

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Joint Application of Madison Gas and Electric
Company and Wisconsin Public Service Corporation
For Approval to Acquire Ownership Interests in
Solar Electric Generating Facilities

5-BS-228

**JEWELL JINKINS INTERVENORS
RESPONSE TO REPLY TO RESPONSE TO APPLICANT'S MOTION FOR
PROTECTIVE ORDER**

Applicants Wisconsin Public Service Corporation and Madison Gas and Electric Company have today jointly filed a Reply to Jewell Jinkins Intervenors Response to Applicants' Motion for Protective Order, in a continued effort to prevent Jewell Jinkins Intervenors from seeking discovery in the above-captioned docket, and seeking to reverse an Order granting intervention in their related Motion for Interlocutory Review. Again, their Motion for a Protective Order should be denied, as well as the Motion for Interlocutory Review. Jewell Jinkins Intervenors should proceed with all the rights, responsibilities and obligations of full party status. In the alternative, the Motion for Protective Order should be granted until the Commission rules on Applicants' Motion for Interlocutory Review, due tomorrow (and effectively in effect given Applicants' delay). If that Motion for Interlocutory Review is denied, by action or inaction, Jewell Jinkins Intervenors request that the schedule for this docket should be adjusted back by 30 days or more to address the wasted time due to Applicants' obstructive Motions.

I. APPLICANTS' CONTINUE TO MISREPRESENT CEII DESIGNATION – ONLY FERC HELD INFORMATION DESIGNATED CEII IS CEII

Applicants continue to grossly misuse CEII regulation and misstate FERC's role in regulating distribution of CEII information. Again, Applicants commit a glaring omission by failing to reveal the scope of 18 CFR §388.13:

(a)Scope. This section governs the procedures for submitting, designating, handling, sharing, and disseminating Critical Energy/Electric Infrastructure Information (CEII) submitted to or generated by the Commission.

18 CFR §388.113(a). The "Commission" referred to is FERC. Applicants' misrepresentation of information as legitimately "CEII" was addressed at the Prehearing Conference when referring to misusing the CEII categorization, anticipating the Applicants' arguments. See Docket 5-BS-228 Tr. 1-39, p. 32, l. 19 – p. 33, l. 18.

Applicants seem confused as to what information has been requested. Reply, p. 5. Jewell Jinkins Intervenors generically seek all the confidential information, as did Kites:

Please provide **all other confidential and** CEII documents shown in ERF record for this docket (5-BS-228), including responses to others' Data Requests, with the exception of PROMOD modeling or other modeling, but including narrative reports regarding PROMOD or other modeling. (Jewell Jinkins Intervenors have no interest in getting into licensing issues and have no ability to utilize PROMOD data!)

Data Request, #5, Response 1's Exhibit A; see Applicants' Reply, p. 5.¹

We are seeking any narrative reports that may be contained in that currently inaccessible information, the contents of which we can only guess, i.e., any reports the sort of which are often produced based on Multiregional Modeling Working Group data ("MMWG") and FERC Form 715 contingency event data, reports of the Eastern Interconnection Reliability Assessment Group, reports forwarded for inclusion in NERC Reliability Assessments, MISO or other reports such as

¹ "... and therefore appear to fall outside the scope of the Jewell/Jinkins Intervenors' discovery (although they would still fall within the Kite Intervenors' more generic request for all confidential information." Reply, p. 5. ???

Feasibility and Interconnection Studies and Agreements, etc. This data is required to address need for acquisition of this project.

FERC's 18 CFR §388.113(g)(5)(v) is inapplicable in this situation, as this is not a request to FERC. There is no need to "verify that she is *currently* authorized to receive such data" because this information is not requested from FERC, as it is in the possession of the Commission. However, Jewell Jinkins Intervenors is forwarding this Motion and Responses to FERC's Toyia Johnson, FOIA/CEII service center; CEII legal counsel Kathryn Allen, and Leonard M. Tao, Director, Office of External Affairs, for their review.

II. APPLICANTS DIVERT ATTENTION FROM "NEED" REVIEW

Applicants are diverting attention from a primary consideration – there is no "need" review included in the Badger Hollow CPCN dockets. Applicants admit that "the principal point of the Buy/Sell docket is to determine, based on their need, whether the Applicants should be allowed to add Badger Hollow... to their generation portfolios..." but then presume that "... the Jewell Jinkins Intervenors have nothing to contribute on that question." Reply, fn. p. 3-4. If Jewell Jinkins Intervenors have nothing to contribute, would they protest so much? But more importantly, potential contribution to the record is not a determine for the Applicants to make.

Where an Independent Power Producer such as Invenergy's "Badger Hollow," there is no need review, no consideration by the Commission. In a pass-through CPCN proceeding, where the Applicants will immediately buy the project, or a portion of it, that takes advantage of a significant hole in the Commission's regulatory scheme. This has been addressed in offered Direct Testimony by CUB witness in the Badger Hollow CPCN docket (9697-CE-100), and again in offered Direct Testimony in this Buy/Sell docket:

Beyond the newness of utility scale solar in Wisconsin, the overall regulatory

process through which approval for the acquisition of these two facilities is being sought is unusual in this state. Rather than the Applicants having directly applied for a Certificate of Public Convenience and Necessity (CPCN) to construct the two solar facilities, with all factors such as siting, engineering, need, and cost being evaluated at once, the process has been bifurcated into two merchant plant CPCN proceedings and an acquisition Certificate of Authority (CA) proceeding. The bifurcated nature of the process essentially limits the scope of both the CPCN proceedings and the CA. Had the Applicants themselves applied for the CPCN, questions such as engineering, economics, need, and alternatives could have been considered alongside the questions of siting, allowing the Commission to appropriately evaluate all of the issues and statutory requirements in a holistic way. I have concerns that use of the site-and-acquire model being employed here may undermine a comprehensive or holistic application of the CPCN statutes by the Commission.

Direct, Singletary, p. 11, l. 11 – p. 12, l. 2 (ERF #355764).

To address need, Jewell Jinkins Intervenors must participate in all the admittedly inter-related dockets, and specifically, in this “Buy/Sell “docket. It is not the Applicants’ place to block Intervenors from participating, nor is it Applicants’ place to determine whether or not intervenors have the capacity to utilize information, or have anything to contribute. To participate meaningfully, Discovery is a part of that participatory process. Attempts to quash Discovery, to prevent Jewell Jinkins Intervenors from intervening, from utilizing that information, from contributing to the record, abuses process and thwarts the public participation aspect of the Commission’s mission.

III. APPLICANTS SHOULD NOT BE REWARDED FOR THEIR OBSTRUCTION AND RESISTANCE.

Applicants continue to spend much effort and money resisting Jewell Jinkins Intervenors intervention. This strategy of objection and delay also costs much in Commission time and expense, and Jewell Jinkins Intervenors have no choice but to focus on Objections and Motions, as if there is no response, the Motion would be granted. This docket’s schedule was agreed to by all parties, and by not-yet-party” Jewell Jinkins Intervenors, at the Prehearing Conference. The

delay is caused by the Applicants' and their repeated attempts to push out intervenors, not by Jewell Jinkins Intervenors.

IV. APPLICANTS' MOTION FOR PROTECTIVE ORDER SHOULD BE DENIED.

For the above reasons, Jewell Jinkins Intervenors again request that the Applicants' Motion for Protective Order be denied and that they be ordered to provide the confidentiality agreement and the information requested.

Dated this 19th day of December, 2018.



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