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 – PETITION FOR REHEARING

Grant County Intervenors submit this Petition for Rehearing as provided by Wisconsin Statute §227.49 and request that the Commission immediately stay its decision, reconsider its determinations regarding application for a CPCN for siting 200 MW of solar on roughly 2,058 acres in Grant County, Wisconsin, and ultimately remand the CPCN Order for rehearing.

I. THE COMMISSION'S CPCN ORDER IS BUILT ON MATERIAL ERRORS OF LAW AND FACTS.

The statute directs that rehearing will be granted only on the basis of:

> (a) Some material error of law.
> (b) Some material error of fact.
> (c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

Wis. Stat. §227.49(3).

This Grant County Solar Commission Decision demands rehearing due to material error of law and also material error of fact in consideration of the requirements of Wis. Stat. §196.491and Wis. Admin. Code Chs. PSC 4 and 111.

Any Order of the Commission must be within the framework of the Commission's statutory charge, within its powers and duties, as found in Wis. Stat. §§ 196.02 and 196.025.

196.02 Commission's powers.

(1) JURISDICTION. The commission has jurisdiction to supervise and regulate every public utility in this state and to do all things necessary and convenient to its jurisdiction.
and
(3) RULES. The commission may adopt reasonable rules to govern its proceedings and to regulate the mode and manner of all inspections, tests, audits, investigations and hearings.

196.025 Duties of the Commission
(2) ENVIRONMENTAL IMPACTS. The commission shall promulgate rules establishing requirements and procedures for the commission to carry out the duties under s. 1.11. Rules promulgated under this subsection shall include requirements and procedures for the commission to comply with sub. (2m) and for each of the following:

(a) Standards for determining the necessity of preparing an environmental impact statement.
(b) Adequate opportunities for interested persons to be heard on environmental impact statements, including adequate time for the preparation and submission of comments.
(c) Deadlines that allow thorough review of environmental issues without imposing unnecessary delays in addressing the need for additional electric transmission capacity in this state.

Additionally:

7(b) The commission may provide technical assistance to units of government other than the state to assist in the planning and implementation of energy efficiency and renewable resources and may charge for those services. The commission may request technical and staff assistance from other state agencies in providing technical assistance to those units of government.

Id.

The issues set forth in the Prehearing Memorandum are broadly framed: whether the proposed project complies with the applicable standards under Wis. Stat. §§ 1.11, 1.12, 196.025, and 196.491, and Wis. Admin. Code, chs. PSC 4, and 111. As a utility scale solar project, this is a type of project docket only recently taken up in Wisconsin, and although there are CPCN criteria that give a general framework for review of electric generating facilities, and although several CPCN's have been Ordered for large solar projects, there are no solar specific rules to guide the Commission[2]. The Commission has fallen into this gaping hole yet again.

In this case, as in other solar CPCN Orders preceding this Order, the Commission has

abdicated its powers and duties by its failure to develop siting regulations for solar projects; for approval of siting despite legitimate questions, issues, and Commission acknowledged areas where not enough is known about impacts; for failing to initiate reasonable fact-finding studies; and for failing to address the paucity of requirements for environmental review, instead relying on a decade's old exemption of solar projects from environmental review, a remnant of a time long before 200MW solar projects, or even 1 MW projects, were dreamed possible.

The Commission has failed to address material issues of fact and failed to require production of crucial, determinative, information of Grant County Solar. GCS has not met its burden of production and the burden of proof in matters such as use of brownfield sites, project impacts on the existing community, individual hardships, mitigation to avoid impacts, decommissioning, and its complaint processes. There will be extensive individual hardships, impacts on community vistas, viewsheds, and aesthetics, water drainage and control issues, and impacts to those living, farming, and working in this long-established agricultural community, with landowners such as the Grant County Intervenors likely to suffer loss of use and enjoyment of their property, the essence of nuisance. In knowing of these substantial impacts, Grant County Solar takes on a significant risk going forward with this utility scale solar project.

These distinct instances of abdication are, in sum, material issues of both law and fact that call the Order into question.

A. Issuing CPCN Without Solar Specific Siting Rules And Environmental Review Requirements A Fundamental Error Of Law, And Is Arbitrary And Capricious.

In the Grant County Solar Order of May 14, 2021, served May 17, 2021, makes a material error of law by issuing a CPCN where there are no siting rules for solar generation siting. Environmentally, the project is regarded as a Type III action under Wis. Admin. Code

PSC 4.10(3). The code is what it is – there is a ceiling of 10 MW for wind projects classified as Type III, but there is no threshold for solar where more extensive review is required, as there is for wind projects over 10 MW – a logical threshold, but large solar projects were not expected at the time of this rulemaking:

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

For environmental review purposes, solar projects of all sizes, even this 200 MW project, one of the largest solar projects in the Midwest, are regarded under PSC rules as a Type III action, with no substantive environmental review required. Id., Table, Type III. This project, despite no environmental review requirement, was the subject of an Environmental Assessment, stating:

> The Commission is preparing this EA to evaluate the location of the project and its potential environmental and community impacts. When the EA is complete a preliminary determination will be made on whether to undertake a full EIS and considered before a final determination is made.

Ex.-PSC-EA, p. 1. The EA goes on to state that:

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

The EA pointed out issues which are overtly significant, such as the project's incompatibility with agricultural preservation and the local land use plan:

> The zoning map provided in the Grant County Farmland Preservation Plan depicts that the land within the project area planned for construction of solar facilities is exclusively classified by Grant County Zoning as Farmland Preservation District. 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.

Id. P. 37; see also p. 30-32. Following this paragraph is a convoluted dismissal of this

incompatibility, turning a blind eye to the acknowledged issues. Id.

Impacts to wildlife, particular "larger animal species" including deer, are also acknowledged, despite use of qualified language:

> Use of the deer exclusion fence around arrays, similar to what was recommended by the Minnesota DNR for large solar sites and required by the Commission in previous solar dockets should allow for the passage of smaller mammals, reptiles, and amphibians while preventing the access of larger animals such as deer. By not using barbed wire on the array fences, the risk of wildlife injury due to entanglement is decreased. GCS states that deer fencing would be utilized around the arrays. However, for public safety reasons, a seven-foot chain link fence that includes one foot of barbed wire on top would be installed around the collector substation site. **The additional fencing in the landscape around the facilities would affect wildlife movement corridors across the project area. Larger animal species would find the fenced a barrier to movement, which could cause habitat fragmentation. Where a solar facility fence line runs along a road, deer that start to proceed along the ROW may have movement restricted, which could lead to more interactions with drivers.** The proposed project does have some areas free of fences, particularly along drainage features or waterways, where wildlife may find routes between the arrays.

Id., p. 24 (**emphasis added)**. That paragraph is followed by admission that there is little known about wildlife impacts and suddenly discussion of impacts to deer shifts to avian studies and deer are not further addressed:

> **Large-scale solar facilities are a relatively new addition to the landscape and research is ongoing to determine impacts to wildlife. Most research on the impacts of solar facilities on wildlife has occurred in different habitats than are found in Wisconsin**. In 2016, a multi-agency collaborative working group released an avian-solar science coordination plan[17] that discussed ways solar development may affect birds and areas where more information is needed to understand potential impacts to birds. **There have been few studies, particularly systematic studies of mortality, at comparable large-scale solar facilities**. The Commission required the first two solar facilities it authorized, Badger Hollow and Two Creeks, to conduct post-construction mortality surveys. However, these projects have not yet finalized the survey methodology, and any results from the surveys are years away. In 2019, the Department of Energy[18] announced that it would award $4.3 million in grant funds to three projects to study solar project effects on bird populations. Although the impacts to birds from a solar facility are likely to be less significant that impacts from building window strikes, cats, or climate change in

> terms of sheer numbers, continuing to build the understanding of how solar facilities at this scale impact species is necessary to acknowledge and mitigate the specific impacts of any given project.

Id. (**emphasis added**). Impacts on large wildlife, such as deer, is not discussed. The Commission's Order similarly ducks the issue of wildlife impacts and specifically fencing impact on deer:

> **Grant County Intervenors proposed that the Commission should order Grant County Solar to conduct a study on wildlife interactions with fencing at the project facility to mitigate concerns about fencing impacts to wildlife in the area.** The specifics and details of what such a study would include was not substantially developed in the record for this docket. At this time, the Commission does not find it necessary to order Grant County Solar to conduct a study on this topic at this facility.

Order, p. 28. Only the potential for avian impacts is taken at all seriously. Where there is no research, failing to Order a study is abdication of responsibility. The Commission made this same error regarding heat island effect, noting that there was not any research on this issue, yet did not Order any study.

All in all, the issues raised in the EA were dismissed and the Commission declared the Environmental Assessment sufficient and adequate, and that an EIS was unnecessary:

> Under Wis. Stat. § 196.491(3)(d)3., the Commission must find that the proposed project is in the public interest considering environmental factors. Similarly, under Wis. Stat. § 196.491(3)(d)4., before issuing a CPCN, the Commission must find that the proposed project will not have an undue adverse impact on environmental values.
>
> The Commission finds that no EIS is required and that the environmental review conducted in this proceeding complies with the requirements of Wis. Stat. § 1.11 and Wis. Admin. Code ch. PSC 4.

Order, p. 35.

The Environmental Assessment is not sufficient. There are many significant impacts identified by PSC staff should trigger a full EIS. Failure to Order an EIS, and failure to order

studies where impacts are expected yet unknown, without informing the record sufficiently to support the Order, and instead to grant a CPCN, are errors of law.

B. The Commission's Order Is Not In Compliance With The Brownfield Statute, Wis. Stat. §238.13(1)(A), An Error Of Law.

Another material error of law is found in the Commission's failure to comply with Wisconsin's "Brownfield" statute. The willful disregard of Wisconsin law, and attribution of unsupported presumptions of its applicability is arbitrary and capricious.

Grant County Intervenors request rehearing because the Commission's Decision regarding brownfields is an error of law – a CPCN should not be granted where Applicants have not complied with Wisconsin's CPCN brownfield statute:

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

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

> **(4)** The commission **may not issue** a certificate under sub. (1), (2), or (3) for the construction of electric generating equipment and associated facilities unless the commission determines that brownfields, as defined in s. 238.13 (1) (a) or s. 560.13 (1) (a), 2009 stats., are used to the extent

practicable. Wis. Stat. §196.49(4) (**emphasis added**).

The Commission's decision states that "A brownfield site for Grant County Solar's proposed project is not practicable." Order, p. 5. The Decision states, without support, that:

> The proposed project requires over 465 acres of nearly contiguous developable land in close proximity to existing transmission facilities.

Order, p. 15. The project desires contiguous land, but there is no requirement that brownfield sites be large enough to site an entire project, particularly a project with multiple distinct arrays such as a solar project.

The Order goes on to state:

> Grant County Intervenors speculated that multiple brownfield sites could accommodate the amount of land needed for the project. However, Grant County Intervenors present no evidence to show its suggestion is practicable.

Id. It is not Grant County Intervenors that have the burdens of production and proof – this is the job of the applicants. Despite this allocation of burdens, Grant County Intervenors did provide evidence that the solar project's search for brownfields was limited only to an EPA list and was in other ways inadequate, citing the Environmental Assessment, Grant County Solar's application, and Data Requests filed as exhibits. See, e.g., Ex.-GCS-Gil-6 (only EPA site checked); Ex.-PSC-EA-9 (only EPA site checked); see also Application Table 5.8.1; 5.8.2 not reviewed as brownfields or considered for siting; GCS failed to consider distributed generation; Ex.-GCS-Gil-10. Direct-GCI-Frear-r-7; Ex.-GCI-Frear-9r; Ex.-GCI-Frear-8r; Tr. Public Hearing David-285:15-23.

Despite these specific references and evidence in the record, PSC Staff supported the "No existing brownfield sites meet the siting criteria for the proposed project" alternative with only the very general citation "Ex.-PSC-EA" without so much as a page number! That is no basis of support for an Order regarding brownfields.

Despite staff's statements in the EA, there are no "details" in the CPCN application, and it is obvious at a glance that for the EA, the application paragraph was copied, pasted, and modified just slightly. Grant County Application, p. 9 (PSC REF# 349485). Neither the Application nor the EA contains an "analysis." There is no primary documentation of the brownfield search. There is no way to tell if use of brownfields was possible, and no support for a finding that it was not.

From Grant County Intervenors' Initial Brief:

The Commission must make an affirmative finding of fact that, "[f]or a large electric generating facility, brownfields, as defined in s. 238.13(1)(a), are used to the extent practicable." Wis. Stat. §196.491(3)(d)8. "Brownfields" means abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination. Wis. Stat. §238.13(1)(a). GCS has not complied with Wisconsin's brownfield law.

One of the benefits of solar is that due to the characteristics of installation, in a number of arrays, solar can take advantages of contaminated and what would be considered underutilized spaces. Grant County Solar has failed to comply with the brownfield statute in the most basic of ways – its search was insufficient because it unreasonably limited its search for potential sites and because its consideration was limited to only EPA sites that could contain the entire project – a universe of zero potential sites.

When asked to "provide all documents and/or links used by Grant County Solar to identify and consider Wisconsin brownfields, including abandoned industrial or commercial land," Gil referenced the application, and stated:

> As set forth in Section 1.4.2.1.2 of the Application, a comprehensive list of brownfield sites was accessed from the U.S. Environmental Protection Agency (U.S. EPA) website to identify and consider Wisconsin brownfields for the Project. United States Environmental Protection Agency. February 2018. Cleanups in My Community.

Ex.-GCS-Gil-6. This GCS EPA-only search is confirmed in the Environmental Assessment:

> 2.2.2 Brownfield Evaluation
>
> Under Wis. Stat. § 196.491(3)(d)8, the Commission shall consider whether brownfields are used to the extent practicable when evaluating large electric generation facilities. Brownfields, as defined by ch. 283.13(1)(a) are abandoned, idle, or underused industrial or commercial facilities or sites, the redevelopment of which is adversely affected by actual or perceived environmental contamination.
>
> GCS's application stated the potential use of brownfield sites was evaluated at the regional level. A list of brownfield sites in southern Wisconsin was accessed from the U.S. Environmental Protection Agency (EPA) website. No brownfield locations were identified in Grant County. Therefore, no nearby brownfield sites could be integrated into the project.

Ex.-PSC-EA-9. The "comprehensive list" is not in the record. There is no information provided in the application regarding the number, sizes, or locations of brownfield sites that turned up in the list from the EPA website, only a statement that "[n]o brownfield locations were identified in Grant County. Further, there is no identification of "abandoned, idle, or underused industrial or commercial facilities or sites, the redevelopment of which is adversely affected by actual or perceived environmental contamination." Id., see also Wis. Stat. §283.13(1)(a).

The Application does mention a compilation of "Contaminated Sites" but only within a 2 mile area of the project, utilizing the "Wisconsin Remediation and Redevelopment Database: and the "Historic Registry of Waste Disposal Sites." Ex. Application, p. 59-60. The two tables identifying contaminated sites and waste disposal sites do not identify acreage or locations. Id., Table 5.8.1; 5.8.2. However, the review of these databases was not a "brownfield" search for potential siting options, but a search for contaminated sites for "evidence of Recognized Environmental Conditions in connection with the project study area," for avoidance, and is not cross-referenced in the Application section for brownfields or the Environmental Assessment. In the words of GCS's Gil, the only sites regarded as "brownfield" were those listed in the EPA database.

The GCS project is comprised of nine or more arrays set up utilizing as many distinct electrical circuits. Ex.-Application-2. GCS also did not consider a combination of brownfields for distributed siting, despite the nine or more separate and distinct circuits that make up the project. When asked whether a brownfield site must be able to contain the entire project, the response was:

> For this Grant County Solar project to develop this 200 megawatt project, that would be the case, yes.

Tr.-Gil-88:6-7.

When asked what distributed generation options were considered, the response was:

> Grant County Solar did not consider distributed generation for the Project. The Project is a 200 MW utility scale solar generation facility that will be connected to the bulk electric transmission system at one point of interconnection. From a cost, performance, and operations perspective, a utility scale solar plant is more practical than a collection of 200 MW of separate distributed generation projects.

Ex.-GCS-Gil-10.

Grant County Intervenors raised the importance of siting on brownfields as conducive for reduction of our human footprint, and provided examples of siting considerations for development of solar that the Commission should take into consideration:

> Distributed generation utilizing rooftops, brownfields, and less productive irrigated land would help minimize the effects of the physical footprint. A Rhode Island study shows the high potential of distributed siting.[1] The need for food is ever increasing and to utilize our resources thoughtfully, such as use of our prime agricultural ground, will become increasingly more important as more projects like these are proposed.

[1] See Ex.-GCI-Frear-9, Solar Siting Opportunities for Rhode Island.

> A recent study published in Environmental Science & Technology examined the use of non-conventional land cover types for solar siting. The researchers – hailing from UC Berkeley, UC Davis, and the Lawrence Berkeley National Laboratory – identified four such land types: the built environment, salt-affected land, contaminated land, and water reservoirs. Each of these land cover types has the potential for creating synergies between solar energy development and ecosystem conservation.[2]

> This study done in California should be used as a model for Wisconsin. By conducting a study to understand our existing land cover and the opportunities for synergy we can develop thoughtful plans to reduce the industrial footprint encroaching on prime farm ground.

Direct-GCS-Frear-r-7.

An example of a site that should be considered for solar generation was brought up at the public hearing by Mike David:

> My comment is that I work in the agricultural production field of assisting farm producers with their crops and livestock. And my question is -- and I'm opposed to this project. Why are we taking such productive cropland out of growing commodities? Why don't we use less productive land, something like the Badger Ammunition plant that is government owned and doesn't grow a huge amount of crops.

Tr.-Public Hearing-David-285:15-23.

The brownfield statute requires that "[f]or a large electric generating facility, brownfields, as defined in s. 238.13(1)(a), are used to the extent practicable." Wis. Stat. §196.491(3)(d)8. GCS has not provided sufficient information for a determination other than that brownfields have not been used at all. The record does not provide a basis for a finding that GCS considered brownfields for siting under the state's definition that "Brownfields" means abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination, as "abandoned, idle or underused industrial or commercial facilities or sites" were not considered – only EPA listed brownfield sites were reviewed and the result of that review is not in the record. Wis. Stat. §238.13(1)(a). There is no requirement in the statute that a brownfield site be able to contain an entire project, and conversely, there is no prohibition of separating out components of a project for siting on brownfields.

There is sufficient information in the record supporting a finding that GCS did not identify brownfield sites sufficient to evaluate whether sites could be used because GCS's search was limited to only EPA sites, and not inclusive of the range of potential sites as defined by the statute. There is also sufficient

[2] See Ex.-GCI-Frear-8, Land-Sparing Opportunities for Solar Energy Development.

> information in the record to spur the Commission to take a serious look at the brownfield law, its applicability to the siting of solar generation, and the benefits of mindful siting of solar generation.

Grant County Intervenors Initial Brief, p. 23-27 (PSC REF#**406386**). The Commission had this information.

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

The Commission had much evidence showing that the requirements of the "brownfield law" was not met. The record does not support a finding that "No existing brownfield sites meet the siting criteria for the proposed project." Wis. Stat. §196.491(3)(d)8 (see also §238.13(1)(a). The Applicants have the burden of proof and production. There was no evaluation of use of multiple brownfield sites and available transmission at those sites (most of which were likely industrial), only rejection as not "suitable," without support in the record. There is no evidence in the record that siting on multiple brownfields is not possible, no explanation for Applicant's failure to utilize available distributed generation sites, no evidence in the record regarding, if distributed generation had been chosen, how much of the project could be sited on brownfields, nor is there any evidence in the record of potential cost savings siting on brownfields and cost savings through utilization of existing transmission infrastructure and capacity. Applicants have not met the standard of Wis. Stat. §196.491(3)(d)8, and the Commission's approval is an error of law**.**

C. **The Commission's Order Is An Error Of Law Because Project Is Not Compatible With, And Will Unreasonably Interfere With, Orderly Land Use And Development Plans.**

The Commission's Order and finding regarding interference with orderly land use and

development is an error of law.

Wisconsin law prohibits local government from restricting development of renewable energy, and PSC jurisdiction pre-empts local governments' ordinances. Wis. Stat. §66.0401(1m). However, there is no solar specific siting criteria, as there is for wind, to take precedence over or to pre-empt local land use plans. In this vacuum, the Commission should give great weight to the impact of the project on the area proposed for siting.

One of the Commission's criteria that does apply to this project is the Commission's consideration of, and finding that, the project will not unreasonably interfere with land use plans:

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

Wis. Stat. §196.491(3)(d)6.

The Commission generally pre-empts local land use through its jurisdiction over CPCN permitting. In this vacuum of solar specific siting rules, standards, criteria, and knowledge of impacts that would ordinarily pre-empt local land use plans, the Commission should focus on prevention of problems, consideration of all affected landowners and land uses, particularly in an issue of early impression, where impacts are not yet documented and understood. The Commission should consider and give great weight to the existing community, neighbors and land use plans. This did not occur. The Grant County project is not compatible with agriculture, it is not compatible with community plans, values, and it will significantly impair viewsheds and aesthetics, and the lives and land-uses of neighbors. This project is, as are all utility scale solar projects, an "either/or" proposition, because the area will be either agriculture, or it will be solar – for 30-50 years with impacts extending beyond the immediate site. Both land uses are not possible, and avoidance of impacts is not possible.

This solar project covering from 1,400 – 2,500 acres of farmland with a 30-50 year project life will interfere with the orderly land use and development plans for the area. The Environmental Assessment details potential permanent impacts, and states:

> 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 Commission's Order states:
>
> The facilities approved by this Final Decision will not unreasonably interfere with the orderly land use and development plans for the area. Wis. Stat. § 196.491(3)(d)6.

Order, Order point 5, p. 4. This law is a nod to the Commission's general pre-emption of local land use plans when it has jurisdiction over a CPCN decision.

> The Commission claims that:
>
> The question is whether the project will "unreasonably interfere" and must also take into account the benefits of the proposed project.

Order, p. 16. However, "must also take into account the benefits of the proposed project" is false. The statute contains no cost/benefit analysis. Wis. Stat. § 196.491(3)(d)6. The Commission then goes further astray:

> Grant County does not have specific zoning requirements or limitations for solar generating facilities.

Id. This is odd, because neither does the Commission have specific requirements or limitations for solar generating facilities! There are no solar specific statutes or rules to pre-empt local zoning. Then the Commission goes further into the weeds with a statement that only one class of landowners, those leasing to the project, was considered:

> The Commission takes seriously that areas within the fenced solar arrays would be taken out of agricultural production for the life of the project **but must balance those concerns with the right of individual landowners to use their properties in the manner they choose.**

Order, p. 17 (emphasis added). Local land use plans supersede "the right of individual landowners to use their properties in the manner they choose," and in the Commission's statute there is no requirement for a "balance," much less an allowance for a Commission decision that is not compatible with local land use plans. Wis. Stat. §196.491(3)(d)6. Further, the Commission's claim that it "must balance those concerns with the right of individual landowners to use their properties in the manner they choose," is disingenuous, because it only took leasing landowners into account[3], did not take into account the project's impacts beyond the fence line and the rights of all those landowners also subject to project impacts and local land use plans. The Commission notably excluded consideration of neighboring landowners' rights to use their properties in the manner they choose and their right to use and enjoyment of their properties.

There is no rational basis for this consideration of this suspect classification of only leasing landowners and the exclusion from consideration of landowners who are not leasing to the property, neighbors, community members, etc.

In looking at the evidence in the record, there was a most convoluted discussion in the EA, which states that the project "could" be compatible Wis. Stat. § 91 (Farmland Preservation) 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. In other words, no demonstration of compatibility has been made, and only qualified language suggests

[3] From the Order: "Grant County Solar must and has secured long-term lease agreements with landowners in the project area to acquire the property for the generation facility. The changes to land use are agreed to by the landowners who have signed leases with Grant County Solar, and after decommissioning, the land may return to agricultural land use."

that it could be compatible. The language of the Order reflects this disconnect.

The record in this docket is not sufficient for a finding that "the proposed facility will not unreasonably interfere with the orderly land use and development plans for the area involved." What is reasonable? What is unreasonable? The statute is silent. There is evidence in the record to support a Commission finding that the project is not compatible with, and would unreasonably interfere with, local land use plans. Until the record is otherwise developed, there is no basis for a Commission finding that "the proposed facility will not unreasonably interfere with the orderly land use and development plans for the area involved."

There is much evidence in the record regarding the impacts to local land use and plans and the long-term and likely permanent nature of these impacts. These conflicts, incompatibility, and unreasonable interference with local land use plans were not addressed by the Commission.

A. The Commission's CPCN Order does not prohibit "Effects Agreements," which are against the public interest.

"Good neighbor" effects agreements are the first means of addressing objections raised by Commission staff, followed by mention of minor adjustments to layouts and screening. Direct-PSC-Tomaszewski-9. Effects agreements are a tacit admission of impacts sufficiently significant to trigger buy-outs of non-participating landowners – agreements which put a landowner at a disadvantage, as a landowner has no way to know of potential impacts that they are waiving. The agreement clauses are broad, as described in the EA:

> 3.2.4.2 Landowner Agreements/Easements/Good Neighbor Agreements
> Some renewable energy projects offer "good neighbor agreements" to nearby non-participating residences. These typically include payments to mitigate some impacts that may affect the non-participant. GCS stated that effects easements are being negotiated with several non-participating landowners at the time of the application and provided a sample of the agreements being offered[33].

Ex.-PSC-EA-36; see also p. 3 (landowner objections to use of "good neighbor" agreements).

> 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.

Yet when the adhesion aspects of these agreements are raised by neighbors, the Commission doesn't even acknowledge the inherent ethical issues with so much as a mention in its Order.

Where there are neighbors who object to the project, and raise negative impacts, factors that are hardships such as loss of property value, fencing, change in the community ranging from viewshed and aesthetics, the applicant's proposal, rather than address the issues of concern, the default is to offer "good neighbor agreements," which is an agreement to be a "good neighbor" and not object to the project in exchange for money:

> That is evident in the "good neighbor agreements." The good neighbor payments are anything but what the name implies. If this project is so positive then why is the company going to such great lengths to make sure our questions are not answered? To make sure there are not public meetings? It seems the company feels it cheaper or more efficient to pay people a yearly amount to waive all rights than deal with any problems that may arise due to their project.

Direct-GCI-Reynolds-3.

The Commission's notion that an offering of "Good Neighbor Agreements" and cash payments equals mitigation of impacts is absurd, and egregiously against public policy. Failing to acknowledge the significant impacts driving these effects agreements, and failure to address the public policy implications of use of effects agreements, are serious errors of law, are against evidence, and are against the public interest.

For these reasons, these errors of law, Grant County Intervenors request rehearing for consideration and preventative actions to avoid dramatic unreasonable change and preserve this agricultural community.

III. THE COMMISSION'S ORDER IS RIFE WITH ERRORS OF FACT.

The Commission's Decision does not address impacts demonstrated in the Environmental Assessment, the evidence presented for the record, the extent of evidence admittedly not in the record because there were no, or minimal studies, and requiring additional study, and the concerns of Grant County Intervenors, including the character of this agricultural community, the change in its visual nature and aesthetics if the project were to be built. These are factors to be considered under Wisconsin's CPCN statute, and:

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

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

The record developed is insufficient to make many of the findings of the Commission contained in the Grant County Solar CPCN Order. In several cases, the record demonstrates that there are legitimate concerns, but that because utility scale solar is so new, and so new to this area, that there are no studies on point. But despite the legitimate concerns, the Commission goes forward with the CPCN Order, and takes no initiative to address the

problems. The Commission has fails to take up its powers and has abdicated its duty to the citizens of Wisconsin. Wis. Stat. §§196.02 and 196.025.

A. Grant County Intervenors Raised Many Examples Of Individual Hardships.

In this hearing, Grant County Intervenors raised many issues of individual hardships that would directly affect them, and which would likely take away their use and enjoyment of their property. Despite the claim of the Commission that in its consideration of interference with local land use plans, it "must balance those concerns with the right of individual landowners to use their properties in the manner they choose," the rights of those individuals testifying as to individual hardships and the project's impact on their use of their properties in the manner they choose were not given equal consideration or "balance." The impacts inflicted on others by the project and those individual landowners leasing land to the project were not considered.

While the focus of Grant County Intervenors is on big picture issues, the members of this association will experience individual hardships, and submitted testimony regarding those impacts See e.g., Direct-GCI-Frear-r-2; Direct-GCI-Reynolds-3; Direct-GCI-Adrian-r-2, 4-5; Direct-Cray-r-5. But c.f. GCS-Loomis-Direct-6:8-9, 18-19 (Rebuttal-GCI-Frear-r2-3-4); Rebuttal-GSC-CallahanR-2 (noise as hardship). Effects easements: Direct-GCI-Reynolds-3; Direct-PSC-Tomaszewski-9; Ex.-PSC-EA-36; Ex.-GCS-Gil-15r-2; Ex.-GCS-Application-6 (PSC Guidelines, Alternative locations); Ex.-PSC-EA-8-9. Setbacks: Ex.-Application-10, Table 1.5.3. Fencing: Direct-GCI-Frearr-4; Direct-GCI-Reynolds-1-2; Ex.-PSC-EA-25; Direct-PSC-Tomaszewski-6:12-13. Heat Island Effect Ex.-GCI-Frear-5r (a-c); Direct-GCI-FREAR-r-11; Rebuttal-GCI-Frear-13; Ex.-PSC-EA-35; Tr. Locker-197 (not aware of studies on 200MW solar projects). Water and drainage issues: Direct-PSC-Tomaszewski-8; Rebuttal-GCS- Callahan, Pr-12; PSC Data Request Attachment No. 1.02; Direct-GCI-Cray-r-6-7; Ex.-GCI-Cray-3r-1; Ex.-

PSC-EA-19. These examples of clear statements of expected individual hardships were ignored.

Those raising concerns about individual hardships and concerns, their rights to use their properties in the manner they choose, impacts affecting their use and enjoyment of their property, were ignored. Only the rights of landowners leasing land to the project were weighed, and there is no rational basis for consideration of only project participants and not neighbors not participating. The impacts of this project are not kept behind the project's fenced boundaries – the impacts will go far beyond. Landowners have no right to inflict impacts on others. A lease does not convey a right to inflict impacts and individual hardships on neighbors, nor does it allow the likelihood of taking landowners' use and enjoyment of their property, the essence of creation of a nuisance. The Order does nothing to restrict impacts or compensate landowners for the impacts. Failure to address this specific evidence of individual hardships in the Order is an error of fact. Failure to take action to prevent the taking of landowners' use and enjoyment of their property is an error of law.

B. The Commission's Order regarding alternative solar array sites is based on "alternate solar arrays" rather than location, and is an error of fact.

In its Order, the Commission states:

> If the situation arises where Grant County Solar elects to use an alternative array area, Grant County Solar shall provide advance written notice to the Commission identifying any such alternative arrays.

Order, p. 37, Order point 3.

This point is a logical impossibility as Grant County Solar has yet to identify the solar array it will use. This fact was raised repeatedly by Grant County Intervenors in Data Requests entered into the record, in cross-examination, in briefing, and in the Decision Matrix:

> Note "6a" refers to "alternate solar arrays" rather than LOCATION. The applicants have refused to disclose what solar panel is to be used, and the project should not be granted CPCN without first identifying panel to be used, and coming back to Commission with amendment request if that choice changes. This is not

> "detailed engineering," it's primary, and it's not early stage of project, has been ongoing for years – panel should be identified.

GCI Decision Matrix, p. 7, Issue 6a, citing Tr.-Callahan,P.-108; see also Ex.-Callahan,P-5r. Direct-GCI-Frear-r-7-9. Ex.-GCS-Callahan,Pr-1-2, Response to GCI-5, Risk Category I-American Society of Civil Engineers 7-10. Ex.-GCS-Gil-15r-16 of 45.

There are no facts in the record to support this Order Point, and there are facts to support the opposite where the solar array to be used has not yet been declared. How will the Commission know if the planned array changes, how will the Commission recognize use alternative arrays? This Order Point is an error of law.

C. Impacts of fencing on deer and other large wildlife is expected, range and severity must be established prior to CPCN Order.

The full range of possible impacts of this project, and in particular, fencing of the project, is unknown. The project will have an impact on deer, and "restriction of movement and use by certain larger species" is expected. Ex.-PSC-EA-25. Due to the fencing, the project will also have visual impacts. Ex.-PSC-Ear-25; Direct-PSC-Tomaszewski-p. 6 (restriction of movement and use by certain larger species) (project will have visual impacts); Direct-GCI-FREARR-4; Direct-GCI-Reynolds-1-1.

Grant County Intervenors addressed this issue directly in testimony: GSC's Frear testimony addressed fencing concerns:

> Grant County Solar's Locker testifies, for example, that "Moreover, the Project will use deer fencing around solar arrays, which the Commission determined in the recent Point Beach Solar proceeding is "less hazardous to wildlife." While Point Beach Solar is planned for both sides of Highway 42, that highway is not as heavily traveled as Highways 35 & 61 though the Grant Count Solar project, thus it is not comparable. Along Highways 35 & 61, deer often cross this highway and would most likely become a hazard to motorists when they are trapped between the tall wildlife-proof fences up and down the highway and town roads. "All dead or injured wildlife found by Project personnel or others in the Project Site will be

> reported to the company's appropriate environmental services personnel." Direct, p. 9, l. 10-12. This is vague. Reported by those "in" the project site? What company will these animals be reported to, Next Era? Alliant? One of the 3 GCS facility employees? And what will happen with these reports, are they filed with the Commission, the DNR? This needs clarification.

Direct-GCI-Frearr-4; see also Direct-GCI-Reynolds-1-2.

The EA does acknowledge that fencing around the arrays will have an impact on wildlife:

> Use of the deer exclusion fence around arrays, similar to what was recommended by the Minnesota DNR for large solar sites and required by the Commission in previous solar dockets should allow for the passage of smaller mammals, reptiles, and amphibians while preventing the access of larger animals such as deer. By not using barbed wire on the array fences, the risk of wildlife injury due to entanglement is decreased. GCS states that deer fencing would be utilized around the arrays. However, for public safety reasons, a seven-foot chain link fence that includes one foot of barbed wire on top would be installed around the collector substation site. The additional fencing in the landscape around the facilities would affect wildlife movement corridors across the project area. Larger animal species would find the fenced area a barrier to movement, which could cause habitat fragmentation. **Where a solar facility fence line runs along a road, deer that start to proceed along the ROW may have movement restricted, which could lead to more interactions with drivers.** The proposed project does have some areas free of fences, particularly along drainage features or waterways, where wildlife may find routes between the arrays.

Ex.-PSC-EA-25 (emphasis added); see also Ex.-GCS-Locker-7. This information is in the record, available to the Commission. "Interactions with drivers" is a tidy euphemism for deer/auto wrecks. The testimony of PSC's Tomaszewski succinctly summarizes the EA's discussion of fencing impact:

> The fenced arrays would restrict movement and use by certain larger species.
>
> Direct-PSC Tomaszewski, p. 6, l. 12-13.

While impacts are acknowledged, there is nothing in the record about specifics of impacts, nothing in the record about different impacts to different types of wildlife, nothing in

the record about literal "impacts" of deer with cars, nothing about how various types of wildlife interact with solar fencing of so many acres. Applicants have not produced studies to provide any reassurance that these admitted literal impacts have been identified and avoided and/or mitigated. What is clear is that studies are needed. Yet the Commission refuses to Order studies.

In its Order, the Commission improperly flips the burdens of production and proof to Intervenors, stating:

> Grant County Intervenors proposed that the Commission should order Grant County Solar to conduct a study on wildlife interactions with fencing at the project facility to mitigate concerns about fencing impacts to wildlife in the area. The specifics and details of what such a study would include was not substantially developed in the record for this docket. At this time, the Commission does not find it necessary to order Grant County Solar to conduct a study on this topic at this facility.

Order, p. 29.

Failure to Order studies, failure to acknowledge the legitimate concerns of the impact of fencing, failure to acknowledge the need for studies of these impacts, and flipping the burden to intervenors to "[t]he specifics and details of what such a study would include" is avoidance by the Commission of its powers and duties and abject failure to protect the public interest. This is an error of both law and fact.

D. Heat island effect is likely, with unknown impacts, and the Commission refused to acknowledge the potential and refused to order a study.

Once again, the Commission acknowledges the lack of studies regarding an admitted impact, and that "no studies have examined the heat island effect in the environment of the Upper Midwest." Order, p. 31.

> Some studies, briefly discussed in the EA, have found that solar panels can create a heat island effect, which alters the temperature of the air near and around the panels. However, no studies have examined the heat island effect in the environment of the Upper Midwest. Therefore, it is unknown whether this effect will occur and to what degree it will change the local temperature near the facility. RENEW raised suggestions in the record as to how a possible heat island study could be conducted in Wisconsin, but did not support the idea of Grant

> County Solar conducting such a study at the Grant County project location. (PSC REF#: 402495.) **The Commission finds that there is insufficient evidence in the record to require Grant County Solar to conduct a third-party study** of the heat island effect at this facility.

Order, p. 31.

In light of staff, intervenor, and Applicant's testimony and exhibits, this is absurd, and against evidence. See Ex.-PSC-EA-35; Ex.-GCI-Frear-5r (a-c); Direct-GCI-FREAR-r-11; Rebuttal-GCI-Frear-13; Tr. Locker-197 (not aware of studies on 200MW solar projects).

The Commission's notion that there is "insufficient evidence in the record" acknowledges the fundamental problem – that there are no heat island studies for utility scale solar projects in the Midwest. The Commission ignores the evidence that one of its own staff members is a co-author on a heat island effect study, and ignores the staff expertise available. No studies in the record is deemed "insufficient evidence" to the Commission. This is not a reason to avoid studies, it is a primary reason to order studies, part and parcel of the Commission's powers and duties. The Commission's failure to address the clear facts in the record demonstrating a need for studies, and failure to require informing the record prior to making a decision is an error of fact, and also an error of law.

E. Water concerns were raised in detail, and drainage and erosion has been an issue at other projects, yet the Commission did not acknowledge the staff documented concerns.

The Commission's Order regarding is inadequate given problems at other solar projects and concerns raised in testimony and exhibits:

> Due to the project being designed to completely avoid direct disturbance to wetlands and waterways, it is anticipated that the project would not require permit coverage under Wis. Stat. § 30.025 or Wis. Stat. § 281.36. However, due to their proximity to the project area and amount of soil disturbance at the nearby sites, DNR staff testified that these resources may still be at risk to indirect impacts of construction. Therefore, DNR staff described and recommended that specific best management practices (BMP) regarding wetlands and waterways be required by the Commission for implementation by Grant County Solar during construction.

> (PSC REF#:401329.) Grant County Solar suggested minor modifications to this language to adhere more to its existing vegetation management plan. However, the Commission finds it reasonable to approve all BMPs as testified by DNR staff where applicable and practical.

Order, p. 31-32.

The Crays, GCI members, raised in great detail the problems they believe will result in siting the solar project adjacent to their farm – issues not addressed by this Order:

> After reviewing the project plans, we have concerns about water drainage and runoff. The Grant County Land Conservation Office put together a map showing water drainage through our farm culvert. Ex.-GCI-Cray-6r.
>
> All of the run off from properties marked on the map adjoining ours flows down through our waterways and flows into the start of Arrow Creek, which eventually leads to the Mississippi River, roughly 4 miles away. During the last several years with the high rainfall events, we have had a tremendous amount of water flow down through our waterways and into our creek. We have spent thousands of dollars over the years to bulldoze, shape, and maintain our waterways to keep them from eroding and having deep gullies.
>
> The County information states that there are 499.4 acres with an average slope of 6.1% with a flow length of 6,028 feet at its longest point, over one mile. Those 499.4 acres drain down through our culvert. Of those 499.4 acres, approximately 160 acres would be our farm acres. The remaining 339.4 acres, which are part of the Grant County Solar project, will drain down through our farm. In addition, according to p. 14 of the application, there will be 31.43 miles of permanent roads and 38.6 miles of permanent impacts due to 23.9 miles of access road construction of roads 12-20 feet wide.

Direct-GCI-Cray-r-6. The Crays also provided maps for the record detailing their concerns, as above. Ex.-GCI-Cray-6r.

The PSC's Tomaszewski testified that soil erosion and storm run-off was an issue in Two Creeks and Badger Hollow solar projects:

> For example, had the contractors and developers of the Two Creeks project discussed final plans with Commission and DNR staff prior to starting work in autumn of 2019, and explained they were not going to seed all disturbed areas during the growing season, the issue of soil stabilization options at that time of

> year could have been raised and discussed before soil erosion and storm water runoff at the site became a problem. Similar problems with permit compliance due to changes in amounts of soil disturbance from those discussed in the application and DNR permits are being observed at the Badger Hollow project this year.

Direct-PSC-Tomaszewski-8. Yet nothing was proposed that addresses the Cray's legitimate issues, not even meeting with the Crays to review plans and potential issues.

The applicant found it necessary to add a drainage pond to the Grant County Solar project:

> The basin location and design will maintain existing hydrologic flow patterns. Stormwater will enter the basin via sheet flow from the south and east. The location of the basin is a natural concentration point that continues flow to the north. The basin will outlet to the north along the natural drainage route. Surface reinforcement will be utilized where necessary to reduce erosion potential.

Rebuttal-GCS-Callahan,Pr-12 (Grant County Solar's 10 Response to PSCW Data Request No. 1.02, Attachment 1.02.).

However, it does not take a hydrologist to recognize that the basin that has been added to the project by the substation is <u>downstream</u> from the Cray's property, admitted by Applicant's witness. Tr.-Callahan-128. A basin downstream does nothing to "maintain existing hydrologic flow patterns" upstream, and does nothing to alleviate the impacts to Crays' property, located upstream, nor to address their water issues or concerns, nor those of any other landowner upstream of that basin.

The Commission's Order ignores the facts and concerns presented in testimony and exhibits, both that of Intervenors and of staff, that call claims of "compliance" and that the project would "completely avoid direct disturbance to wetlands and waterways." Water doesn't follow property lines, and this Order does not address likely indirect impacts. This failure to acknowledge potential for impacts is an error of fact.

The record in this proceeding identifies impacts, known and unknown. In light of the unknown impacts, their severity, and ostensibly unintended consequences inherent in this project, the Commission could have, and should have, exercised caution and prudence, but it did not. The record contains evidence regarding issues with the design and location, issues leading to blanket waivers in leases rather than avoidance or mitigation, the potential for individual hardships, safety issues, impairment of wildlife habitat, soil erosion and water drainage issues, and other environmental factors. The record information identifies potential for the proposed facility to have undue adverse impact on environmental values including ecological balance, public health and welfare, historic sites, geological formations, the aesthetics and viewshed, and water drainage and erosion issues. Failure to acknowledge these issues and the evidence in the record, and the evidence admittedly not yet available, and to focus on buying off objecting landowners flies in the fact of the charge to the Commission. The Commission's Decision, ignoring this mountain of evidence, and ignoring the dearth of evidence, yet issuing a CPCN Order, is an error of fact many times over.

VI. GRANT COUNTY INTERVENORS REQUEST REHEARING

Grant County Intervenors are parties in this proceeding and as such, are directly aggrieved parties with standing to submit a Petition for Rehearing under Wis. Stat. §229.49. For all of the reasons outlined above, we respectfully request rehearing, and request oral argument of the Petitions for Rehearing.

Grant County Intervenors request rehearing because this CPCN permit is fatally flawed by the Commission's procedural errors and errors of fact and law. The Commission relied on false statements and incomplete research regarding brownfields; ignored important evidence of substantial and material impacts, and misinterpreted and did not properly address Wisconsin's

statutory criteria. Logically, a project cannot be sited using solar specific criteria when there is no solar specific siting criteria. NextEra/Grant County Solar did not meet their burden of proof or production required for a CPCN Order for the project as proposed. The Commission's Order contains material errors of both law and fact and requires rehearing.

Dated this 6th day of June, 2021.

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