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Public Service Commission of Wisconsin
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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

ORDER ON REQUEST TO INTERVENE - THIRD

This Order, pursuant to Wis. Admin. Code §§ PSC 2.04(1), and PSC 2.21, grants the requests for intervention out-of-time (Requests) of Richard and Patricia Jenkins, Alan and Marcia Jewell, and Wade Wendhausen, ([PSC REF#: 353022](#)), and Brenda and Casey Kite. ([PSC REF#: 353052](#))(Requestors).

The Joint Applicant opposed the Requests. ([PSC REF#: 353470](#))(Response). The Response provides a multifaceted argument against granting the Requests on the grounds that Requestors: 1) lack substantial interest in the outcome of the proceeding, 2) fail to satisfy the requirements for permissive intervention, and 3) would disrupt the proceeding and place additional burdens upon existing parties. By leave of the ALJ, granted at the Prehearing Conference, Requestors replied. ([PSC REF#: 353525](#) and [PSC REF#: 353659](#)).

Joint Applicants primary objection to the Requests is that Requestors fail the two-part standard for intervention by right: (1) whether the requestor demonstrates 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. Response at 2.

The instant docket pertains to the application of two public utilities for authority to acquire ownership in two proposed electric generating facilities and high-voltage transmission lines, the subject of four other pending dockets.¹ ([PSC REF#: 343600](#))(Joint Application). Joint

¹ Docket 9696-CE-100, *Application for a Certificate of Public Convenience and Necessity of Two Creeks Solar, LLC to Construct a Solar Electric Generation Facility, to be Located in Manitowoc and Kewaunee Counties, Wisconsin*; Docket 9696-CE-101, *Application for a Certificate of Public Convenience and Necessity of Two Creeks Solar, LLC to Construct an Electric Tie Line to Connect a Solar Electric Generation Facility to the Existing Transmission System, to be Located in Manitowoc and Kewaunee Counties, Wisconsin*; Docket 9697-CE-100, *Application for a Certificate of Public Convenience and Necessity of Badger Hollow Solar Farm, LLC to Construct a Solar Electric Generation Facility, to be Located in Iowa County, Wisconsin*; and Docket 9697-CE-101, *Application for a Certificate of Public Convenience and Necessity of Badger Hollow Solar Farm, LLC to Construct*

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Applicants request, in pertinent part, approval of this acquisition under Wis. Stat. § 196.49. (Joint Application at 9).

Joint Applicants assert that Requestors are ratepayers of neither utility. (Response at 1). Joint Applicant's argue that because the criteria in Wis. Stat. § 196.49(3)(b), only serves to protect the interests of ratepayers of the Joint Applicants, Requestors fail part two of the intervention test. (Response at 2).

Joint Applicants' attempt to limit the inquiry of its proposal to the impacts on its own ratepayers contradicts settled law. "Wis. Stat. § 196.49(3)(b) provides that the Commission 'may require that no project may proceed until the Commission has certified that public convenience and necessity require the project.'" (Joint Application at 9, *quoting*, Wis. Stat. § 196.49(3)(b)). But, "the word 'public' in sub. (3) (b) includes all electric consumers in the state, not only the ratepayers of the utility seeking authorization." *Wisconsin Power & Light Co. v. PSC*, 148 Wis. 2d 881,893, 437 N.W.2d 888, (Ct. App. 1989). Requestors are electricity consumers in this state, so they qualify as part of the "public" whose interest the Commission must consider if Joint Applicants desire approval of the acquisition. Furthermore, *Wisconsin Power & Light Co. v. PSC*, dealt with a Commission denial of a project that would shift costs from the applicant's ratepayers to those of other utilities. And here the Kites assert, they, "stand more to lose from this project than any customer of the [Joint] Applicants." ([PSC REF#: 353659](#)) (Kite Response at 2).

Joint Applicants also assert that Requestors' alleged injury fails part-one of the intervention test. Joint Applicants argue that Requestors' assertion that they are will be affected by the impact of the proposal on energy rates is "theoretical," and, therefore not, injury in fact. (Response at 2).

This argument ignores the facts of the acquisition, as clarified by one of the applicants after the filing of the Joint Application in a response to a Commission staff data request. Joint Applicants, "intend to transfer to [American Transmission Company] their ownership interests in the generation tie lines and related facilities [] they acquire as part of the proposed projects."

an Electric Tie Line to Connect a Solar Electric Generation Facility to the Existing Transmission System, to be Located in Iowa County, Wisconsin.

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([PSC REF#: 349600](#))(Response to PSCW JK-06). ATC's cost are borne directly by Requestors as a customer of an ATC owner utility. ([PSC REF#: 353659](#))(Kite Response at 2).

This argument also reduces the test for injury in fact to a simple conditional statement: if an alleged injury is theoretical, then it cannot be injury in fact. However, this argument obfuscates the complexity of this test. "Injury alleged, which is remote in time or which will only occur as an end result of a sequence of events set in motion by the agency action challenged, can be a sufficiently direct result of the agency's decision to serve as a basis for standing." *Wisconsin's Environmental Decade, Inc. v. Public Service Commission of Wisconsin et al.*, 69 Wis. 2d. 1, 14, 230 N.W.2d 243 (1975). "However, the sequence of events cannot be so conjectural or hypothetical, ... as to strain the imagination." *Fox v. Wisconsin Dept. of Health and Social Services*, 112 Wis.2d 514, 334 N.W.2d 532 (1983) (internal citation omitted).

The Joint Application describes the facilities and their acquisition, in a manner that renders alleged injury to Requestors a possible result of Commission action. If constructed, the energy generated by the facilities will dispatch according to the requirements of the MISO market across an integrated transmission system. ([PSC REF#: 343600](#) at 5 and 24). So the construction and operation of the facilities, in some way, will impact the interests of all electric consumers in the state. For the same reasons, the acquisition of the facilities may compound (or lessen) these impacts, or cause impacts to the public different in nature to that of the facilities. Therefore, in this proceeding, whether the acquisition poses injury to Requestors is up for debate.

Simply because Requestors cannot precisely enumerate the injury alleged at this stage of the proceeding does not disqualify that injury as so conjectural or hypothetical as to strain the imagination. By asking the Commission to reject an assertion of "theoretical" but possible injury, Joint Applicants ask the Commission to force Requestors to prove injury will occur before they are allowed to participate in the process by which those fact may be revealed. This runs contrary to logic, and the plain language of the standard for intervention which provides, "[a] person whose substantial interests **may** be affected by the commission's action or inaction in a proceeding shall be admitted as an intervenor." Wis. Admin. Code § PSC 2.21(1) (emphasis added), *See* Wis. Stat. § 227.44(2m).

Joint Applicants also assert that Requestors' participation at this time, will disrupt the proceeding will cause additional burdens upon the existing parties by requiring responses to Requestors' discovery, and review of possible response to Requestors' offered evidence.

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(Response at 3-4). However, Requestors' exercise of their rights to discovery, and to rebut and offer countervailing evidence in this proceeding overcomes any inconvenience that activity may cause Joint Applicants.

Any prejudice or undue burden, any party may cause in the course of this processing, if brought to this tribunal's attention in the timely manner, will be addressed with paramount consideration to creating a complete and accurate record upon which the Commission may deliberate to form a just and reasonable decision supported by substantial evidence.

For these reasons, this Order grants the Requests.

A handwritten signature in black ink, appearing to read "Michael E. Newmark". The signature is stylized and cursive, with a prominent flourish at the end.

Michael E. Newmark
Administrative Law Judge

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