

**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

Application of Wisconsin Power and Light Company for a Certificate of Authority for Acquisition, Construction, Installation, and Operation of Six Solar Electric Generation Facilities in Wisconsin

Docket No. 6680-CE-182

GRANT COUNTY INTERVENORS

**NOTICE OF MOTION AND MOTION TO RESCIND GRANT COUNTY SOLAR CPCN
AND ACQUISITION ORDERS**

NOTICE TO ALL PARTIES:

Grant County Intervenors, a party in the above-captioned CPCN docket, 9804-CE-100, and participant in the above-captioned acquisition docket, 6680-CE-182, bring this Motion to rescind the Grant County Solar CPCN and Acquisition Orders.

Grant County Solar, LLC, an “affiliate” of NextEra, was granted a Certificate of Public Convenience and Necessity. Grant County Solar’s 200 MW solar project with a project footprint of roughly 2,058 acres of agricultural land in Grant County, on land leased to the company, with leases covering the expected term of operation of at least 30 years. Ex.-GCS-Application, p. 1. Grant County Solar, LLC. Wisconsin Power & Light acquired this project and five others immediately after the CPCN was granted. See PSC Dockets 6680-CE-182; 6680-AE-120.

The project is sited on 2,045 acres of agricultural land, in fact, agricultural land designated as “farmland preservation” land by Grant County. Order, p. 16, May 14, 2021 (PSC

REF [411529](#)). The Order claims that “The Commission takes seriously that areas within the fenced solar arrays would be taken out of agricultural production for the life of the project...” Id., p. 17. However, the project is dependent on utilizing land acquired through leases with a term of thirty (30) years with two options for another ten (10) years each, totaling 50 years.

The Constitution of the state of Wisconsin prohibits leasing of agricultural land for a term of over fifteen (15) years.

The Commission’s approval of a Certificate of Public Convenience and Necessity, and subsequent approval of acquisition of the project by Wisconsin Power & Light, of the Grant County Solar project, which is reliant on leases of agricultural land is void as a matter of law. The Commission must rescind the CPCN and acquisition approvals.

I. GRANT COUNTY SOLAR IS BUILT ON AGRICULTURAL LAND ALSO DESIGNATED BY GRANT COUNTY AS “FARMLAND PRESERVATION.”

The project footprint covers 2,058 acres of agricultural land, of which 92% is agricultural use, and which designated by Grant County as “farmland preservation” land. Order, p. 16, May 14, 2021 (PSC REF [411529](#)); see also Environmental Assessment, p. 6, 32-33 (PSC REF [400274](#)). “The predominant land use of the proposed solar facility is agricultural row crops, along with areas of pasture and fallow fields.” Id., p. 25.

During the operation of the solar facility as proposed, land used for solar arrays would no longer be available for crop production or manure disposal. Farmland leased for the project would not be available as rental cropland during the project lifespan, which might drive up rental prices on other local fields due to a decreased supply. Because the land would be taken out of agricultural production, there would also be a reduced demand for agricultural products and services in the immediate area, such as seed, fertilizer, and harvesting services. Fields would no longer be available for manure spreading, which may increase the amount that is applied to surrounding fields or increase the distance it would need to be transported for disposal if dairy farms in the area continue normal operations.

“The solar farm is intended to be a long-term non-agricultural land use.” Environmental

Assessment, p. 48 (PSC REF [400274](#)).

There is no question that the project is sited on agricultural land and that the land leased for the project is agricultural land.

II. THE WISCONSIN CONSTITUTION AND THE PUBLIC INTEREST PROHIBIT LEASES FOR TERM LONGER THAN FIFTEEN YEARS.

The Wisconsin Constitution, Wis. Const. art. 1, §14, expressly states:

Feudal tenures; leases; alienation. SECTION 14. All lands within the state are declared to be allodial, and feudal tenures are prohibited. Leases and grants of agricultural land for a longer term than fifteen years in which rent or service of any kind shall be reserved, and all fines and like restraints upon alienation reserved in any grant of land, hereafter made, are declared to be void.

The Grant County Solar project was applied for utilizing, and is dependent upon, land leases of agricultural land for a term of thirty (30) years with the option of extension of the term for two terms of ten (10) years, totaling fifty (50) years:

3. **Term.** The initial term of the Easements shall end thirty (30) years after the Commencement Date. Operator has the right to extend the Term of the Agreement for two (2) consecutive terms of ten (10) years each.

Application, Appendix Y, Sample Memo of Solar Lease and Easement Agreement (ERF [389021](#)).

The Grant County Solar project is also dependent on “Effects Easements,” agreements with neighboring landowners where rights are waived regarding “sound, noise, visual, view, light, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project.” Application, Appendix Y, Sample Effects Easement Agreement, p. 2 (ERF [389020](#)).

These Effects Easements are for the same term as the project, “shall be in effect as long as Operator is operating the Project”:

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.

Application, Appendix Y, Sample Effects Easement Agreement (ERF [389020](#)).

The leases term of thirty (30) years, with two ten (10) year options is longer than the 15 years allowed under the Wisconsin Constitution. The Lease and Easement Agreements and the Effects Easement Agreements are void as a matter of law. Wis. Const. art. 1, §14.

III. THE GRANT COUNTY LEASES, AND THE CPCN AND ACQUISITION ORDERS ARE VOID AS A MATTER OF LAW.

The Grant County solar leases and effects easements are void as a matter of law. The Public Service Commission's Orders approving the Certificate of Public Convenience and Necessity, and the Acquisition of the Grant County Solar project by Wisconsin Power & Light, dependent on the project's leases of agricultural land, are void as a matter of law.

The Grant County Solar CPCN and acquisition approvals are void and must be rescinded.

Dated this 17th day of February, 2022



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