

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application for a Certificate of Public
Convenience and Necessity of Badger
Hollow Solar Farm, LLC to Construct a
Solar Generation Facility, to be Located in
Iowa County Wisconsin.

Docket No. 9697-CE-100

JEWELL JINKINS INTERVENORS – PETITION FOR REHEARING

Jewell Jinkins Intervenors submit this Petition for Rehearing as provided by Wisconsin Statute §229.49 and request 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)¹. This Commission Decision demands rehearing in consideration of the requirements of Wis. Stat. §196.491 and Wis. Admin. Code Chs. PSC 4 and 111.

The issues set forth in the Prehearing Memorandum are broadly framed: whether the proposed project complies with the applicable standards under Wis. Stat. §§ 1.11, 1.12, 196.025, and 196.491, and Wis. Admin. Code, chs. PSC 4, and 111. As a utility scale solar project, this is a matter of first impression in Wisconsin, and although there are CPCN criteria that gives a general framework for review of electric generating facilities, there are no solar specific rules to guide the Commission².

¹ This Decision was made immediately preceding the Commission’s Decision in the WPSC and MGE acquisition docket to acquire one-half of the Badger Hollow solar project. These five dockets were intentionally run together in tandem through the CPCN process in a rushed timeframe.

² For this reason, Jewell Jinkins Intervenors submitted a rulemaking petition for utility scale solar, upon which the Commission abdicated its lawful power to initiate rulemaking and instead rejected the petition with a “go to the

Badger Hollow has not met its burden of production and the burden of proof in matters such as use of brownfield sites, project impacts on the existing community, individual hardships, mitigation to avoid impacts, decommissioning, and complaint processes. There will be extensive individual hardships, impacts on community vistas, viewsheds, and aesthetics, impacts to those living, farming, and working in this long established agricultural community, with landowners such as the Jewell Jinkins Intervenors likely to suffer loss of use and enjoyment of their property, the essence of nuisance.

I. APPLICANTS HAVE NOT COMPLIED WITH THE BROWNFIELD STATUTE, WIS. STAT. §238.13(1)(a).

Jewell Jinkins Intervenors request rehearing because the Commission's Decision regarding brownfields is an error of law -- Applicants have not complied with Wisconsin's CPCN brownfield statute:..

8. For a large electric generating facility, brownfields, as defined in s. [238.13 \(1\) \(a\)](#), are used to the extent practicable. Wis. Stat. §238.13(1)(a).

The statute governing acquisitions shows of the importance of siting on brownfields:

(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 decision states that "A brownfield site for Badger Hollow's proposed project is not practicable." Decision, p. 5. The Decision states, without support, that:

The project as proposed requires approximately 3,500 acres of nearly contiguous developable land in close proximity to existing transmission facilities. None of the parties (sic. Parcels?) identified in Wisconsin brownfield sites met the siting requirements of the proposed project. The Jewell Jinkins Intervenors speculate that perhaps, in sum, multiple brownfields in Southwest Wisconsin could accommodate the amount of land needed for the project. However, the Jewell

"legislature" dismissal, repeated at the April 11, 2019 Commission meeting.

Jinkins Intervenors present no evidence to show its suggestion is practicable. Decision, p. 20.

The Commission's approval of this acquisition application is an error of law. Jewell Jinkins Intervenors, or any intervenor, do not need to demonstrate that any suggestion is practicable. It is the applicant that has the burden of production and proof, and neither has been met. Wis. Stat. §196.491(3)(d)8 (see also §238.13(1)(a)).

What was said about brownfield? What is in the record? In the EA for the Badger Hollow CPCN dockets, 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 1.4.2.³ 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)⁴. No supporting documentation was provided.

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.

³ PSC REF#: 349485, pages 8-12

⁴ The Final EA was not filed until January 14, 2019, 4 days before the hearing in this docket, just one day before the Two Creeks hearing and two days before the Badger Hollow hearing. The Draft EA was not filed, and was only available upon request to PSC staff!

Badger Hollow Application, p. 9 (ERF 349485). Despite staff's statements in the EA, there are no "details" in the CPCN application, and it is obvious at a glance that for the EA, the application paragraph was copied and modified just slightly.

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 Decision Matrix in this docket does correctly quote Jewell Jinkins Intervenors positions and Transcript References, and shows those of other parties, and properly comes to two decision alternatives – that no brownfield sites meet the siting criteria or that Badger Hollow did not comply with the mandate to utilize brownfields:

FINAL Decision Matrix
Badger Hollow Solar Farm, LLC
Docket 9697-CE-100
February 22, 2019

Issue 4: Has Badger Hollow Solar Farm, LLC (Badger Hollow) considered the use of brownfield sites to the extent practicable as required by Wis. Stat. § 196.491(3)(d)8.?		
PARTY POSITIONS	AMOUNT	TRANSCRIPT REFERENCES
<u>Badger Hollow:</u> Supports Alternative One. The siting criteria evaluated by Badger Hollow was reasonable and did not identify a brownfield site that would provide a practicable alternative site. U.S. Environmental Protection Agency data identified 113 properties in the 9,250 square miles of southwest Wisconsin. The average size of these properties was less than five acres; the largest brownfield property in the state is 369 acres. None of these properties satisfy the land requirements of the project.		Ex.-Badger Hollow-Application: Section 1.4.2 and referenced appendices Direct-Badger Hollow-Litchfield-41-42; Ex.-PSC-FEA-7
<u>Clean Wisconsin:</u> Supports Alternative One.		
<u>CUB:</u> Does not oppose the Alternative One.		
<u>Jewell Jinkins Intervenors:</u> Badger Hollow has not complied with Wis. Stat. § 196.491(3)(d)8. The applicant identified 113 brownfields identified over 9,250 square miles in SW Wisconsin, but would not consider unless large enough to fit all. Largest in state was 369 acres in Oneida; BH unreasonably rejected brownfield siting. Use of existing transmission was not evaluated until after elimination of brownfield sites. Multiple brownfields in SW Wisconsin could accommodate 300 MW of solar.		Ex-Badger Hollow-Application-9 (brownfields); Ex.-PSC-FEA-7 (brownfields, existing transmission resources)
<u>RENEW:</u> Supports Alternative One.		
<u>Commission Staff:</u> The range of siting criteria evaluated by Badger Hollow was reasonable and did not identify a brownfield site that would provide a suitable alternative site.		Ex.-PSC-FEA
COMMISSION ALTERNATIVES		
<u>Alternative One:</u> No existing brownfield sites meet the siting criteria for the proposed project.		
<u>Alternative Two:</u> Badger Hollow hasn't complied with Wis. Stat. §196.491(3)(d)8.		
<u>Commissioner Notes:</u>		

Again, the record does not support a determination that "No existing brownfield sites meet the siting criteria for the proposed project.

The Commission's approval of this acquisition docket is invalid because there was no use of brownfield sites, either utilizing distributed sites or siting a portion of the project on brownfields. Brownfields were not used 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), only rejection as not “suitable,” without support in the record. 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. The Commission's approval is an error of law.

**II. THE COMMISSION'S ORDER MUST BE STAYED BECAUSE
STATE HAS NOT PREPARED FOR A 300 MW SOLAR PROJECT –
THIS IS AN ISSUE OF FIRST IMPRESSION AND THERE ARE NO
RULES.**

Generally, a CPCN is reviewed under Wisc. Stat. §196.491(3)(d). After removal of the criteria for transmission lines, Wis. Stat. 196.491(3)m, r, and t; and removal of those expressly inapplicable to wholesale merchant plants, Wis. Stat. §196.491(2), and those related to the impact of air pollution, leaves few CPCN statutory requirements remaining. Wis. Stat. §196.491(3)(d) (selected).

Environmentally, the project is regarded as a Type III action under Wis. Admin. Code §

PSC 4.10(3). The code is what it is – there is a ceiling of 10 MW for wind projects classified as Type III, but there is no threshold for solar where deeper review is required:

- cg. Construct a wind-powered electric generation facility whose nominal capacity is less than 10 MW.
- cr. Construct a solar-powered electric generation facility.

For environmental review purposes, solar projects of all sizes, even this 300 MW project, larger than any project in the Midwest, are regarded as a Type III action, with no substantive environmental review required. Id., Table, Type III. This project, combined with the generation tie-line project (docket (9697-CE-101), were reviewed in an Environmental Review. The Environmental Assessment did point out many significant impacts, yet in the review of criteria for an EIS determination, the significant impacts were not forwarded into that evaluation. The many significant impacts identified by PSC staff should trigger a full EIS.

While wind specific siting rules have been promulgated, Wisconsin does not have solar specific siting statutes, rules or standards. See Wis. Stat. §196.378(4g)(a)4. PSC staff admits that “the Commission has no experience with utility-scale solar developments,” but recounts Commission authorization of “five utility-scale wind developments located within the state.” Direct-PSC-Grant-r-3. Grant notes that the Commission developed wind siting rules (not mentioning the legislative mandate). Id. Further, there is a statutory mandate to promulgate rules regarding wind decommissioning and financial assurance:

The commission shall promulgate rules requiring the owner of a wind energy system with a nominal operating capacity of at least one megawatt to maintain proof of financial responsibility ensuring the availability of funds for decommissioning the wind energy system upon discontinuance of use of the wind energy system. The rules may require that the proof can be established by a bond, deposit, escrow account, irrevocable letter of credit, or other financial commitment specified by the commission.

Wis. Stat. §196.378(4g)(d). Wis. Code Chapter PSC 128 does address these issues and more.

The Commission must consider these rules in its evaluation of a wind CPCN application:

- (dg) In making a determination under par. (d) that applies to a large electric generating facility, if the large electric generating facility is a wind energy system, as defined in s. 66.0403 (1) (m), the commission shall consider whether installation or use of the facility is consistent with the standards specified in the rules promulgated by the commission under s. 196.378 (4g) (b).

There are none of these considerations for siting solar.

Wisconsin clearly did not expect a solar project of this size, and is not prepared. There are no state setbacks, no noise criteria, no decommissioning plan requirements or financial assurance for solar as there is for wind. In numerous points in this docket, staff and applicants leaned on wind siting for guidance for solar siting. As noted by Applicant's counsel, "... this is not a rulemaking proceeding." Tr. 13:14. That's correct, and to proceed without a solar rulemaking and a framework in place results in a decision that is arbitrary and capricious and an error of law.

III. REHEARING IS REQUESTED BECAUSE PROJECT WILL INTERFERE WITH ORDERLY LAND USE AND DEVELOPMENT -- THE COMMISSION SHOULD OPERATE WITH PREVENTION OF PROBLEMS AS ITS FIRST CONCERN.

The Commission should focus on prevention of problems, particularly in an issue of first impression, and consider the existing community and land use plans. This did not occur. The Badger Hollow project is not compatible with agriculture, it is not compatible with community plans, values, and it will significantly impair viewsheds and aesthetics. This utility scale solar project is an "either/or" because the area will be either agriculture, or it will be solar, but both are not possible.

Wisconsin law prohibits local government from restricting development of renewable energy, and PSC jurisdiction pre-empts local governments' ordinances. Wis. Stat. §66.0401(1m). In this vacuum, the Commission should give great weight to the impact of the project on the area proposed for siting. One of the criteria that does apply to this project is PSC consideration of

whether:

The proposed facility will not unreasonably interfere with the orderly land use and development plans for the area involved.

Wis. Stat. §196.491(3)(d)6.

This solar project covering more than 3,000 acres with a 30-50 year project life, will unreasonably interfere with the orderly land use and development plans for the area. The Environmental Assessment details potential permanent impacts, and states:

To the extent that the thousands of acres of land occupied by the solar farm facilities would not be available for agricultural production and would not support the agricultural industry, the solar farm would not be in keeping with the goals of the area's agricultural designation. The solar farm would be an industrial-type facility that is of a different character from the agricultural setting of the project area, as well.

Ex.-JJI-Jewell-r2, Draft Environmental Assessment, p. 40.

The PV subarrays would cause the greatest visual impact of the proposed project facilities. The many acres covered and **the industrial appearance of the panels would be a dramatic change from the existing views** of agricultural fields.

Ex.-JJI-Jewell-r2, Environmental Assessment, p. 56 (emphasis added).

The EA openly says that “Some of the greatest impacts of the project would be to agriculture,” and that “nearly 80 percent of the land proposed for sub-arrays (areas within the fences), totaling 2,141 acres, is classified as having prime farmland soils.” Ex.-JJI-Jewell-2[r]-p. 58. The EA also says that 54-69% of the transmission route is on cropland, depending on which route is chosen, plus an additional 55 miles of underground collection system lines. Id. This is very disturbing. This is some of the best land in Wisconsin, and arguably some of the finest farmland on the face of the earth. Other communities that have already permitted solar projects and have consciously avoided prime farmland, and Wisconsin should do the same, learning from others’ experiences.

Direct, JJI-Jewell-r2-5-6.

The Commission should operate with prevention of problems as its first concern, and setbacks are a means of prevention. Mr. Singletary asks “Are setback distances incorporated by the Applicant sufficient to mitigate undue harm to and owners within the project area that may occur due to a degradation in the aesthetics or character of areas within the project area, or reductions in property

value?” Again, this is a primary focus of Jewell Jinkins Intervenors. We have lived, worked, and invested in this community for many years, it is much more than our homes and our livelihood. The visual and aesthetic impacts affect the character of our community, and for this project, it represents a significant impact. The Commission needs to carefully consider the impact of this project coming into our pre-existing community.

Rebuttal-JJI-Jewell-r2-13; see also Direct-CUB-Singletary-7. Yes, “reasonable concerns require addressing.” Direct-CUB-Singletary-8. There is much evidence in the record regarding the impacts to local land use and plans and the long-term and likely permanent nature of these impacts. Beyond lip service without action, these reasonable concerns were not addressed by the Commission.

For these reasons, Jewell Jinkins Intervenors request rehearing for consideration and preventative actions to avoid dramatic change and preserve this agricultural community.

IV. IMPACTS ON THE CHARACTER OF THIS AGRICULTURAL COMMUNITY, CHANGE IN VISUAL NATURE, AND AESTHETICS, AND THE NOISE WERE NOT ADDRESSED BY THE COMMISSION.

The Commission’s Decision does not address impacts demonstrated in the Environmental Assessment and the concerns of Jewell Jinkins Intervenors, including the character of this agricultural community, the change in its visual nature and aesthetics if the project were to be built. These are factors to be considered under Wisconsin’s CPCN statute, and:

... a certificate of public convenience and necessity only if the commission determines all of the following:

3. The design and location or route is in the public interest considering alternative locations or routes, individual hardships, safety, reliability and environmental factors...
4. The proposed facility will not have undue adverse impact on other environmental values such as, but not limited to, ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water and recreational use...

Wis. Stat. §196.491(3)(d)3,4(selected).

Jewell testified at length of the importance of these attributes, and the probable impact if the Badger Hollow solar project moves into this pre-existing community, based on his lifelong farming experience, his formal education in agricultural economics, and his many years of writing and radio programming regarding general agricultural issues and agricultural economics. Direct-JJI-Jewell-r2, see e.g., p. 5-9; Ex.-JJI-Jewell-1, Resume. The “character of the project is a negative character with significant impacts. This project is a dreadful intrusion into our community that will permanently and irreversibly change its [character]. Rebuttal-JJI-Jewell-r2-3:6-8.

While the focus of Jewell Jinkins Intervenors is on big picture issues, the members of this association will experience individual hardships. They will be personally impacted by this project. Jewell testified in lengthy cross-examination about his extensive investment in many parcels in the area, the extent of which is indicative of his commitment to farming generally and specifically to farming in Iowa County. Tr. 186:23-194:2. In response to Data Requests from Badger Hollow, and in testimony, Jewell Jinkins Intervenors submitted information about their interests in property in Iowa County demonstrating the significant individual hardships if this 3,500 acre project moves into the area. As large landowners, the impacts will be large as well.

For Alan and Marcia Jewell:

Parcel	Owner(s)	Site Address	Tax Years
0410 - TOWN OF LINDEN	JEWELL REVOCABLE TRUST;		1992-2018
0411 - TOWN OF LINDEN	JEWELL REVOCABLE TRUST;		1992-2018
0422 - TOWN OF LINDEN	JEWELL REVOCABLE TRUST;		1992-2018
0423 - TOWN OF LINDEN	JEWELL REVOCABLE TRUST;		1992-2018
0424 - TOWN OF LINDEN	JEWELL REVOCABLE TRUST;		1992-2018
0425 - TOWN OF LINDEN	JEWELL REVOCABLE TRUST;	3362 COUNTY ROAD B; 3366 COUNTY ROAD B	1992-2018

0406.A - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP		1992-2018
0407.A - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP		1992-2018
0408 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP		1992-2018
0409 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP		1992-2018
0428 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP	2511 COUNTY ROAD Q	1992-2018
0428 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP		N/A
0428.03 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP	2511 COUNTY ROAD Q	N/A
0429 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP		1992-2018
0628 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP		1992-2018
0630 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP		1992-2018
0631 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP		1992-2018
0639 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP		1992-2018
0642 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP		N/A
0642 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP	2215 COUNTY ROAD Q	1992-2018
0642.01 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP	2215 COUNTY ROAD Q	N/A
0643 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP		1992-2018
0665 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP		1992-2018
0666 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP		N/A
0666 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP	2083 BLOOMFIELD RD	1992-2018
0666.01 - TOWN OF LINDEN	OAKDALE FARMS LTD PARTNERSHIP	2083 BLOOMFIELD RD	N/A
1176 - TOWN OF DODGEVILLE	OAKDALE FARMS LTD PARTNERSHIP	4050 US HIGHWAY 18	1992-2018
1176 - TOWN OF DODGEVILLE	OAKDALE FARMS LTD PARTNERSHIP		N/A

Parcel	Owner(s)	Site Address	Tax Years
1176.01 - TOWN OF DODGEVILLE	OAKDALE FARMS LTD PARTNERSHIP	4050 US HIGHWAY 18	N/A
1177 - TOWN OF DODGEVILLE	OAKDALE FARMS LTD PARTNERSHIP		1992-2018
1178 - TOWN OF DODGEVILLE	OAKDALE FARMS LTD PARTNERSHIP		1992-2018
1179 - TOWN OF DODGEVILLE	OAKDALE FARMS LTD PARTNERSHIP		1992-2018
1179 - TOWN OF DODGEVILLE	OAKDALE FARMS LTD PARTNERSHIP		N/A
1181 - TOWN OF DODGEVILLE	OAKDALE FARMS LTD PARTNERSHIP		N/A
1184 - TOWN OF DODGEVILLE	OAKDALE FARMS LTD PARTNERSHIP		1992-2018
1182 - TOWN OF DODGEVILLE	OAKDALE FARMS LTD PARTNERSHIP		N/A
1182 - TOWN OF DODGEVILLE	OAKDALE FARMS LTD PARTNERSHIP		1992-2018
1341 - TOWN OF DODGEVILLE	OAKDALE FARMS LTD PARTNERSHIP	4045 US HIGHWAY 18	1992-2018
1341 - TOWN OF DODGEVILLE	OAKDALE FARMS LTD PARTNERSHIP		N/A
1341.02 - TOWN OF DODGEVILLE	OAKDALE FARMS LTD PARTNERSHIP	4045 US HIGHWAY 18	N/A
1342 - TOWN OF DODGEVILLE	OAKDALE FARMS LTD PARTNERSHIP		1992-2018

Alan and Marcia Jewell have an interest in the following property of Marcia Jewell's father, who passed away in 1981, through the Charles Mueller Trust naming Marcia Jewell as heir. This land has been in the family for 125 years. The Charles Mueller Trust parcels are adjacent to the solar project. The Jewells, Marcia Jewell's brother, Mike, and nephew Matt, have rented this land for the last decade or so:

Parcel	Owner(s)	Site Address	Tax Years
0523 - TOWN OF EDEN	MUELLER, CHARLES TRUST		1992-2018
0524 - TOWN OF EDEN	MUELLER, CHARLES TRUST		1992-2018
0525 - TOWN OF EDEN	MUELLER, CHARLES TRUST		1992-2018
0526 - TOWN OF EDEN	MUELLER, CHARLES TRUST		1992-2018

Alan and Marcia Jewell also have an interest in Marcia Jewell's mother's land, through Evelyn L. Mueller Revocable Trust, of which Marcia is a named heir. The Jewell's have rented this farm for the last decade or so, with Marcia's brother, Mike, and nephew Matt. Parcel 0513 of the Evelyn L. Mueller Revocable Trust will host roughly 40 acres of Badger Hollow solar panels.

Parcel	Owner(s)	Site Address	Tax Years

Parcel	Owner(s)	Site Address	Tax Years
0505 - TOWN OF EDEN	MUELLER, EVELYN L REV TR	821 COUNTY ROAD B	1992-2018
0506 - TOWN OF EDEN	MUELLER, EVELYN L REV TR	821 COUNTY ROAD B	1992-2018
0507 - TOWN OF EDEN	MUELLER, EVELYN L REV TR		1992-2018
0508 - TOWN OF EDEN	MUELLER, EVELYN L REV TR		1992-2018
0513 - TOWN OF EDEN	MUELLER, EVELYN L REV TR		1992-2018
0516 - TOWN OF EDEN	MUELLER, EVELYN L REV TR		1992-2018

ANSWER: For Richard and Patricia Jinkins, 1086 Enloe Road, Rewey, WI 53580:

Parcel Number	Location of Property/Legal Description
016 0213	Sec15, T5N,R1E NE1/4 of SW1/4
016 0214	Sec15, T5N,R1E NW1/4 of SW1/4
016 0215	Sec15, T5N,R1E SW1/4 of SW1/4
016 0216	Sec15, T5N,R1E SE1/4 of SW1/4
016 0218	Sec15, T5N,R1E NW1/4 of SE1/4
016 0219	Sec15, T5N,R1E SW1/4 of SE1/4
016 0237	Sec16, T5N,R1E SE1/4 of SE1/4
016 0330	Sec22, T5N R1E NW1/4 of NE1/4
016 0335	Sec22, T5N,R1E NE1/4 of NW1/4
016 0336	Sec22, T5N,R1E NW1/4 of NW1/4

For Wade Wendhausen, 1962 Drinkwater Rd, Livingston, WI 53554:

Parcel Number	Location of Property/Legal Description
016 0211	Sec15, T5N,R1E SW1/4 of NW1/4
016 0212	Sec15, T5N,R1E SE1/4 of NW1/4
016 0224	Sec16, T5N,R1E PT SW1/4 of SW1/4
016 0333	Sec22, T5N,R1E E ½ of SE1/4 of NE1/4
016 0225	Sec16, T5N,R1E SE1/4 of NE1/4
016 0354	Sec23, T5N,R1E SW1/4 of NW1/4
016 0334.A	Sec22, T5N,R1E PT E of W ½ of SE1/4 of NE1/4
016 0206	Sec15, T5N R1E SW1/4 of NE1/4
016 0357	Sec23, T5N,R1E NW1/4 of SW1/4

Wade Wendhausen is currently renting 226 acres of farmland from the following landowners, who are also listed as having contracted their land to the Badger Hollow Solar project:

150 Acres currently renting from WIL-CLAR FARMS, 2468 DRINKWATER RD,
MONTFORT WI 53569

76 Acres currently renting from PEGGY A HOLMES, 1184 COUNTY ROAD IG,
MONTFORT WI 53569

These 226 acres are approximately a quarter of the total land Wade Wendhausen farms. The loss of this farmland that is contracted for Badger Hollow Solar Panel installation will negatively impact his livelihood. In addition, finding available farmland to rent in the area will be even more difficult when so many acres of farmland are leased to Badger Hollow and taken out of production.

In addition to the issues above, Jewell Jinkins Intervenors are particularly concerned about the consequences to agricultural support businesses which are dependent on farming for their business; impacts on property values, impact on value of land under solar arrays, and impact on value of land near the solar arrays; impact on value of residences near solar arrays; financial consequences to local schools , local governmental and services; and loss of population.

The Commission's Decision notes that Badger Hollow has offered "Good Neighbor Agreements" and seem to believe that that offers mitigation of impacts. This is not correct, instead, it requires landowners give away their rights. In the participant's lease agreements, there is a general waiver, a "Grant of Additional Easements" which includes:

(b) Interference. An exclusive easement for electromagnetic, audio, visual, view, light, noise, vibration, electrical, radio interference, or other effects attributable to the Solar Generating Equipment, the Project or any Site Activities...

Ex.-PSC-Staff Data Request Response-Response 2.16, Solar Lease and Easement Agreement, Appendix B (REDACTED COPY).

Insertion of a broad waiver in the land lease is an indication that issues are anticipated, and has elements of an adhesion contract. The Badger Hollow lease contains several other waivers:

9.4 Requirements of Governmental Agencies and Setback Waiver. Owner shall provide best efforts to assist and fully cooperate with Grantee, at no out-of-pocket expense to Owner, in complying with or obtaining any land use permits and approvals, building permits,

environmental impact reviews, tax abatements or any other permits and approvals reasonably necessary for the financing, construction, installation, monitoring, repair, replacement relocation, maintenance, operation or removal of Solar Facilities, including, but not limited to, execution of applications and documents reasonably necessary for such approvals and permits, and participating in any appeals or regulatory proceedings respecting the Solar Facilities. To the extent permitted by law, Owner hereby waives enforcement of any applicable setback requirements respecting the Solar Facilities to be placed on or near the Property that are reasonably necessary, in Grantee's sole and absolute discretion, to carry out Grantee's power-generating activities on or near the Premises.

14.12 Waiver of Right to Trial by Jury. EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.

Ex.-PSC-Staff Data Request Response-Response 2.16, Solar Lease and Easement Agreement, (REDACTED COPY).

In light of the record in this proceeding, with identified impacts, and in light of unknown impacts and unintended consequences inherent in this first-of-a-kind project, the Commission should exercise caution and prudence. The Commission should have exercised caution and prudence, but it did not. The record contains evidence regarding issues with the design and location, issues leading to several blanket waivers in leases, a determination of whether the project is in the public interest, the potential for individual hardships, safety issues (waived?) and environmental factors. The record information identifies potential for the proposed facility to have undue adverse impact on environmental values including ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water and recreational use.

The Commission's Decision, ignoring this mountain of evidence, is an error of law.

For these reasons, Jewell Jinkins Intervenors request rehearing of the Commission's Decision.

V. BASED ON THE MANY SIGNIFICANT IMPACTS IDENTIFIED IN THE ENVIRONMENTAL ASSESSMENT, THIS PROJECT REQUIRES AN ENVIRONMENTAL IMPACT STATEMENT.

The Commission held that an Environmental Impact Statement should not be required.

The Commission has the authority to permissively require an EIS when a situation arrants, but it did not, and instead accepted for an inadequate Environmental Assessment.

The purpose of an Environmental Assessment is to identify potential impacts, which in this case, demonstrated that significant impacts are expected.

An EIS is required if an EA determines there are significant impacts to the environment as a result of the project.

Ex.-JJI-Jewell-r2, Draft EA, p. 2; PSC-FEA; see Wis. PSC Code 420(2)(d); see also Wis. Stat. 1.1; Wis.. PSC Code 420(2)(d).

The Draft and Final Environmental Assessment (EA) drafted by PSC staff demonstrates that an Environmental Impact Statement is necessary due to the many anticipated impacts discussed in the EA and the magnitude of those impacts. The significant impacts range from a 30-50+ year usurpation of land designated for Farmland Preservation and as "Exclusive Agriculture," to noise levels, to impacts on wildlife, fencing of 2-3,000 acres, vegetation and stormwater management, and potential for irreversibility of impacts.

The EA itself discloses many significant impacts, for example:

Some of the greatest impacts of the project would be to agriculture. Overall, land cover and land use within the project area is dominated by agriculture, primarily corn and soybean row crop production, with some pasture land. The project would take many acres of cropland out of agricultural production for the life of the project, which could be 50 years or more.

Ex.-JJI-Jewell-r2, Draft EA, p. 56; PSC-FEA.

One of the criteria to be considered in an EA, and in the determination of whether an Environmental Impact Statement is necessary, is “Irreversible environmental effects.” The EA narrative touched on irreversibility, and the relative impact of a 30-50 year installation in its conclusion:

Few aspects of the proposed project would be truly irreversible, although reversing project actions would incur significant costs and create additional disturbance and environmental effects. Short-term impacts such as noise, air quality, disturbance to local residents, erosion, and removal of vegetation would occur as a result of construction activities, and would not be irreversible. Direct impacts to any wildlife in the project area as a result of construction actions would not be irreversible. Fuels and some construction materials would be irreversibly committed and unavailable for other uses.

Ex.-JJI-Jewell-r2, Draft EA p. 63 (emphasis added); PSC-FEA. Note that “truly” irreversible is not explained, and there is no discussion of long term impacts, only short term, but no established date for termination of the project. Irreversibility is long term.

Jewell Jinkins Intervenors did address irreversibility and staff failure to sufficiently address irreversibility, long considered in environmental review, with examples offered for reference. Ex.-JJI-Jewell-r2, Draft EA, p. 17; PSC-FEA. However, there was no further consideration of irreversibility. Given the EA’s admission of detrimental impacts on agriculture, there is no support for a determination that this project will not have an irreversible impact on agriculture.

Vegetation management and drainage and runoff are interlinked issues for solar developments. Jewell’s testimony, based on his lifelong experience farming, and his experience with prairie restoration and pollinators raised questions that have not been answered by Applicants. Direct-Jewell-r2-14.

The breadth and depth of information considered by staff for its Environmental Assessment is insufficient to identify potential and likely impacts, impacts which have been the

subject to peer-reviewed studies and articles available to PSC staff. The information that has been provided reveals potential for significant impacts. A full Environmental Impact Statement is necessary for review of this project – the Environmental Assessment is inadequate for environmental review. Further, as above, the language of the CPCN criteria is specific. In light of the record in this proceeding, with identified impacts, and in light of unknown impacts and unintended consequences inherent in this first-of-a-kind project, the Commission should exercise caution and prudence. Issues with the design and location, whether the project is in the public interest, potential for individual hardships, safety issues and environmental factors the Commission should deny the CPCN Application. The identified potential for the proposed facility to have undue adverse impact on environmental values including ecological balance, public health and welfare, historic sites, geological formations, and the aesthetics of land and water and recreational use.

The information and evidence in this record does not support a determination by the Commission that an EIS is not necessary. Instead, it supports a decision to require an EIS prior to making a decision regarding the CPCN. The Environmental Assessment is inadequate. For this reason, Jewell Jinkins Intervenors requests rehearing.

VI. 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. §229.49. For all of the reasons outlined above, we respectfully request rehearing, and request oral argument of the Petitions for Rehearing.

Jewell Jinkins Intervenors request rehearing because this CPCN permit is fatally flawed by the Commission's procedural errors and errors of fact and law. The Commission relied on

false statements regarding brownfields, ignored important evidence of substantial and material impacts, and 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. The Commission's Decision requires rehearing.

Dated this 8th day of May, 2019.



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