

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

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

Docket No. 9697-CE-101

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 Badger Hollow application to construct an Electric Tie-Line, as captioned above¹. This application, docket, and Commission Decision requires rehearing in consideration of the requirements of Wis. Stat. §196.491; Wis. Stat. § 1.11 and Wis. Admin. Code § PSC 4 and 111.

Jewell Jinkins Intervenors are intervenors, granted full party status, and are residents and landowners in the immediate vicinity of the Badger Hollow project and this generation tie-line, which proposes to move into a long-established agricultural community. Further, these landowners are ratepayers in the state of Wisconsin. As such, they are directly affected and aggrieved parties. Jewell Jinkins Intervenors participated to the best of their abilities, with the limited resources available, and without assistance of Intervenor Compensation.

The Applicant has not met its burden of proof. Jewell Jinkins Intervenors request that this Order be stayed because it is not supported by the record, and that this Decision be remanded

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.

to the Hearing Officer for rehearing for additional fact finding. This transmission tie-line should receive “utility level” scrutiny due to the plan of immediate transfer to a utility when CPCN is approved, as evidenced in the acquisition docket². Because of the uncertainties of interconnection, for which only 1 of 3 required MISO studies has been completed, and no Generation Interconnection Agreement has been signed, and because the policy shift implications of “site-and-acquire model” permitting, this application and approval are premature.

The issues were broadly framed for hearing as “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.” Jewell Jinkins Intervenors takes no position on specific routes, which by proposing more than one route, pits landowners against landowner.

I. THE STATE SHOULD NOT CONDONE “SITE AND ACQUIRE MODEL” FOR UTILITY INFRASTRUCTURE.

Generally, a CPCN is reviewed under Wisc. Stat. §196.491(3)(d). However, for a merchant plant, various aspects of the criteria are expressly not applicable. After removal of the criteria expressly inapplicable to wholesale merchant plants, highlighted below, and those related to the impact of air pollution inapplicable to transmission, there are few CPCN statutory requirements remaining for Commission consideration. This is most concerning because of the limited environmental review – ownership of a project has no bearing on whether or not a project will have environmental impacts.

This project is a “site and acquire model,” a pass-through application and proceeding, the project avoids need review – that avoidance should not be allowed. Wis. Stat. §196.491(3); see also Environmental Assessment, Ex.-JJI-Jewell-r2, p. 4.

A permitting review for a transmission line must inherently include economic and

² WPSC and MGE acquisition docket 5-BS-228.

engineering considerations. Although this transmission tie-line is admittedly a smaller project, than the connected solar project, the review for this project should not be able to opt out of consideration of economic and engineering issues based on the project's reliance on the applicant's claim as a "wholesale merchant plant." In addition, a generation tie-line should not qualify as a "merchant plant." The statutory exception is not for transmission, "merchant" or otherwise, it is for "plants".

Project need and engineering has been provided in this transmission docket with a caveat: Based on pre-application discussion with PSC Staff, Badger Hollow understands that this section is not applicable to the proposed GEN-TIE Project.

Application – Badger Hollow-p. 16 , §2.0.

PSC staff should not be relinquishing jurisdiction. The Commission should clarify the status and declare that, as a separate CPCN application, the generation tie-line is sufficiently separate to incorporate economic and engineering considerations into its review.

II. ENVIRONMENTAL IMPACTS HAVE NOT BEEN DULY CONSIDERED NOR IS MITIGATION ADEQUATE.

Environmentally, the project is regarded as a Type II action under Wis. Admin. Code § PSC 4.10(3), and an Environmental Assessment was completed for this transmission project, combined with gratuitous Environmental Assessment of the "Type III" solar project. The Environmental Assessment did point out many significant impacts, primarily impacts of the solar project, but there are also impacts of the generation interconnection tie-line. Jewell Jinkins Intervenors submitted detailed comments on the Environmental Assessment that should be considered by the Commission – but which are not directly considered because they are not incorporated into the project record. The issues of specific concern are those regarding the admitted alteration in character, aesthetics, and visual impacts of this above-ground transmission line, impacts which would change this pre-existing long established agricultural community.

Ex.-JJI-Jewell-6-2r. Vegetation management, construction wetland and waterway crossings are The solar and transmission tie-line projects are physically and environmentally interconnected, and their impacts cumulative.

Environmental review for these two projects should include a range of alternatives, and viewed as a whole, with cumulative impacts. The alternatives and impacts contained in the two-docket EA were too limited.

The Environmental Assessment's consideration of alternatives is deficient and inadequate, as there was no mention of distributed and/or dispersed generation, which would eliminate need for a generation tie-line, and eliminate cost of the generation tie-line, cost of network upgrades, and cost of transmission service. Distributed and/or dispersed generation would also obviate many of the impacts, particularly those direct and indirect environmental, economic, sociological, cultural, aesthetic associated with building the solar project and transmission on prime agricultural land. See EA, p. 61-62.

Ex.-JJI-Jewell-r6, p. 3.

The only route options considered were "Preferences of ATC and MISO." Application-Badger Hollow, p. 21. The preferences of ATC and MISO are not statutory criteria nor are they the deciding factors.

There is no prohibition of increased environmental review for merchant plants, and it is unreasonable not to include engineering considerations in transmission permitting. Engineering considerations, in particular state review of MISO studies and need consideration,s are crucial in transmission dockets. To avoid this review is de facto deregulation. The Commission should carefully and expressly define "merchant plant" to exclude transmission lines in separate CPCN dockets, and should be careful not to set precedent for this type of "site and acquire" model for this generation tie-line and its connected solar project.

The Decision only provides for nominal mitigation to waterways and wetlands, only "to the extent practicable," which is too vague. There is no acknowledgement of the change this

project imposes on the community and individuals.

The Commission's Decision should be reconsidered and should incorporate the transmission docket specifics regarding environmental impacts. For these reasons above, this project requires rehearing and more in depth environmental review.

III. THE PROJECT DOES NOT COMPLY WITH SITING CRITERIA AND WOULD UNREASONABLY INTERFERE WITH LOCAL LAND USE

The project, as proposed, does not meet the requirements of Wis. Stat. §1.12(6) or Wis. Stat. §196.491(3)(d)6. Much of this project would be on new routes, not a route utilizing existing corridor. See Ex.-Badger Hollow-r-Application, p. 11-12. New routes would not conform to the routing hierarchy, and would per se interfere with local land use and plans.

IV. BECAUSE THE 300 MW SOLAR PROJECT IS UNCERTAIN, THERE IS NO NEED FOR THE TRANSMISSION LINE.

At this time, it is not known whether the Badger Hollow solar project can connect to the grid – any approval by the Commission is premature. That was reflected in Issue 1's Alternative Two of the Decision Matrix – Because the 300 MW solar project is uncertain, there is no need for the transmission line.³ However, it is not only the solar project that is uncertain. It is also not known, if it could connect, what project infrastructure would be need, what the capital cost of the interconnecting transmission line would be, nor is it known whether network upgrades would be required and the cost of those upgrades. These unknowns could make or break the project. For this reason, the Commission should be stayed until ability and cost of interconnection is demonstrated with a Generator Interconnection Agreement.

The Commission's order misrepresents the timing and process:

³ See e.g., Ex.-Application-Badger Hollow-16, §2.0; Id., p. 21 (preferences of ATC and MISO); Ex.-Application, Badger Hollow, Appendix F, MISO DPP August 2017 Wisconsin Area Phase 1, System Impact Study Report, December 13, 2018; Tr. 74-81, and particularly Tr. 80:16-81:6.

At the time of this Final Decision, the reviews of queue positions J870 and J871 **are not far enough along** in the study process to provide specific answers from MISO or the transmission owner about what transmission or interconnection facilities upgrades are required. The Phase I study results were completed on **January 22, 2019**, and a signed generator interconnection agreement **will** be forthcoming.

Decision, p. 8 (ERF 364426)(emphasis added).

- The admission that the studies “**are not far enough along**” should be sufficient to pause this review and stay the order. The study in the record is only the first of three. The sentence in the Decision notably quotes the Application, Application-Badger Hollow-16, response to 2.21; 2.2.1.1 and 2.2.1.2.
- The Commission should note that the first of the MISO interconnection studies was released **December 13, 2018**, not “completed January 22, 2019.” The study was not disclosed until a repeated Data Request by Jewell Jinkins Intervenors resulted in filing of the MISO DPP study a month after its release and just prior to the hearing. It was subsequently added to the Application in Appendix F during the technical hearing. See Application-Badger Hollow-Appendix F, MISO DPP August 2017 Wisconsin Area Phase 1, System Impact Study Report, December 13, 2018.
- It is not reasonable to state that a generator interconnection agreement **WILL** be forthcoming. It may be, but that is not certain, and as the schedule has been pushed out significantly since the time of the Application and responses to staff Data Requests.

The MISO study schedule was discussed in the hearing:

Q: Okay. Clearly the schedule's changing. Do you know, what would the schedule be? Would it be this schedule in number JJW 9 paragraph E or has it been extended further?

A: As far as I know, the JJW 9 schedule, the later schedule, is more current.

Q: Okay. So the next study is due April 1st, 2019; and the generation interconnection agreement, that is expected January 10th, 2020, correct?

A: That's what it says; and I don't have the current schedule in front of me, but that sounds about right.

Litchfield, Tr. 77:8-18. The planned date for completion of the three MISO studies is now April 1, 2019 for DPP2, August 13, 2019 for DPP3 (moved out from “April 2019” with the execution

of the Generation Interconnection Agreement not until one year from now, January 10th, 2020.

One point in the MISO DPP Study that should be acknowledged by the Commission is that in Table “8.2.12 J870 and J871,” it 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),” 259.85 MW out of the 300 MW requested. Badger Hollow’s Litchfield was questioned about this difference and potential impact on the project:

Q: And would you agree that this study shows that that 300 megawatts at this point is not -- that the maximum level of service does not reach 300 megawatts?

A: I believe -- I agree the number is less than 300. But I don't think that -- I wouldn't agree with that assertion that it means the project cannot achieve 300 megawatts. The process we're going through is to determine what upgrades are necessary for the project's stated size to fit on the grid. And the process will -- first of all, other applicants in this group study may leave the study -- leave the group allowing more capacity for our project potentially. Or the later phases of the study will identify what upgrades are necessary to get to 300 megawatts. And we'll be presented with the opportunity of proceeding and funding those. Or at this point in the process, we can shrink the project, both key positions, by up to 10 percent if we wanted to avoid any necessary upgrades.

Litchfield, Tr. 79:2-21.

Further MISO studies will be performed, but at this time, based on this study, and testimony of Litchfield, interconnection of the 300 MW of the Badger Hollow project is speculative because the 259.85MW megawatts deliverable are less than the 300 MW total project capacity requested.

Judge Newmark had follow up questions regarding this difference, and Litchfield testified as to the speculative nature of the studies and MISO process:

EXAMINER NEWMARK: I just wanted to ask the witness on that string of thought, what is your experience with MISO in terms of having projects hook up at maximum capacity, I guess it is at the rated nameplate capacity versus a lower capacity? You know, how likely is it that Badger Hollow won't be able to meet maximum given the congestion of the system versus being able to meet maximum because of upgrades?

THE WITNESS: I don't think there's a generalization that can be made because each group of studies is unique and the process allows for applicants to stay in or leave. I sometimes liken it to a poker game. And we think we have a solid project. We were going to probably plan to stay in as long as it's reasonably possible.

Litchfield, Tr. 80:16-81:6.

The information provided in this first MISO DPP study is preliminary and subject to change. Once the Generation Interconnection Agreement is signed, a fourth step after the three studies are completed, interconnection is no longer speculative. *Id.* That date is off in the future. Interconnection of the Badger Hollow project is also speculative because the total costs to interconnect, and to interconnect at the requested 300 MW, is unknown. There is no definitive cost estimate or apportionment scheme, and no assurance that the acquisition will not add to the cost and not increase value or availability of service. The Commission's Decision must be stayed until there is certainty about interconnection. At this point, granting a CPCN is premature.

V. BADGER HOLLOW IS NOT A UTILITY AND THIS CPCN APPROPRIATELY WAIVES RIGHTS OF EMINENT DOMAIN

The Commission appropriately recognized that Badger Hollow is not a utility, and that Badger Hollow does not have the power of eminent domain. The CPCN was granted to an LLC, not a utility. "This CPCN does not confer any 'right to acquire real estate or personal property appurtenant thereto or interest therein for such project by condemnation' under §§32.02 or 32.075(2) as otherwise provided under Wis. Stat. §23.03(5)(a). This section of the CPCN is important to retain.

VI. BADGER HOLLOW GENERATION TRANSMISSION TIE-LINE DECISION SHOULD BE STAYED

Badger Hollow's Application for a Certificate of Public Convenience and Necessity for this generation transmission tie-line for the Badger Hollow proposed 300 MW solar project is

premature. There are many uncertainties and much speculation, including the MISO interconnection studies, network upgrade requirements, costs, and half of the Badger Hollow project itself. Because the policy shift, implications, and impacts of siting “merchant transmission” under current statutory criteria is precedent setting and calls Commission jurisdiction into question, there is inadequate basis in the record to support the Commission’s Decision and approval of this project.

Jewell Jinkins Intervenors request rehearing, and that the CPCN for this transmission project be stayed pending execution of a MISO Generator Interconnection Agreement and resolution of the outcome for the “other half” of the Badger Hollow solar project.

Dated this 8th day of May, 2019.



Carol A. Overland MN Lic. 254617
Attorney for Jewell Jinkins Intervenors
1110 West Avenue
Red Wing, MN 55066
(612) 227-8638
overland@legalelectric.org