BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application for a Certificate of Public Convenience and Necessity of Grant County Solar, LLC to Construct a Solar Generation Facility, to be Located in Grant County, Wisconsin.	Docket No. 9804-CE-100

GRANT COUNTY INTERVENORS' REPLY BRIEF

I. INTRODUCTION

Grant County Solar claims that the project is in the public interest, that it has met the statutory requirements, that it doesn't pose individual hardships, that there are no safety issues, and most importantly, that there is no "undue adverse impact" on the environment. Grant County Intervenors disagree. The record shows specific individual hardships, specific safety issues, specific economic and environmental "undue adverse impact."

II. GRANT COUNTY SOLAR HAS NOT MET IMPORTANT CPCN REQUIREMENTS.

A CPCN is reviewed under Wisc. Stat. §196.491(3)(d), and because this is a "merchant plant" until seconds after the CPCN is issued, there are few CPCN statutory requirements remaining. Wis. Stat. §196.491(3)(d). However, the Commission must make affirmative findings regarding what applicable criteria remains, and in several instances, there is insufficient record on which to base such an affirmative finding, and in others, statutory requirements have not been met. See Wis. Stat. §196.491(3)(d), Wis. Stat. §§ 1.11, 1.12, 196.025, and 196.491, and Wis. Admin. Code chs. PSC 4 and PSC 111.

A. A CPCN for the Grant County Solar project is not in the public interest.

The Commission must make a finding that "the design and location or route is in the public interest considering alternative sources of supply, alternative locations or routes, individual hardships, engineering, economic, safety, reliability and environmental factors…" Wis. Stat. §196.491(3)(d)3. The applicant focuses in part on "public interest" in terms of safety codes and reliability factors. See, e.g., Direct-Grant County Solar-Gil-11. Other factors to be considered leave questions, with too many admitted uncertainties.

Grant County Solar's primary considerations are self-selected: "transmission and injection capacity, proximity to existing land and infrastructure, constructability (such as topography, environmental factors), site suitability, cultural and historical resources, construction and O&M efficiencies; and community and landowner feedback. Initial Brief-GSC-5 (citing Direct-GCS-Gil-r-9; Ex.-GCS-Application: Sections 1.4.2.1; 1.4.2.1.1.). These considerations do not encompass the range of statutory requirements.

1. Alternative locations were not adequately considered and Wisconsin's brownfield law was blatantly ignored.

Applicant's brief starts and ends on a pair of conceptual and legal deficiencies of its proposal. The applicant's interpretation and Commission's practice of declaring "alternative locations" is that a developer must provide an additional 25% of land as "alternative project areas" to give options for siting should there be prohibitive conditions in the developers planned footprint. See Ex.-GCS-Application-6 (Section 1.4.2.1, referencing "PSC guidelines."). "The proposed Array includes thirteen panel array areas…" plus "two additional panel array areas that are available as the Alternative Array, if selected." Initial Brief-GCS-4; Direct-GCS-Guzman-4. GCS states that "The Project location **required** over 1,403 acres of **nearly contiguous developable land in close proximity to a transmission interconnection**." Initial Brief-GCS-30, citing Direct-GCS-Gil-r-9 (emphasis added). Applicant's siting is an arbitrary process, based

on **applicant's** weighted factors of "transmission and injection capacity; Solar Resource; Landowner & Customer Interest and Community Support; Constructability; Environmental Factors; and Cultural and Historic Resources." Ex.-PSC-EA-8-9; see Initial Brief p. 5; Direct-GCS-Gil-r-9; Ex.-Application: Sections 1.4.2.1;1.4.2.1.1.

Nowhere does GCS address distribution of the 15 arrays in anything but a "nearly contiguous" configuration. Nowhere does GCS address positioning of brownfield sites near transmission, and logically, that most brownfield sites would have transmission nearby to serve the industrial activity that created the brownfield. Nowhere does GCS address the reliance of this project on the new and costly Cardinal-Hickory Creek transmission project, nor the cost of transmission service when sited far from load.

The only evidence in the record regarding brownfield sites is a link to an EPA site and the applicant's rejection of any possibility of using any brownfield site. Ex.-Application-Section 1.4.2.1.2; Ex.-GCS-Gil-6. Applicant goes on to state that "GCS evaluated existing brownfield sites within the region and is not aware of a Wisconsin brownfield location that would meet Project site criteria." Initial Brief-GCS-30. It's important to note that the brownfield law does not require siting only if brownfields "meet Project site criteria." See Id.; Wis. Stat. §196.491(3)(d)8.

It's hard to be aware of brownfield sites when the search is so limited and does not even meet the criteria of the breadth of the state's definition of "brownfield." There is no evidence of any list of brownfield sites, no evidence of review of "abandoned, idle, or underused industrial or commercial facilities or sites, the redevelopment of which is adversely affected by actual or perceived environmental contamination" as required by statute. Wis. Stat. §283.13(1)(a).

Instead of making any effort to comply with brownfield alternative locations, this is a

matter of applicant's choice using applicant's "requirements" and applicant's project "criteria" that conveniently eliminates alternative locations and brownfield siting and any consideration of distributed generation siting.

There is no statutory direction or definition of "alternative project areas," nor has the notion of declaration of an additional 25% of land been tested in any court. There is no statutory prohibition of distributed generation. There is a statutory requirement that brownfields be utilized. Wis. Stat. 238.12(1)(a), and the Commission has thus far ignored it, or blatantly disregarded it as was done in the Badger Hollow Commission deliberation.

Additional land at 25% of the project footprint was identified, but not "alternative locations." This narrow view is not supported by law or rule, is not in compliance with the state's brownfield law, and does not meet the public interest requirement of alternative locations.

2. Individual hardships will exist and weren't given consideration.

The applicant rejects any recognition of the individual hardships of this project, stating that "The Design and Location of the Project is in the Public Interest Considering Individual Hardships," with its first sentence of this section of its brief, stating, "The project does not pose any individual hardships." Initial Brief-GCS-5. This is contrary to the record.

Specific individual hardships were raised by Grant County Intervenors, in the case of the Frears, their need to uproot their family and build on a site away from the project. Direct-GCI-Frear-r-2. Grant County Intervenors' Reynolds, Adrian and Cray also raised specific individual hardships. Direct-GCI-Reynolds-3; Direct-GCI-Adrian-r, p. 2, p. 4-5; see also Direct-Cray-r-5-7; Ex.-GCI-Cray-3r-1. See also Rebuttal-GCI-Frear-r2, p. 3-4; Rebuttal-GSC-CallahanR-2. In addition, "… NextEra's proposed Facility will surround the Langmeiers' home and land on three sides." Intervention-Langmeier-2. Individual hardships have been raised by parties. What could

be more of a hardship than moving the Frear family's home? What could be more of a hardship than water drainage and erosion on the Cray's farmland?

There is no mention of "individual hardship" in the application, nor is individual hardship addressed in testimony, other than noise potential. Rebuttal-GSC-CallahanR-2. Rather than avoid, acknowledge, mitigate, or compensate, Grant County Solar outright denies individual hardship, in testimony and in its Initial Brief, discounting, rejecting, the impacts of this project. Rebuttal-GCI-Frear-r2, p. 7-8.

There is, however, evidence that the project will inflict individual hardships on those nearby – that evidence is inherent in the "good neighbor" agreements, which is an agreement to be a "good neighbor" and not object to the project, in exchange for money. See Ex.-GCS-Gil-15 "Effects Easement;" Direct-GCI-Reynolds-3. The "effects easement" acknowledges potential impacts and allows the project to inflict this wide range of potential impacts on the landowner:

> 1. **Grant**. Owner grants to Operator an irrevocable, non-exclusive easement for sound, noise, visual, view, light, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project or activity located on the Property or on adjacent properties over and across the Property (collectively "**Effects Easement**"). The Agreement shall be in effect as long as Operator is operating the Project. If Operator does not continue to use the Effects Easement, Operator shall provide evidence of termination. Operator shall not be permitted to drive on the Property or use the Property as a right-of-way.

Ex.-GCS-Gil-15r-2.

Conversely, in offering "good neighbor" agreements, agreements that include an "'easement" for any effects of the project, the company acknowledges impacts and individual hardship sufficient to trigger offering an "effects easement" and some compensation. Rather than buying off landowners facing individual hardships, the project should not inflict hardships on landowners. The project is moving into an existing community, the nuisance coming to the residents, with an acknowledged potential to take away landowners' use and enjoyment of their property.

"Effects Easements" with clauses above are adhesion agreements, because landowners, and even project developers, are unaware of the full range of impacts, and as such, are against the public interest. What "Effects Easements" have been signed prior to construction and operation, with uncertainties and unknowns repeatedly show by lack of studies, and as agreements signed before the impacts are identified, these agreements should have no legal effect. The Commission should take note of the acknowledgement of impacts implied by "Effects Easements" and address whether these agreements are in the public interest.

The project has not met its burden of production or proof regarding individual hardship.

3. Glare is a safety factor not adequately modeled or considered.

Grant County Solar states that the design and location of the project is in the public Interest considering safety factors. Initial Brief-GCS-8; Wis. Stat. §196.491(3)(d)3. Glare studies have not been performed that address airport use patterns, which could have an impact on public safety, yet GCS does not address glare in its "safety" portion of its brief, claiming it "will not result in an undue adverse impact regarding glint or glare." Initial Brief-GCS-18-19.

GCI provided testimony regarding the frequent use of the Lancaster airport for training purposes by the University of Dubuque. These training flights involve not just landing or taking off in the north/south direction of the landing strip, but also involves repeated circling of the airport. Direct-GCI-Frear-r-10-11. While GCS' glare modeling was performed in accordance with FFA guidelines, GCS studied only north/south approaches, and no other patterns. Ex.-GCS-Blank-4; Ex.-GCS-Gil-6. Mere compliance with FAA minimum requirements is not sufficient. A CPCN should not be granted until glare studies are performed that take this airport's typical flight patterns and airport usage into account.

4. Impact on system reliability has not been adequately considered.

The project states that it will not adversely affect system reliability. Initial Brief-GCS-11. The project plan is to site 200MW of solar across 1,403 acres in an area frequented by intense storms. Direct-GCI-Frear-7-9. The ability of utility scale solar to withstand extreme wind and tornadoes has not been demonstrated, and the Frears' and their neighbors have had outbuildings destroyed. Ex.-GCI-Frear-4r.

Siting utility scale solar in one spot, in one extreme weather prone site, "all its eggs in one basket," can have an impact on system reliability.

B. The project will have an undue adverse impact on the environment.

Although Grant County Solar glibly states otherwise, the Grant County Solar project will have an adverse impact on the environment. Initial Brief-GCS-11. GCS leans on the Commission's Order for Two Creeks for support. Id., fn 6. However, Commission decisions are not precedential, there are no rules, and no solar Order has yet to be addressed by Wisconsin's Court of Appeals. Perhaps the question should be defining an "undue" adverse impact versus a "due" impact, though it's hard to imagine what a "due" impact would be. The Commission should explain this distinction in every finding that requires a determination that there will be "no undue adverse impact."

1. The project will have an undue adverse impact on waterways.

The project will cover 1,403 acres of Farmland Preservation prime farmland with solar panels. GCS denies any potential impacts. Initial Brief-GCS-12. However, the project is bound to have an impact on wetlands and waterways. Direct-GCI-Cray-r-6-7; Ex.-GCI-Cray-3r-1. The Commission has observed issues with drainage and erosion issues apparent in the Two Creeks and Badger Hollow solar projects. Direct-PSC-Tomaszewski-8. GCS has added a drainage pond

to this project, anticipating water issues. Rebuttal-GCS-Callahan,Pr-12. This basin is located near the substation, and is downstream from the Cray's property, and thus would not have an impact on drainage on their property. Tr.-Callahan-128.

The project utterly fails to address impacts of the project on drainage and erosion, impacts that would have an impact on wetlands and waterways.

2. The project will have an undue adverse impact on wildlife habitat.

The project denies any adverse impact on wildlife habitat. Initial Brief-GCS-12. However, the Environmental Assessment does address impacts, and acknowledges that fencing around the arrays will have an impact on wildlife, particularly deer movement that will be restricted and channeled to road rights of way. Ex.-PSC-EA-25 (Where a solar facility fence line runs along a road, deer that start to proceed along the ROW may have movement, which could lead to more interactions with drivers); Direct-PSC-Tomaszewski, p. 6 (The fenced arrays would restrict movement and use by certain larger species); see also Direct-GCI-Frearr-4; Direct-GCI-Reynolds-1-2.

Applicants claim that "the project will have minimal impact on wildlife species" but there is no evidence in the record to support that claim. Initial Brief-GCS-12. There is nothing in the record addressing different impacts to different types of wildlife. No studies have been produced. Similarly, there are no avian studies in an area similar to Grant County, a midwestern site within the largest flyways in the U.S. GCS argues that "… there is no empirical evidence that avian studies are necessary for solar PV facilities in the Midwest." Initial Brief-GCS-14. A more accurate statement would be that "there are no avian studies of solar PV facilities in the Midwest." As noted previously, this is an area with few studies, and applicants have not produced studies to provide any evidence or reassurance that impacts have been identified and

avoid and/or mitigated.

Studies of impacts of utility scale solar projects on wildlife are needed, particularly impacts on deer. If the Commissions issues a CPCN Order, it should include a condition requiring a study of impacts on deer and other wildlife, and also avian specific studies as requested by Commission staff.

3. GCS ignores land use plans in siting this project in Grant County.

GCS misstates the land use aspect of the Commission's siting statute, stating that "[t]he project will not have an undue adverse impact based on changes in land use." Initial Brief-GCS-15. Although that statement does presume "changes in land use," it does not reflect the wording of the statute. What the statute requires is that the Commission make an affirmative finding that "the proposed facility will not unreasonable interfere with the orderly land use and development plans for the area involved." Wis. Stat. §196.491(3)(d)6. The EA clearly stated that:

> As currently proposed, the fenced solar PV arrays, collector substation, interconnection switchyard, O&M building, and laydown area would not be in agricultural use while the facility is operational, which is not in keeping with the goal of using those acres as active farmland.

Ex.-PSC-EA-38.

The EA addressed Wis. Stat. § 91 (Farmland Preservation) and stated that the project could be compatible if certain conditions are met, but then explains how those conditions will not be met, and that one "could" be met but that additional details are required which are not available. Id.

As the Commission is aware, there are no solar specific siting rules. The PSC's jurisdiction typically overrides that of local governments. Where there are no solar specific siting statutes and regulations, the Commission should give great weight to local land-use plans and the intent of Farmland Preservation. Grant County Solar will unreasonably interfere with the

orderly land use and development plans for the area. The project would lock the solar project land use in place for 30-50 years, preventing any other land use – unreasonable interference by any measure.

As it stands, the record is not sufficient for an affirmative finding that "the proposed facility will not unreasonably interfere with the orderly land use and development plans for the area involved." There is, however, a record sufficient to find that the proposed facility will unreasonably interfere with the orderly land use and development in Grant County.

4. The extent of the project's PVHI effects are unknown.

Grant County Solar states that "the Project will not create an undue risk of potential PHVI effects." Initial Brief-GCS-20. The record does not provide sufficient information to make such a determination. There are NO studies of heat island effect in large utility scale solar projects. See Ex.-PSC-EA-35. GSC' Locker agrees that there are no heat island effects studies on 200MW solar projects. Tr.-Locker-197. Studies all note that more study is required. See e.g., Ex.-GCI-Frear-5r. GCI related concerns regarding heat island effect that have not been addressed in studies or by GSC. See Direct-GCI-Frear-r-11; Rebuttal-GCI-Frear-r2-6, 13.

GCS misleadingly states that "In contrast to the majority of studies documenting the PVHI effect, the GCS Project is located in a temperate region," citing Locker. A more correct statement is that "there are no studies of a utility scale solar project in a temperate region." GCS has produced no studies of utility scale solar, and no studies of utility scale solar in a "temperate region."

Any order approving this project must include a condition requiring study of PVHI effect of utility scale solar in this temperate region of Grant County.

5. Stray voltage is a concern and any Order must include a condition requiring stray voltage testing.

GSC agrees to a condition requiring pre- and post-construction testing. Grant County Grant County Intervenors stress the importance of stray voltage testing in the "project area" or "Project Study Area" as recommended by Commission staff. See Direct-PSC-Chee-4; Wis. Admin. Code § PSC 128.17.

6. Grant County Solar considers only benefits as economic impacts.

Grant County Solar claims that the project will generate local economic benefits. Initial Brief, p. 23. GCS considers only the positive economic impacts were considered, not economic activity lost due to removal of land from production, and economic impacts to landowners are addressed only from the point of view of a landowner leasing land to the project. 2-3 "full-time equivalent jobs will be created. Id. Impacts to adjacent landowners and the community at large are not considered. Direct-GCI-Wagner-4. GCS' Loomis states that "The agricultural supply chain will not see a significant loss of seed sales, repairs, contracting work, etc. as a result of this project." Rebuttal-GCS-Loomis-2. However, there is no evidence to support that claim. GCS also regards payments to those leasing land as an economic benefit to the community. Initial Brief-GCS-24. At least 90% of the landowners leasing land to GCS are absentee landowners. Direct-GCS-Frearr-4-5. Economic impact is more than direct payments to landowners or temporary construction jobs, and long-term impacts have not been addressed.

7. The project's impact on property values has not been demonstrated.

GCS claims that the project "will not have a negative impact on either rural residential or agricultural property values in the surrounding area. Initial Brief-GCS-22. However, the Marous Market Impact Analysis is materially flawed through reuse of outdated comparable listings, and use of listings that are not comparable. The Analysis was a rehash of the Badger

Hollow Market Impact Analysis using the same comps without knowledge if properties had been marketed and sold since that time, and repeatedly referencing "wind" in a "solar" report. Tr.-Marous-52:12-17; see also 43:17-52:11; *c.f.*, Ex.-Application-Appendix AA. No weight should be given to this "Market Impact Analysis."

8. The project's decommissioning is not yet assured.

GCS claims that "[t]he Project will be properly decommissioned within twelve months of the Project ceasing operation." Initial Brief-GCS-24-25. GCS has committed to submitting a decommissioning plan prior to construction. Direct-GCS-Gil-r-17; Rebuttal-GCS-Gil-r-3. However, this is no basis for a statement that "[t]he Project will be properly decommissioned within twelve months of the Project ceasing operation." GCI is concerned about decommissioning because the lease agreements include a "self-help" provision for landowners which provides an off-ramp for GCS to avoid decommission effort and expense:

> 22.21 **Self Help**. If Operator fails to timely remove any Improvements from the Owner's Property after expiration or termination of this Agreement and after the time period provided in this Agreement for Operator to remove such Improvements, then and in such event (i) such Improvements will be deemed abandoned by Operator, (ii) Owner may remove the Improvements and Operator will pay Owner's charges for such removal upon demand, and (iii) all such Improvements removed from the Owner's Property by Owner may be handled or stored by Owner at Operator's expense, or may be sold by Owner for the account of Operator (to the extent Operator owes certain amounts to Owner under this Agreement) less Owner's costs in connection with such storage/sale(s).

Ex.-GCS-Gil-15pr, p. 28 (PSC REF #406097-public). If GCS will properly decommission the project within twelve months of the Project ceasing operation, such a clause is unnecessary and against the public interest.

For this reason, the Commission should put a condition in any CPCN requiring a decommissioning plan, together with adequate financial assurance for decommissioning, and also prohibit such clauses that provide an escape for project owners, with a condition that such "self help" clauses be void as a matter of law.

9. At this late date, GCS still will not commit to solar panel to be used.

GCS steadfastly refuses to commit to a make and model of solar panel to be used:

> To commit to a solar panel this early in the project is not necessary. It would not be prudent for a company to make such a commercial investment prior to the project getting approved by the state. Also, if we made the decision now, we would not be able to take advantage of efficiency improvements in solar manufacturing in that the rapidly advancing technology and the efficiencies in prices are coming down, and the project would like to take advantage of benefits.

Tr.-Callahan,P.-108; see also Ex.-Callahan,P-5r.

Reply briefing is not an "early" stage of the project. This project will come before the Commission soon. As a condition of any CPCN Ordered, GCI requests a condition that applicant specify the panel to be used before ownership of the project is transferred to, or acquired by, another entity.

III. GCS REQUESTS CONDITIONS FOR ANY CPCN APPROVED BY COMMISSION

Grant County Intervenors joins with and supports conditions suggested by Commission staff, and other conditions, below, which should be part of the Order if the Commission does approve a CPCN, with conditions following the CPCN to any and all future owners and assigns. GCS also requests that the Commission consider those conditions suggested for the WP&L acquisition docket that incorporates this Grant County Solar project, in weighing conditions for this project.

GCI requests conditions, as in our Initial Brief, including but not limited to:

- Identification of solar panels to be used prior to approval of CPCN by Commission.
- 3rd party analysis of Heat Island Effect for this project, as part of the group of the six Wisconsin Power and Light projects (6680-CE-182) including:
    - Evidence based assessment and recommendations to inform environmental review, permitting/Orders, and policy directives.
    - Study of group needed to compare impacts and address cumulative impacts
- Heat Island Effect Statewide study launched by Commission of all utility scale solar projects, including Grant County Solar.

- Applicant to make vegetation management plan public, and work with Commission staff and DNR where appropriate regarding placement of vegetative buffers and pollinator enhancement plantings in site-specific vegetation management plan.
- Brownfield use study and development of solar siting standards in compliance with the statute requiring use of brownfields incorporating the state definition of brownfield.
- Engage DNR species experts and comply with DNR recommendations to identify, avoid, and minimize environmental impacts, particularly water issues, both permitted and not.
- Group of projects study on avian impacts of avian attraction, injury, mortality, including cumulative impacts to begin to inform where scientific knowledge currently does not exist.
- Group of projects study of impacts on eagles where nearby nests have been identified.
- Group of projects study on impacts of fencing on wildlife (particularly ungulates), including movement patterns, injury, mortality, including cumulative impacts to begin to inform where scientific knowledge is only beginning to be reported.
- Stray voltage testing and procedure for project area. Direct-PSC-Chee-4.
- Group of Wisconsin Power & Light projects (6680-CE-182) post-construction noise monitoring (testing) and comparison to pre-construction noise modeling, filing of post-construction study with Commission, and comparison by Commission stuff for consistency. If results of post-construction study not consistent with pre-construction modeling, to bring to Commission for investigation.
- For all projects, bird diverters on transmission where risk is indicated.
- Pre- and post-construction meetings with Commission staff to review planned actions and ensure compliance. Meeting minutes should be posted online in project dockets.
- Update Endangered Resources Review pre-construction.
- Investigate and mitigate any project interference with line-of-sight communications.
- The Commission should require a decommissioning plan before construction, together with adequate financial assurance for decommissioning that is regularly updated.
- The Commission should also prohibit such clauses that provide an escape for project owners, with a condition that such "self help" clauses be void as a matter of law.
- Provide a clearly described complaint process to those living in the project area prior to the start of construction as was suggested by Commission staff in Pt. Beach solar docket. Ex.-GCS-Gil-14 (from Order, 9802-CE-100, Pt. Beach, p. 25-26).
- Commission initiation of promulgation of solar specific siting rules, inviting participation of parties to solar dockets.
- Such other conditions as the Commission determines are warranted.

IV. THE GRANT COUNTY SOLAR PROJECT APPLICATION SHOULD BE DENIED.

Grant County Solar's Application for a Certificate of Public Convenience and Necessity for its proposed 200 MW solar project should be denied. The Certificate of Public Convenience and Necessity provides criteria and guidance for review of an electric generation facility, but not

solar generating facilities. Wis. Stat. §196.491(3)(d). There are no solar specific rules as there are for wind projects, and the record reveals that there are too many uncertainties and too many certain impacts for this project to be approved. The Grant County Solar CPCN Application must be denied.

Should the Commission decide to approve a CPCN, there must be conditions such as those detailed above in the Order to provide sufficient compliance and information about impacts of utility scale solar to inform future decisions in the many areas where little or no information is available.

Dated this 15th day of March, 2021

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