

**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

Docket 5-BS-228

APPLICANTS' RESPONSE TO MOTIONS TO INTERVENE OUT OF TIME

The Applicants, Wisconsin Public Service Corporation and Madison Gas and Electric Company, by their undersigned attorneys, hereby respond in opposition to the motions to intervene out of time of the Jewell Jinkins Intervenors and Casey and Brenda Kite (together, Landowners). The Commission should deny the Landowners' motions because the issues in this docket pertain to the Applicants' need for additional electric generating capacity and the cost of their proposed acquisition of solar generating capacity, both of which relate to Applicants' provision of electric service to their customers. These issues necessarily do not pertain to the Landowners, who are not customers of the Applicants. The Landowners' interests pertain only to the siting and construction of the proposed Badger Hollow Solar Farm, which will be sited and constructed (or not) regardless of who ultimately owns the project. Furthermore, allowing the Landowners to intervene permissively at this late state of the proceeding could disrupt the proceeding, add to the burdens of the existing parties, and result in administrative inefficiency.

Argument

As a general rule, “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. The Landowners have not made the required showing for either type of intervention.

The Landowners do not have a right to intervene in this docket, which concerns the Applicants' application to acquire ownership interests in the solar generation facility proposed to be constructed by Badger Hollow Solar Farm, LLC (Badger Hollow) in Docket 9697-CE-100. *See* Wis. Stat. § 227.44(2m); Wis. Admin. Code § 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 is to an interest the law seeks to regulate or protect. *Consolidated Water Co. and Wis. Pub. Serv. Corp.*, Docket 5-DR-105, PSC REF#: 48623. According to the Landowners' filings, their interests relate to the solar generation project's potential impact on their "property values", "health and safety" and "agricultural activities". *See* PSC REF #353052 and #353022. Those are not issues in the instant case but will be examined in the CPCN proceeding regarding the solar generation project, in which the Landowners' have already been granted party status.

By contrast, the Landowners lack a substantial interest in whether Applicants acquire ownership in the project after it is built. Despite the Jewell Jenkins Intervenors' claim that "they will also be affected by the impact of this project on energy rates," none of the Landowners are electric customers of either Applicant. They have nothing but a theoretical interest in the need for or cost of Applicants' participation in the project.

Moreover, the Applicants propose to acquire only partial ownership interests in the project and Badger Hollow has indicated that the project will be constructed with or without Applicants' involvement. Badger Hollow Solar Farm CPCN Application at 3-4, Docket 9697-CE-100 (June 1, 2018), PSC REF#: 343803. Thus, the Landowners' cognizable interests will be

impacted regardless of whether Applicants purchase ownership shares in the project or not. Since the Landowners do not meet the injury in fact test, they have no right to intervene in this proceeding.

Nor do the Landowners satisfy the standard for permissive intervention under Wis. Admin. Code § PSC 2.21(2). Permissive intervention may be granted if 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." The issues in this docket are limited to Applicants' need for the proposed solar generation facilities and their impact on Applicants' cost and efficiency of electric service to their customers. *See* Wis. Stat. § 196.49(3)(b). The Landowners offer no special expertise regarding these issues, and there are already parties who have intervened in the present docket who represent the interests of the Applicants' customers and have special expertise to do so. There is no basis to conclude that the Landowners' intervention in this case will help in the proper disposition of the issues in this docket.

Even if the Landowners established grounds for either intervention of right or permissive intervention, they have failed to state good cause for not seeking to intervene in this docket earlier. *See* Wis. Admin. Code § PSC 2.21(4)(a)1. Applicants filed their application in this docket on May 31, 2018. The notice of proceeding was issued on October 12, 2018, yet other parties sought intervention as early as June and have actively pursued discovery. The Landowners did not, presumably in recognition that the Applicants' proposed acquisition of a portion of the project did not affect the Landowners' interests.

In addition, intervention by the Landowners at this very late date would likely result in disruption of the proceeding and additional burdens upon the existing parties. *See* Wis. Admin.

Code § PSC 2.21(4)(a)2. and 3. Presumably, the Landowners would seek discovery on, and offer evidence related to, the project's potential impacts to them and their property. As stated above, those issues are properly being addressed in the CPCN proceeding to which the Landowners are already parties and the project developer is in a much better position to respond to the Landowners' concerns. Duplicating the issues and evidence in this docket would be disruptive and burdensome to the parties and administratively inefficient.

Finally, even if the Landowners restricted their discovery and testimony to the issues in this proceeding—the Applicants' need for the proposed solar generation facilities and the facilities' impact on Applicants' cost and efficiency of electric service to their customers—the Landowners' participation could be unnecessarily disruptive and burdensome at this late date. The Landowners' discovery could interfere with the preparation of pre-filed testimony by all parties and Commission staff between now and the hearing on January 18, 2019. In addition, the parties and staff would need to respond to any testimony or other evidence the Landowners offer on those issues.

Conclusion

For these reasons, the Applicants respectfully request that the Commission deny the Landowners' motions to intervene in this docket.

Respectfully submitted this 19th day of November, 2018.

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