

Solar Project Siting in Wisconsin Towns- the interplay between local issues and the PSC review process

Prepared For:
Town Association Conference
October 1, 2021

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Today's Topics

- Overview of proposed and/or approved utility scale solar projects in Wisconsin
- PSC process, review standards and timeline
- Considerations for effective representation of local government interests

Utility-scale solar projects

- Sited on several thousand acres
- Grid connection path and cost is a significant consideration
- Typically generate between 100 to 300 megawatts of electricity
- Built by a developer, then sold to one or more utilities
- Unlike wind turbines, solar projects preclude the preservation of land use activities previously for the area immediately occupied by the project
- Typical lifespan of projects 25-50 years
- More recent trend includes battery storage systems

Applications filed with the PSC

- 2018
 - Badger Hollow Solar Farm, Iowa County
 - Two Creeks Solar, Manitowoc County
- 2019
 - Paris Solar Farm, Kenosha County
 - Point Beach Solar, Manitowoc County
 - Wood County Solar Project, Wood County
 - Badger State Solar, Jefferson County

Applications filed with the PSC

- 2020
 - Onion River Solar, Sheboygan County
 - Grant County Solar, Grant County
 - Darien Solar Energy Center, Walworth County
 - Springfield Solar Farm, Dodge County
 - Apple River Solar, Polk County
 - Sunrise Solar, Rock County
 - Portage Solar, Portage County

Applications filed with the PSC

- 2021
 - Koshkonong Solar Energy Center, Dane County

Certificate of Public Convenience and Necessity

- “CPCN” required for large electric generating facility of 100 megawatts or more
 - Secs. 196.491(1)(e) and 196.491(3)(a)(1), Stats.
- CPCN application provides comprehensive information about the project; extensive PSC staff review
- PSC Commissioners make decision through a “contested case hearing”, with input from multiple agencies and the public
 - See PSC 2 “Procedure and Practice”

CPCN Application process

- Applicant notification to PSC and DNR
- Pre-filing consultation
- Engineering plans filed with DNR 60 days before application filing
- Within 30 days of filing of engineering plans, the DNR provides list of necessary DNR permits and approvals

CPCN Application process

- Within 10 days of filing, PSC sends application to clerks of municipalities and towns in which the facility is proposed to be built; and to the main public library for the County
 - Sec.196.491(3)(a)1.
- PSC makes “completeness” determination within 30 days
 - Sec. 196.491(3)(a)2 and 194.491(3)(a)(3)(b), Stats.
- If application not complete, PSC notifies applicant of deficiencies; no limit on refileing the application

Application Filing Requirements

- PSC updated Application Filing Requirements (“AFR’s”) for Solar Energy Projects in 2021
- Wide range of information requested, including impacts on public lands and recreation, floodplains, local zoning and safety, land use plans, agricultural impacts, airports, wetlands, landowners affected, public outreach and communication
- See <https://psc.wi.gov/SiteAssets/2021SolarPowerAFR.pdf>

Intervention requests

- Intervention of right. “A person whose substantial interests may be affected by the commission’s action or inaction in a proceeding shall be admitted as an intervenor.”
- Intervention by permission. “...the person’s participation will promote the proper disposition of the issues to be determined ...and the person’s participation will not impede the timely completion of the proceeding...”
 - See PSC 2.21(1) and (2)

Alternatives to Intervention

- Public Comment to PSC on specific issues of concern
- Public Comment to PSC on Environmental Assessment
- Direct negotiations, including Joint Development Agreements.

Effective Advocacy of Town interests: intervention in PSC proceeding

- Considerations in filing public comments versus intervention
- Costs of intervention include legal fees and expert witness costs
- Balance costs against degree of confidence that the PSC process will address and satisfy Town concerns
- Consider best way to achieve strategic goal in the likelihood that the PSC will approve the project- what conditions of approval would satisfy the Town's concerns?
- Intervenor compensation under PSC chapter 3 is potentially available but requires a separate proceeding and has been rarely used by local governments

Contested Case Hearings

- Docket opened after completeness determination
- Pre-hearing conference:
 - ALJ assigned
 - ruling on requests to intervene as a party
 - identify issues and issue scheduling order for hearings, including submission of testimony, and exhibits
 - See PSC 2, “Subchapter II- Proceedings and Dockets”; PSC 2.21
 - See also ALJ “Facilitating Matters Ordered in a Contested Case Hearing” addressing filings and service, confidentiality, testimony/exhibits, briefing, motions, and hearing procedures

Hearing and Post-Hearing procedures

- Public Hearing
- Technical Hearing
- Decision matrix prepared by PSC staff
- PSC Commissioners meeting in open session
- Decision and order by PSC Commissioners
- Right of appeal, chapter 227 review in circuit court
 - Sec. 196.491(3)(j), Stats

CPCN Timeline

- PSC required to take final action on application within 180 days after completeness determination
 - Sec. 196.491(3)(g), Stats.
- PSC can extend review period an additional 180 days for “good cause”
- In general, process completed in 12 to 18 months

PSC review standards *

- The design and location of the facility is in the public interest considering:
 - alternative locations or routes
 - individual hardships
 - safety, reliability and environmental factors
 - Sec. 196.491(3)(d)3, Stats.

* review applicable to merchant
power plants

PSC review standards

- The proposed facility will “not have undue adverse impacts on other environmental values such as, but not limited to”
 - ecological balance
 - public health and welfare
 - historic sites
 - geologic formations
 - aesthetics of land and water
 - recreational use
 - Sec. 196.491(d)4, Stats.
- The proposed facility “will not unreasonably interfere with the orderly land use and development plans for the area involved.” (emphasis added)
 - Sec. 196.491(d)6, Stats.

PSC review standards

- If an application does not meet these standards, the PSC must reject it, or
- Approve the application “with such modifications as are necessary for an affirmative finding...”
 - Sec. 196.491(3)(e)

State Energy Policy

- “It is the goal of the state that, to the extent that it is cost-effective and technically feasible, all new installed capacity for electric generation in the state be based on renewable energy resources, including hydroelectric, wood, wind, solar, refuse, agricultural and biomass energy resources.”
 - section 1.12(3)(b) Wisconsin Statutes

PSC Environmental review

- Wisconsin Environmental Policy Act (WEPA)
 - section 1.11, Wisconsin Statutes
- Applies to “major actions significantly affecting the quality of the human environment”
- Requires detailed statement on the environmental impact of the proposed action(s)
- PSC administrative rules categorize actions as Type I, II or III
 - See generally PSC 4; PSC 4.10(1), (2) and (3)

PSC Environmental Review

- WEPA (continued)
 - PSC rules categorize construction of a solar-powered electric generation facility as a Type III action
 - PSC rules provide that Type III actions do not necessarily require an environmental assessment (EA) or environmental impact statement (EIS)
 - But PSC can still require EA or EIS for Type III actions

CPCN and pre-emption of local ordinances

- “If installation or utilization of a facility for which a certificate of convenience and necessity has been granted is precluded or inhibited by a local ordinance, the installation and utilization of the facility may nevertheless proceed.”

sec. 196.491(3)(i), Wisconsin Statutes

CPCN and pre-emption of local ordinances

- Rural v. PSC, 239 Wisconsin 2d 660, 619 N.W. 2d 888 (2000)
- see also American Transmission Company v. Dane County, 321 Wisconsin 2d 138, 772 N.W. 2d 731 2009 (Wis. Ct. Appeals)

State Restrictions on local solar ordinances

- ”No political subdivision may place any restriction, either directly or in effect, on the installation or use of a solar energy system..., unless the restriction satisfies one of the following conditions:
 - (a) Serves to preserve or protect the public health or safety.
 - (b) Does not significantly increase the cost of the system or significantly decrease its efficiency
 - (c) Allows for an alternative system of comparable cost and efficiency.

Sec. 66.0401(1m), Stats.

State Restrictions on local solar ordinances

- (a) includes health and safety, excludes general welfare
- (b) provisions that do not address health or safety may be permitted as long as they do not “significantly increase the cost of the system or significantly decrease its efficiency”
- “Significantly” is not defined or quantified
- Statute applies to any solar energy system, regardless of type or size. See cross-reference to sec. 13.48(2)(h), Stats.
- Statute applies to political subdivisions, including: cities, villages, towns or counties. Sec. 66.0401(1e)(c)

Effective Advocacy of Town interests: pre-litigation

- Potential PSC pre-emption does not prohibit discussions between local government and the developer
 - Identify “reasonable” concerns
 - Engage developer early- potential to resolve concerns pre-filing of CPCN
 - Developer may have an interest in minimizing or eliminating objections in PSC review process, reduce uncertainty

Joint Development Agreements

- Recognized by PSC
 - See Application Filing Requirements Solar Energy Projects (2021)
- Topics for inclusion relating to construction and operations:
 - e.g. water, fire, EMS, police, security measures, traffic control, road impacts
 - Community and facility readiness for incidents such as fires
 - Set backs for non-participating residents
 - drainage
 - Vegetation buffers
 - Noise studies
 - Minimize communication and broadcast disruptions

Thank You

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