

<p><b>SERVICE DATE</b> Nov 27, 2018</p>
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**PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application for a Certificate of Public Convenience and Necessity of  
Two Creeks Solar, LLC to Construct a Solar Electric Generation  
Facility, to be Located in Manitowoc and Kewaunee Counties,  
Wisconsin

9696-CE-100

Public Service Commission of Wisconsin  
RECEIVED: 11/27/2018 11:25:01 AM

**PREHEARING CONFERENCE MEMORANDUM**

This memorandum orders the following consistent with the prehearing conference held  
on Friday, November, 9, 2018, and pursuant to Wis. Admin. Code § PSC 2.04(1):

**I. PARTIES:**

**A. Applicant:**

1. Two Creeks Solar, LLC

**B. Intervenors:**

1. American Transmission Company
2. Citizens Utility Board
3. Renew Wisconsin
4. Wisconsin Industrial Energy Group

**II. ISSUES:**

- A. Does the proposed project comply 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?

**III. SCHEDULE:**

- **11/20/2018 1:30 PM**                      Offered Evidence Direct : Applicant
- **12/07/2018 1:30 PM**                      Offered Evidence Direct : Intervenor and Commission Staff
- **12/21/2018 1:30 PM**                      Offered Evidence Rebuttal : Parties and Commission Staff

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- **01/10/2019 1:30 PM** Offered Evidence Surrebuttal : Parties and Commission Staff
- **01/14/2019 1:30 PM** Offered Evidence Other: Errata Testimony and Replacement Exhibits
- **01/15/2019 10:00 AM** Hearing: Party Session in Madison
- **01/22/2019 2:00 & 6:00 PM** Public Hearing Session in Two Rivers
- **01/17/2019 4:30 PM** Transcript: Draft Transcript
- **01/18/2019 1:30 PM** Offered Evidence Other: Exhibits Offered and Received at Hearing
- **01/18/2019 1:30 PM** Offered Evidence Other: Witness Verification Affidavits
- **01/18/2019 1:30 PM** Offered Evidence Other: Revised Testimony
- **01/23/2019 1:30 PM** Transcript: Proposed Corrections to Draft Transcript
- **01/25/2019 1:30 PM** Brief: Initial Brief
- **01/28/2019 1:30 PM** Transcript: Objections to Proposed Corrections to Draft Transcript
- **02/01/2019 1:30 PM** Brief: Reply Brief

**IV. OTHER FACILITATION MATERS:**

Other matters required to facilitate this proceeding as they appear in the attached Guidelines for Contested Case Proceedings are incorporated into this Order.



Michael E. Newmark  
Administrative Law Judge

MEN: :DL:01658304

## Guidelines for Contested Case Proceedings

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## Guidelines for Contested Case Proceedings

### 1 A. General

- 2
- 3 1. The Commission provides the following guidelines to inform the public of certain details of practice
- 4 contested case proceedings. These guidelines become binding procedures for a particular docket wh
- 5 Administrative Law Judge. The presiding Administrative Law Judge may adopt these guidelines in
- 6 these guidelines as necessary to facilitate processing a particular docket.
- 7 2. The assigned Commission staff attorney is the first point of contact for a party on any procedural ma
- 8

### 9 B. Documents – Filing, and Service, Formatting, Numbering

#### 10 1. Filing and Service

- 11 a. The Commission shall receive only Portable Document Format (“PDF”) files for the record. D
- 12 attachments or embedded files. For more information, contact the Commission’s Records Man
- 13 b. File any document by upload to the Commission’s Electronic Records Filing System (“ERF”)
- 14 (<http://apps.psc.wi.gov/appsHome.html>).
- 15 c. If ERF does not accept a document, serve the document and contact the Commission’s Records
- 16 (608) 261-8521 for assistance.
- 17 d. ERF upload requires the assignment of a “Document Type.” Choose the “Document Type” as
- 18 or if not specified herein, that best corresponds with the substance of the document from the fo
- 19
  - 20 1. Application
  - 21 2. Brief
  - 22 3. Comments
  - 23 4. Correspondence
  - 24 5. Data Request/Response
  - 25 6. Exhibit - Offered
  - 26 7. Motion
  - 27 8. Petition
  - 28 9. Request for Intervenor / Party Status
  - 29 10. Testimony - Offered
- 30 e. ERF upload requires the submission of a document “Description.” Use the description specific
- 31 specified herein, be concise.
- 32 f. Filing constitutes certification of service. *See* Wis. Admin. Code § PSC 2.06(3)(a).

## Guidelines for Contested Case Proceedings

- 1 g. Parties and Commission staff serve by e-mail. Use password protection when serving a document  
2 filed under a request for confidential handling. If size, or format prevents e-mail service, serve  
3 storage media.  
4 h. Parties and Commission staff shall inform each other of any e-mail address, and one physical  
5 requirements of service shall apply.  
6 i. Serve the Commission docket coordinator any, but, unless otherwise required, file no party to a  
7 j. In computing any period of time that follows service, the day of e-mailing is the day of mailing  
8 § PSC 2.05(2). This applies regardless of any dated signature or ERF filing date stamp.  
9

### 10 2. Confidentiality

- 11 a. To protect a record submitted in the course of this proceeding from public disclosure, request c  
12 under Wis. Admin. Code § 2.12(3).  
13 b. For any filing that includes information subject to a request for confidential handling:  
14 1. File a confidential version with the affidavit required under Wis. Admin. Code PSC § 2.12  
15 document.  
16 2. Shade in light gray, any specific text to which the request applies.  
17 (“The cost was \$2.00 . . .”)  
18 3. File a public version with the specific text to which the request applies completely removed  
19 mark. Include no affidavit in the public version.  
20 (“The cost was [REDACTED] . . .”)  
21 4. No confidential filing shall enter the record if the public version is a complete redaction of  
22 5. The signatory of an affidavit required under Wis. Admin. Code PSC § 2.12 may not rely on  
23 with respect to the substantive basis of the request for confidential handling, but shall have  
24 personally verify that basis. This means filer of the document may need to obtain the affidavit  
25 third party. But if the document to be filed already exists on ERF subject to confidential handling  
26 affidavit may meet this requirement by making reference to the existing affidavit on file.  
27 c. The Commission shall hear *in camera* any oral testimony and cross-examination that may include  
28 claim for confidential handling. The Commission shall handle the transcript volume for such hearing  
29 to the post-hearing process provided herein to maintain such claim.  
30 d. Any party, or its representative, may review a record submitted in the course of this proceeding  
31 Admin. Code § 2.12, and participate in any *in camera* proceedings in this docket, subject to any  
32 necessary to protect the trade secrets of parties and any information entitled to confidentiality protection  
33 be provided by agreement between the parties and without approval of the Administrative Law Judge  
34 be reached, by order of the Administrative Law Judge.

## Guidelines for Contested Case Proceedings

### 3. Written Testimony

#### a. Contents

1. Parties and Commission staff produce written testimony in lieu of oral testimony at hearing established by order.
2. Rounds of written testimony, are defined as:
  - a. The first round of testimony, "direct," provides each party the opportunity to present its evidence to prove the facts needed to support its claims.
  - b. A second round of testimony, "rebuttal," provides each party the opportunity to present evidence to that presented in direct.
  - c. A third round of testimony, "surrebuttal," provides each party the opportunity to present countervailing evidence to that presented in rebuttal.
3. Testimony that supplements the contents of testimony the witness already filed requires a request. Submit the request simultaneously, but separately, from the supplement.
4. The rounds of testimony filed after direct shall introduce no new issues.
5. The scope of written testimony is narrowed with each round of filing such that it addresses previous round.
6. Failure to rebut or surrebut the testimony of another witness does not imply consent to that witness expressly recant any prior testimony. A witness need not repeat or restate prior testimony that matter.
7. The testimony of another witness speaks for itself. A witness should refer to the testimony citation rather than restating it, whenever possible.
8. Only documentary evidence expressly offered for and duly received as an exhibit will come before the Commission. Therefore, testimony shall only direct the Commission to documents offered as exhibits. Testimony shall not include citations (including PSC REF#s) to documents not offered as exhibits, but only for the purpose of facts asserted so that the fact asserted may be verified by other parties and Commission staff.
9. Identify in an errata sheet, any corrections to testimony known before the hearing. After the hearing, identify any corrections that requires corrections as provided in the post-hearing process provided in these Guidelines.

#### b. Format

1. Separate the testimony from any:
  - a. Exhibit being offered in that testimony.
  - b. Cover letter.
  - c. Request for an order.
2. Include no cover page.

## Guidelines for Contested Case Proceedings

- 1           3. Allow space at the top right corner for the PSC REF# stamp.  
 2           4. Structure testimony in question and answer format.  
 3           5. Page numbers for each filing shall begin at “1” and continue in numerical order for that filing.  
 4           6. Use line numbers starting at “1” on the first line of each page.  
 5           7. Center page numbers at the bottom of every page.  
 6           8. Number each page according to the following convention:  
 7                 “[identify the round of testimony]-[identify the party]-[identify the witness]-[page #]”  
 8           9. If the filing is filed under a request for confidential handling, add “c” to the page number.  
 9           10. If the filing is a redacted public version of a document filed under a request for confidential  
 10           number.  
 11           11. If the testimony offered in the filing supplements a round of testimony already filed, add “s”  
 12           12. If the testimony offered corrects a round of testimony already filed, add “r” to the page number.  
 13           13. If the testimony offered is a subsequent refiling add a number to the page number that it

	Initial Filing	1 <sup>st</sup> Revision	2 <sup>nd</sup> Revision
Public only	Direct-PSC-Smith-1	Direct-PSC-Smith-r-1	Direct-PSC-Smith-r-2
Confidential	Direct-PSC-Smith-c-1	Direct-PSC-Smith-cr-1	Direct-PSC-Smith-cr-2
Redacted	Direct-PSC-Smith-p-1	Direct-PSC-Smith-pr-2	Direct-PSC-Smith-pr-3
	1 <sup>st</sup> Supplemental Filing	1 <sup>st</sup> Revision	2 <sup>nd</sup> Revision
Public only	Direct-PSC-Smith-s-1	Direct-PSC-Smith-sr-1	Direct-PSC-Smith-sr-2
Confidential	Direct-PSC-Smith-sc-1	Direct-PSC-Smith-scr-1	Direct-PSC-Smith-scr-2
Redacted	Direct-PSC-Smith-sp-1	Direct-PSC-Smith-spr-1	Direct-PSC-Smith-spr-2
	2 <sup>nd</sup> Supplemental Filing	1 <sup>st</sup> Revision	2 <sup>nd</sup> Revision
Public only	Direct-PSC-Smith-s2-1	Direct-PSC-Smith-s2r-1	Direct-PSC-Smith-s2r-2
Confidential	Direct-PSC-Smith-sc2-1	Direct-PSC-Smith-s2cr-1	Direct-PSC-Smith-s2cr-2
Redacted	Direct-PSC-Smith-sp2-1	Direct-PSC-Smith-s2pr-1	Direct-PSC-Smith-s2pr-2

- 14           14. Include no live Internet hyperlinks.  
 15           15. Cite to any existing pre-hearing testimony in this docket by the assigned page or exhibit number  
 16           PSC REF #s.  
 17                 (“As mentioned in Direct-PSC-Smith-15 . . . .”)  
 18           16. Cite to any existing offered exhibit in this docket by the exhibit number. Include no PSC REF #s.  
 19                 (“I prepared Ex.-PSC-Smith-1 . . . .”)  
 20           17. Refrain from pinpoint line number citation because refiling of the source document may result in  
 21           revisions.

## Guidelines for Contested Case Proceedings

1           **18. To cite to a CPCN application:**

2           **a. Cite to a page # as:**

3           Ex.-[identify the applicant]-Applicant-Application-Vol. # : page#  
4           ("Ex.-ATC-Application-Vol. 1:312")

5           **b. Cite to a Figure as:**

6           Ex.-[identify the applicant]-Application-Vol. # : Appendix \_ Figure \_  
7           ("Ex.-ATC-Application-Vol. 2: Appendix A Figure 1")

8           **c. Cite to a Part as:**

9           Ex.-[identify the applicant]-Application-Vol. # : Appendix \_ Part\_  
10           ("Ex.-ATC-Application-Vol. 2: Appendix C Part 1")

11           **d. Cite to a Table as:**

12           Ex.-[identify the applicant]-Application-Vol. # : Appendix \_ Table\_  
13           ("Ex.-ATC-Application-Vol. 2: Appendix B Table 1")

14           **e. Cite to an Exhibit as:**

15           Ex.-[identify the applicant]-Application-Vol. # : Appendix \_ Exhibit\_  
16           ("Ex.-ATC-Application-Vol. 2: Appendix D Exhibit 2")

17           **19. To cite to other types of applications:**

18           Cite to Ex.-[identify the applicant]-Application-[applicable page # or section]  
19           ("Ex.-ATC-Application-Attachment A:2")

20           **20. To cite to a Final EIS:**

21           **a. Cite to a section as:**

22           "Ex.-PSC-FEIS-Vol. # § #"  
23           ("Ex.-PSC-FEIS-Vol. 1 § 12.1.2")

24           **b. Cite to a page # as:**

25           "Ex.-PSC-FEIS-Vol. #: page #"  
26           ("Ex.-PSC-FEIS-Vol. 1:312")

27           **21. To cite to a Final EA:**

28           **a. Cite to a section as:**

29           "Ex.-PSC-FEA-Vol. # § #"  
30           ("Ex.-PSC-FEA-Vol. 1 § 12.1.2")

31           **b. Cite to a page # as:**

32           "Ex.-PSC-FEA-Vol. #: page #"  
33           ("Ex.-PSC-FEA-Vol. 1:312")



## Guidelines for Contested Case Proceedings

1                   22. To cite to a response to a staff data request offered in a staff data request response exhibit:

- 2                   a. "Ex.-PSC-Data Request: Response #"  
3                   ("Ex.-PSC-Data Request: Response 2.02")

4                   23. To cite to public comments offered in the staff public comment exhibit:

- 5                   a. "Ex.-PSC-Public Comment: Witness name"  
6                   ("Ex.-PSC- Public Comment: Smith")

7  
8                   **c. Filing**

- 9                   1. File according to previously established deadlines.  
10                  2. Use the ERF Document Type: "Testimony-Offered."  
11                  3. ERF Document Description: Use the page numbering convention, but exclude the page num  
12                  4. If the filing is an errata sheet for testimony already filed, add "e" to the page number.

	Initial Filing	1 <sup>st</sup> Revision	2 <sup>nd</sup> Revision
Public only	Direct-PSC-Smith	Direct-PSC-Smith-r	Direct-PSC-S
Confidential	Direct-PSC-Smith-c	Direct-PSC-Smith-cr	Direct-PSC-S
Redacted	Direct-PSC-Smith-p	Direct-PSC-Smith-pr	Direct-PSC-S
Errata	Direct-PSC-Smith-pe	Direct-PSC-Smith-pre	Direct-PSC-S
	1 <sup>st</sup> Supplemental Filing	1 <sup>st</sup> Revision	2 <sup>nd</sup> Revision
Public only	Direct-PSC-Smith-s	Direct-PSC-Smith-sr	Direct-PSC-S
Confidential	Direct-PSC-Smith-sc	Direct-PSC-Smith-scr	Direct-PSC-S
Redacted	Direct-PSC-Smith-sp	Direct-PSC-Smith-spr	Direct-PSC-S
Errata	Direct-PSC-Smith-spe	Direct-PSC-Smith-spre	Direct-PSC-S
	2nd Supplemental Filing	1 <sup>st</sup> Revision	2 <sup>nd</sup> Revision
Public only	Direct-PSC-Smith-s2	Direct-PSC-Smith-s2r	Direct-PSC-S
Confidential	Direct-PSC-Smith-sc2e	Direct-PSC-Smith-s2cre	Direct-PSC-S
Redacted	Direct-PSC-Smith-sp2	Direct-PSC-Smith-s2pr	Direct-PSC-S
Errata	Direct-PSC-Smith-sp2e	Direct-PSC-Smith-s2pre	Direct-PSC-S

13  
14                   **4. Exhibits**

15                   **a. Contents**

- 16                   1. Only documentary evidence expressly offered for and duly received on the record as an ext  
17                   Commission.  
18                   2. Offer documentary evidence by filing:

## Guidelines for Contested Case Proceedings

- 1           a. All documents, except for those already filed as exhibits in this docket.
- 2           b. Introduce the documents in written testimony, affidavit, or at hearing.
- 3           c. If only the portion of the document relates to the purpose of its introduction, offer only
- 4           document.
- 5       3. To offer any document already filed on ERF in this docket requires refiling the document a
- 6       4. To offer any evidence already filed on ERF in another docket requires refiling, as an exhibi
- 7           verified by the original sponsor.
- 8       5. Any change to an exhibit requires refiling a complete replacement version.
- 9       6. Offer no supplemental exhibits. Mark an exhibit offered with supplemental testimony, as a
- 10       7. To offer a docket application for the record:
- 11           a. Submit a draft exhibit to the Commission docket coordinator that lists all documents wi
- 12           to all the documents filed on ERF that make up the application.
- 13           b. The live link for any document filed confidentially shall point to the confidential version
- 14           c. File the draft exhibit no later than two weeks prior to the first deadline to file pre-hearing
- 15           d. File the version approved by Commission staff no later than one week prior to the first d
- 16           testimony.
- 17           e. Mark the exhibit "Ex.-[Applicant identifier]-Application."
- 18           ("Ex. ATC-Application")
- 19       8. In a CA or CPCN proceeding, Commission staff shall file an exhibit that identifies all respo
- 20           a. Mark the exhibit as "Ex.-PSC-Staff Data Request-Response."
- 21       9. Commission staff shall file an exhibit that constitutes a Final Environmental Impact Statem
- 22           Assessment.
- 23           a. Mark as "Ex.-PSC-FEIS"/"Ex.-PSC-FEA."
- 24       10. Commission staff shall file an exhibit that lists all public comments received:
- 25           a. Mark as "Ex.-PSC-Public Comment"
- 26       11. The filer of any application, staff data request response, or FEIS/FEA exhibit shall refile th
- 27           complete.

### b. Format

- 29       1. Separate exhibits from any:
  - 30           a. Testimony.
  - 31           b. Cover letter.
  - 32           c. Request for an order.
- 33       2. Use a cover page.
- 34

## Guidelines for Contested Case Proceedings

3. Allow space at the top right corner of the cover page for the PSC REF# stamp.
4. Mark the exhibit at the center bottom of the cover page according to the marking convention:
  - a. "Ex.-[identify the party]-[identify the witness]-[exhibit #]"
  - b. If the exhibit is offered under a request for confidential handling, add "c" to the marking.
  - c. If the exhibit offered is a redacted public version of a document filed under a request for confidential handling, add "p" to the marking.
  - d. If the exhibit offered corrects a round of testimony already filed, add "r" to the marking.
  - e. If the exhibit offered is a subsequent refiling add a number to the marking that indicates the round of testimony.

	Initial Filing	1 <sup>st</sup> Revision	2 <sup>nd</sup> Revision
Public only	Ex.-PSC-Smith-1	Ex.-PSC-Smith-1r	Ex.-PSC-Smith-1cr
Confidential	Ex.-PSC-Smith-1c	Ex.-PSC-Smith-1cr	Ex.-PSC-Smith-1cpr
Redacted	Ex.-PSC-Smith-1p	Ex.-PSC-Smith-1pr	Ex.-PSC-Smith-1pcr

### c. Filing

1. File according to previously established deadlines.
2. Use the ERF Document Type: "Exhibit-Offered."
3. ERF Document Description: Use the exhibit marking.
4. File all updates to the following exhibits as if it was an initial filing:
  - a. Application.
  - b. Staff data request response.
  - c. FEIS
  - d. FEA

## 5. Requests for an Order/Briefs

### a. Contents

1. For any post-hearing brief on the merits:
  - a. Cite to the record all noted evidence and assertions of fact.
  - b. Cite to no evidence or assertion of fact outside the record.

### b. Format

1. Include no cover page.
2. Allow space at the top right corner of the first page for the PSC REF# stamp.
3. Use 12 point double-spaced type and one-inch margins.
4. Limit the number of pages as follows:

## Guidelines for Contested Case Proceedings

- 1 a. Initial post-hearing brief on the merits - 30 pages.
- 2 b. All other briefs - 15 pages.
- 3

### 4 c. Filing

- 5 1. File any request for an order using the "Motion" document type even if a brief is attached.
- 6 2. File any brief, response, or reply to a request for an order using the "Motion" document type.
- 7 3. File any initial post-hearing brief on the merits using the "Brief" document type.
- 8 4. File any reply post-hearing brief on the merits using the "Reply Brief" document type.
- 9

### 10 d. Corrections

- 11 1. Any change to a request or brief requires refileing a complete replacement version. Indicate
- 12 "(revised)" to the title and ERF Document Description.
- 13 ("Request for Leave (revised)")
- 14

## 15 C. Motion Practice

16 For all requests for an order, including objections, made prior to a Commission decision on the subject

- 17 1. Direct the request to the Administrative Law Judge.
- 18 2. File the request, unless timely made at a hearing.
- 19 3. When filing the request, use the "Motion" document type.
- 20 4. The following schedule shall apply to any filed requests:
  - 21 a. Respond by 1:30 p.m. 3 days after the filing of the request.
  - 22 b. Reply by 1:30 p.m. 2 days after the filing of the response.
- 23 5. File a response or reply using the "Motion" document type.
- 24 6. Any request that contains a representation or certification of the consent of the parties and Commis
- 25 immediately upon filing, but shall receive reconsideration if so ordered within 3 days after filing of
- 26 7. Any request to which a response is authorized, but not received, shall take effect immediately after
- 27 shall receive reconsideration if so ordered within 3 days after the response deadline.
- 28 8. Any requests for an order not included anywhere in this document shall follow the process under V
- 29

## Guidelines for Contested Case Proceedings

### 1 D. ALJ Communications and Orders

- 2
- 3 1. Send no e-mails to the Administrative Law Judge unless otherwise herein.
- 4 2. Written orders of the Administrative Law Judge shall be served by e-mail.
- 5 3. In computing any period of time that follows the issuance of an order of the Administrative Law Ju
- 6 date stamp is the date of mailing. *See Wis. Admin. Code § PSC 2.05(2).*
- 7

### 8 E. Pre-Hearing Procedures

#### 9 1. Discovery

- 10 a. File any response to a party discovery request or Commission staff data request as information
- 11 1. For any request made prior to the deadline to file rebuttal testimony, respond in full no later
- 12 the request, with an exception of 30 days allowed for just cause.
- 13 2. For any request made after the deadline to file rebuttal testimony, respond in full no later th
- 14 request.
- 15 b. Serve all, party discovery requests and notices to object, with the Commission staff docket coo
- 16 staff attorney assigned to the docket.
- 17 c. File no party discovery requests, or notices to object.
- 18 d. Notify a requester of the intent to answer a discovery request or data request solely by objection
- 19 response, notwithstanding the objection.
- 20 1. For any notice related to a discovery request or data request made prior to the deadline to fi
- 21 the requester, by 1:30 p.m., 5 days after receipt of the discovery request or data request.
- 22 2. For any notice related to a discovery request or data request made after the deadline to file 1
- 23 requester, by 1:30 p.m., 3 days after receipt of the discovery request or data request.
- 24 e. File any request to compel a response to a discovery request or data request.
- 25 1. For any request related to a discovery request or data request made prior to the deadline to 1
- 26 request by 1:30 p.m., 5 days after receipt of a notice to answer solely by objection, or by ob
- 27 notwithstanding the objection.
- 28 2. For any request related to a discovery request or data request made after the deadline to file
- 29 request by 1:30 p.m., 3 days after receipt of a notice to answer solely by objection, or by ob
- 30 notwithstanding the objection.
- 31 f. File any request for protective order to a discovery request or data request.
- 32

## Guidelines for Contested Case Proceedings

### 2. Hearing Preparation

- a. Offer any written testimony and exhibits by filing by the deadline established by order.
- b. To request to change the schedule in this proceeding, file a request to the schedule for good cause.
- c. Follow all format requirements for written testimony and exhibits provided herein.
- d. Request leave to file supplemental written testimony or exhibits. File the supplement concurrently with the request.
- e. Object to pre-hearing testimony and exhibits by the deadline of the next round of filing.
- f. Any party who compels a witness to appear at hearing shall create a volume of written testimony and exhibits of either a deposition or interrogatory. File the volume of written testimony for any witness being examined and corresponding exhibits, by the deadline to file rebuttal testimony.
- g. The applicant shall make an adequate number of personnel with knowledge of the issues in this public hearing session to answer questions from members of the public.
- h. A party shall endeavor to identify its employees or members who wish to file written comments at the hearing session in support of that party's position and shall use best efforts to organize the testimony in a manner that avoids undue repetition.
- i. Attempt to obtain consent under Wis. Stat. § 807.13 in sufficient time to plan an in-person witness examination.
- j. File all corrections to pre-hearing testimony (errata) and exhibits (replacement) by one day prior to the hearing. Timely filed corrections require no request or pre-approval from the Administrative Law Judge subject to objection at hearing.
- k. E-mail the Administrative Law Judge and copy the parties and Commission staff by 1:30 p.m. before the party hearing session to:
  1. Request to take a witness at a specific prearranged time.
  2. Identify the witnesses that a party or Commission staff intends to cross-examine. This does not include cross-examine other witnesses.
  3. Identify any need to conduct a portion of the hearing *in camera*.
  4. Identify any witness appearing by telephone.
  5. Request the scheduling of additional hearing time.

### F. Hearing Procedures

1. Before the call of witnesses, the Administrative Law Judge may:
  - a. Hear any corrections to the Pre-Hearing Written Testimony and Exhibit List.
  - b. Hear any remaining corrections to pre-hearing written testimony and exhibits.
  - c. Rule on pending and allowable objections.

## Guidelines for Contested Case Proceedings

- 1           d. Hear oral arguments in lieu of briefs with respect to any pending motion for which the deadline
- 2           prior to, or on, that day.
- 3           e. Receive into the record all items on the previously issued Pre-Hearing Written Testimony and l
- 4           verification by the witness, pending or allowable objections, and corrections to the list.
- 5           2. The sponsor of any pre-hearing testimony or exhibit not received into the record may make such fi
- 6           3. The sponsor of any oral testimony not received into the record may make a brief oral offer of proof
- 7           4. The order of appearances and cross-examination by parties shall follow the order of parties as prov
- 8           Commission staff shall follow all parties. Each party and Commission staff may arrange the order
- 9           5. A rebuttable presumption of good cause under Wis. Stat. § 807.13 exists to allow witnesses to appe
- 10          6. Prior to cross-examination, any witness may offer brief oral testimony that responds only to the las
- 11          testimony or any subsequent testimony of another witness received at the hearing. Use best efforts
- 12          surprise or prejudice.
- 13          7. Limit cross-examination of a witness by the length and scope required to reasonably investigate ma
- 14          testimony of that witness. To investigate beyond these parameters requires the party to have follow
- 15          process for compelling the witness to appear at hearing for direct examination.
- 16          8. Provide an adequate number of copies of any document referred to during the hearing, but not prev
- 17          9. The Commission intends to webcast all hearings held in Madison. Therefore, the Commission wil
- 18          available to monitor a hearing.

### G. Post-Hearing Procedures

- 21
- 22          1. File any document not filed prior to the party hearing session but offered and received at the party
- 23          3 days after the last day of the party hearing session.
- 24          2. File documentary evidence not previously filed but identified at the party hearing session and for w
- 25          delayed until after the party hearing session by 1:30 p.m. 3 days after the last day of the party heari
- 26          3. File the affidavit of any witness attesting to the truthfulness and accuracy of that witness's written
- 27          into the record in the absence of a live oath or affirmation by 1:30 p.m. 3 days after the last day of
- 28          using "Testimony-Offered" ERF document description.
- 29          4. File a complete replacement version of any written testimony or exhibit corrected by errata or at th
- 30          after the last day of the party hearing session.
- 31          5. Object to the filings listed above as provided in these Guidelines.
- 32          6. The opportunity to offer hearing transcript corrections is as follows:
- 33          a. By the established transcript turnaround time, the court reporter shall serve a draft transcript.

## Guidelines for Contested Case Proceedings

- 1           **b.** File any proposed corrections to the draft transcript in the form of an errata sheet by 1:30 p.m. :  
2           transcript.
- 3           **c.** File using the "Offered Testimony" ERF Document Type.
- 4           **d.** An errata may correct a misstatement when necessary to convey the truth, and if the change ca  
5           **e.** Propose a clarification to eliminate confusion, without prejudicially changing meaning.
- 6           **f.** File any objection to a proposed transcript correction by 1:30 p.m. 2 days after the filing of the  
7           **g.** Any timely filed objection shall stand unless overruled by the Administrative Law Judge withi  
8           objection.
- 9           **h.** Commission staff shall serve, and send to the court reporter, all corrections timely filed, unopp  
10          objection.
- 11          **i.** The court reporter shall create the official version of the transcript by making the corrections p  
12          The court reporter shall serve the official transcript only to Commission staff.
- 13          **j.** Commission staff shall file all official transcript volumes and serve only the official version of  
14          transcript volume.
- 15         **6.** Maintain a claim to confidential handling under Wis. Admin. Code § PSC 2.12 of an *in camera* he  
16          1:30 p.m. 5 days after service of the official version of the transcript, a request as described in Wis.  
17          attached before a copy of the transcript, shaded in light gray, all text to which the request applies.  
18          separately, file a redacted copy of the official version of the *in camera* transcript consistent with W  
19          2.12(4). Omit from the transcript any affirmation of the veracity of the official volume included in  
20          reporter. File both documents using "Testimony-Offered" ERF document description. The redacte  
21          Commission staff to evaluate the claim and for public convenience. The redacted volume provides  
22          proceedings. In the case of any discrepancy between the original volume and the redacted volume,  
23          control.
- 24         **7.** Object to or request to offer rebuttal or countervailing evidence for any evidence offered by a mem  
25          2 days after service of the transcript of the public hearing session.
- 26         **8.** Request leave to present additional evidence by showing 1) the additional evidence is material; and  
27          failure to present the evidence according to the schedule. Simultaneously, but separately, file the ev  
28          affidavit.
- 29         **9.** Request to take official notice under Wis. Stat. § 227.45(3). Simultaneously, but separately, file the  
30          affidavit.
- 31         **10.** A non-party shall offer a brief on the merits by filing simultaneously with, but separately from the  
32          file.



## Guidelines for Contested Case Proceedings

- 1           11. Respond to a notice by the Commission of its decision to avail itself of any evidence in its possessi  
2           Stat. § 227.45(2) by 1:30 p.m. 3 days after the notice issues. Simultaneously, but separately, file an  
3           evidence verified by affidavit. Reply by 1:30 p.m. 2 days after the filing of the response.
- 4           12. A request for an order filed after the hearing does not stay any Commission open meeting discussio  
5           record or the issuance of a final decision by the Commission. Either Commission action effects a c  
6           otherwise indicated by the Commission.

### 8   **H. Post-Decision Procedures**

- 9
- 10          1. File any for request rehearing or reopening under Wis. Stat. §§ 196.39 or 227.49.
  - 11           a. File a request using the "Petition" document type.
  - 12           b. Respond by 1:30 p.m. 5 days after the filing of the request.
  - 13           c. File a response using the "Petition" document type.
  - 14           d. File no reply from the requester.
- 15          2. The record on review under Wis. Stat. § 227.55 shall contain any offer of proof. But, no offer of p  
16          record unless the Commission or a court overturns the ruling to exclude the evidence and provides  
17          cross-examination or the offer of countervailing evidence.

<p><b>SERVICE DATE</b> <b>Nov 27, 2018</b></p>
--

**PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application for a Certificate of Public Convenience and Necessity of Two Creeks Solar, LLC to Construct an Electric Tie Line to Connect a Solar Electric Generation Facility to the Existing Transmission System, to be Located in Manitowoc and Kewaunee Counties, Wisconsin

9696-CE-101

**PREHEARING CONFERENCE MEMORANDUM**

This memorandum orders the following consistent with the prehearing conference held on Friday, November, 9, 2018, and pursuant to Wis. Admin. Code § PSC 2.04(1):

**I. PARTIES:**

**A. Applicant:**

1. Two Creeks Solar, LLC

**B. Intervenors:**

1. American Transmission Company
2. Wisconsin Industrial Energy Group

**II. ISSUES:**

- A. Does the proposed project comply 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?

**III. SCHEDULE:**

- |                      |   |
|----------------------|---|
| • 11/20/2018 1:30 PM | Offered Evidence Direct : Applicant                               |
| • 12/07/2018 1:30 PM | Offered Evidence Direct : Intervenor and Commission Staff         |
| • 12/21/2018 1:30 PM | Offered Evidence Rebuttal : Parties and Commission Staff          |
| • 01/10/2019 1:30 PM | Offered Evidence Surrebuttal : Parties and Commission Staff       |
| • 01/14/2019 1:30 PM | Offered Evidence Other: Errata Testimony and Replacement Exhibits |

Docket 9696-CE-101

- **01/15/2019 10:00 AM** Hearing: Party Session in Madison
- **01/22/2019 2:00 & 6:00 PM** Public Hearing Session in Two Rivers
- **01/17/2019 4:30 PM** Transcript: Draft Transcript
- **01/18/2019 1:30 PM** Offered Evidence Other: Exhibits Offered and Received at Hearing
- **01/18/2019 1:30 PM** Offered Evidence Other: Witness Verification Affidavits
- **01/18/2019 1:30 PM** Offered Evidence Other: Revised Testimony
- **01/23/2019 1:30 PM** Transcript: Proposed Corrections to Draft Transcript
- **01/25/2019 1:30 PM** Brief: Initial Brief
- **01/28/2019 1:30 PM** Transcript: Objections to Proposed Corrections to Draft Transcript
- **02/01/2019 1:30 PM** Brief: Reply Brief

**IV. OTHER FACILITATION MATERS:**

Other matters required to facilitate this proceeding as they appear in the attached Guidelines for Contested Case Proceedings are incorporated into this Order.



Michael E. Newmark  
Administrative Law Judge

MEN: :DL:01658307

## Guidelines for Contested Case Proceedings

1	<b>Contents</b>
2	
3	<b>A. General</b>
4	<b>B. Documents – Filing and Service, Formatting, Numbering</b>
5	<b>1. Filing and Service</b>
6	<b>2. Confidentiality</b>
7	<b>3. Written Testimony</b>
8	<b>a. Contents</b>
9	<b>b. Format</b>
10	<b>c. Filing</b>
11	<b>4. Exhibits</b>
12	<b>a. Contents</b>
13	<b>b. Format</b>
14	<b>c. Filing</b>
15	<b>5. Requests for an Order/Briefs</b>
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19	<b>d. Corrections</b>
20	<b>C. Motion Practice</b>
21	<b>D. ALJ Communications and Orders</b>
22	<b>E. Pre-Hearing Procedures</b>
23	<b>1. Discovery</b>
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25	<b>F. Hearing Procedures</b>
26	<b>G. Post-Hearing Procedures</b>
27	<b>H. Post-Decision Procedures</b>

## Guidelines for Contested Case Proceedings

### 1 A. General

- 2
- 3 1. The Commission provides the following guidelines to inform the public of certain details of practice
- 4 contested case proceedings. These guidelines become binding procedures for a particular docket with
- 5 Administrative Law Judge. The presiding Administrative Law Judge may adopt these guidelines in
- 6 these guidelines as necessary to facilitate processing a particular docket.
- 7 2. The assigned Commission staff attorney is the first point of contact for a party on any procedural matter.
- 8

### 9 B. Documents – Filing, and Service, Formatting, Numbering

#### 10 1. Filing and Service

- 11
- 12 a. The Commission shall receive only Portable Document Format (“PDF”) files for the record. Do not
- 13 attachments or embedded files. For more information, contact the Commission’s Records Management
- 14 b. File any document by upload to the Commission’s Electronic Records Filing System (“ERF”)
- 15 (<http://apps.psc.wi.gov/appsHome.html>).
- 16 c. If ERF does not accept a document, serve the document and contact the Commission’s Records Management
- 17 (608) 261-8521 for assistance.
- 18 d. ERF upload requires the assignment of a “Document Type.” Choose the “Document Type” as
- 19 or if not specified herein, that best corresponds with the substance of the document from the following:
- 20 1. Application
- 21 2. Brief
- 22 3. Comments
- 23 4. Correspondence
- 24 5. Data Request/Response
- 25 6. Exhibit - Offered
- 26 7. Motion
- 27 8. Petition
- 28 9. Request for Intervenor / Party Status
- 29 10. Testimony - Offered
- 30 e. ERF upload requires the submission of a document “Description.” Use the description specifically
- 31 specified herein, be concise.
- 32 f. Filing constitutes certification of service. *See* Wis. Admin. Code § PSC 2.06(3)(a).

## Guidelines for Contested Case Proceedings

- 1 g. Parties and Commission staff serve by e-mail. Use password protection when serving a docum  
2 filed under a request for confidential handling. If size, or format prevents e-mail service, serve  
3 storage media.  
4 h. Parties and Commission staff shall inform each other of any e-mail address, and one physical a  
5 requirements of service shall apply.  
6 i. Serve the Commission docket coordinator any, but, unless otherwise required, file no party to a  
7 j. In computing any period of time that follows service, the day of e-mailing is the day of mailing  
8 § PSC 2.05(2). This applies regardless of any dated signature or ERF filing date stamp.  
9

### 2. Confidentiality

- 11 a. To protect a record submitted in the course of this proceeding from public disclosure, request c  
12 under Wis. Admin. Code § 2.12(3).  
13 b. For any filing that includes information subject to a request for confidential handling:  
14 1. File a confidential version with the affidavit required under Wis. Admin. Code PSC § 2.12  
15 document.  
16 2. Shade in light gray, any specific text to which the request applies.  
17 (“The cost was \$2.00 . . . .”)  
18 3. File a public version with the specific text to which the request applies completely removed  
19 mark. Include no affidavit in the public version.  
20 (“The cost was [REDACTED] . . . .”)  
21 4. No confidential filing shall enter the record if the public version is a complete redaction of  
22 5. The signatory of an affidavit required under Wis. Admin. Code PSC § 2.12 may not rely on  
23 with respect to the substantive basis of the request for confidential handling, but shall have  
24 personally verify that basis. This means filer of the document may need to obtain the affida  
25 third party. But if the document to be filed already exists on ERF subject to confidential ha  
26 affidavit may meet this requirement by making reference to the existing affidavit on file.  
27 c. The Commission shall hear *in camera* any oral testimony and cross-examination that may incl  
28 claim for confidential handling. The Commission shall handle the transcript volume for such h  
29 to the post-hearing process provided herein to maintain such claim.  
30 d. Any party, or its representative, may review a record submitted in the course of this proceeding  
31 Admin. Code § 2.12, and participate in any *in camera* proceedings in this docket, subject to any  
32 necessary to protect the trade secrets of parties and any information entitled to confidentiality p  
33 be provided by agreement between the parties and without approval of the Administrative Law  
34 be reached, by order of the Administrative Law Judge.

## Guidelines for Contested Case Proceedings

### 3. Written Testimony

#### a. Contents

1. Parties and Commission staff produce written testimony in lieu of oral testimony at hearing established by order.
2. Rounds of written testimony, are defined as:
  - a. The first round of testimony, "direct," provides each party the opportunity to present its evidence to prove the facts needed to support its claims.
  - b. A second round of testimony, "rebuttal," provides each party the opportunity to present evidence to that presented in direct.
  - c. A third round of testimony, "surrebuttal," provides each party the opportunity to present countervailing evidence to that presented in rebuttal.
3. Testimony that supplements the contents of testimony the witness already filed requires a request. Submit the request simultaneously, but separately, from the supplement.
4. The rounds of testimony filed after direct shall introduce no new issues.
5. The scope of written testimony is narrowed with each round of filing such that it addresses previous round.
6. Failure to rebut or surrebut the testimony of another witness does not imply consent to that testimony. A witness need not repeat or restate prior testimony in a subsequent round of testimony.
7. The testimony of another witness speaks for itself. A witness should refer to the testimony citation rather than restating it, whenever possible.
8. Only documentary evidence expressly offered for and duly received as an exhibit will come before the Commission. Therefore, testimony shall only direct the Commission to documents offered as exhibits. Testimony shall not include citations (including PSC REF#s) to documents not offered as exhibits, but only for the purpose of facts asserted so that the fact asserted may be verified by other parties and Commission staff.
9. Identify in an errata sheet, any corrections to testimony known before the hearing. After the hearing, a request for correction that requires corrections as provided in the post-hearing process provided in these Guidelines.

#### b. Format

1. Separate the testimony from any:
  - a. Exhibit being offered in that testimony.
  - b. Cover letter.
  - c. Request for an order.
2. Include no cover page.

## Guidelines for Contested Case Proceedings

- 1           3. Allow space at the top right corner for the PSC REF# stamp.
- 2           4. Structure testimony in question and answer format.
- 3           5. Page numbers for each filing shall begin at "1" and continue in numerical order for that filing.
- 4           6. Use line numbers starting at "1" on the first line of each page.
- 5           7. Center page numbers at the bottom of every page.
- 6           8. Number each page according to the following convention:  
               "[identify the round of testimony]-[identify the party]-[identify the witness]-[page #]"
- 7           9. If the filing is filed under a request for confidential handling, add "c" to the page number.
- 8           10. If the filing is a redacted public version of a document filed under a request for confidential
- 9           11. If the testimony offered in the filing supplements a round of testimony already filed, add "s"
- 10          12. If the testimony offered corrects a round of testimony already filed, add "r" to the page number.
- 11          13. If the testimony offered is a subsequent refiling add a number to the page number that it
- 12
- 13

	Initial Filing	1 <sup>st</sup> Revision	2 <sup>nd</sup> Revision
Public only	Direct-PSC-Smith-1	Direct-PSC-Smith-r-1	Direct-PSC-Smith
Confidential	Direct-PSC-Smith-c-1	Direct-PSC-Smith-cr-1	Direct-PSC-Smith
Redacted	Direct-PSC-Smith-p-1	Direct-PSC-Smith-pr-2	Direct-PSC-Smith
	1 <sup>st</sup> Supplemental Filing	1 <sup>st</sup> Revision	2 <sup>nd</sup> Revision
Public only	Direct-PSC-Smith-s-1	Direct-PSC-Smith-sr-1	Direct-PSC-Smith
Confidential	Direct-PSC-Smith-sc-1	Direct-PSC-Smith-scr-1	Direct-PSC-Smith
Redacted	Direct-PSC-Smith-sp-1	Direct-PSC-Smith-spr-1	Direct-PSC-Smith
	2 <sup>nd</sup> Supplemental Filing	1 <sup>st</sup> Revision	2 <sup>nd</sup> Revision
Public only	Direct-PSC-Smith-s2-1	Direct-PSC-Smith-s2r-1	Direct-PSC-Smith
Confidential	Direct-PSC-Smith-sc2-1	Direct-PSC-Smith-s2cr-1	Direct-PSC-Smith
Redacted	Direct-PSC-Smith-sp2-1	Direct-PSC-Smith-s2pr-1	Direct-PSC-Smith

- 14           14. Include no live Internet hyperlinks.
- 15           15. Cite to any existing pre-hearing testimony in this docket by the assigned page or exhibit number and PSC REF #s.  
               ("As mentioned in Direct-PSC-Smith-15 . . .")
- 16           16. Cite to any existing offered exhibit in this docket by the exhibit number. Include no PSC REF #s.  
               ("I prepared Ex.-PSC-Smith-1 . . .")
- 17           17. Refrain from pinpoint line number citation because refiling of the source document may result in a different line number.
- 18
- 19
- 20
- 21



## Guidelines for Contested Case Proceedings

1 **18. To cite to a CPCN application:**

2 **a. Cite to a page # as:**

3 Ex.-[identify the applicant]-Applicant-Application-Vol. # : page#  
4 (“Ex.-ATC-Application-Vol. 1:312”)

5 **b. Cite to a Figure as:**

6 Ex.-[identify the applicant]-Application-Vol. # : Appendix \_ Figure \_  
7 (“Ex.-ATC-Application-Vol. 2: Appendix A Figure 1”)

8 **c. Cite to a Part as:**

9 Ex.-[identify the applicant]-Application-Vol. # : Appendix \_ Part \_  
10 (“Ex.-ATC-Application-Vol. 2: Appendix C Part 1”)

11 **d. Cite to a Table as:**

12 Ex.-[identify the applicant]-Application-Vol. # : Appendix \_ Table \_  
13 (“Ex.-ATC-Application-Vol. 2: Appendix B Table 1”)

14 **e. Cite to an Exhibit as:**

15 Ex.-[identify the applicant]-Application-Vol. # : Appendix \_ Exhibit \_  
16 (“Ex.-ATC-Application-Vol. 2: Appendix D Exhibit 2”)

17 **19. To cite to other types of applications:**

18 Cite to Ex.-[identify the applicant]-Application-[applicable page # or section]  
19 (“Ex.-ATC-Application-Attachment A:2”)

20 **20. To cite to a Final EIS:**

21 **a. Cite to a section as:**

22 “Ex.-PSC-FEIS-Vol. # § #”  
23 (“Ex.-PSC-FEIS-Vol. 1 § 12.1.2”)

24 **b. Cite to a page # as:**

25 “Ex.-PSC-FEIS-Vol. #: page #”  
26 (“Ex.-PSC-FEIS-Vol. 1:312”)

27 **21. To cite to a Final EA:**

28 **a. Cite to a section as:**

29 “Ex.-PSC-FEA-Vol. # § #”  
30 (“Ex.-PSC-FEA-Vol. 1 § 12.1.2”)

31 **b. Cite to a page # as:**

32 “Ex.-PSC-FEA-Vol. #: page #”  
33 (“Ex.-PSC-FEA-Vol. 1:312”)

## Guidelines for Contested Case Proceedings

1                   22. To cite to a response to a staff data request offered in a staff data request response exhibit:

- 2                   a. "Ex.-PSC-Data Request: Response #"  
3                   ("Ex.-PSC-Data Request: Response 2.02")

4                   23. To cite to public comments offered in the staff public comment exhibit:

- 5                   a. "Ex.-PSC-Public Comment: Witness name"  
6                   ("Ex.-PSC- Public Comment: Smith")

7  
8 **c. Filing**

- 9                   1. File according to previously established deadlines.  
10                  2. Use the ERF Document Type: "Testimony-Offered."  
11                  3. ERF Document Description: Use the page numbering convention, but exclude the page num  
12                  4. If the filing is an errata sheet for testimony already filed, add "e" to the page number.

	Initial Filing	1 <sup>st</sup> Revision	2 <sup>nd</sup> Revision
Public only	Direct-PSC-Smith	Direct-PSC-Smith-r	Direct-PSC-S
Confidential	Direct-PSC-Smith-c	Direct-PSC-Smith-cr	Direct-PSC-S
Redacted	Direct-PSC-Smith-p	Direct-PSC-Smith-pr	Direct-PSC-S
Errata	Direct-PSC-Smith-pe	Direct-PSC-Smith-pre	Direct-PSC-S
	1 <sup>st</sup> Supplemental Filing	1 <sup>st</sup> Revision	2 <sup>nd</sup> Revision
Public only	Direct-PSC-Smith-s	Direct-PSC-Smith-sr	Direct-PSC-S
Confidential	Direct-PSC-Smith-sc	Direct-PSC-Smith-scr	Direct-PSC-S
Redacted	Direct-PSC-Smith-sp	Direct-PSC-Smith-spr	Direct-PSC-S
Errata	Direct-PSC-Smith-spe	Direct-PSC-Smith-spre	Direct-PSC-S
	2nd Supplemental Filing	1 <sup>st</sup> Revision	2 <sup>nd</sup> Revision
Public only	Direct-PSC-Smith-s2	Direct-PSC-Smith-s2r	Direct-PSC-S
Confidential	Direct-PSC-Smith-sc2e	Direct-PSC-Smith-s2cre	Direct-PSC-S
Redacted	Direct-PSC-Smith-sp2	Direct-PSC-Smith-s2pr	Direct-PSC-S
Errata	Direct-PSC-Smith-sp2e	Direct-PSC-Smith-s2pre	Direct-PSC-S

13  
14 **4. Exhibits**

15 **a. Contents**

- 16                  1. Only documentary evidence expressly offered for and duly received on the record as an ex  
17                  Commission.  
18                  2. Offer documentary evidence by filing:

## Guidelines for Contested Case Proceedings

- 1 a. All documents, except for those already filed as exhibits in this docket.
- 2 b. Introduce the documents in written testimony, affidavit, or at hearing.
- 3 c. If only the portion of the document relates to the purpose of its introduction, offer only
- 4 document.
- 5 3. To offer any document already filed on ERF in this docket requires refileing the document a
- 6 4. To offer any evidence already filed on ERF in another docket requires refileing, as an exhibi
- 7 verified by the original sponsor.
- 8 5. Any change to an exhibit requires refileing a complete replacement version.
- 9 6. Offer no supplemental exhibits. Mark an exhibit offered with supplemental testimony, as a
- 10 7. To offer a docket application for the record:
- 11 a. Submit a draft exhibit to the Commission docket coordinator that lists all documents wi
- 12 to all the documents filed on ERF that make up the application.
- 13 b. The live link for any document filed confidentially shall point to the confidential version
- 14 c. File the draft exhibit no later than two weeks prior to the first deadline to file pre-hearing
- 15 d. File the version approved by Commission staff no later than one week prior to the first d
- 16 testimony.
- 17 e. Mark the exhibit "Ex.-[Applicant identifier]-Application."
- 18 ("Ex. ATC-Application")
- 19 8. In a CA or CPCN proceeding, Commission staff shall file an exhibit that identifies all resp
- 20 a. Mark the exhibit as "Ex.-PSC-Staff Data Request-Response."
- 21 9. Commission staff shall file an exhibit that constitutes a Final Environmental Impact Statem
- 22 Assessment.
- 23 a. Mark as "Ex.-PSC-FEIS"/"Ex.-PSC-FEA."
- 24 10. Commission staff shall file an exhibit that lists all public comments received:
- 25 a. Mark as "Ex.-PSC-Public Comment"
- 26 11. The filer of any application, staff data request response, or FEIS/FEA exhibit shall refile th
- 27 complete.

### b. Format

- 29 1. Separate exhibits from any:
  - 30 a. Testimony.
  - 31 b. Cover letter.
  - 32 c. Request for an order.
- 33 2. Use a cover page.
- 34

## Guidelines for Contested Case Proceedings

- 1                   3. Allow space at the top right corner of the cover page for the PSC REF# stamp.  
2                   4. Mark the exhibit at the center bottom of the cover page according to the marking conventio  
3                   a. "Ex.-[identify the party]-[identify the witness]-[exhibit #]"  
4                   b. If the exhibit is offered under a request for confidential handling, add "c" to the marking;  
5                   c. If the exhibit offered is a redacted public version of a document filed under a request fo  
6                   "p" to the marking.  
7                   d. If the exhibit offered corrects a round of testimony already filed, add "r" to the marking  
8                   e. If the exhibit offered is a subsequent refiling add a number to the marking that indicates  
9

	Initial Filing	1 <sup>st</sup> Revision	2 <sup>nd</sup> Revision
Public only	Ex.-PSC-Smith-1	Ex.-PSC-Smith-1r	Ex.-PSC-Smit
Confidential	Ex.-PSC-Smith-1c	Ex.-PSC-Smith -1cr	Ex.-PSC-Smit
Redacted	Ex.-PSC-Smith-1p	Ex.-PSC-Smith 1pr	Ex.-PSC-Smit

10  
11                   **c. Filing**

- 12                   1. File according to previously established deadlines.  
13                   2. Use the ERF Document Type: "Exhibit-Offered."  
14                   3. ERF Document Description: Use the exhibit marking.  
15                   4. File all updates to the following exhibits as if it was an initial filing:  
16                   a. Application.  
17                   b. Staff data request response.  
18                   c. FEIS  
19                   d. FEA

20  
21                   **5. Requests for an Order/Briefs**

22                   **a. Contents**

- 23                   1. For any post-hearing brief on the merits:  
24                   a. Cite to the record all noted evidence and assertions of fact.  
25                   b. Cite to no evidence or assertion of fact outside the record.

26                   **b. Format**

- 27                   1. Include no cover page.  
28                   2. Allow space at the top right corner of the first page for the PSC REF# stamp.  
29                   3. Use 12 point double-spaced type and one-inch margins.  
30                   4. Limit the number of pages as follows:

## Guidelines for Contested Case Proceedings

- 1 a. Initial post-hearing brief on the merits - 30 pages.
- 2 b. All other briefs - 15 pages.
- 3

### 4 c. Filing

- 5 1. File any request for an order using the "Motion" document type even if a brief is attached.
- 6 2. File any brief, response, or reply to a request for an order using the "Motion" document typ
- 7 3. File any initial post-hearing brief on the merits using the "Brief" document type.
- 8 4. File any reply post-hearing brief on the merits using the "Reply Brief" document type.
- 9

### 10 d. Corrections

- 11 1. Any change to a request or brief requires refileing a complete replacement version. Indicate
- 12 "(revised)" to the title and ERF Document Description.
- 13 ("Request for Leave (revised)")
- 14

## 15 C. Motion Practice

16 For all requests for an order, including objections, made prior to a Commission decision on the subject

- 17 1. Direct the request to the Administrative Law Judge.
- 18 2. File the request, unless timely made at a hearing.
- 19 3. When filing the request, use the "Motion" document type.
- 20 4. The following schedule shall apply to any filed requests:
  - 21 a. Respond by 1:30 p.m. 3 days after the filing of the request.
  - 22 b. Reply by 1:30 p.m. 2 days after the filing of the response.
- 23 5. File a response or reply using the "Motion" document type.
- 24 6. Any request that contains a representation or certification of the consent of the parties and Commis
- 25 immediately upon filing, but shall receive reconsideration if so ordered within 3 days after filing of
- 26 7. Any request to which a response is authorized, but not received, shall take effect immediately after
- 27 shall receive reconsideration if so ordered within 3 days after the response deadline.
- 28 8. Any requests for an order not included anywhere in this document shall follow the process under V
- 29

## Guidelines for Contested Case Proceedings

### 1 D. ALJ Communications and Orders

- 2
- 3 1. Send no e-mails to the Administrative Law Judge unless otherwise herein.
- 4 2. Written orders of the Administrative Law Judge shall be served by e-mail.
- 5 3. In computing any period of time that follows the issuance of an order of the Administrative Law Ju
- 6 date stamp is the date of mailing. *See* Wis. Admin. Code § PSC 2.05(2).
- 7

### 8 E. Pre-Hearing Procedures

#### 9 1. Discovery

- 10 a. File any response to a party discovery request or Commission staff data request as information
- 11 1. For any request made prior to the deadline to file rebuttal testimony, respond in full no later
- 12 the request, with an exception of 30 days allowed for just cause.
- 13 2. For any request made after the deadline to file rebuttal testimony, respond in full no later th
- 14 request.
- 15 b. Serve all, party discovery requests and notices to object, with the Commission staff docket coo
- 16 staff attorney assigned to the docket.
- 17 c. File no party discovery requests, or notices to object.
- 18 d. Notify a requester of the intent to answer a discovery request or data request solely by objection
- 19 response, notwithstanding the objection.
- 20 1. For any notice related to a discovery request or data request made prior to the deadline to fi
- 21 the requester, by 1:30 p.m., 5 days after receipt of the discovery request or data request.
- 22 2. For any notice related to a discovery request or data request made after the deadline to file 1
- 23 requester, by 1:30 p.m., 3 days after receipt of the discovery request or data request.
- 24 e. File any request to compel a response to a discovery request or data request.
- 25 1. For any request related to a discovery request or data request made prior to the deadline to 1
- 26 request by 1:30 p.m., 5 days after receipt of a notice to answer solely by objection, or by ob
- 27 notwithstanding the objection.
- 28 2. For any request related to a discovery request or data request made after the deadline to file
- 29 request by 1:30 p.m., 3 days after receipt of a notice to answer solely by objection, or by ob
- 30 notwithstanding the objection.
- 31 f. File any request for protective order to a discovery request or data request.
- 32

## Guidelines for Contested Case Proceedings

### 2. Hearing Preparation

- a. Offer any written testimony and exhibits by filing by the deadline established by order.
- b. To request to change the schedule in this proceeding, file a request to the schedule for good cause.
- c. Follow all format requirements for written testimony and exhibits provided herein.
- d. Request leave to file supplemental written testimony or exhibits. File the supplement concurrently with the request.
- e. Object to pre-hearing testimony and exhibits by the deadline of the next round of filing.
- f. Any party who compels a witness to appear at hearing shall create a volume of written testimony and corresponding exhibits, by the deadline to file rebuttal testimony.
- g. The applicant shall make an adequate number of personnel with knowledge of the issues in this public hearing session to answer questions from members of the public.
- h. A party shall endeavor to identify its employees or members who wish to file written comments at the hearing session in support of that party's position and shall use best efforts to organize the testimony in a manner that avoids undue repetition.
- i. Attempt to obtain consent under Wis. Stat. § 807.13 in sufficient time to plan an in-person witness examination.
- j. File all corrections to pre-hearing testimony (errata) and exhibits (replacement) by one day prior to the hearing. Timely filed corrections require no request or pre-approval from the Administrative Law Judge but are subject to objection at hearing.
- k. E-mail the Administrative Law Judge and copy the parties and Commission staff by 1:30 p.m. prior to the party hearing session to:
  1. Request to take a witness at a specific prearranged time.
  2. Identify the witnesses that a party or Commission staff intends to cross-examine. This does not include cross-examine other witnesses.
  3. Identify any need to conduct a portion of the hearing *in camera*.
  4. Identify any witness appearing by telephone.
  5. Request the scheduling of additional hearing time.

### F. Hearing Procedures

1. Before the call of witnesses, the Administrative Law Judge may:
  - a. Hear any corrections to the Pre-Hearing Written Testimony and Exhibit List.
  - b. Hear any remaining corrections to pre-hearing written testimony and exhibits.
  - c. Rule on pending and allowable objections.

## Guidelines for Contested Case Proceedings

- 1           d. Hear oral arguments in lieu of briefs with respect to any pending motion for which the deadline
- 2           prior to, or on, that day.
- 3           e. Receive into the record all items on the previously issued Pre-Hearing Written Testimony and l
- 4           verification by the witness, pending or allowable objections, and corrections to the list.
- 5           2. The sponsor of any pre-hearing testimony or exhibit not received into the record may make such fi
- 6           3. The sponsor of any oral testimony not received into the record may make a brief oral offer of proof
- 7           4. The order of appearances and cross-examination by parties shall follow the order of parties as prov
- 8           Commission staff shall follow all parties. Each party and Commission staff may arrange the order
- 9           5. A rebuttable presumption of good cause under Wis. Stat. § 807.13 exists to allow witnesses to appe
- 10          6. Prior to cross-examination, any witness may offer brief oral testimony that responds only to the las
- 11          testimony or any subsequent testimony of another witness received at the hearing. Use best efforts
- 12          surprise or prejudice.
- 13          7. Limit cross-examination of a witness by the length and scope required to reasonably investigate ma
- 14          testimony of that witness. To investigate beyond these parameters requires the party to have follow
- 15          process for compelling the witness to appear at hearing for direct examination.
- 16          8. Provide an adequate number of copies of any document referred to during the hearing, but not prev
- 17          9. The Commission intends to webcast all hearings held in Madison. Therefore, the Commission wil
- 18          available to monitor a hearing.

### G. Post-Hearing Procedures

- 21           1. File any document not filed prior to the party hearing session but offered and received at the party
- 22           3 days after the last day of the party hearing session.
- 23           2. File documentary evidence not previously filed but identified at the party hearing session and for v
- 24           delayed until after the party hearing session by 1:30 p.m. 3 days after the last day of the party heari
- 25           3. File the affidavit of any witness attesting to the truthfulness and accuracy of that witness's written
- 26           into the record in the absence of a live oath or affirmation by 1:30 p.m. 3 days after the last day of
- 27           using "Testimony-Offered" ERF document description.
- 28           4. File a complete replacement version of any written testimony or exhibit corrected by errata or at th
- 29           after the last day of the party hearing session.
- 30           5. Object to the filings listed above as provided in these Guidelines.
- 31           6. The opportunity to offer hearing transcript corrections is as follows:
- 32           a. By the established transcript turnaround time, the court reporter shall serve a draft transcript.
- 33



## Guidelines for Contested Case Proceedings

- 1           **b.** File any proposed corrections to the draft transcript in the form of an errata sheet by 1:30 p.m. of  
2           transcript.
- 3           **c.** File using the "Offered Testimony" ERF Document Type.
- 4           **d.** An errata may correct a misstatement when necessary to convey the truth, and if the change can  
5           **e.** Propose a clarification to eliminate confusion, without prejudicially changing meaning.
- 6           **f.** File any objection to a proposed transcript correction by 1:30 p.m. 2 days after the filing of the  
7           **g.** Any timely filed objection shall stand unless overruled by the Administrative Law Judge within  
8           objection.
- 9           **h.** Commission staff shall serve, and send to the court reporter, all corrections timely filed, unopposed  
10          objection.
- 11          **i.** The court reporter shall create the official version of the transcript by making the corrections proposed.  
12          The court reporter shall serve the official transcript only to Commission staff.
- 13          **j.** Commission staff shall file all official transcript volumes and serve only the official version of  
14          transcript volume.
- 15        **6.** Maintain a claim to confidential handling under Wis. Admin. Code § PSC 2.12 of an *in camera* hearing.  
16        1:30 p.m. 5 days after service of the official version of the transcript, a request as described in Wis. Admin. Code § PSC 2.12(4).  
17        attached before a copy of the transcript, shaded in light gray, all text to which the request applies.  
18        separately, file a redacted copy of the official version of the *in camera* transcript consistent with Wis. Admin. Code § PSC 2.12(4).  
19        Omit from the transcript any affirmation of the veracity of the official volume included in the transcript.  
20        reporter. File both documents using "Testimony-Offered" ERF document description. The redacted copy is for Commission staff  
21        Commission staff to evaluate the claim and for public convenience. The redacted volume provides a copy of the transcript of the  
22        proceedings. In the case of any discrepancy between the original volume and the redacted volume, the original volume shall have  
23        control.
- 24        **7.** Object to or request to offer rebuttal or countervailing evidence for any evidence offered by a member of the public hearing session.  
25        2 days after service of the transcript of the public hearing session.
- 26        **8.** Request leave to present additional evidence by showing 1) the additional evidence is material; and 2) the failure to present the evidence  
27        failure to present the evidence according to the schedule. Simultaneously, but separately, file the evidence with the transcript and  
28        affidavit.
- 29        **9.** Request to take official notice under Wis. Stat. § 227.45(3). Simultaneously, but separately, file the request with the transcript and  
30        affidavit.
- 31        **10.** A non-party shall offer a brief on the merits by filing simultaneously with, but separately from the transcript and affidavit.  
32        file.

## Guidelines for Contested Case Proceedings

- 1           **11.** Respond to a notice by the Commission of its decision to avail itself of any evidence in its possessi  
2           Stat. § 227.45(2) by 1:30 p.m. 3 days after the notice issues. Simultaneously, but separately, file a  
3           evidence verified by affidavit. Reply by 1:30 p.m. 2 days after the filing of the response.
- 4           **12.** A request for an order filed after the hearing does not stay any Commission open meeting discussi  
5           record or the issuance of a final decision by the Commission. Either Commission action effects a c  
6           otherwise indicated by the Commission.

### 8   **H. Post-Decision Procedures**

- 9
- 10          **1.** File any for request rehearing or reopening under Wis. Stat. §§ 196.39 or 227.49.
  - 11           **a.** File a request using the "Petition" document type.
  - 12           **b.** Respond by 1:30 p.m. 5 days after the filing of the request.
  - 13           **c.** File a response using the "Petition" document type.
  - 14           **d.** File no reply from the requester.
- 15          **2.** The record on review under Wis. Stat. § 227.55 shall contain any offer of proof. But, no offer of p  
16          record unless the Commission or a court overturns the ruling to exclude the evidence and provides  
17          cross-examination or the offer of countervailing evidence.
- 18

<b>SERVICE DATE</b> <b>Nov 30, 2018</b>
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**PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application for a Certificate of Public Convenience and Necessity of  
 Two Creeks Solar, LLC to Construct an Electric Tie Line to Connect a  
 Solar Electric Generation Facility to the Existing Transmission System,  
 to be Located in Manitowoc and Kewaunee Counties, Wisconsin

9696-CE-101

Public Service Commission of Wisconsin  
 RECEIVED: 11/30/2018 1:55:00 PM

**NOTICE OF HEARING**

**For parties to the proceeding:**

**Tuesday, January 15, 2019 - 10:00 a.m.**

**PSC Hearing Room (S105) – 1<sup>st</sup> Floor  
 Public Service Commission  
 4822 Madison Yards Way  
 Madison, Wisconsin**

**For a member of the general public:**

**Tuesday, January 22, 2019 - 2:00 p.m.**

**Lester Public Library  
 1001 Adams Street  
 Two Rivers, Wisconsin**

**Tuesday, January 22, 2019 - 6:00 p.m.**

**Lester Public Library  
 1001 Adams Street  
 Two Rivers, Wisconsin**

**NOTICE IS GIVEN** that the Public Service Commission of Wisconsin will hold a public hearing in this proceeding. There will be three separate hearing sessions, one for parties admitted to the proceeding and two for members of the public.

On Tuesday, January 15, 2019, at 10:00 a.m., the Commission shall receive evidence from the parties and Commission staff in the Public Service Commission Hearing Room located on the first floor, Room S105 at the Hill Farms State Office Building, 4822 Madison Yards Way, Madison, Wisconsin.

On Tuesday, January 22, 2019, at 2:00 p.m. and 6:00 p.m., the Commission shall receive comments from the public in the Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin. The presiding Administrative Law Judge may allot additional time to receive evidence and comments, if necessary.

Docket 9696-CE-101

This is a Class 1 proceeding as defined in Wis. Stat. § 227.01(3)(a).

The Commission intends to webcast any hearing sessions held in the Public Service Commission Hearing Room live on the Commission's web site at <http://psc.wi.gov> under the "Live Broadcast" button.

**DOCUMENTS.** All documents in this docket are filed on the Commission's Electronic Records Filing (ERF) system. To view these documents: (1) go to the Commission's E-Services Portal at <http://apps.psc.wi.gov>, (2) enter "9696-CE-101" in the box labeled "Quick Single Docket Search," and (3) select "Documents." To receive electronic notifications when new documents are filed in this docket, go to ERF - EZ Subscriptions and follow the instructions to subscribe to this docket.

**SCHEDULE.** For the official schedule in this docket, check the notices and orders filed in this docket on the ERF system. For public convenience only, the Commission will maintain the schedule in this docket on the PSC Docket Calendar. To view the calendar: (1) go to the Commission's E-Services Portal at <http://apps.psc.wi.gov>, and (2) select the button labeled "Docket Calendar." From there you may browse or search the calendar, and subscribe to a particular docket schedule.

**PUBLIC COMMENTS.** A person may testify in this proceeding without becoming a party and without attorney representation. A person may submit this testimony in only one of the following ways:

- **Web Comment.** Go to the Commission's web site at <http://psc.wi.gov>, click on "File a Comment" button. On the next page, select the "File a comment" link that appears for docket number 9696-CE-101. Web comments shall be received no later than Monday, January 21, 2019.
- **Oral Comment.** Spoken testimony at the public session.
- **Written Comment.** Instead of speaking at the hearing, write out a comment and submit it at the public session.
- **Mail Comment.** All comments submitted by U.S. mail shall be received no later than Monday, January 21, 2019. A mail comment shall include the phrase "Docket 9696-CE-101 Comments" in the heading, and shall be addressed to:

Docket 9696-CE-101 Comments  
Public Service Commission  
P.O. Box 7854  
Madison WI 53707-7854

Docket 9696-CE-101

The Commission will not accept comments submitted via e-mail or facsimile (fax).

A person shall limit a public comment to non-technical personal knowledge or personal opinion. A person may include references to other materials in a comment, but may not include as part of a comment, any document not written or substantially modified by that person. The Commission shall only accept documents that a person offers to supplement a comment for the purpose of showing the basis of an opinion, not for proof of the matter asserted. Parties may object to the receipt of a public comment.

Any material submitted to the Commission is a public record and may appear on the Commission web site. Only one comment may be submitted per person during a comment period. The Commission may reject a comment that does not comply with the requirements described in this notice.

**AMERICANS WITH DISABILITIES ACT.** The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this docket or who needs to obtain this document in a different format should contact the docket coordinator listed below. Any hearing location is physically accessible to individuals with disabilities. The Public Service Commission is located in the Hill Farms State Office Building that is also physically accessible to individuals with disabilities through the entrances on the first floor. Parking for people with disabilities is available on the ground floor of the parking garage. There is also limited, free handicap visitor parking at the front of the Hill Farms State Office Building.

**CONTACT.** Please direct questions about this docket or requests for additional accommodations for the disabled to the Commission's docket coordinator, Ajinkya Rohankar, at (608) 266-1567 or [Ajinkya.Rohankar@wisconsin.gov](mailto:Ajinkya.Rohankar@wisconsin.gov).



Michael E. Newmark  
Administrative Law Judge

MEN:CNSLDL:01658333

<b>SERVICE DATE</b> <b>Nov 30, 2018</b>
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**PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application for a Certificate of Public Convenience and Necessity of  
 Two Creeks Solar, LLC to Construct a Solar Electric Generation Facility,  
 to be Located in Manitowoc and Kewaunee Counties, Wisconsin

9696-CE-100

**NOTICE OF HEARING**
**For parties to the proceeding:**
**Tuesday, January 15, 2019 - 10:00 a.m.**

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 Public Service Commission  
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Docket 9696-CE-100

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**SCHEDULE.** For the official schedule in this docket, check the notices and orders filed in this docket on the ERF system. For public convenience only, the Commission will maintain the schedule in this docket on the PSC Docket Calendar. To view the calendar: (1) go to the Commission's E-Services Portal at <http://apps.psc.wi.gov>, and (2) select the button labeled "Docket Calendar." From there you may browse or search the calendar, and subscribe to a particular docket schedule.

**PUBLIC COMMENTS.** A person may testify in this proceeding without becoming a party and without attorney representation. A person may submit this testimony in only one of the following ways:

- **Web Comment.** Go to the Commission's web site at <http://psc.wi.gov>, click on "File a Comment" button. On the next page, select the "File a comment" link that appears for docket number 9696-CE-100. Web comments shall be received no later than Monday, January 21, 2019.
- **Oral Comment.** Spoken testimony at the public session.
- **Written Comment.** Instead of speaking at the hearing, write out a comment and submit it at the public session.
- **Mail Comment.** All comments submitted by U.S. mail shall be received no later than Monday, January 21, 2019. A mail comment shall include the phrase "Docket 9696-CE-100 Comments" in the heading, and shall be addressed to:

Docket 9696-CE-100 Comments  
Public Service Commission  
P.O. Box 7854  
Madison WI 53707-7854

The Commission will not accept comments submitted via e-mail or facsimile (fax).

A person shall limit a public comment to non-technical personal knowledge or personal opinion. A person may include references to other materials in a comment, but may not include as part of a comment, any document not written or substantially modified by that person. The Commission shall only accept documents that a person offers to supplement a comment for the purpose of showing the basis of an opinion, not for proof of the matter asserted. Parties may object to the receipt of a public comment.

Any material submitted to the Commission is a public record and may appear on the Commission web site. Only one comment may be submitted per person during a comment period. The Commission may reject a comment that does not comply with the requirements described in this notice.

**AMERICANS WITH DISABILITIES ACT.** The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this docket or who needs to obtain this document in a different format should contact the docket coordinator listed below. Any hearing location is physically accessible to individuals with disabilities. The Public Service Commission is located in the Hill Farms State Office Building that is also physically accessible to individuals with disabilities through the entrances on the first floor. Parking for people with disabilities is available on the ground floor of the parking garage. There is also limited, free handicap visitor parking at the front of the Hill Farms State Office Building.

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Michael E. Newmark  
Administrative Law Judge

MEN:CNS:DL:01658332



**SERVICE DATE**  
**Dec 04, 2018**

PSC REF#: 354427

Public Service Commission of Wisconsin  
RECEIVED: 12/04/2018 9:05:03 AM

**PUBLIC SERVICE COMMISSION OF WISCONSIN**

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

5-BS-228

**ORDER ON REQUEST TO INTERVENE - THIRD**

This Order, pursuant to Wis. Admin. Code §§ PSC 2.04(1), and PSC 2.21, grants the requests for intervention out-of-time (Requests) of Richard and Patricia Jinkins, Alan and Marcia Jewell, and Wade Wendhausen, (PSC REF#: 353022), and Brenda and Casey Kite. (PSC REF#: 353052)(Requestors).

The Joint Applicant opposed the Requests. (PSC REF#: 353470)(Response). The Response provides a multifaceted argument against granting the Requests on the grounds that Requestors: 1) lack substantial interest in the outcome of the proceeding, 2) fail to satisfy the requirements for permissive intervention, and 3) would disrupt the proceeding and place additional burdens upon existing parties. By leave of the ALJ, granted at the Prehearing Conference, Requestors replied. (PSC REF#: 353525 and PSC REF#: 353659).

Joint Applicants primary objection to the Requests is that Requestors fail the two-part standard for intervention by right: (1) whether the requestor demonstrates that it has or will suffer an injury in fact; and (2) whether that injury is to an interest the law seeks to regulate or protect. Response at 2.

The instant docket pertains to the application of two public utilities for authority to acquire ownership in two proposed electric generating facilities and high-voltage transmission lines, the subject of four other pending dockets.<sup>1</sup> (PSC REF#: 343600)(Joint Application). Joint

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<sup>1</sup> Docket 9696-CE-100, *Application for a Certificate of Public Convenience and Necessity of Two Creeks Solar, LLC to Construct a Solar Electric Generation Facility, to be Located in Manitowoc and Kewaunee Counties, Wisconsin*; Docket 9696-CE-101, *Application for a Certificate of Public Convenience and Necessity of Two Creeks Solar, LLC to Construct an Electric Tie Line to Connect a Solar Electric Generation Facility to the Existing Transmission System, to be Located in Manitowoc and Kewaunee Counties, Wisconsin*; Docket 9697-CE-100, *Application for a Certificate of Public Convenience and Necessity of Badger Hollow Solar Farm, LLC to Construct a Solar Electric Generation Facility, to be Located in Iowa County, Wisconsin*; and Docket 9697-CE-101, *Application for a Certificate of Public Convenience and Necessity of Badger Hollow Solar Farm, LLC to Construct*

Docket: 5-BS-228

Applicants request, in pertinent part, approval of this acquisition under Wis. Stat. § 196.49. (Joint Application at 9).

Joint Applicants assert that Requestors are ratepayers of neither utility. (Response at 1). Joint Applicant's argue that because the criteria in Wis. Stat. § 196.49(3)(b), only serves to protect the interests of ratepayers of the Joint Applicants, Requestors fail part two of the intervention test. (Response at 2).

Joint Applicants' attempt to limit the inquiry of its proposal to the impacts on its own ratepayers contradicts settled law. "Wis. Stat. § 196.49(3)(b) provides that the Commission 'may require that no project may proceed until the Commission has certified that public convenience and necessity require the project.'" (Joint Application at 9, *quoting*, Wis. Stat. § 196.49(3)(b)). But, "the word 'public' in sub. (3) (b) includes all electric consumers in the state, not only the ratepayers of the utility seeking authorization." *Wisconsin Power & Light Co. v. PSC*, 148 Wis. 2d 881,893, 437 N.W.2d 888, (Ct. App. 1989). Requestors are electricity consumers in this state, so they quality as part of the "public" whose interest the Commission must consider if Joint Applicants desire approval of the acquisition. Furthermore, *Wisconsin Power & Light Co. v. PSC*, dealt with a Commission denial of a project that would shift costs from the applicant's ratepayers to those of other utilities. And here the Kites assert, they, "stand more to lose from this project than any customer of the [Joint] Applicants." (PSC REF#: 353659) (Kite Response at 2).

Joint Applicants also assert that Requestors' alleged injury fails part-one of the intervention test. Joint Applicants argue that Requestors' assertion that they are will be affected by the impact of the proposal on energy rates is "theoretical," and, therefore not, injury in fact. (Response at 2).

This argument ignores the facts of the acquisition, as clarified by one of the applicants after the filing of the Joint Application in a response to a Commission staff data request. Joint Applicants, "intend to transfer to [American Transmission Company] their ownership interests in the generation tie lines and related facilities [] they acquire as part of the proposed projects."

---

*an Electric Tie Line to Connect a Solar Electric Generation Facility to the Existing Transmission System, to be Located in Iowa County, Wisconsin.*

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(PSC REF#: 349600)(Response to PSCW JK-06). ATC's cost are borne directly by Requestors as a customer of an ATC owner utility. (PSC REF#: 353659)(Kite Response at 2).

This argument also reduces the test for injury in fact to a simple conditional statement: if an alleged injury is theoretical, then it cannot be injury in fact. However, this argument obfuscates the complexity of this test. "Injury alleged, which is remote in time or which will only occur as an end result of a sequence of events set in motion by the agency action challenged, can be a sufficiently direct result of the agency's decision to serve as a basis for standing." *Wisconsin's Environmental Decade, Inc. v. Public Service Commission of Wisconsin et al.*, 69 Wis. 2d 1, 14, 230 N.W.2d 243 (1975). "However, the sequence of events cannot be so conjectural or hypothetical, ... as to strain the imagination." *Fox v. Wisconsin Dept. of Health and Social Services*, 112 Wis.2d 514, 334 N.W.2d 532 (1983) (internal citation omitted).

The Joint Application describes the facilities and their acquisition, in a manner that renders alleged injury to Requestors a possible result of Commission action. If constructed, the energy generated by the facilities will dispatch according to the requirements of the MISO market across an integrated transmission system. (PSC REF#: 343600 at 5 and 24). So the construction and operation of the facilities, in some way, will impact the interests of all electric consumers in the state. For the same reasons, the acquisition of the facilities may compound (or lessen) these impacts, or cause impacts to the public different in nature to that of the facilities. Therefore, in this proceeding, whether the acquisition poses injury to Requestors is up for debate.

Simply because Requestors cannot precisely enumerate the injury alleged at this stage of the proceeding does not disqualify that injury as so conjectural or hypothetical as to strain the imagination. By asking the Commission to reject an assertion of "theoretical" but possible injury, Joint Applicants ask the Commission to force Requestors to prove injury will occur before they are allowed to participate in the process by which those fact may be revealed. This runs contrary to logic, and the plain language of the standard for intervention which provides, "[a] person whose substantial interests may be affected by the commission's action or inaction in a proceeding shall be admitted as an intervenor." Wis. Admin. Code § PSC 2.21(1) (emphasis added), See Wis. Stat. § 227.44(2m).

Joint Applicants also assert that Requestors' participation at this time, will disrupt the proceeding will cause additional burdens upon the existing parties by requiring responses to Requestors' discovery, and review of possible response to Requestors' offered evidence.

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(Response at 3-4). However, Requestors' exercise of their rights to discovery, and to rebut and offer countervailing evidence in this proceeding overcomes any inconvenience that activity may cause Joint Applicants.

Any prejudice or undue burden, any party may cause in the course of this processing, if brought to this tribunal's attention in the timely manner, will be addressed with paramount consideration to creating a complete and accurate record upon which the Commission may deliberate to form a just and reasonable decision supported by substantial evidence.

For these reasons, this Order grants the Requests.

A handwritten signature in black ink, appearing to read "Michael E. Newmark". The signature is stylized and cursive, with a long, sweeping tail on the final letter.

Michael E. Newmark  
Administrative Law Judge

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