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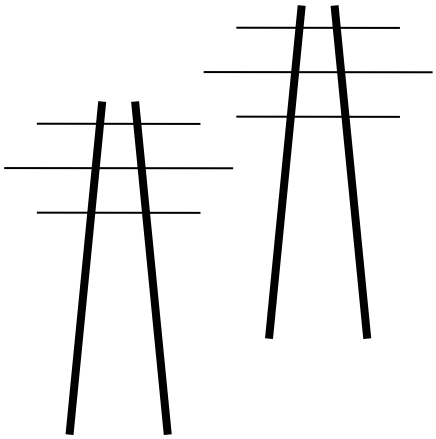

November 16, 2020

Tyler Tomaszewski
Environmental Analysis and Review Specialist
Wisconsin Public Service Commission
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via email and ERF filed only

RE: Grant County Intervenors' Comment on Environmental Assessment
Application for Grant County Solar, LLC to Construct a New Solar Electric Generation Facility located near Potosi and Harrison townships, in Grant County, Wisconsin
PSC Docket 9804-CE-100

Dear Mr. Tomaszewski:

On behalf of Grant County Intervenors, please find our comments on the Grant County Solar Environmental Assessment. Thank you for this opportunity to submit comments on this project.

An Environmental Impact Statement is Necessary

Your letter dated October 27, 2020 announced the completion of an Environmental Assessment for the Grant County Solar project. Grant County Intervenors appreciate that this project was deemed worthy of an Environmental Assessment. The letter, however, states that a preliminary determination has been made that an Environmental Impact Statement (EIS) is not necessary because "no significant impacts on the human or natural environment are likely to occur as a result of the construction and operation of this project."

Grant County Intervenors disagree. The Environmental Assessment contains documentation and discussion of significant and material impacts and potential impacts of this project, as proposed. The impacts are further demonstrated by the need and plan for mitigation measures, measurers which may or may not be adequate. The project **will** have a significant impact on the human environment as defined by Wis. Stat. §1.11, and an Environmental Impact Statement **is** necessary for compliance with WEPA.

Generally, for a project with a final footprint of 1,403 acres; a study area of 2.058 acres, and 1,607 acres of solar arrays and 20-foot fence buffer and 189 acres with 20-foot fence buffer, it is a reasonable presumption that the project will have substantial impacts. The fact that impacts are proposed to be mitigated demonstrates the material nature of the impacts, otherwise mitigation would not be necessary. A project with significant environmental impacts requires an Environmental Impact Statement to adequately consider the impacts and be compliant with WEPA.

Wisconsin must promulgate solar specific siting rules

Solar developments admittedly may have environmental impacts, including impacts on humans. No solar project should be sited until solar specific noise standards are developed, as has been done for wind. A solar wind rulemaking petition was made to the Public Service Commission and unreasonably rejected. Siting rules were developed for wind. The Public Service Commission should establish a rulemaking proceeding immediately, and not issue any CPCN for any solar project until solar specific siting rules are established.

Project should not be exempted from needs analysis

Because Alliant/Wisconsin Power and Light (WP&L) is in line to buy the project, as admitted by applicants, this project should not be exempted from a needs analysis. Doing so circumvents the state's statutory needs analysis requirement.

Environmental Assessment requires a more extensive literature review

The Environmental Assessment does cite some references, which will be discussed in that section's comments. However, this is "review lite," and should be more extensive given the magnitude of this project, and the very fast adoption of solar as Wisconsin's go-to renewable energy generation for development.

Environmental Assessment "alternative" review requires a systems consideration, not just location.

Where "alternative" is only addressed as "Alternative Solar Array Area" following "Applicants' Siting Process," it is a matter of the applicant defining "alternative" and there is no consideration of distributed generation, and inadequate review of brownfield sites, and no acknowledgement of project-driven transmission, or conversely, project using available transmission, which inherently justifies a burgeoning transmission buildout at significant ratepayer expenses. The transmission build-out should be apportioned to cost of solar facility and considered in solar CPCN dockets (linked with a needs analysis, another reason this needs analysis should not be exempted).

Too much information is "CONFIDENTIAL."

The EA references information that is regarded as "CONFIDENTIAL" and references filings to be made that will be "CONFIDENTIAL." There is no substantive basis for this in some instances. The Commission is too willing to make information not-public, where the public has no way to evaluate the claims and statements made by the applicants. Grant County Intervenors attorney has executed an NDA, and will receive "CONFIDENTIAL" filings soon (?), and of

course will abide by the terms of that NDA, but the limitations on information provided to the public is unreasonable.

COMMENTS ON SPECIFIC SECTIONS OF ENVIRONMENTAL ASSESSENT

Section 1.4 Persons Contacted, Comments, and Permit Compliance

Keeping a list of "persons contacted, comments, and permit compliance" is inadequate. This "list" and comments and records of permit compliance and/or lack thereof, should be entered into the Commissions electronic filing system for the docket. It is impossible to tell if comments have been considered and taken into account if they are not filed and available for public access.

Section 1.4.1 Persons Contacted

The EA states that "[n]o other persons besides staff at DNR and the Commission were contacted or involved in the preparation of this EA." That seems inadequate on its face. For example, the FAA and WI/DOT has jurisdiction over airports, and should weigh in. The Dept. of Agriculture and County land use has jurisdiction over agricultural land, and should weigh in. See Section 1.4.3 for examples of why other federal, state, and local agencies, particularly those expected to issue project permits, should be aggressively invited to weigh in on scoping and with comments on the adequacy of the EA.

The FAA should comment, because the airport framed by the project area is a training center, with pilots constantly flying over, landing, performing touch and go practice, and turning around in multiple approaches to the runway. Any glare to pilots is dangerous.

Section 1.4.2 Public Comments

As above, public comments regarding scope of the EA and in response to the EA and regarding adequacy should be posted in the Grant County Solar Commission docket for public access and review. Compiling and summarizing is not sufficient.

Section 1.4.3 Permit Compliance

Table 1, p. 4-5 lists at least 15 permits, or categories of permits, that must be approved prior to the beginning of construction, ranging from federal US. ACoE and USFWS; state including PSC and DOT, DNR and Historical Society and DATCP; and at County level and Town level as well. As above, the other federal, state, and local agencies, particularly those expected to issue project permits, should be aggressively invited to weigh in on scoping and with comments on the adequacy of the EA.

Please note the inclusion of DATCP's Agricultural Impacts Statement in Table 1 Regulatory Requirements. This Agricultural Impacts Statement is crucial for a project that would cover, and remove from production, 1,403-2,058 acres of land designated as Agricultural Preservation Land by the County, and this designation adopted by the state. An Agricultural Impacts Statement must be done. Particularly important in this process is notice to landowners, who in prior dockets were not adequately provided with notice and ability to participate in the AIS survey. All landowners in the project area and contiguous, and affected town, municipal, and county

governments must receive a survey and DATCP follow up to assure participation.

Section 2.1 Purpose and Need

As noted above, this project should not be exempted from a needs analysis. The Commission should recognize that this project is applied for in a site/acquire mode, where there will be a near immediate handoff to a utility that would require a needs analysis for a CPCN.

As Grant County Intervenors noted in scoping comments:

> Impact of use of "site and acquire" model v. utility application on environmental review and more or less rigor in permit review. Environmental review of a utility proposed project, as well as more general regulatory review, is more robust, and includes considerations not included when it is a non-utility applying, specifically exempting production of information regarding supply and project area alternatives and their cost, cost (land and land rights, structures and improvements, generators, accessory electrical equipment, terms and conditions of site and nonparticipant agreements, and decommissioning plan, cost and source of funding. Applicant states in its application that it will either "construct and operate the Project by selling the power…" or "Grant County Solar will sell the project to the(sic) one or more Wisconsin utilities and build the project." Application, p. 5-6. Grant County Solar has already disclosed that Alliant will be buying the project:

Lastly, as you may have heard, Alliant Energy has announced plans to acquire additional solar energy in Wisconsin. Once project approvals are received from the PSCW, the Grant County Solar project will be sold to Alliant Energy, who will own and operate the solar plant. NextEra Energy Resources will construct the Grant County Solar project. This is a positive development for the project and ensures the energy that Grant County Solar will generate benefits customers throughout Wisconsin.

> Exhibit F, Darwish Letter, June 10, 2020.

> As with the Badger Hollow and Two Creeks projects, this is using the site-acquire model, problematic, as stated by Citizens Utility Board witness in the Badger Hollow and Two Creeks (NextEra) "Buy-Sell" docket:

> > *Beyond the newness of utility scale solar in Wisconsin, the overall regulatory process through which approval for the acquisition of these two facilities is being sought is unusual in this state. Rather than the Applicants having directly applied for a Certificate of Public Convenience and Necessity (CPCN) to construct the two solar facilities, with all factors such as siting, engineering, need, and cost being evaluated at once, the process has been bifurcated into two merchant plant CPCN proceedings and an acquisition Certificate of Authority (CA) proceeding. The bifurcated nature of the process essentially limits the scope of both the CPCN proceedings and the CA. Had the Applicants themselves applied for the CPCN, questions*

> *such as engineering, economics, need, and alternatives could have been considered alongside the questions of siting, allowing the Commission to appropriately evaluate all of the issues and statutory requirements in a holistic way. I have concerns that use of the site-and-acquire model being employed here may undermine a comprehensive or holistic application of the CPCN statutes by the Commission.*
>
> Direct-CUB-Singletary-10-12 (ERF #358104), Badger Hollow Solar and Two Creeks Buy-Sell Docket 5-BS-228; see also Two Creeks 9696-CE-100 & 101; Badger Hollow 9697-100 & 101.

This "straw man" application circumvents aspects of environmental review, and regulatory review, that would be considered but for this misleading sleight-of-hand. Use of a straw man is prohibited when purchasing a gun because the entity approving the purchase does not have factual information about the purchaser.[1] The same is true here, where NextEra is pretending to not know the scenario under which this project will be permitted, constructed and operated, yet NextEra has announced that Alliant will be buying the project. That's misleading. Alliant has committed to purchasing this project and NextEra has notified the public of this purchase in writing, in a mailing. See attached Darwish Letter, June 10, 2020. This material fact should be in the record, yet NextEra has not updated its application with this information. Further, Alliant should be the applicant, or a co-applicant, in this application and permitting docket, and the applicants should provide information required of an utility, and it should be produced publicly, in the docket, for consideration. The Commission and the public should be allowed to "*appropriately evaluate all of the issues and statutory requirements in a holistic way."*

Because Alliant/Wisconsin Power and Light (WP&L) is in line to buy the project, as admitted by applicants, this project should not be exempted from a needs analysis. Doing so circumvents the state's statutory needs analysis review. In this regard, the EA is inadequate.

The Energy Priorities Law rates solar generation, "noncombustible renewable resources as the second highest priority." Efficiency, that the cheapest megawatt is the one that isn't used, is not adequately addressed. The efficiency of solar generation is greatly reduced when it is transmitted over distances by transmission, subtracting the parasitic conversion from DC to AC and subtracting the inherent inefficiency of transmission from its admittedly low (but improving over time) efficiency factor. These efficiency reduction should be quantified and considered in this CPCN proceeding. Solar generation sited near load, would obviate the need for transmission service and line loss, and perhaps even transmission construction – this would improve the overall efficiency of all solar projects. The Commission must take reductions of efficiency

[1] See "Straw Purchases Policy Summary," online at https://lawcenter.giffords.org/straw-purchases-policy-summary/

inherent in the design into account, and this has not been done.

Section 2.2.1 Applicants' Siting Process

The heading of this paragraph says it all – "Applicants' Siting Process" (do move the apostrophe in the next iteration, there is only one applicant, though perhaps WP&L/Alliant is considered an applicant?!?!). This section reveals, as does the Application, the characteristics they were looking for. Only an area that sites the entire project is considered, although the land leases separate the parcels such that it is not contiguous, a "uniform power block" is the goal. Distributed generation is not even considered.

The Commission avoids consideration of economic factors because it is a merchant plant, another reason that this should not be deemed a "merchant plant" with a utility purchase in the wings. "A meaningful comparison of alternative project locations is not possible without the ability to consider costs and economic factors." Only "the range of array sites within the GCS project footprint" are considered in this CPCN docket. The Commission is missing/avoiding this crucial review, and the Commission's decision options are unreasonably limited and not compliant with WEPA. The Environmental Assessment is inadequate due to this omission.

Section 2.2.2 Brownfields

The Grant Co. EA does not even state how many properties and acres in SW Wisconsin were regarded as Brownfields, and there is no link or documentation showing what brownfields were considered! How many properties acres are listed on the US EPA website? According to the Badger Hollow EA, there are at least 113 such properties[2]. In the Grant County application, Tables 5.8.1 and 5.8.1 (ps. 59-60) list only 12 sites, no acreage is shown, and the sites shown are expressly limited to "Sites within 2 miles of the Project Study Area." Id.

In Wisconsin's siting law, there is no constraint of distance from a project study area; there is no requirement that one site accommodate all of a proposed project, nor is there any prohibition of use of more than one brownfield site. See Wis. Stat. §196.491(3)(d)8.

The state siting statute shows the emphasis 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); see also brownfield statute, Wis. Stat. §238.13(1)(a).

[2] See Badger Hollow Brownfield, EA p. 7:

> *At the regional level, the potential use of brownfield sites was evaluated. A list of brownfield sites was accessed from the US 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.*

Further, as noted in the EA, "brownfields" are defined in statute as "abandoned, idle, or underused industrial or commercial facilities or sites." Wis. Stat. 283.12(1)(a). In addition to EPA listed "brownfields," there are numerous abandoned, idle, or underused industrial or commercial facilities or sites, such as abandoned and idle frac sand mining sites, coal and nuclear electric generating plants, etc., that, as brownfields by definition. How many numerous abandoned, idle, or underused industrial or commercial facilities or sites are there in Wisconsin, comprising how many acres?

The applicant has unduly limited brownfield sites, and has not considered the full range of potential sites as provided by statute, nor has it incorporated an analysis focused on distributed generation using multiple sites. The PSC has improperly accepted the applicant's flawed consideration and not required a more extensive collection of potential brownfield sites and review of these sites. These many brownfield siting options should be considered, individually and collectively. The applicant and the PSC have not done so.

As noted in the Grant County Solar application, the Wisconsin Remediation and Redevelopment database is at http://dnr.wi.gov/topic/Brownfields/WRRD.html.

The sites of coal plants retired and soon to be retired should be considered for siting of this project:

https://coal.sierraclub.org/coal-plant-map?_ga=2.29737663.1488206129.1605053241-1704503964.1605053241

The Wisconsin DNR lists abandoned or not working frac sand mining operations[3]. These sites should be considered for solar development and within the context of siting this project.[4]

The sites of retired nuclear plants should also be considered for this solar project, including but not limited to Dairyland's Genoa nuclear plant, with decommissioning nearly complete.

This is only a start to the many brownfields that should be considered by the applicant and the Commission. Siting on brownfields is long overdue – the Commission improperly dismissed consideration of brownfields as the Badger Hollow solar project was approved. Solar generation is uniquely able to be designed to site near load on most any site. The Commission must start taking the brownfield siting law seriously. Wis. Stat. §196.491(3)(d)8.

Section 2.2.3 Minor Siting Flexibility

Where there are no siting rules, the CPCN siting process provides nothing but major siting flexibility with very few limitations, essentially no regulation. This section notes that one condition of a minor siting approval is "Complying with the **applicant's** environmental siting criteria." EA Section 2.2.3, p. 10 (emphasis added). This demonstrates the unacceptable level of regulatory capture in solar project CPCN review and siting.

[3] https://dnrmaps.wi.gov/H5/?viewer=AMDV

[4] See also Avoidance of impacts by siting on brownfields: Renewable Energy Projects at Mine Sites https://semspub.epa.gov/work/HQ/100000041.pdf and The Value of Brownfield Remediation https://www.journals.uchicago.edu/doi/pdf/10.1086/689743

Section 2.2.4 Alternative Solar Array Area

The EA demonstrates how Commission interpretation distorts consideration alternative sites. Without solar siting rules, without adherence to the brownfield law, and ignoring the efficiency analysis of Wisconsin's energy hierarchy, the "alternative solar array area" at an additional 25% of land in the applicant's choice of footprint is an inadequate evaluation of "alternative solar array area."

Note "minimizing construction costs" is one reason for utilizing the "alternative solar array area." This is inconsistent with failure to include construction costs, and costs generally, in a CPCN review of a "wholesale merchant plant," and particularly one that was developed to be purchased by a utility and which is admittedly a turnkey development to be transferred immediately to a utility.

Section 2.3.1 Project Design

The EA notes "fenced in arrays," but doesn't describe the specifics, and the locations of the fences are not shown on the "Proposed Facilities" map. See Figure 2, Preliminary Layout of Grant County Solar Energy Project. This section also notes collector system "trenches approximately three to four feet deep" and it is not clear whether these trenches will be removed in decommissioning. The MISO August 2017 DPP study should be ERF filed and parts relevant to J947 Grant County Solar summarized in the EA, more than a "details have been worked out" general statement. Information that should be included, at minimum, are the cost estimates for interconnection and network upgrades

The MISO DPP states that the interconnection network upgrades are not expected to be complete until 12/31/2023. Attached Miso DPP 2017 August Wisconsin Area Phase 3, Table 10.1.14 J947 Transmission Conditionality (May 22, 2019).

Section 2.3.2 PV Arrays

A crucial flaw in the project and EA is that "a decision has not yet been made on which model of panel would be use (sic)." The type of panel is important because many impacts, and the robustness of the project, depend on the panel selected. The thinner First Solar brand is a thin film panel. The choice of panel matters in terms of construction, operation, and decommissioning. It is also not clear if panels can be obtained in this time of COVID and tariffs, and that should be clarified.

A CPCN should not be approved before selection of the solar panels to be used, and should not be approved prior to environmental review of panel choice and impacts with public comment.

Section 2.4 Project Schedule

The EA notes that construction is not expected to start until late 2021 – that is one year from now, with PV panel installation not starting until spring 2022, with collector substation and generator tie line construction not starting until spring 2023, with commercial operation not beginning until late 2023. THAT IS THREE YEARS FROM NOW!! That is also consistent with the MISO schedule in the August 2017 DPP for the network improvements to be completed

12/31/2023. Why is this project before the Commission now? The EA is inadequate as it does not address the drawn out schedule, paired with the administrative rush to permit. It appears that this project was applied for at least 2 years too early.

Section 2.5 Decommissioning Plan

The first sentence in this section needs emphasis:

> **No solar facility similar to the one proposed has reached the point of decommissioning or repowering, and projected actions may change from the description provided in the application materials.**

The EA is inadequate because it accepts an overview in the Application, repeated in the EA, rather than requiring a decommissioning plan. It also parrots the language of the application, that the applicant "will" do this and that. The Commission should require that these "will" provisions be received before any CPCN is granted.

The EA states that the non-binding estimate of decommissioning costs will be provided on a "confidential basis." There is no reason that this cost estimate should be confidential. It should be a matter of public record and the Commission should carefully review this estimate in light of other decommissioning estimates nationwide.

A decommissioning plan, including cost estimate, is not something new to NextEra, as one has been provided for the Two Creeks NextEra solar project. The EA appropriately notes that "a financial instrument may be required to demonstrate the financial capability to respond to accidents and restore a site at the end of facility operation," and that the Commission should review other decommissioning plans. Given the applicant's filing of a decommissioning plan in the Two Creeks docket, the Commission should require a decommissioning plan, rather than a general description, be filed, with appropriate financial assurance, prior to approval of a CPCN. The Commission is the regulator, and should not foist responsibility for decommissioning and financial assurance on the Town of Potosi or Grant County.

Section 3.1.1 Geology, Topography and Soils

The EA notes that the project could experience heaving and settlement, but impacts on project are not addressed, only that "geotechnical study would be incorporated into the detailed design, and the design will address the impact of frost heave…" The EA also notes that "Piles would need to be driven to a point where frost heave would not substantially impact the facility." It isn't reasonable to postpone this to the "detailed design" timeframe – this seems like a substantial issue that should be considered. Further, driving piles can have an impact on neighboring properties, particularly on buildings with foundations, or slabs, that could crack, settle, or otherwise be affected by pile driving. The EA does not address this concern.

The EA notes "auger refusal" and bedrock groundwater, and that dewatering may be needed during any excavations. The EA does not address what this dewatering entails and the impacts of the project on groundwater, drainage, etc.

It appears that grading, and the amount of disturbance and removal of topsoil is an issue. It is not clear how spreading of topsoil will be handled in a manner that will not be detrimental to the soils of the area.

Section 3.1.1.1 Soil Erosion Control

The EA notes that "some assumptions of the plan… are unlikely to be accurate." The Erosion Control Plan must be updated before any CPCN can be reviewed and approved, not only prior to a DNR permit, and should include, as specified in the EA, maintenance of vegetated areas under the arrays and along the perimeter of the site to minimize storm water runoff and soil erosion. Note that this presumes issues of storm water runoff and soil erosion.

The BMPs of staff must be incorporated specifically into any CPCN issued.

Section 3.1.2.1 Water Resources – Storm Water Runoff

The EA points out methods to reduce water scour/erosion using "well-maintained vegetation between and underneath solar panels," vegetation maintenance (the vegetation plan is deemed "CONFIDENTIAL" which is absurd) and minimization of vertical clearance. These points must be incorporated as conditions into any CPCN issued.

Section 3.1.2.2 Water Resources -- Wetlands

The EA lists many specific points for "Wetland Impact Avoidance and Minimization." The nine specific measures listed should be incorporated into any CPCN issued. EA, p. 20. The many impacts to wetlands are one more reason why an EA is inadequate and that an EIS is necessary.

The Commission should require an independent environmental monitor to conduct the onsite inspections during construction, as recommended in the EA.

Section 3.1.2.3 Water Resources – Waterways

As above, the specific points for impact avoidance and minimization should be incorporated into any CPCN issued. EA, p. 22. This is another example of the extent of potential impacts and why an EA is inadequate and an EIS is necessary.

Section 3.1.2.4 Water Resources – State Wetland and Waterway Impact Permitting

As above, this is an example of the extent of potential impacts and why an EIS is necessary. The iterative process of an EIS would include DNR comments for public review and for incorporation into the EIS. It is not clear the extent of DNR participation in the EA and to what extend DNR comments and concerns have been incorporated.

Section 3.1.5 Wildlife Impacts

The EA is inadequate as the very real problem presented by fencing in the project area, and nothing in the way of mitigation, the fencing and animal interaction is not addressed beyond identification. The EA notes the issue that fencing presents to "larger" animals, animals larger than an opening in an "exclusion fence." Does that mean a chain link fence? This will, as noted, restrict animal movement, and if animals get in, they may not be able to get out.

Restriction of animal corridors and pathways in the area, with more, if not all, animal movement concentrated on roads, as stated in the EA, "more interactions with drivers" would be expected. However, it's more a case of more interactions, wrecks, with vehicles. In some only the deer and vehicle are totaled, and some deer/vehicle wrecks result in human injuries, even some deaths. Deer/vehicle collisions in the area can be expected to greatly increase. This is also something that the DOT should comment on due to the highly traveled Highway 61 through the middle of the project, and another reason an iterative EIS would be useful. Deer population in Grant County seems "moderate" in the bell curve of estimates.[5] There is no mitigation proposed for this very real problem (this writer has hit three deer, resulting in 2 of 3 vehicles totaled out!).

As the EA notes, there are no research on impacts on wildlife in this habitat setting, and studies that have ben done focus on impacts to birds. There are no known studies regarding impacts on non-avian large species of wildlife.

Section 3.1.6 Historic Resources

Although there was a historical survey of sites, and new sites were identified, resulting in 17 archeological sites, five within the project and one abutting it, with avoidance of at least 50 feet recommended for just two of the five within and the one abutting the project. It is not clear in the EA why or where the recommendation of 50 feet avoidance originated for only some of the finds within the project.

Regarding registration of the sites, the EA mentions that sites identified are not eligible for listing in NRHP. It is not stated whether the sites are eligible for Wisconsin's historical register.

Section 3.1.8 Vegetation Management

The EA comments on applicant's vegetation management plan, but because it is significantly redacted, it's impossible to make informed comments on it. See PSC REF#: 389288; 389289).

Staff recommends that the applicant utilize BMPs, "Pollinator Guidelines for Solar Developers" (https://polinators.wisc.edu/solar/), but the public has no way to compare the Vegetation Management Plan with these guidelines due to redactions.

The EA should explain how compliance with the Vegetation plan and seed mixes proposed to assure that the impacts are not significantly different.

Section 3.1.10 Air Quality

The EA is inadequate as it has not addressed the impacts on air quality if there is a tornado or high winds that break apart the solar panels, scattering the materials hither and yon.

Section 3.1.11 Hazardous Materials

As in the paragraph above, GCI is concerned about the potential for hazardous materials within the solar panels should they break and/or be scattered across the landscape by a tornado or high

[5] See https://dnr.wi.gov/topic/WildlifeHabitat/documents/reports/wtaildeerpop2.pdf

winds. The EA does not address this potential problem. Because the panels to be used have not yet been selected, the level of risk is unknown.

Section 3.2.1 Agricultural Land Impacts

This project needs an Agricultural Impact Statement. The EA states that "In other solar projects proposed by merchant plants, DATCP has provided letters confirming the understanding that since there is no condemnation authority, there is no scope for DATCP to produce an AIS." This is no excuse for failure to produce an AIS. The Department of Agriculture, and the Commission, are avoiding a detailed identification and consideration of impacts to agriculture. It is not only the leasing participating landowners' land that is affected. The range of impacts include the literal impact to the soils and land of long term, 30-50 years, of removal of land from cultivation, but also the economic impacts of removal of land from production, including impacts on farm service businesses ranging from contract cultivation and harvesting, to air spraying, to feed and seed sales, and financing at local banking institutions, land rental, participants moving out of the area, children no longer living within the school district, sales of residences as landowners move away, etc.

Again, please note the inclusion of DATCP's Agricultural Impacts Statement in Table 1 Regulatory Requirements. This Agricultural Impacts Statement is crucial for a project that would cover, and remove from production, 1,403-2,058 acres of land designated as Agricultural Preservation Land by the County, and this designation adopted by the state. An Agricultural Impacts Statement must be done. Particularly important in this process is notice to landowners, who in prior dockets were not adequately provided with notice and ability to participate in the AIS survey. All landowners in the project area and contiguous, and affected town, municipal, and county governments must receive a survey and DATCP follow up to assure participation and identification of agricultural impacts.

The EA is also inadequate because it does not take into account the agricultural impacts of the project on federal and state conservation, habitat, vegetation, clean water and drainage, and ag preservation efforts.

Section 3.2.1.1 Agricultural Land Use

The EA is inadequate because it is confusing, or perhaps misleading, as it lays out many numbers and percentages regarding the types of agricultural land. The EA should clearly state how many acres in the Town of Potosi are the different types of farmland, and how many acres of each category will be removed from production by the project. In addition, it is not reasonable to think that the generic use of "utility" in Wis. Stat. 91.42(2) and 91.46(1)(f) or the more specific Wis. Admin. Code ATCP 49.01(19) last updated in 2013, contemplated solar development of this magnitude.

Section 3.2.1.2 Drainage Tiles

The EA states that there are no records of drain tile in fields. How can this be? The EA correctly notes that damage may occur and that may not show "for months or even years." This is problematic, and the developer/owner of the project must be held accountable for damage to

drain tiles. Where location of drain tile is not known, avoidance, identification, and correction of damage is difficult to accomplish.

Section 3.2.2 Stray Voltage

Stray voltage, a common issue in electric distribution systems, is a recurrent theme in utility projects in Wisconsin. Because the collector system is essentially a distribution system in reverse, the potential for stray voltage is greater than would be associated with a transmission project. It is important to offer testing to all sizes of animal operations.

Section 3.2.3 Heat Island Effect

The EA is inadequate because it does not thoroughly investigate the Heat Island Effect. Studies are rare, and because admittedly "[n]o known studies have been conducted in the environment and climate of the Upper Midwest," more work needs to be done to know the impacts. In addition to climate issues limiting value of existing studies, there is no study available for a solar project as large as this one. While the EA states that "it is not anticipated that the heat island effect should be a significant concern," this statement is not supported by any evidence or study. On the other hand, looking at the few available studies, "each found that solar generation facilities were altering the temperature of the air and in some cases the soil nearby the solar panels by a small amount." Because these studies were of very small solar arrays, there is no basis for this statement. Setbacks "of at least 150 feet from adjacent residential buildings… a minimum of 20 feet from the project fence," "revegetated after construction" provides little comfort when impacts are unknown. Because the Commission has staff with expertise in this area, there should be a more thorough consideration of Heat Island Effect, including a clear identification of the limitations of application of the existing studies to this project that is so much larger than those studied thus far. Knowing that more research is needed, and having no basis for any statement that "it is not anticipated that the heat island effect should be a significant concern," there is no rational basis to move forward with a project with these acknowledged unknowns.

Section 3.2.4 Landowner Impacts

The EA is inadequate in that it does not take into account the "fenced in" impact resulting from construction of this project. For many residents, particularly those who commute, they will have to drive through this project, surrounded by it, daily, and the feeling of confinement, the change in viewshed, and the aesthetics, with fences near the road with panels behind, will have a continuing impact. Because anticipated setbacks are of nominal distance, the impacts of noise should also be given greater consideration.

The EA correctly lists some of the issues raised by landowners, and lists the numbers of "non-participating" residents at various increments from 50 to 300 feet. The use of a "centroid" for measurement is a flaw because such a choice can make a significant difference when setbacks are small. That error should be able to be corrected with GIS, and instead, the property line should be used, as a landowner should have full use and enjoyment of their entire property. There is no rationale provided for distinguishing non-participating from participating

landowners, as a contract will not limit impacts, only limit landowner options to address any problems.

Grant County Intervenors heartily agrees with this statement in the EA:

> **The Commission could consider requiring the use of different setback distances or screening vegetation to mitigate the impacts described by landowners that are concerned about solar facilities adjacent to their property.**

In the Badger Hollow docket, PSC staff, recognizing potential for impacts, and a need for mitigation, after considering residences affected and a chart drawn up for the EA, developed a mitigation and compensation scheme based upon a prior wind project:

> The plan may include, but is not limited to: relocation of turbines to reduce the number of turbines within one-half mile to no more than seven turbines; providing annual payments to these two families, not to exceed the amount paid to participating residents receiving payment for one turbine lease; or, purchasing the properties at fair market value.

See chart and EA proposal, Badger Hollow PSC-FEA, Appendix A. The EA notes that negotiations are in progress, but is not known whether objecting landowners have been approached, or have agreed to mitigation options presented by applicant.

A distinct impact on landowners not addressed in the EA is the potential impact of pile driving for the project structures. Homes and buildings could suffer cracking and other damage to foundations and structures.

Section 3.2.4.2 Landowner Agreements/Easements/Good Neighbor Agreements

The EA raises the prospect of "good neighbor agreements," which essentially are a contract securing a landowner commitment not to object to a project for a sum. The EA also states that "effects easements" are being negotiated with landowners. What is concerning is that this is essentially an adhesion contract. The landowner owns land and may live on that land, and the project is coming into the community. Landowners are legitimately concerned that the Grant County Solar project may limit or take away their use and enjoyment of their property. This impact is the essence of nuisance. To attempt to negotiate a contract at this point in time is not reasonable, as a landowners has no way of knowing what the impacts may be.

The EA notes that a sample of "good neighbor agreements being offered" has been filed. A landowner lease should also be provided. The lease found in the Application, Appendix Y, is only a "Sample **MEMO** of Solar Lease," likely for filing with the County, and not a lease.

Landowner agreements often put the landowner on the hook for decommissioning if the owner does not decommission at the end of project's life cycle or abandonment, with landowners responsible for decommissioning and including language that they can then recoup expenses from the project owner. This is absurd – if the project is not decommissioned by the project owner, that's an indication that recovery of expenses is not feasible.

Section 3.2.4.3 Property Values

Property values are discussed in the EA, which admits that "[s]olar generating facilities have the potential to impact property values," however, similarly to heat island effect, there are no studies regarding property values because solar facilities of this size are so new. The EA states that "[w]idespread negative impacts to property values are not anticipated," but there are no studies to support that conclusion. There is also no information regarding the potential of impacts on property values when a large amount of agricultural land is removed from production. The EA should also draw a distinction between residential land and agricultural land, as impacts on valuation may be different for different land uses.

The Commission should be cautious when considering property values, and to consider not just the literal valuation of a property, but also the impact of a project on marketability of a project. One a project is announced, it would logically have an impact on the ability of an owner to market that property, long before it is built.

Section 3.2.4.4 Potential Property Damage

The EA notes that "GCS states that racking and tracker supports are designed to withstand wind loads of 175 MPH…" 175 MPH? Unlikely. Also, it does not mention panels, and the wind load it is designed to withstand. Tornadoes are common in this area, and there is no demonstration that panels can withstand a tornado that barns, outbuildings, and homes cannot withstand.

Grant County Solar raised this issue in Data Requests to Grant County Intervenors. Below is the question and response:

Response of Grant County Intervenors to
Data Request GCS-4

DATA REQUEST NO. 4:

Set forth each and every fact and identify each and every document that describes, supports, or evidences your concern about tornadoes and other extreme weather events in the area, including incidents of severe property damage, as described on pages 2-3 of your motion to intervene (PSC REF#: 393285) and GCI Data Request Numbers GCI-1 through GCI-5, including all subparts (PSC REF#: 395933).

ANSWER: Subject to the General Objections identified above, without waiving any objection, Grant County Intervenors responds as follows:

Anyone who lives here is familiar with storm damage, has heard about past extreme storm events, and knows that there is a high likelihood of extreme storm events and significant property damage. See, for example, attached links and printouts:

https://www.midwestfarmreport.com/2020/03/28/update-national-weather-service-says-tornado-caused-damage-to-farm-buildings/

https://www.weather.gov/arx/grant

https://www.weather.gov/arx/aug1020

https://www.weather.gov/arx/may0918

https://www.weather.gov/arx/jun2215

https://www.weather.gov/arx/Jun2914

https://www.weather.gov/arx/Jun1614

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The EA's statements regarding commercial general liability insurance for bodily injury and/or property damage is not reassuring. This insurance coverage is a given for any commercial operation, and it seems an admission that bodily injury and/or property damage could well occur.

Section 3.2.5 Land Use Plans

The EA correctly notes that the land planned to be used for the project is "Farmland Preservation District" and notes that the solar project "**is not in keeping with the goal of using those acres as active farmland**." The Commission should give the fact that this land is "Farmland Preservation District" great weight. See comments on Ag Use section of EA.

Section 3.2.6 Nearby Populations and Environmental Justice Issues

The EA is inadequate because it takes a limited view in defining vulnerable populations subject to environmental justice issues. In this case, older residents and children are vulnerable and must be considered. The EA does include in the definition of "vulnerable" the very young, elderly, or infirm, but goes on to discuss schools, day care centers, hospitals, or other health care facilities within one mile of the project. The EA should identify the number of children who live within the project and/or immediately adjacent to the project – there are many. The EA should follow with a review of impacts that would specifically affect these vulnerable populations and avoidance, precautionary, and mitigation measures that could be taken.

Section 3.2.7 Local Jobs

The EA is inadequate in that there is no explanation of where the "up to 350 workers" would come from, and no commitment to use local workers – in fact, the EA notes that "[t]he project's contractor would likely use a traveling workforce…" There is no commitment to prevailing wage. There is no identification of availability of local resources for food, lodging, supplies, and fuel. There is also no identification of "local vendors" of "materials such as fuel, concrete, and aggregate materials."

Section 3.2.8.1 Road Use and Traffic Impacts

The EA notes that road use would require permits from Grant County and the Town of Potosi. Table 1, p.5. "Repair of road damage would be covered in the JDA with the affected local governments." The EA notes that "GCS has discussed the project and maintains regular contact

with representatives at the Town of Potosi and Grant County…" but there is no indication that they have reached an agreement regarding road use. Id., but see EA Section 3.2.9, p. 39 ("not yet executed a JDA"). A CPCN should not be granted unless and until a road agreement has been reached, because without it, the project cannot go forward.

Section 3.2.8.3 Air Traffic

The EA is inadequate because it unreasonably minimizes the impact of the project on air traffic. Although the Lancaster airport is a small airport, there is much use. Planes are constantly flying over, landing, performing touch and go practice, and turning around in multiple approaches to the runway. The FAA should comment, because the airport framed by the project area is a training center. Any glare to pilots is dangerous.

The application also minimizes the relationship between the project and the airport by cutting the airport off of the map, making it difficult to discern that what is there is an airport! See Application, snippets from Maps A-4 and A-5 and the Project Index Map.

Map A-4:

Map A-5:

Project Index Map:

Source: General Project Map, PSC REF 388958; Maps A-4 and A-5, PSC REF 388959.

Section 3.2.9 Municipal Services and Local Government Impacts

The EA states that "GCS has not yet executed a JDA with Grant County or with the Town of Potosi, but states that it intends to continue to pursue the JDAs depending on the County and the Town's interest." This should be finalized prior to approval of a CPCN because the project cannot go forward without these JDAs. It should be clarified whether the municipal system or an onside well and sanitation disposal will be utilized. This also has an impact on cost.

The EA notes that one issue for inclusion in a JDA is "replacement of lost tax receipts for those entities that do not receive Utility Shared Revenue Funds." Clarification of this issue, the entities, and a dollar estimate is needed.

Section 3.2.9.1 Shared Revenue

The EA is inadequate as it does not address the impact that revenue to a County or Town can have on its charge of protecting the public health and safety and the relationship between the government's pecuniary interest when pitted against residents' and landowners' interests. This is particularly important in an economic downturn, where local governments and farmers are struggling, needing to generate revenue and looking to new sources. It is not clear that participating landowners and local governments are receiving sufficient value for what they are giving up, that the trade-offs made are not readily apparent, and may not be apparent until the project is constructed and operational, at which point it's too late to adjust or renegotiate.

It appears that through the calculation of payments, locations with a lower population may be favored – this per capita limit needs clarification.

Section 3.2.10 Communication Towers

The EA notes that there was no "comprehensive documentation describing communications facilities or electromagnetic interference (EMI) studies in the project area." The applicant should produce this information. The area has sketchy cell phone service. If the project is installing communications facilities in the area, the area residents should also have access to such communication infrastructure improvements.

Section 3.2.11 Noise

There are no noise standards for solar developments in any applicable Wisconsin jurisdiction. Because noise is a consideration, and one that may have an impact on "receptors," no solar project should be sited until solar specific noise standards are developed, as has been done for wind.

Construction noise at 50 feet is high. The EA is correct that the noise of construction "may be disruptive and annoying for nearby residents." Will this be avoided, mitigated, compensated?

The distance of the project's setbacks from the property line and potential "receptors" also should be clarified and considered. The ground factor should be adjusted to incorporate the reflectivity of the panels and the directive quality of the angle of the panels on the travel of noise, and the short distances from the noise to potential receptors.

Post-construction noise monitoring is necessary.

Section 3.2.11.1 Noise Level Standards

As with siting rules and standards for solar generating facility, there are no noise standards for solar projects in any jurisdiction. The Commission should not site projects without noise standards.

Section 3.2.11.2 Pre-Construction Noise Study.

Noise of the solar project when operational is influenced by the array structure's surface, which in the case of the noise study for this project, is assumed at a 0.5 ground factor based on the earth's surface, the farmed soil of the agricultural area. There is no incorporation into that ground factor figure the reflective nature of the solar panels themselves, which are much more reflective than concrete or ice, which would have a ground factor of 0.0 if only the panels were considered.

129 single family residences, totaling an undisclosed number of residents, were deemed "noise-sensitive receptors." Why, what characteristics, gave them this label is unknown.

The EA is flawed because it did not perform independent noise modeling.

Section 3.2.11.3 Noise Levels During Construction

Given the construction noise levels shown in Table 4, p. 41, construction noise seems a legitimate concern, particularly for those who work at night, people confined to home (as many are in these days of COVID), if children are young and need a nap, etc. The applicant should submit a plan for noise control and mitigation.

Section 3.2.11.4 Post-Construction Noise Complaints

The Commission must draft a complaint process, for noise and other complaints, requiring reporting by the applicant/owner of any and all complaints, and the resolution. If complaints are not resolved, there must be a process to hold applicant/owner responsible for correction of the issue.

Section 3.2.12 Visual Impacts, Aesthetics, and Lighting

The EA is flawed because it minimizes the impact of the change in landscape and viewshed, and claims the project "would not be visible at a great distance from the project." "Great distance" is not defined. The EA does raise the issues of the project itself, and also of the fencing. The EA does suggest vegetation as a means to mitigate visual impacts, but only recommends aa greater setback for the substation. The Commission should consider greater project setbacks, and require vegetation on the fencing. The longer distance viewshed impacts are not easily mitigated.

Section 3.2.12.2 Glint and Glare

In the EA, glint and glare are recognized as significant issues. The residences modeled as receptor are 128 in this instance, one less residence than for noise modeling. It does not appear that the Lancaster Municipal Airport was modeled for the type of use, such as training, where

pilots circle around, land or touch and go repeatedly, rather than a one-shot flight in on the landing path. The EA reports that the complaint process of Application, Section 5.17.4, will be used. The Commission should require a more robust process with greater Commission involvement and reporting, to assure complaints are handled quickly, with a satisfactory resolution.

Section 3.2.12.3 Lighting

The EA has conflicting information about construction hours. In the section on construction noise, it states that construction will be in daytime hours, but in this section, it proposes lighting for night-time construction.

Down facing "dark skies" lighting is necessary, and should be required for the substation, which too often are lit like an intergalactic spacestation or KwikTrip. This would be unacceptable in an agricultural and residential area.

Section 3.2.13 Recreation

The main impact of the project on recreation would be limitations on hunting. Snowmobiling in the area would also be affected, and the fencing must be marked such that snowmobilers will be able to see the fencing. These issues are not even mentioned in the EA.

Section 3.2.14 EMF

The EA is inadequate because it does not set out the various mG expected at various distances from the line. The distances from the tie line to homes and work areas should be disclosed. A level of 2mG is deemed an upper bound by the World Health Organization, and it appears that at 200 feet from the line, at a range of 5-14 mG, it is above that recommendation.

Section 4.1 No Action Alternative

The EA misses one possible "no action alternative" in that the timing of this application is early for a project not expected to be online until the end of 2023, and that the transmission interconnection and network upgrades will not be completed until 12/31/2023 per MISO DPP August 2017. An additional "no action alternative" would be to put the project on hold for 12-18 months. There is no clear reason to move forward with this application at this time.

Section 4.2 Alternative Sites for PV Arrays

As noted in Section 2.2.2 Brownfields, above, brownfields have not been adequately explored for siting some or all of this project. The EA is inadequate in this regard.

The EA is also inadequate in that it does not consider distributed generation, particularly rooftop generation over every big box, manufacturing facility, warehouse, school, hospital, parking lot, siting near load, and eliminating need and cost for transmission interconnection, network upgrades, transmission service, and line loss.

Section 4.3 Other Alternatives

The EA is inadequate as "other alternatives" were not explored.

WISCONSIN ENVIRONMENTAL POLICY ACT DETERMINATION

Section 5.1 Effects on geographically important or scarce resources, such as historic resources, scenic or recreational resources, prime farmland, threatened or endangered species, and ecologically important areas

The EA determination is inadequate because it improperly dismisses the impact of taking prime farmland out of production for 30-50 years, particularly where it is unknown if the land can be returned to production after decommissioning, and even unknown whether the project land can be properly decommissioned.

Section 5.2 Conflicts with federal, state, or local plans or policies

The EA says it succinctly: "The large-scale, industrial-like, solar facilities proposed do not seem to be in keeping with the exclusive agricultural designation of the project area in local land use plans.

Section 5.3 Significant controversy associated with the proposed action

The EA states that "[t]he Commission is not aware of any controversies regarding the type, magnitude, or significance of the expected environmental impacts related to the proposed project." GRANT COUNTY INTERVENORS STRONGLY BEG TO DIFFER!!! It seems the Commission has not been paying attention and taking the concerns of GCI into account.

Section 5.4 Irreversible environmental effects

It remains unknown whether the project can be decommissioned completely and the land be returned to production, and it is unknown the impacts of removing land from production for 30-50 years. It is likely that there will be not just short-term as stated in the EA, but long term, irreversible environmental effects.

Section 5.5 New environmental effects

This project falls within the definition of "new environmental effects," and also "unknown environmental effects," from the long term impacts on the soils and land to glint and glare to forever altering the viewshed and local aesthetics, to fencing in the many project acres, and the cumulative impacts which may well remove the landowners use and enjoyment of their property, the very definition of nuisance. As the EA states, the Commission has approved large projects, but they are not operational and the impacts remain unknown.

Section 5.6 Unavoidable environmental effects

The EA admits that there will be unavoidable environmental effects during construction and during operation. These impacts are not readily mitigated, but there is no system set out for compensation for these unavoidable effects. The Commission, if the project goes forward, must establish mitigation and compensation for the unavoidable environmental effects.

Section 5.7 Precedent-setting nature of the proposed action.

The Commission has regarded this as a "Type II" project, but this step should be formally established in rulemaking, and should go further due to the admitted unknowns – full environmental review in an EIS and full needs analysis should be required for a project of this size, cost, and impacts.

Section 5.8 Cumulative effect of the proposed action when combined with other actions and the cumulative effect of repeated actions of the type proposed

If this project goes forward, with the admitted and acknowledged unknowns, the cumulative impacts of this and the four other large solar projects preceding this one are, indeed, cumulative. The unknowns, added to the known impacts that are unavoidable and which are not planned to be mitigated, could easily become unbearable, insurmountable, and impossible for residents to live with. This project, and the others, could become textbook nuisances. The Commission should exercise more caution in granting CPCNs for these projects with so many unanswered question and unknown impacts.

Section 5.9 Foreclosure of future options

As noted in the EA, this project takes over the land, converts the land use, and forecloses any other options for 30-50 years.

Section 5.10 Direct and indirect environmental effects

The EA lists many direct and indirect effects, but is leaving out several addressed in the EA. This section fails to mention heat island effect, a major unknown where more research is required. This section also fails to mention impact on property values and marketability. This section also does not address the potential impacts of electric and magnetic fields of the tie line and underground collector system. Most importantly, this project does not address decommissioning, other than the unknowns of decommissioning, and without basis, states it "would allow for a return to agricultural use.

This section states that "air quality would be improved by the displacement of fossil-fueled power generation" but there is no contractual displacement, no direct link to displacement. This is a false statement.

The easement payments and shared revenue dollars are a "benefit" side of the equation, and this section does not address potential costs.

RECOMMENDATION

Grant County Intervenors strongly disagrees with staff recommendation, and believes that construction of Wis. Stat. §1.11project will have a significant impact on the human environment as defined by Wis. Stat. §1.11, and that preparation of an EIS is required. This EA does not comply with Wis. Stat. §1.11 and Wis. Admin. Code §4.20.

These comments are those of Grant County Intervenors, and are not all inclusive – some comments and information may be missing. If a section is not commented on, this does not infer

agreement with statements and conclusions, and GCI retains the right to raise additional issues going forward in this proceeding.

If you have any questions, or require anything further, please let me know.

Very truly yours

Carol A. Overland
Attorney at Law

cc: Grant County Intervenors
Al Parties via ERF