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PUBLIC SERVICE COMMISSION OF WISCONSIN

Petition for Administrative Rules for Siting of Solar Generation
Facilities.

1-AC-254

ORDER

This is the Order on the Petition for Administrative Rules Regarding the Siting of Solar Generation Facilities. On December 7, 2018, the Jewel Jinkins Intervenors (JJI) petitioned the Public Service Commission (Commission) for rulemaking regarding siting solar projects and a request for the creation of an advisory committee to assist in that rulemaking. (JJI Petition, [PSC REF#: 354919](#).) On January 10, 2019, the Commission received a nearly identical petition filed on behalf of 23 residents of Jefferson County, Wisconsin (Residents Petition, [PSC REF#: 357360](#).) The Commission considered the JJI Petition and the Residents Petition (collectively, Petitions) at its open meeting of January 31, 2019. The Petitions are DENIED.

Background

The JJI petitioners requested “rules with siting criteria and standards for solar generation, and to utilize and [sic] advisory committee in the rulemaking process.” ([PSC REF#: 354919](#), at 1). They requested that such rules be “similar to those for wind found in Wis. Code Chapter 128” (*Id.*) They asked that this rulemaking develop regulations governing the following:

information to be included in solar applications; land leasing, purchasing, and promotional practices; notice requirements for local governments and non-participants in project area; limits to percentages and/or acreages that can be removed from agricultural production; setbacks from roads, homes, public buildings and other receptors; permissible and prohibited glare of the panels; collector system locations and specifications; drainage and run off and water collection systems; fencing and vegetation surrounding a project or pieces of the project; construction best practices and model development agreements; unintended economic consequences of removal of land from production, such as

loss of revenue for agricultural support industries including equipment sales and repair, planting, spraying and harvesting services; potential for population decrease if farms are no longer farming and residents move; decommissioning plan and financial assurance to be in place prior to construction; and other issues that become apparent in the rulemaking process.

(*Id.*, at 2.) They also requested that the environmental review categories set forth in Wis. Admin. Code ch. PSC 4, Table 3 be revised to add megawatt thresholds for solar projects. (*Id.*, at 3.)

They further requested that the Commission establish an advisory committee under Wis. Stat. § 227.13 to participate in the rulemaking.

The Residents Petition was filed by 32 residents of Jefferson County who submitted they have an interest in this matter because “Invenergy is currently in the process of planning another 300MW/3500 acre large solar electric generating facility (known as Sinnissippi Solar) in our community.” ([PSC REF#: 357360](#), at 3.) Like the JJI petitioners, they requested this rulemaking “to provide rules with siting criteria and standards for large solar electric generating facilities, and to utilize an advisory committee in the rulemaking.” (*Id.*, at 1.) They requested that such rules “be targeted at promulgating rules, siting guidelines, restrictions, and standards for large solar electric generating facility construction, operation, and maintenance.” (*Id.*) They asked that this rulemaking develop regulations governing the following:

- Information to be included in solar applications;
- Land leasing, purchasing and promotional practices;
- Notice requirements for local governments and non-participants in project area;
- Limits to percentage and/or acreages that can be removed from agricultural production;
- Setbacks from roads, property lines, public buildings and other receptors;
- Permissible and prohibited glare of the panels;
- Collector system locations and specifications;
- Drainage and run off and water collection systems;
- Fencing and vegetation surrounding a project or pieces of the project;
- Noise level limitations including infrasound;
- Interference mitigation procedures;

- EMF evaluation and limitation;
- Procedures to make non-participating property owners whole in the event that they experience loss of property values;
- Construction best management practices and model development agreements;
- Unintended economic consequences of removal of land from production, such as loss of jobs to the farming community, increase cost to lease land, loss of revenue for agricultural support industries including equipment sales and repair, planting, spraying and harvesting services;
- Decommissioning plan and financial assurance to be in place prior to construction;
- Fencing, height and material;
- Lighting;
- Groundcover, type and maintenance;
- Tree removal limitations;
- Stray voltage;
- Emergency response plans;
- Fire prevention, including battery storage;
- Land grading limitations;
- Public road restoration post construction;
- Health implications to people, livestock, pets (noise, stray voltage, emf, etc.)
- Other issues that become apparent in the rulemaking process.

(*Id.*, at 2.) They also requested that the environmental review categories set forth in Wis. Admin. Code ch. PSC 4, Table 3 be revised to add megawatt and/or acreage thresholds for solar projects.

(*Id.*, at 2.). They also requested that the Commission establish an advisory committee pursuant to Wis. Stat. § 227.13.

A response to the JJI Petition was filed by Badger Hollow Solar Farm, LLC (Badger Hollow) on December 27, 2018. ([PSC REF#: 356140.](#)) Badger Hollow also filed a response to the Residents Petition on January 29, 2019. ([PSC REF#: 358514.](#)) RENEW Wisconsin, Clean Wisconsin, and Clean Grid Alliance filed a response on January 30, 2019. ([PSC REF#: 358633.](#)) Those responding to the Petitions urged the Commission to deny the requests to open a rulemaking for the siting of solar generation facilities.

Legal Standard

Wisconsin Stat. § 227.12 states, in relevant part:

- (1) Unless the right to petition for a rule is restricted by statute to a designated group or unless the form of procedure for a petition is otherwise prescribed by statute, a municipality, an association which is representative of a farm, labor, business or professional group, or any 5 or more persons having an interest in a rule may petition an agency requesting it to promulgate a rule.
- (2) A petition shall state clearly and concisely:
 - (a) The substance or nature of the rule making requested.
 - (b) The reason for the request and the petitioners' interest in the requested rule.
 - (c) A reference to the agency's authority to promulgate the requested rule.

Wisconsin Admin. Code § PSC 2.07(4) provides that “[a]ny person may file a response to the request within 20 days of the date of service of the request.” Wisconsin Admin. Code § PSC 2.07(5) requires that the Commission must either deny the petition or open a docket within 60 days from the date of receipt of a request. *See also*, Wis. Stat. § 227.12(3). If the petition is denied, the Commission must provide a brief statement for the reason for denial. Wis. Stat. § 227.12(3), Wis. Admin. Code § PSC 2.07(5).

Wisconsin Stat. § 227.13 states:

An agency may use informal conferences and consultations to obtain the viewpoint and advice of interested persons with respect to contemplated rule making. An agency may also appoint a committee of experts, interested persons or representatives of the public to advise it with respect to any contemplated rule making. Such a committee shall have advisory powers only. Whenever an agency appoints a committee under this section, the agency shall submit a list of the members of the committee to the joint committee for review of administrative rules.

Whether or not to grant a petition for administrative rulemaking or create an advisory committee to assist in any such rulemaking is within the agency’s discretion.

Opinion

Wisconsin Stat. § 227.12(1) provides that only a “municipality, an association which is representative of a farm, labor, business or professional group, or any 5 or more persons having an interest in a rule may petition an agency requesting it to promulgate a rule.” It is unclear from the JJI Petition filing upon whose behalf the JJI Petition was actually filed. The JJI Petition is signed by five individuals (Alan and Marcia Jewell, Richard and Patricia Jinkins, and Wade Wendhausen) in their capacities as officers presumably of Jewell Jinkins Intervenors, Inc., which is a Wisconsin non-profit corporation formed on November 20, 2018, consisting of these five members. (*See, e.g.*, [PSC REF#: 355110, Attachment A.](#)) If the Commission construes the JJI Petition as being filed by these individuals in their individual capacity, the petition would satisfy the standing requirement of Wis. Stat. § 227.12. If the Commission interprets the JJI Petition as being filed by the non-profit corporation, it would not satisfy these requirements. Whether the JJI Petition meets the requirements of Wis. Stat. § 227.12 is unclear.

In contrast, it is clear that the Residents Petition, filed by more than 5 persons, meets these requirements. Because the JJI Petition and the Residents Petition are substantially similar and there is no doubt as to the compliance of the Residents Petition with Wis. Stat. § 227.12, and, because the Petitions can be denied on other grounds, the Commission declines to address the standing issue associated with the JJI Petition.

The Commission denies the Petition because a rulemaking is not necessary at this time. The subject matter the Petitions request be addressed in rulemaking are already addressed and established through the Commission’s application of either Wis. Stat. § 196.491 and/or Wis. Admin. Code § PSC 111.53. Wisconsin Stat. § 196.491 applies to the review and siting of all

large electric generation and transmission facilities that require a Certificate of Public Convenience and Necessity (CPCN). The statute does not distinguish between the types of generation. Wisconsin Admin. Code ch. PSC 111 details the requirements for CPCNs. While the rules distinguish between generation and transmission facilities, there are not, contrary to the statement in the JJI Petition, specific siting regulations in the administrative code based upon the type of generation (*e.g.*, coal, nuclear, natural gas). Wisconsin Admin. Code § PSC 111.53(1) details the application filing requirements for all large scale electric generating facilities, and Wis. Admin. Code § PSC 111.53(1)(g) requires the submittal of “[a]ny additional information the commission may request, including information necessary for it to make the determinations listed in s. 196.491(3)(d), Stats., or to prepare an environmental assessment or an environmental impact statement under s. 1.11, Stats.” As a result, the Petitions fail to identify a need for the requested rulemaking specific to the siting of solar generation facilities.

While the Commission does have administrative code provisions specific to the siting of wind generating facilities (Wis. Admin. Code ch. PSC 128), such requirements are not specifically applicable to CPCN projects. Wisconsin Admin. Code § PSC 128.02(3) simply provides that “[t]he commission shall consider whether the installation or use of a wind energy system is consistent with the standards specified in this chapter when reviewing an application under s. 196.491(3)(d), Stats., filed on or after March 1, 2011.” Further, it was the Legislature that required the promulgation of these rules with the assistance of a Wind Siting Council. Wis. Stat. § 196.378(4g). Here, the rules the Petitions request lack the legislative support or directive that served as the impetus for the Commission to promulgate siting rules applicable to wind facilities.

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The Commission also finds that a rulemaking is not needed as there is no change needed to address the scope of environmental review for large scale solar projects. Pursuant to Wis. Admin. Code ch. PSC 4, Table 3 identifies construction of solar-powered electric generating facility as a Type III action. However, Wis. Admin. Code § PSC 4.10 specifically provides that while Type III actions do not normally require preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), “[a]n evaluation of a specific Type III proposal, however, may indicate that the preparation of an EA or EIS is warranted for that proposal.” As such, the existing rules provide the necessary flexibility in order to ensure that large scale solar projects get an appropriate level of environmental review.

Finally, because the Commission concludes there is no need for the requested rulemaking, the request for the establishment of an advisory committee under Wis. Stat. § 227.12 is also not necessary.

For these reasons, and those stated in the responses filed in opposition to the proposed rulemaking in this docket, the Commission DENIES the Petitions.

Dated at Madison, Wisconsin, the 6th day of February, 2019.

By the Commission:

A handwritten signature in black ink that reads "Steffany Powell Coker". The signature is written in a cursive, flowing style.

Steffany Powell Coker
Secretary to the Commission

SP: DL:01672603