

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application for a Certificate of Public
Convenience and Necessity of Badger
Hollow Solar Farm, LLC to Construct a
Solar Generation Facility, to be Located in
Iowa County Wisconsin.

Docket No. 9697-CE-100

Joint Application of Madison Gas and Electric
Company and Wisconsin Public Service Corporation
For Approval to Acquire Ownership Interests in
Solar Electric Generating Facilities

Docket 5-BS-228

**JEWELL JINKINS INTERVENORS
NOTICE OF MOTION AND
MOTION TO RESCIND BADGER HOLLOW CPCN AND ACQUISITION ORDERS**

NOTICE TO ALL PARTIES:

Jewell Jinkins Intervenors, a party in the above dockets, bring this Motion to rescind the Badger Hollow Solar Certificate of Public Convenience and Necessity and the Acquisition of the Badger Hollow solar project by Madison Gas and Electric Company and Wisconsin Public Service Corporation. It has come to our attention that Wisconsin Constitution prohibits leases longer than 15 years on agricultural land. Wis. Const. art. 1, §14.¹

The Commission's order states that "The Commission is sensitive to the loss of agricultural land... The Commission also observes that while the proposed project will use approximately 2,200 acres of farmland, this is a small part of the 440,000 acres of agricultural land in Iowa County." Final Order, p. 18, see also p. 22 (PSC REF [364425](#)). Apparently, however, the Commission is not sensitive of, or perhaps aware of, the Constitutional limitations

¹ See Intervenors' EL/TOC filing in Koshkonong Solar docket 5-BS-258 (PSC REF [431196](#) and [431197](#)).

of agricultural land, which is a fatal flaw in the Commissions orders approving the CPCN and the acquisition of this project.

I. BADGER HOLLOW SOLAR IS SITED ON AGRICULTURAL LAND

It is uncontested, an established and frequently repeated fact in this Badger Hollow Solar docket, that the project is sited on agricultural land. Applicant Badger Hollow repeatedly acknowledged the agricultural focus and designation of farmland preservation by Iowa County:

The townships that are within the Badger Hollow Project area in Iowa County have been primarily in agricultural use for many years. Each township – Eden, Linden, and Mifflin - has established a separate land use element for inclusion in the Iowa County Comprehensive Land Use Plan. Ex.-Badger Hollow-Application: Appendix I. All three town land use plan elements seek to protect active agricultural lands from incompatible uses and maintain rural, small town character and generally restrict conversion to residential or other use. Iowa County’s Comprehensive Plan states that “[s]mall-town atmosphere, being near family and friends, and natural beauty are the top reasons why people choose to live in Iowa County.” The Comprehensive Plan also acknowledges that “existing homes and buildings will need remodeling, repairs, or improvements; new buildings, businesses, and homes will be constructed.” In addition, the Iowa County Farmland Preservation Plan adopted December 1, 2016 reports on the high value Iowa County residents place on preservation of farmland and points out the challenges of how to preserve farmland.

Direct-Badger Hollow-Palmer-7, l. 9-23 (PSC REF [356897](#)).

Some of the greatest impacts of the project would be to agriculture. Overall, land cover and land use within the project area is dominated by agriculture, primarily corn and soybean row crop production, with some pasture land. The project would take many acres of cropland out of agricultural production for the life of the project, which could be 50 years or more. Areas within the proposed fenced sub-arrays contain 1,832 acres of cropland, with access roads outside the fenced sub-arrays requiring another 1.76 acres. Hay or pasture land occupy 778 acres within the sub-arrays. Access roads account for an additional 0.39 acre. Badger Hollow is considering allowing grazing by sheep or goats within the fenced sub-arrays.

Nearly 80 percent of the land proposed for sub-arrays (areas within the fences), totaling 2,141 acres, is classified as having prime farmland soils. These are the lands best suited for food and fiber production.

Environmental Assessment, Ex.-PSC-FEA, p. 56 (PSC REF [357519](#)).

The EA notes the project area “is primarily zoned “Exclusive Agriculture,” and that “Iowa County has a Farmland Preservation ordinance.” EA, p. 41. The EA characterizes the solar project as “an industrial-type facility that is of a different character from the agricultural setting

of the project area...” Id.

The Commission’s Order also explicitly agrees that the project is sited is agricultural:

The land where the proposed project would be constructed is classified as agricultural in local land use plans.

Order, Final Order, p. 22 (PSC REF [364425](#)).

This project is sited on 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 Badger Hollow solar project was applied for utilizing, and is dependent, on land leases of agricultural land for a term of twenty-five (25) years with the option of extension of the term for another twenty-five (25) years. Ex.-PSC-Staff Data Request Response-Response 2.16, Solar Lease and Easement Agreement, Appendix B (ERF [352330](#))(REDACTED COPY).

3. Term. The term of this Agreement shall commence on the Effective Date and continue for the following described periods (collectively, the “**Term**”):

3.1 Development Term. This Agreement shall be for an initial term (the “**Development Term**”) commencing on the Effective Date and continuing until the earlier to occur of: (a) the fifth (5th) anniversary of the Effective Date or (b) the commencement of construction.

3.2 Construction Term. Upon the expiration of the Development Term, the term of this Agreement shall automatically extend and continue (“**Construction Term**”) until the earlier to occur of: (a) the first date on which the Project generates power in commercial quantities on a continual basis and such power is delivered to the grid as declared by Grantee, is hereinafter referred to as the “Operations Date” or (b) the eighth (8th) anniversary of the Effective Date.

3.3 First Extended Term. Upon the Operations Date, the term of this Agreement shall automatically extend for an additional twenty-five (25) year term (the “**First Extended Term**”).

3.4 Second Extended Term. Provided that Grantee has not fully surrendered or terminated this Agreement, then on or before the expiration of the First Extended Term, Grantee may, at its option, extend the term of this Agreement for an additional twenty-five (25) year period (the “**Second Extended Term**”). Grantee may exercise its option to extend this Agreement for the Extended Term by giving Owner written notice thereof on or before the date that is one hundred and eighty (180) days prior to the expiration of the First Extended Term.

Ex.-PSC-Staff Data Request Response-Response 2.16, Solar Lease and Easement Agreement, p.

2 of 26, Appendix B, (ERF [352330](#))(REDACTED COPY).

The leases clearly state that the term is twenty-five (25) years, with another twenty-five (25) year option, which is longer than the 15 years allowed under the Wisconsin Constitution.

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

The Badger Hollow solar leases 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 Badger Hollow solar project by Madison Gas and Electric Company and Wisconsin Public Service Corporation, dependent on the project's leases of agricultural land, are also void as a matter of law and must be rescinded.

The Badger Hollow Solar CPCN and acquisition approvals must be rescinded.

Dated this 16th day of February, 2022.



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**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Joint Application of Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and Madison Gas and Electric Company for Approval to Acquire Ownership Interests in the Koshkonong Solar Electric Generation Facility in the Town of Christiana and the Town of Deerfield, Dane County, Wisconsin

Docket No: 5-BS-258

NOTICE AND MOTION TO DISMISS

Please take notice that Roxann Engelstad and Edward Lovell (EL), and the Town of Christiana (TOC), proposed parties in this matter that have independently petitioned to intervene pursuant to Wis. Admin. Code § PSC 2.21, jointly move for dismissal of the Applications in this Docket and termination of this Docket.

In support of their motion, EL and TOC state as follows:

1. The leases (Leases) for the solar facility the Applicants (Utilities) propose to acquire are void.
2. The Leases involve the Koshkonong Solar Electric Generation Facility under consideration in PSC Docket No. 9811-CE-100. Movants are interveners in that Docket.
3. The form for the Leases is set out in PSC Docket No. 9811-CE-100, PSC Ref.#: 409499 (Koshkonong Solar, CPCN Application: Appendix Z).

4. Leases, and the Applications in PSC Docket Nos. 9811-CE-100 and 05-BS-258 (this Docket), contemplate "...an initial term of five (5) years, a construction term of three (3) years, operations term of twenty-five (25) years and one extended term of twenty-five (25) years...." (PSC Docket No. 9811-CE-100, PSC Ref.#: 409499, p. C-3; PDF: p. 26; Koshkonong Solar, CPCN Application: Appendix Z).
5. Leases involve rental of agricultural land.
6. Wis. Const. art. 1, § 14 prohibits "[l]eases and grants of agricultural land for a longer term than fifteen years in which rent or service of any kind shall be reserved... are declared to be void." The prohibition is broadly understood. *See*: Exhibit 1.
7. All the leases presented by the Applicant in PSC Docket No. 9811-CE-100 and relied-on in this Docket allow the lease of agricultural land for 50 years. Those leases violate the Wisconsin Constitution and are void.
8. Approval of Applications that depend on legally void leases cannot be in the interest of the ratepayers, or anyone else. "Statutes regarding public utilities exist to protect the consuming public." *State v. Mt. Vernon Telephone*, 361 N.W.2d 310, 121 Wis.2d 699 (Wis. App. 1984) citing *Wis. Environmental Decade v. Public Service Comm.*, 81 Wis.2d 344, 351, 260 N.W.2d 712, 715-16 (1978)."
9. The PSC cannot approve Applications that depend on void leases. The Applications in this Docket should be dismissed, and the Docket terminated. No person or entity should be required or induced to expend additional resources.

Dated and respectfully submitted February 15, 2022.

Progressive Law Group, LLC

s/ Electronically signed by Frank Jablonski

Frank Jablonski

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EXHIBIT 1

(Wisconsin Agricultural Lease Law Primer)

EL-TOC Joint Motion to Dismiss

PSC Docket No. 05-BS-258

Wisconsin Agricultural Lease Law Primer
Philip E. Harris, University of Wisconsin-Madison/Extension

I. Formation

- A. A lease for more than one year must be in writing and signed by the parties to be enforceable. Wis. Stat. § 704.03. Exception: partial performance by one party.
- B. A verbal lease for one year or less is enforceable in Wisconsin if the terms of the lease can be proven.
- C. If premises are leased for a year or longer primarily for other than private residential purposes, and the lessee holds over after expiration of the lease, the lessor may elect to hold the tenant on a year-to-year basis. The terms and conditions of the year-to-year lease are the same as those of the original lease except that any right of the lessee to renew or extend the lease, or to purchase the premises, or any restriction on the power of the lessor to sell without first offering to sell the premises to the lessee, does not carry over to the year-to-year lease. Wis. Stat. § 704.25(2)(a) and (3).
- D. A lease of agricultural land for more than 15 years is void under the Wisconsin Constitution, Article I, Section 14.

II. Rights and Duties of Lessor (owner) and Lessee (tenant)

- A. Unless otherwise stated in the lease, the lessor and lessee have the following rights and duties
 - 1. Lessee has the right of exclusive possession other than lessor's right to enter to protect the property or to show it to prospective lessees. Wis. Stat. § 704.05(2).
 - 2. Lessee cannot make physical changes to the property without the lessor's consent. Wis. Stat. § 704.05(3).
 - 3. Lessor must repair or replace any plumbing, electrical wiring, machinery, or equipment furnished with the premises and no longer in reasonable working condition. Wis. Stat. § 704.07(2)(a)(5).
 - 4. Lessee must repair damage caused by his or her negligence or improper use. Wis. Stat. § 704.07(3)(a).
- B. The parties can alter these rights and duties in the lease.

III. Termination

- A. A lease for a term certain ends at the end of the term unless otherwise stated in the lease.
- B. Unless otherwise agreed, a year-to-year agricultural lease requires 90 days notice before the end of the term to terminate the lease. Wis. Stat. § 704.19(3).

Resources for lease forms:

<http://aglease101.org/doclib/default.aspx>

<http://learningstore.uwex.edu/Options-for-Pasturing-Animals-P100C14.aspx>