropriate.

Fourth, JJW's other concerns are expressly rendered irrelevant by statute, and therefore cannot lead to an "injury to an interest the law seeks to regulate or protect." JJW claim to be "concerned" about issues that relate to alternative sources of supply, project engineering, project need, and project cost, all of which are explicitly excluded from consideration by statute. Wis. Stat. § 196.491.[3] Many of those "big picture issues," in addition to being irrelevant pursuant to the CPCN statute, implicate legislative or administrative policy-making priorities are well beyond the scope of this proceeding.

JJW's remaining claims of interest are merely a hodge-podge of assertions that have no demonstrated connection to this docket or even to JJW. They claim they will be affected by "energy rates," the Cardinal-Hickory project, and whether utilities are promoting other generation projects "in the area," none of which are at issue in this proceeding. They also

[2] JJW's counsel described her potential intervention in the GenTie docket as a "limited intervention." *Id.*

[3] For example, JJW cite "the apparent focus by the PSC on large industrial solar projects" and contend that "Energy efficiency, energy self-sufficiency investments, load management, and utilization of distributed and dispersed generation -- the path of our energy system -- are significantly impacted by the energy investment direction selected by the Commission's decision in this transmission docket and the solar project docket." (JJW Request to Intervene, pp. 5-6) (PSC REF#: 353024).

identify other concerns about which they lack any apparent or identified connection, such as tourism.

II. JJW DOES NOT QUALIFY FOR PERMISSIVE INTERVENTION

JJW lacks a basis for permissive intervention. Wis. Admin. Code § PSC 2.21(2). It is self-evident that JJW's generalized, generic, and irrelevant "concerns" – detailed above – cannot promote the proper disposition of the issues to be determined in the docket. JJW's digression into such matters means that JJW's participation will impede the timely completion of the docket.

III. JJW DOES NOT MEET THE CRITERIA FOR INTERVENTION OUT OF TIME

The Commission has held that "a necessary condition for a request for intervention out of time being granted is that the person making the request -- had the request been timely filed -- would be granted intervention by right or permissive intervention." *Application for All Approvals Necessary for the Transfer of Ownership and Operational Control of the Kewaunee Nuclear Power Plant*, Dkt. 05-EI-136, (Mar. 11, 2004) at 3. Since JJW does not meet the requirements for intervention by right or permissive intervention, consideration of the additional criteria relating to intervention out of time unnecessary.

Even if JJW met the requirements for intervention by right or permissive intervention, JJW's request for intervention out of time should be denied based on the considerations applicable to such tardy requests. Wis. Admin. Code § PSC 2.21(4).

First, JJW failed to show that they had good cause for failing to file the request within the prescribed time. JJW apparently relies on their eleventh hour retention of counsel in relation to this matter - she was retained on the date of the intervention deadline - as their excuse for their tardy intervention. This Docket was opened on June 15, 2018, and JJW could have sought intervention and/or retained counsel and/or sought discovery at any time after that date, as did other intervenors. Moreover, the Notice of Proceeding was issued on October 4, 2018, setting a

specific deadline for intervention. Again, JJW could have sought intervention and/or retained counsel and/or sought discovery at any time prior to that deadline, but chose not to. JJW fails to explain its delay in seeking intervention or retaining counsel. JJW's counsel provides no explanation as to why she waited until November 12, 2018 – nearly one month after she had been retained by JJW – to seek intervention in this matter *even though she timely sought intervention in the Solar Farm Docket*. Therefore, JJW provides no basis for a finding of "good cause" for their delay in seeking intervention.

Second, JJW's late intervention will disrupt this docket, resulting in an inappropriate and unnecessary burden to the existing parties and Commission staff. JJW's participation would interfere with Badger Hollow's preparation of pre-filed testimony between now and the hearing on January 16, 2019, and Badger Hollow would need to respond to any testimony or other evidence JJW offers on its irrelevant and insubstantial concerns.

CONCLUSION

For the foregoing reasons, JJW's request for intervention out of time should be denied.

Dated this 19th day of November, 2018.

ATTORNEYS FOR BADGER HOLLOW SOLAR FARM LLC

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Attachment A

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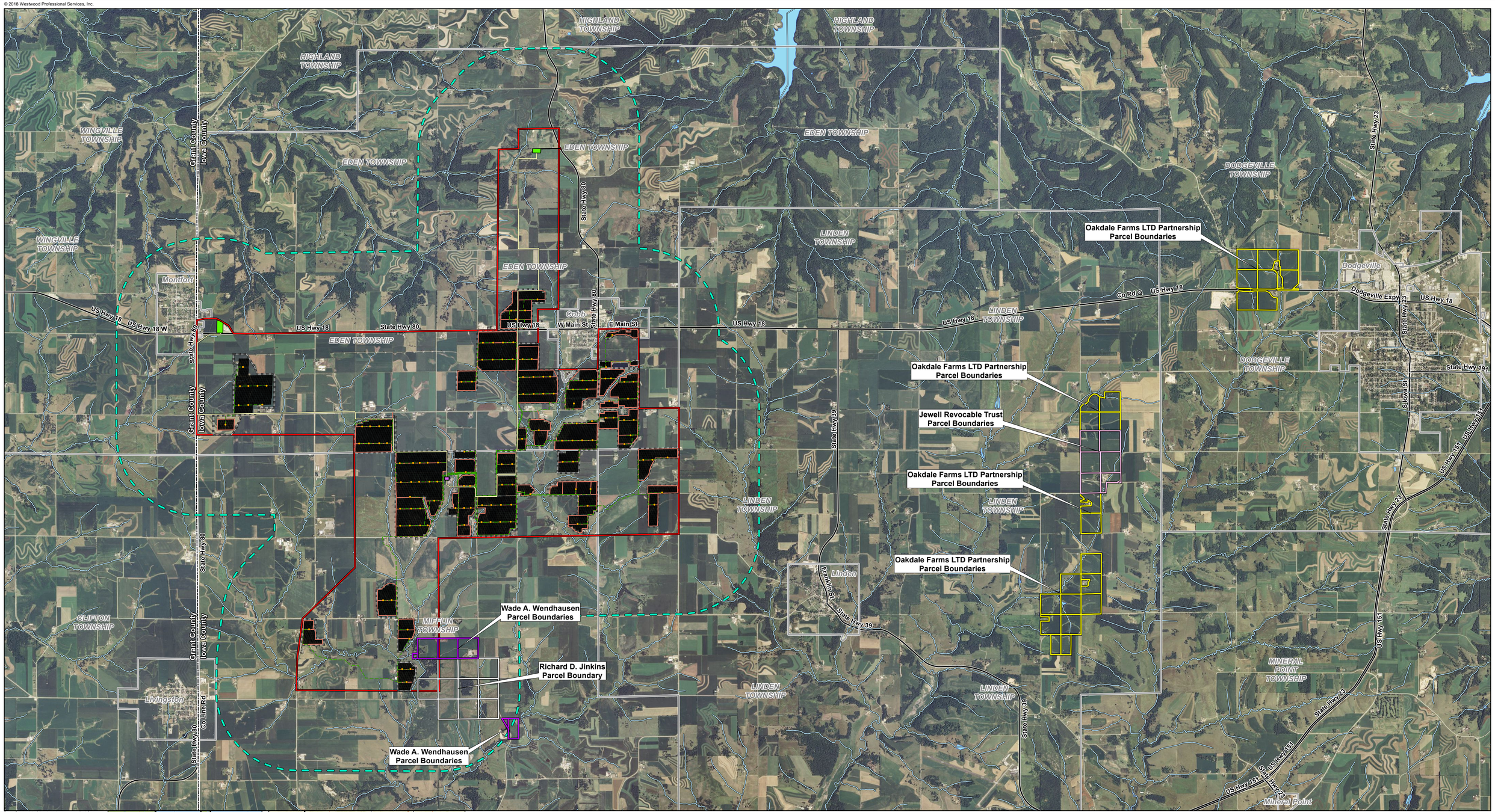

Data Source(s): Map has been compiled from a variety of sources and subject to change; Westwood (2018); Wisconsin NAIP Imagery (Accessed 2018); ESRI WMS National Geographic & World Streets Basemaps (Accessed 2018); Census Bureau (2017); USGS NHD Dataset (2013).

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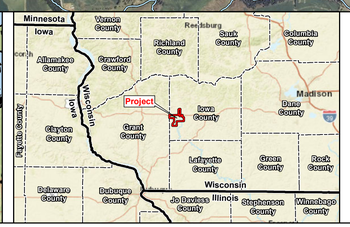

Legend

- Project Boundary
- 1-Mile Project Boundary Buffer
- Substation & O&M Location
- Potential Point Of Interconnect
- Inverter Pad
- Access Road
- Potential Transmission Route
- Collection Line
- Solar Array Panels
- Array Fence
- Major Road
- WDNR Flowline
- WDNR Waterbody
- Municipal Boundary
- County Boundary
- Richard D. Jinkins Parcel Boundary
- Wade A. Wendhausen Parcel Boundary
- Oakdale Farms LTD Partnership Parcel Boundary
- Jewell Revocable Trust Parcel Boundary

N

0 3,000 Feet

Badger Hollow Solar Farm

Iowa County, Wisconsin

General Project Area Map

FIGURE 4.1.1.

Map Document: N:\0141\20.00\GIS\Permit Exhibits\181102 Permit Exhibits With Layout Updates\BH_Permit_Fig4_1_1_GeneralProjectAreaMap_181115.mxd 11/15/2018 12:08:51 PM rabovits