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 – PETITION FOR REHEARING

Jewell Jinkins Intervenors ("JJI") submit this Petition for Rehearing as provided by Wisconsin Statute §227.49. JJI requests that the Commission immediately stay its decision and reconsider its determinations regarding the joint application for acquisition of 300 MW of solar (200MW by WPSC and 100 MW by MGE) and the generation transmission tie-line of Wisconsin Public Service Corporation (WPSC) and Madison Gas and Electric Company (MGE) (hereinafter "Applicants").[1] This application and Commission Decision requires rehearing due to errors of fact and law and in consideration of the requirements of Wis. Stat. §196.49; Wis. Stat. § 1.11 and Wis. Admin. Code § PSC 4.30.

Jewell Jinkins Intervenors request that this acquisition Order be stayed because it is not supported by the record, and that this Decision be remanded to the Hearing Officer for rehearing for additional fact finding.

Jewell Jinkins Intervenors are residents and landowners in the immediate vicinity of the Badger Hollow project, which proposes to move into an established agricultural community. Further, these landowners are also ratepayers in the state of Wisconsin. As such, they are directly affected and aggrieved parties. Jewell Jinkins Intervenors were full parties in this docket

[1] This Decision follows immediately on the heels of the Commission's Decision in the Two Creeks dockets, 9696-CE-100 & 101 and Badger Hollow dockets 9697-CE-100 & 101, made just minutes earlier at the same meeting. These five dockets were intentionally run together in tandem through the CPCN process in a rushed timeframe.

and participated to the best of their abilities, with the limited resources available, and with very little time and with no help from the State's Intervenor Compensation fund.

The Prehearing Memorandum framed the issues for hearing as set forth in the statutory criteria:

ISSUES:

A. Should the Commission grant in whole or in part the Application, under Wis. Stat. § 196.49, and if so, under what terms and conditions?

1. Would acquisition of the proposed project substantially impair the efficiency of the service of a public utility?

2. Would acquisition of the proposed project provide facilities unreasonably in excess of the probable future requirements?

3. Would acquisition of the proposed project, when placed in operation, add to the cost of service without proportionately increasing the value or available quantity of service?

I. FAILURE TO RECUSE IS AN ERROR OF LAW – IT IS A COMMISSIONER'S RESPONSIBILITY TO DISCLOSE A CONFLICT AND RECUSE.

The Decision of the Commission is invalid because the Chair, Rebecca Cameron Valcq, has a direct conflict-of-interest that was not disclosed, nor was it addressed, despite the opportunity when it was raised by Jewell Jinkins Intervenors at the Commission meeting of April 11, 2019. Commissioner Valcq should have recused herself, and should not have participated in the discussion and should not have voted. Instead, Chair Valcq led the discussion. Had Chair Valcq recused herself as she should have, there would have been no quorum and no decision would have been made. Her failure to recuse, in this situation, was a material and prejudicial error. Failure to recuse is an error of law, and in this case, had a significant impact.

Chair Valcq's conflict is not only related to those cases upon which she had "personally and substantially participated," but is also a matter of receiving benefits as a partner in Quarles, a

law firm working on this docket, representing an applicant, Wisconsin Public Service Corporation (WPSC), subsidiary of WEC. This taint of personal benefit is broad because Quarles is representing many clients before the Commission, and Chair Valcq would have received shareholder payments based on a range of representation beyond those which she personally and substantially participated – that financial gain is part and parcel of partner status.

In addition to her partnership at Quarles, Valcq was also in house counsel for WEC, the umbrella under which WPSC shelters:

> Prior to my appointment I was a Partner in Quarles & Brady's Energy and Environmental Group and focused my practice on regulatory, compliance and energy law. Previously, I was regulatory counsel for Wisconsin Electric Power Company where I advised on all areas of regulatory law in multiple jurisdictions as well as compliance and legislative matters.[2]

Upon appointment, the Commission and Valcq reached an agreement of matters from which she would recuse herself, interpreting the statutory "personally and substantially participated" very narrowly. SCR 20:1.11; see also Wis. Stat. §15.79. While claiming that "[t]he vast majority of her representation of the WEC Entities involved matters not jurisdictional to the Commission," the agreement disclosed 30 dockets in the agreement and supplemental agreement that are currently before the Commission. Agreement, p. 1. The agreement does not address that as a partner in Quarles & Brady's Energy and Environmental Group, Chair Valcq received a share of revenue generated from matters before the Commission, including but not limited to this docket, where Quarles represented the joint applicants.

Chair Valcq was appointed to the Commission on December 21, 2018, and began as a Commissioner on January 7, 2019. Even if we presume that Chair Valcq had no personal and substantial involvement in this docket at Quarles; even if we presume, incredible as it may be,

[2] Linked-in profile of "Becky Cameron Valcq" accessed 5/5/2019. https://www.linkedin.com/in/becky-cameron-valcq-2aa4a28

that Chair Valcq had no knowledge of this matter in her energy division of Quarles; as a partner, Chair Valcq would have received remuneration as a shareholder. It is not known at what date payments to Valcq as a shareholder in Quarles ended, or if in fact they were terminated. It is also not known the details of her leaving of Quarles, and whether there was a buy-out, which would likely increase the remuneration, including that attributable to Quarles representation of WEC and its subsidiaries. Whatever the specifics, there was a time when Chair Valcq did receive remuneration from Quarles related to the firm's representation of WPSC in the Badger Hollow docket – there is an overlap. This must be acknowledged.

As noted below in detail, Quarles was the firm working diligently in this docket to prevent Jewell Jinkins Intervenors, and Kites too, from intervening and from receiving responses to Discovery requests, resulting in a scathing Order, concluding:

> *Joint Applicants acted in every way but the manner directed by the rules, Guidelines and Prehearing Conference instructions. By ignoring these directives and erroneously asserting protection from discovery as a shield against their obligations to serve documents under Wis. Admin. Code § PSC 2.06(3)(a)1, the Motion was without any reasonable basis in law.*

Order, p. 7, January 9, 2019 (ERF: 357254).

Rule 11 violation issues aside, with this focused effort to prevent and limit intervenor participation in this docket, prior to and as Chair Valcq was taking the reins of the Commission, how did this "coincidence" of Quarles' efforts escape acknowledgement of the Commission, much less the necessary action of Chair Valcq's recusal?

Chair Valcq has the affirmative responsibility of reviewing, disclosing, and appropriately recusing herself from matters in which she has or has had a financial interest. The Commission counsel and staff have an affirmative obligation to vet appointees and perform similar conflicts checks. It is not the job of Intervenors to perform conflicts checks. However, at the April 11,

2019 Commission meeting when the Commission was undertaking deliberations on this docket and it was clear this financial conflict was not disclosed, it was raised on the record by Jewell Jinkins Intervenors' counsel. The meeting paused… a private discussion was had between Chair Valcq and Commission counsel… and then the disclosure was rebuffed and meeting resumed as if nothing had happened.

This goes beyond the appearance of impropriety. It is a direct financial conflict of interest. Chair Valcq received a share of the revenue generated by Quarles representation of the Applicants. The Commission Decision is invalid as a matter of law.

II. APPLICANTS'/QUARLES' IMPROPER EFFORTS TO DELAY AND LIMIT JEWELL JINKINS INTERVENORS PARTICIPATION.

In the first section of its Decision, the Commission notes multiple procedural steps in this order, yet there is an error of fact. Missing from the procedural steps are the Applicants' Motions which served to delay and limit Jewell Jinkins Intervenors' ability to participate in this docket –omission of this orchestrated effort is a material omission. Also missing is the failure of the PSC to grant intervenor compensation to Jewell Jinkins Intervenors or Kites, and granting intervenor compensation only to those organizations supporting and promoting the project. Also missing was any recognition of the fact that these improper and frivolous Motions that were brought against Jewell Jinkins Intervenors and Kites by Quarles, Chair Valcq's former firm, all dated prior to her appointment to the Commission.

The missing procedural steps in the Commissions outline are the Motions brought by Quarles and the responses. First is the Applicant's November 19, 2018 Opposition to the intervention request of Jewell Jinkins Intervenors the week before. This intervention request was not decided until the Order of December 4, 2018, granting Jewell Jinkins Intervenors' intervention request, at which time Discovery could begin. However, Jewell Jinkins Intervenors

were still not able to fully participate as Quarles delayed in sending a Confidentiality Agreement for execution, and then Applicants filed a Motion for Interlocutory Review regarding the JJI intervention on December 10, 2018. That was dismissed by law as the Commission did not act on that Motion.

Applicants next filed a Motion for Protective Order on December 12, 2018. There was Much back and forth, from JJI's response (ERF 355434) to Applicants Reply (ERF 355757) to JJI's Response to Reply (ERF 355811), an abuse of process, wasting time and effort with conflations and misstatements regarding CEII and confidential information. From JJI's Response to Reply, setting out the egregious nature of Applicants' filings:

> 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 <u>all the confidential information</u>, as did Kites:
>
> > Please provide **all other confidential *<u>and</u>*** 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.

> 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 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.

JJI's Response to Reply, p. 2-3 (ERF 355811). The request was clearly stated, and resistance was abuse of process.

Jewell Jinkins Intervenors also raised abuse of process in its response to the Applicant's Motion for Interlocutory Appeal:

> Applicants' Objection and Motions are an abuse of process that has sucked Intervenors into a cycle of responding which takes time away from effective participation in the docket, delays Discovery, and which does "impede the timely completion of the proceeding or docket." Applicants' should be held accountable for their delays.

JJI Response, p. 6, December 15, 2018 (ERF 355472).

At its December 20, 2018 meeting, "The Commission took no action on the Motion for Interlocutory Review and allowed the motion to be denied by operation of law, pursuant to Wis. Admin. Code § PSC 2.27(3)." 12/20/2018 Minute (ERF 357275).

It was not until January 9, 2019 that the ALJ's Order denying Applicant's Motion for Protective Order was filed, as above, concluding:

> *Joint Applicants acted in every way but the manner directed by the rules, Guidelines and Prehearing Conference instructions. By ignoring these directives and erroneously asserting protection from discovery as a shield against their*

obligations to serve documents under Wis. Admin. Code § PSC 2.06(3)(a)1, the Motion was without any reasonable basis in law.

Order, p. 7, January 9, 2019 (ERF: 357254).

The hearing for this docket was January 18, 2019, just 9 days later.

Jewell Jinkins Intervenors had little opportunity to participate, due to the machinations of the Applicants.

Applicants' abusive tactics wasted the limited time in this docket schedule and limited resources of not only Jewell Jinkins Intervenors in four responses to their Motions, but intervenor Kites as well, and wasted the time of the Commission's Administrative Law Judge. This delay extended from Jewell Jinkins Intervenors November 12, 2018 intervention request, which the ALJ had wanted to address at the Prehearing Conference the following day,[3] until the January 9, 2019 Order, two months, where Jewell Jinkins Intervenors were severely prejudiced and limited in opportunity to meaningfully participate. This delaying tactic should be acknowledged and negatively sanctioned by the Commission, rather than the Commission rewarding their actions by granting this acquisition application.

III. STATUTORY CRITERIA MUST BE MET FOR AN APPLICATION TO BE APPROVED.

The commission may refuse to certify a project if it appears that the completion of the project will do any of the following:

1. Substantially impair the efficiency of the service of the public utility.

2. Provide facilities unreasonably in excess of the probable future requirements.

3. When placed in operation, add to the cost of service without proportionately increasing the value or available quantity of service unless

[3] See 5-BS-226, Tr. 4-8.

> the public utility waives consideration by the commission, in the fixation of rates, of such consequent increase of cost of service.

Wis. Stat §196.49(3)(b).

A. ACQUISITION IMPAIRS THE EFFICIENCY OF THE SERVICE OF A PUBLIC UTILITY.

The first of the statutory criteria is difficult to apply in this case. Would acquisition of the proposed project LLC owner substantially impair the efficiency of the service of a public utility? The project will be acquired not as owning the project, but as owning the LLC that owns the project.[4] This was not addressed in the Commission Decision. The acquisition contracts were not yet filed in this docket, and the Commission had not reviewed them prior to the Decision. To approve an acquisition without review of the underlying documents is an abdication of the Commission's due diligence and an error of law and fact.

B. ACQUISITION OF THE PROPOSED PROJECT PROVIDES FACILITIES UNREASONABLY IN EXCESS OF THE PROBABLE FUTURE REQUIREMENTS.

Jewell Jinkins Intervenors adopt the technical economic arguments of Citizens Utility Board as if fully related here. JJI is not expert in this matter, had no resources to sponsor a witness. CUB has significant expertise, to which JJI defers.

C. IT IS UNKNOWN IF COST IS REASONABLE IN RELATION TO BENEFITS BECAUSE SPECIFICS HAVE NOT BEEN DISCLOSED.

Jewell Jinkins Intervenors again adopts the technical economic arguments of Citizens Utility Board as if fully related here. JJI is not expert in this matter, and have no resources to sponsor a witness. CUB has significant expertise, to which JJI defers.

[4] See Wis. Stat. §196.49(3)(b)3. From Decision Matrix, see Ex.-Application-2; Tr. 48:23-49:2; Direct-CUB-Singletary-10-12; Direct-PSC-Vedvik-r-7-17, Surrebuttal-PSC-Vedvik-cr-1-12, Surrebuttal-PSC-Vedvik-pr-1-12, Ex.-PSC-Vedvik-1-13; Surrebuttal-PSC-Grant-1-4

The costs of interconnection and the Badger Hollow project itself are speculative. On the positive side, the Commission did place a limit on the acquisition cost of the Badger Hollow share of the acquisition, however, the acquisition contracts and agreements are not in the record, so the acquisition and its cost remains speculative. In its CPCN application, Badger Hollow's treatment of "cost" was "This section is omitted as it is only applicable to public utility sponsored projects." Application, p. 16 (ERF 349485). The transmission side is more troubling, with the MISO transmission studies not completed, in fact, only just begun.

WPSC and MGE are acquiring just 150 MW of the 300 MW Badger Hollow solar project. The Commission allowed this docket to proceed without the necessary information regarding the other 150 MW of this project. The Applicants will be acquiring one-half of the project, and not the project in its entirety, as they are for the Two Creeks project. The plan for the other half of the Badger Hollow project is uncertain and speculative, with Badger Hollow either finding a buyer for the capacity or half the project, or selling energy on the open market. There is no evidence in the record of the impact of the "other half" of the project on the acquired half, i.e., if the "other half" is not built, is not operational, how does that affect the acquired half. Is the cost of the project dependent on the other half being operational? There is no evidence in the record on this issue of the Badger Hollow project as a whole v. the project as the "other half."

WPSC and MGE could be at risk of substantially impairing their efficiency of service by taking on this speculative project. There is no assurance that the other half can be sold, no assurance that the project as a whole would not produce excess capacity beyond future requirements. There is no assurance that half of the project's failure to successfully market the other half of capacity would or would not have a would not weigh the WPSC and MGE half of

the project down. The impact of the "other half" is utterly speculative and needs clarification through evidence.

Transmission interconnection of the Badger Hollow project is more obviously speculative because the interconnection itself is not certain. Only the first of three studies is complete and there is no Generation Interconnection Agreement. The total costs to interconnect, and to interconnect at the requested 300 MW, are unknown, as is the more basic question as to whether the project can connect into the system and what transmission system and what substation would be utilized.

The speculative nature of interconnection was revealed in testimony and the first of three MISO studies to be performed, released in December, 2018. Tr. 100:7-104:2; see Ex.-Plante-5, MISO DPP August 2017 Wisconsin Area Phase 1, System Impact Study Report, December 13, 2018 (selected, only references to J870 and J871). The other studies will be produced by MISO, and the Generation Interconnection Agreement signed, sometime in the future, and Plante was not aware of when that would be. Tr. 100:7-104:2.

Total estimated costs for the project's network upgrades are stated in Table 1.2-1. Id, p. 6. The total cost of network upgrades is $3,543,170, with an additional $502,500 in Affected System costs and $311,801 in TOIF costs (Transmission Owner Interconnection Facilities) totaling $4,357,471, a small percentage of the expected project costs. Id. These costs will be apportioned, and at this time, that apportionment is not known.

The MISO DPP study, Table "8.2.12 J870 and J871" states that for J870 and J871, the Badger Hollow project, the "Deliverable (NRIS) Amount in 2022 Case is 259.85 MW (Conditioned on ERIS upgrades and case assumptions out of 300 MW requested). Additional MISO studies will be performed, but at this time, based on this study, interconnection of the

Badger Hollow project is speculative because the 259.85MW megawatts deliverable are less than the 300 MW total project capacity requested.

These are all issues that can be corrected, identification and correction of interconnection and network issues is the purpose of the MISO interconnection studies, but at what cost, and under what timeline? The interconnection and cost is speculative.

The economics of the project are speculative in two essential respects: There is no definitive cost estimate or apportionment scheme of Badger Hollow as a whole and the "other half," and there no assurance that the acquisition of only one half of the project will not add to the cost and not increase value or availability of service. Interconnection availability and costs will only be certain at execution of the Generation Interconnection Agreement, which is off in the future, the essence of "speculative."

The Applicants have the burden of proof in their application docket, and have not demonstrated whether this project will or will not add to the cost of service without proportionately increasing the value or available quantity of service. Approval of this project at this stage is an error of law.

IV. APPLICANTS HAVE NOT COMPLIED WITH THE BROWNFIELD STATUTE, WIS. STAT. §196.491(3)(d)8.

The emphasis of the importance of siting on brownfields is clear:

> **(4)** The commission **may not issue** a certificate under sub. (1), (2), or (3) for the construction of electric generating equipment and associated facilities unless the commission determines that brownfields, as defined in s. 238.13 (1) (a) or s. 560.13 (1) (a), 2009 stats., are used to the extent practicable.

Wis. Stat. §196.49(4) (emphasis added).

The Commission's approval of this acquisition application is an error of law. There is no evidence in the acquisition docket record regarding use of brownfields, thus there is no evidence

in the record regarding compliance with Wis. Stat. §196.491(3)(d)8 (see also §238.13(1)(a). Wisconsin law governing granting of CPCNs is less firm, but also requires that:

> For a large electric generating facility, brownfields, as defined in s. 238.13 (1) (a), are used to the extent practicable.

Wis. Stat. §196.491(3)(d)8 .

The Commission staff and some parties all cite, in "Issue 3" of the Decision Matrix, to "Direct-PSC-Schumacher-r-1-2," but there is absolutely nothing in "Direct-PSC-Schumacher-r-1-2" whatsoever about analysis of potential brownfield sites, and there is absolutely nothing in this record about potential use of brownfield sites. The Decision Matrix, upon which Commissioners rely, contains false statements, and statements are made using false citations – this was raised by Jewell Jinkins Intervenors in its Decision Matrix comment, and in oral argument before the Commission.

At the Commission's April 11, 2019 meeting, "Issue 3" was presented by Chair Valcq as uncontested, at which time Jewell Jinkins Intervenors objected.

In the EA for the Badger Hollow CPCN dockets, regarding Badger Hollow (**NOT** this acquisition docket), the discussion of "brownfield sites" was limited to just one paragraph:

> *Badger Hollow evaluated a range of variables to arrive at the selection of the proposed site facilities. The application provides details of this selection process in Section 1.4.2.*[5] *The application describes the method by which Badger Hollow analyzed the entire state of Wisconsin to site a solar facility and arrived at the current location. It describes a three-tiered evaluation; state level, regional level, and project area level. At the regional level, the potential use of brownfield sites was evaluated. A list of brownfield sites was accessed from the U.S. Environmental Protection Agency (EPA) website, and 113 properties were identified in the approximately 9,250 square mile area of southwest Wisconsin. Through that analysis, Badger Hollow determined that none of the brownfield sites would be suitable due to insufficient acreages.*

Badger Hollow EA, p. 7 (ERF 357519).

[5] PSC REF#: 349485, pages 8-12

In the Badger Hollow CPCN Application narrative, it states similarly:

> The potential use of existing Brownfield sites within the region was evaluated. A comprehensive list of Brownfield sites was accessed from the US EPA website, and 113 properties were identified in the approximately 9,250 square mile area covering southwest Wisconsin. The average size of these properties was less than five acres, and further searching at the state level showed the largest brownfield property as 369 acres in Oneida, WI1.
>
> Given the land requirements of the proposed Project, it was concluded that no Brownfield sites would be suitable.

Badger Hollow Application, p. 9 (ERF 349485). There are no "details" in the CPCN EA, and it is obvious at a glance that for the EA, the application section was copied and modified slightly.

The Commission's Decision states that "this requirement is potentially inapplicable," recognizing the weakness of this rationalization. Further, it states that:

> Regardless, the underlying CPCN dockets conducted concurrently authorizing the Solar Facilities include such an analysis as part of the EAs. No party introduced any evidence contrary to this finding.

Decision, p. 20. Neither the Application nor the EA contains an "analysis." There is no primary documentation of the brownfield search. There is no way to tell if use of brownfields was possible, and no support for a finding that it was not.

The Issue 3 page of the Decision Matrix, again, cites "Direct-PSC-Schumacher-r-1-2" but a review of that testimony shows that there is nothing regarding brownfields. On that page, citing Schumacher's testimony, are PSC staff, WPSC, MGE, Sierra Club and even Kites. This is improperly misrepresenting that testimony and making a false statement in the Decision Matrix.

Jewell Jinkins Intervenors noted in writing that **"Direct-PSC-Schumacher-r-1-2 (contains NOTHING about brownfields)(the EA parrots CPCN Applicant's statements without analysis)."** JJI Decision Matrix, Issue 3 (ERF 360086).

DRAFT Decision Matrix
Multiple Utilities
Docket 5-BS-228
February 14, 2019

Issue 3: Does the proposed acquisition comply with Wis. Stat. § 196.49(4), and use brownfields to the extent practicable? (Uncontested)		
Issue Scope: The Commission must find that the proposed acquisition uses brownfields to the extent practicable before issuing a CA. As defined in Wis. Stat. § 238.13(1)(a), a brownfield means "abandoned, idle, or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination."		
PARTY POSITIONS	AMOUNT*	TRANSCRIPT REFERENCES
Jewell Jinkins Intervenors: There is no evidence in the record regarding use of brownfields, there is no evidence in the record regarding compliance with Wis. Stat. §238.13(1)(a).		Direct-PSC-Schumacher-r-1-2 (contains NOTHING about brownfields)(the EA parrots CPCN Applicant's statements without analysis).
Commission Staff: No evidence was presented showing that the acquisition did not use otherwise available brownfields.		Direct-PSC-Schumacher-r-1-2
COMMISSION ALTERNATIVES		
Uncontested Alternative One (a): For MGE, the proposed acquisitions comply with Wis. Stat. § 196.49(4).	**Uncontested Alternative One (b):** For WPSC, the proposed acquisitions comply with Wis. Stat. § 196.49(4).	
Commissioner Notes:		

That plain language should be sufficient to bring it to the attention of the Commission.

Oh, but wait… The FINAL Decision Matrix filed by staff:

FINAL Decision Matrix
Multiple Utilities
Docket 5-BS-228
February 27, 2019

Issue 3: Does the proposed acquisition comply with Wis. Stat. § 196.49(4), and use brownfields to the extent practicable? (Uncontested)		
Issue Scope: The Commission must find that the proposed acquisition uses brownfields to the extent practicable before issuing a CA. As defined in Wis. Stat. § 238.13(1)(a), a brownfield means "abandoned, idle, or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination."		
PARTY POSITIONS	AMOUNT*	TRANSCRIPT REFERENCES
CUB: Does not oppose the Uncontested Alternative.		
Jewell Jinkins Intervenors: There is no evidence in the record regarding use of brownfields.		
Kite: Do not oppose the uncontested alternatives in the event a CA is deemed appropriate by the Commission.		Ex.-WPSC and MGE-Joint Application-r2 at 9 Direct-CUB-Singletary-r-11-12
MGE: MGE supports the uncontested alternatives. The record does not contain any evidence suggesting that a brownfield site would be practicable or of sufficient size for the solar projects.		Direct-PSC-Schumacher-r-1-2
Sierra Club: Uncontested Alternative One (a) and (b). Both WPSC and MGE are compliant with Wis. Stat. § 196.49(4) to Sierra Club's knowledge.		Direct-PSC-Schumacher-r-1-2
WPSC: WPSC supports the uncontested alternatives. WPSC agrees with MGE that the record does not contain any evidence suggesting that a brownfield site would be practicable or of sufficient size for the solar projects.		Direct-PSC-Schumacher-r-1-2
Commission Staff: No evidence was presented showing that the acquisition did not use otherwise available brownfields.		Direct-PSC-Schumacher-r-1-2
COMMISSION ALTERNATIVES		
Uncontested Alternative One (a): For MGE, the proposed acquisitions comply with Wis. Stat. § 196.49(4).	**Uncontested Alternative One (b):** For WPSC, the proposed acquisitions comply with Wis. Stat. § 196.49(4).	
Commissioner Notes:		

… staff removed that language stating **"Direct-PSC-Schumacher-r-1-2 (contains NOTHING**

about brownfields)(the EA parrots CPCN Applicant's statements without analysis)" and removed Jewell Jinkins Intervenors note of the improper citations of Schumacher's testimony as saying something that it did not!

Regarding the statement of PSC staff that "No evidence was presented showing that the acquisition did not use otherwise available brownfields" and Commission's Decision that " No party introduced any evidence contrary to this finding," that is a shift of the burden of proof off of applicants. Further, it is the PSC staff job to vet and verify the application, and staff should not attempt to shift the burden of proof when applicants have not met their burden of production.

While it is the PSC staff's task to vet and verify party comments and staff comments, on the Decision Matrix, it is not part of the job to make substantive comments disappear and proliferate "Transcript References" that are false.

The Commission's approval of this acquisition docket is invalid because there was no use of brownfield sites, much less to the extent practicable – instead, the applicability of the statute was dismissed out of hand by applicants and orally by Commissioner Huebsch at the Commission meeting. The Applicants have the burden of proof and production. There was no evaluation of use of multiple brownfield sites and available transmission at those sites (most of which were likely industrial), and would be expected to have existing transmission access, and instead, there was only blanket and unexplained rejection as not "suitable," without support. There is no evidence in the record that siting on multiple brownfields is not possible, no explanation for Applicants failure to utilize available distributed generation sites, no evidence in the record regarding, if distributed generation had been chosen, how much of the project could be sited on brownfields, nor is there any evidence in the record of potential cost savings siting on brownfields and cost savings through utilization of existing transmission infrastructure and

capacity. Applicants have not met the standard of Wis. Stat. §196.491(3)(d)8, and the Commission's approval is an error of law. Reliance on the Commission staff's version of the Decision Matrix Issue 3's references to **Direct-PSC-Schumacher-r-1-2** is an error of fact.

V. JEWELL JINKINS INTERVENORS REQUEST REHEARING

Jewell Jinkins Intervenors are parties in this proceeding and as such, are directly aggrieved parties with standing to submit a Petition for Rehearing under Wis. Stat. §227.49, based on errors of facts and law in the Commission's decision.

For all of the reasons outlined above, we respectfully request rehearing, and request oral argument of the Petitions for Rehearing. Rehearing should not occur until a third Commissioner has been appointed and seated, one without a conflict in this matter, such that the Commission can have a quorum and address this docket with Chair Valcq's recusal.

Jewell Jinkins Intervenors request rehearing because this acquisition approval is fatally flawed by the Commission's procedural errors and errors of fact and law. Most importantly, the Commission's Chair did not recuse herself – had the Chair properly recused, there would be no quorum – the Commission's Decision is invalid. Further, the Commission relied on false statements regarding brownfields, misinterpreted and did not properly address Wisconsin's statutory criteria. WPSC and MGE did not meet their burden of proof for an acquisition as proposed.

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