

**PUBLIC SERVICE COMMISSION OF WISCONSIN****Memorandum**

May 17, 2019

**FOR COMMISSION AGENDA**

TO: The Commission

FROM: Mark Ruskiewicz, Assistant General Counsel  
Office of General Counsel

RE: Application for a Certificate of Public Convenience and Necessity of Badger Hollow Solar Farm, LLC to Construct an Electric Tie Line to Connect a Solar Electric Generation Facility to the Existing Transmission System, to be Located in Iowa County, Wisconsin 9697-CE-101

Jewell Jinkins Intervenors Petition for Rehearing

Suggested Minute: The Commission (granted rehearing on one or more of the issues presented in the petition for rehearing filed by Jewell Jinkins Intervenors/denied the petition for rehearing/took no action and allowed the petition for rehearing to be deemed denied by operation of law).

**Introduction**

On April 18, 2019, the Commission issued a Final Decision approving the application of Badger Hollow Solar Farm, LLC (Badger Hollow) for a Certificate of Public Convenience and Necessity (CPCN) to construct a new 138 kilovolt (kV) generation tie line to connect a 300 megawatt (MW) alternating (AC) photovoltaic (PV) solar electric generation facility to the existing electric transmission grid. ([PSC REF#: 364426.](#))

On May 8, 2019, Jewell Jinkins Intervenors (JJI)<sup>1</sup> filed a petition for rehearing pursuant to Wis. Stat. § 227.49. ([PSC REF#: 366211.](#)) Badger Hollow filed an opposition to the petition on May 13, 2019. ([PSC REF#: 366762.](#))

<sup>1</sup> JJI is a non-profit corporation formed on November 20, 2018 consisting of five members. The individual officers or members of JJI consist of Richard and Patricia Jinkins, Alan and Marcia Jewell, and Wade Wendhausen. These

## Legal Standard

The disposition of a petition for rehearing is governed by Wis. Stat. § 227.49, which provides that rehearing may only be granted on the basis of: (1) some material error of law; (2) some material error of fact; or (3) the discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence. A petition for rehearing must be filed within 20 days after service of a final order. Wis. Stat. § 227.49(1).

Under Wis. Stat. § 227.49(4), the agency may order a rehearing or enter an order with reference to the petition without a hearing, within 30 days after it is filed. If the agency grants the petition, it shall set the matter for further proceedings as soon as practicable. Wis. Stat. § 227.49(6). If the agency does not order a rehearing or enter such an order within 30 days, the petition is deemed denied by operation of law upon expiration of this 30 day period. Wis. Stat. § 227.49(4).

The purpose of the rehearing statute is to enable the administrative agency to correct any errors in the proceedings before the case goes any further in the adjudicative process. *Vill. of Cobb v. Public Serv Comm'n*, 12 Wis. 2d 441, 458, 107 N.W.2d 595 (1961). “A petition for rehearing pursuant to [Wis. Stat. § 227.49] is addressed to the agency’s discretion.” *Schwartz v. Wisconsin Dept. of Revenue*, 2002 WI App 255, ¶ 40, 258 Wis. 2d 112, 653 N.W.2d 150.

## Analysis

JJI appears to argue that the Commission did not review the transmission tie-line project under the appropriate legal standard because of JJI’s characterization of the project as a “site and acquire model.” ([PSC REF#: 366211](#) at 2.) JJI contends that the project does not qualify as a

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five individuals, in their individual capacity, were granted party status in docket 9697-CE-101. ([PSC REF#: 353838](#).)

merchant plant and economic and engineering considerations should have been addressed.

*Id.* at 3.

Wisconsin Stat. § 196.491(1)(w) defines “wholesale merchant plant” as “electric generating equipment and *associated facilities* located in this state that do not provide service to any retail customer and that are owned and operated by . . . a person that is not a public utility.” (emphasis added.) Badger Hollow responds that the tie-line falls within this definition and, as a result, was exempt from certain requirements under the CPCN law such as those involving need, alternative sources of supply, engineering, or economic factors. ([PSC REF#: 366762](#) at 4-5 *citing* Wis. Stat. §§ 196.491(3)(d)2, 196.491(3)(d)3.) JJI cites no statute or case law to support its position. *Id.* at 5.

JJI contends that environmental impacts, specifically “those regarding the admitted alteration in character, aesthetics, and visual impacts of this above-ground transmission line . . . “ were not considered or mitigated. ([PSC REF#: 366211](#) at 3.) JJI argues that the review of the route alternatives preferred by American Transmission Company and the Midcontinent Independent System Operator (MISO) were too limited and unreasonable. *Id.* at 4. Badger Hollow counters that preparation of the Environmental Assessment (EA) for this Type II project complied with the applicable law and the conclusion of the EA that the project is unlikely to have significant impact on the human environment is supported by extensive facts in the record which it cites. ([PSC REF#: 366762](#) at 6-7.) Badger Hollow also observes that JJI’s complaint about the route evaluations and its failure to proffer alternatives of its own ignores Badger Hollow’s extensive description of its route evaluation process. *Id.* at 7.

JJI argues that the project does not meet the requirements of Wis. Stat. § 1.12(6) (siting criteria) or Wis. Stat. § 196.491(3)(d)6 (prohibition against unreasonably interference with land

use and development plans) because “[n]ew routes would not conform to the routing hierarchy, and would per se interfere with local land use and plans.” ([PSC REF#: 366211](#) at 5.)

Wisconsin Stat. § 1.12(6) provides:

SITING OF ELECTRIC TRANSMISSION FACILITIES. In the siting of new electric transmission facilities, including high-voltage transmission lines, as defined in s. [196.491\(1\)\(f\)](#), it is the policy of this state that, to the greatest extent feasible that is consistent with economic and engineering considerations, reliability of the electric system, and protection of the environment, the following corridors should be utilized in the following order of priority:

- (a) Existing utility corridors.
- (b) Highway and railroad corridors.
- (c) Recreational trails, to the extent that the facilities may be constructed below ground and that the facilities do not significantly impact environmentally sensitive areas.
- (d) New corridors.

The Commission considered four alternative routes, selecting the Red Route, and concluding that “[t]he approved transmission line route utilities priority siting corridors listed in Wis. Stat. § 1.16(6) to the greatest extent feasible, consistent with economic and engineering considerations, reliability of the electric system and protection of the environment.” ([PSC REF#: 364426](#) at 4.)

Badger Hollow argues that JJI misinterprets the applicable law and ignores the evidence in the record. ([PSC REF#: 366762](#) at 8.) It notes that the siting priorities law does not impose an inflexible routing hierarchy divorced from practical circumstances and the JJI’s argument that siting transmission lines on new corridors is a per se unreasonable interference has no support in the law. *Id.* at 9. Badger Hollow cites the record demonstrating consideration of the siting criteria and compliance with land use. *Id.*

JJI argues that because “it is not known whether the Badger Hollow solar project can connect to the grid – any approval by the Commission is premature.” ([PSC REF#: 366211](#) at 5.) JJI also contends that the 300 MW solar project is uncertain. *Id.* Badger Hollow cites applicable law that precludes the Commission from delaying review, when not all of the interconnection information is available or where the applicant must still secure other permits or approvals.

([PSC REF#: 366762](#) at 10 *citing* Wis. Stat. § 196.491(3)(a)(2m) and *Clean Wisconsin, Inc. v. Public Serv. Comm'n*, 2005 WI 93, ¶¶ 89-93.)

### **Commission Alternatives**

**Alternative One:** Grant the petition for rehearing and [order a rehearing or enter an Order with reference to the petition without a hearing].

**Alternative Two:** Deny the petition.

**Alternative Three:** Take no action on the petition with the 30-day period (by June 8, 2019) and allow the petition to be deemed to have been denied by operation of law.

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#### Key Background Documents

[Final Decision Signed and Served 04-18-19 - PSC REF#: 364426](#)

[Jewell Jinkins Intervenors - Petition for Rehearing - PSC REF#: 366211](#)

[Response of Badger Hollow Solar Farm, LLC to Jewell Jinkins Intervenors' Petition for Rehearing - PSC REF#: 366762](#)