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## **Appeals court agrees county erred in solar farm approval**

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By The Associated Press

*The Associated Press*

MEDFORD, Ore. (AP) — An Oregon appeals court has agreed with a state board that Jackson County improperly approved a large solar farm planned for prime agricultural land outside Medford.

The Capital Press reports that Jackson County commissioners last year approved the project proposing nearly 40,000 solar panels on 80 acres of prime farmland.

The group 1000 Friends of Oregon appealed to the state Land Use Board of Appeals. That board said the project by Florida-based Origis Energy didn't qualify for an exception to the Oregon's land use goal of preserving farmland because it's not dependent on a "unique resource."

The appellate court disagreed with some of the board's interpretation of land use law, but still reversed the county's approval of the project.

Meriel Darzen, a lawyer for 1000 Friends of Oregon, called it a victory.

A message to Origis Energy wasn't immediately returned.

*The Associated Press*

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# We Energies projects seek to expand use of solar energy in southern Wisconsin

By [Guy Boulton](#), Milwaukee Journal Sentinel | Published 10:19 a.m. CT Nov. 20, 2018 | Updated 4:50 p.m. CT Nov. 24, 2018

We Energies has proposed an innovative pilot project that would increase the amount of electricity it generates from solar power without passing the costs onto its existing customers.

The company also has proposed a smaller pilot project in which it basically would rent space for solar panels on the rooftops or property of commercial and industrial customers.

For the main project, large customers who want to support renewable energy could buy an interest in a solar project that We Energies would operate. The pilot project would be limited to 150 megawatts.

The customers would receive a credit each month on their bills for the revenue from the project, less operating costs and depreciation. The operating costs would include the return, currently 10.2 percent that We Energies is allowed to earn on investments for its system.

"Customers want to be the key driver for sourcing more renewable energy for Wisconsin," said Richard Stasik, a director of state regulatory affairs for WEC Energy, the parent company of We Energies.

The proposed pilot project would give large industrial and commercial customers — who typically need more electricity than can be generated by rooftop solar panels — a simple way to meet goals for using renewable energy.

At the same time, We Energies would add more solar power to its system without passing the costs on to all of its existing customers, potentially increasing rates, while still making a profit on its investment.

"This is a creative idea," said Tyler Huebner, executive director of Renew Wisconsin. "We have to give them credit for this."

The project's scale is expected to lower costs.

"With some conservative estimates, we believe customers will save money with these investments over time," Stasik said.

The power from the solar project would be sold at wholesale rates. But many of We Energies' largest customers now pay close to wholesale rates for power.

The Public Service Commission is expected to rule on the proposed projects in the next few months. Specific contracts also will need to be approved by the commission.

A similar pilot project was approved for Madison Gas & Electric Co. last year.

"It is a novel approach that both utilities are taking, and it is a relatively new thing throughout the country," said Martin Day, administrator of the Division of Energy Regulation at the PSC.

We Energies hasn't disclosed the planned project. But it has been expected to buy the remaining 150-megawatt interest in a 450-megawatt solar project in southwestern Wisconsin.

Nationally, 150 megawatts is enough electricity for roughly 24,600 residences.

For the smaller pilot project, customers would receive a monthly lease payment in exchange for allowing We Energies to put solar panels on their property.

The lease payments would be tied to the amount of power, up to 2.25 megawatts, generated on the site.

The appeal for customers, such as school districts, is they would not have to come up with the money on their own to install solar panels.

We Energies, which plans to hire contractors to install the panels, basically would be providing a turnkey service.

Both pilot programs could appeal to customers who don't want to become experts in solar power — or want the chore of cleaning solar panels or replacing inverters, the devices that convert direct current to alternating current, said Day of the PSC.

The pilot project would be limited to 35 megawatts, and We Energies would set aside 10 megawatts for nonprofit organizations or government entities.

Rooftop solar panels now generate an estimated 65 megawatts in Wisconsin, Huebner said.

## Competing in the market

The project also would give We Energies experience with operating so-called distributed solar generation — as opposed to large power plants — and how that new capacity would tie into its local distribution system.

It also would give the company a better sense of what investments it may need to make in its distribution system in the future.

We Energies would be competing to some degree with private companies that now install and arrange financing for solar panels for commercial customers.

But Mike Cornell, energy consultant and director of business development for Arch Electric, in Plymouth, supports the proposed pilot project.

"It's a neat approach to growing solar," he said.

Arch Electric, which installs commercial and residential solar panels, has seen its business quadruple in the past three years.

"There is plenty to go around," Cornell said.

That said, state law may bar other companies from doing what We Energies is proposing: Lease space for solar panels.

The law, which is somewhat of a gray area, prohibits a third-party from owning solar panels and selling the power to a business or organization as well as to We Energies.

"It's the one thing that's holding the industry back in this area," Cornell said.

The PSC has been asked to change the restriction but has said that the issue should be left to the Legislature.

We Energies would oppose any change, said Stasik, the director of state regulatory affairs.

We Energies, though, has been awash in excess power.

That is no longer the case after the company shut down the 1,190-megawatt coal-fired power plant in Pleasant Prairie this year. And, in all likelihood, We Energies eventually will need additional generating capacity that could be met through the two proposed pilot projects.

In the past, We Energies didn't embrace solar power, Huebner said, partly because of its excess capacity.

"It wasn't a business opportunity for them," he said. "Now it is."



**This Joint Development Agreement (JDA) by and among Badger Hollow Solar Farm LLC (Badger Hollow), an affiliate of Invenergy LLC, and Iowa County and Eden, Linden and Mifflin Townships of Iowa County, Wisconsin (the Local Governments). Collectively, Badger Hollow and the Local Governments are referred to as The Parties.**

**RECITALS:**

Badger Hollow Solar Farm (Badger Hollow) desires to develop, construct and operate an up to 300 megawatt (MW) solar photovoltaic electrical generating facility with necessary associated facilities such as underground power collection lines, access roads, Operating and Maintenance Facility, electrical substation and overhead transmission line connection in the Towns of Eden, Linden and Mifflin in Iowa County (the "Project").

1. The Parties agree that it is in the best interest of each to memorialize the rights, obligations and responsibilities of the parties with respect to the Project's use of County and Town roads, rights-of-way and drainage systems during construction and operation of the Project.
2. The Parties agree that the Project is under the jurisdiction of the Public Service Commission of Wisconsin (PSCW.)

**AGREEMENT:**

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, the Parties to this Agreement hereby stipulate and agree as follows:

**Planning.** The Parties understand and recognize that approval of the Project is under the jurisdiction of the Public Service Commission of Wisconsin (PSCW) and that the Project must seek concurrence and approval from the PSCW for substantive site design changes. Proposed Site Plan: Exhibit A is the proposed plan for aboveground facilities of the Project.

- a. Proposed Site Plan: Exhibit A is the proposed plan for aboveground facilities of the Project.
- b. Proposed Haul Route: Exhibit B is a map depicting proposed Project equipment Haul Routes.
- c. Construction Schedule: Exhibit C is the proposed Project schedule.

Updated exhibits shall be provided after issuance of a Certificate Public Convenience and Authority by the PSCW.

At least 60 days prior to the start of construction, Badger Hollow shall meet (the "pre-construction meeting") with County and Town officials responsible for roads and drainage and local emergency responders to present final plans for use of public roads, location of equipment laydown yards, finalize construction scheduling and discuss safety practices and coordinate local emergency response capabilities. Badger Hollow shall advise attendees of planned equipment and material delivery types and schedules. The Parties shall identify safety concerns and structural issues of any road or structure and propose mutually acceptable alternative routes or remediation methods for alleviating such concerns and issues.

1. **Initial Evaluation.** At the pre-construction meeting, the parties shall decide upon a scope of work for evaluating the condition of road and structures and drainage infrastructure immediately prior to construction, which the Project will carry out at its expense. The Project shall provide a complete copy of the evaluation ("Initial Evaluation") to the Parties prior to starting construction.
2. **Use of Roads.** The Parties agree that the Project may use public roads. The Project agrees to minimize the use of Town roads when practicable. The Parties acknowledge that in connection with construction, operation and maintenance of electric collection lines, communications cables and other equipment (the "Facilities"), that Project facilities may cross road rights-of-way and/or drainage systems. The Project agrees that it shall seek and obtain all permits typically required of others, such as driveway permits and rights-of-way crossing permits. It is agreed that all road rights-of-way crossing shall be by underground borings perpendicular to the right-of-way, plus or minus 30 degrees. All underground borings shall commence and terminate outside of the right-of-way.
3. **Ownership.** Badger Hollow shall have the right to sell, assign, or lease all or portions of its Facilities to other parties and, in that event, such other parties shall, with Badger Hollow or, in the event of total assignment or transfer, in lieu of Badger Hollow, have the right, in the manner and to the same extent above, to operate the Facilities in, along, under, and across the same road rights-of-way and drainage systems. Badger Hollow, its successors or assigns, shall, at all times and at its sole expense, maintain the Facilities in good condition and repair.
4. **Road Repair Obligations.** Throughout the construction of the Project, the Parties shall work cooperatively to maintain public road infrastructure in a safe condition for passage by the public. Following issuance of a permit to proceed with construction being issued by the Public Service Commission of Wisconsin, Badger Hollow will engage a professional engineer to prepare an "Initial Condition" report on all roads designated as "Haul Roads." The same engineering firm will be engaged to prepare a post-construction road condition report on project "Haul Roads." These reports will be the basis for future discussions and decisions among the parties about needed post Project construction repairs.  
Badger Hollow shall issue a Request for Proposals for road maintenance and restoration services to a list of contractors which shall include local contractors familiar with conditions in the Project area.



5. During the ongoing construction of the Project, Badger Hollow, at its expense, shall repair any significant damage to Haul Roads due to any cause connected with the Project. In the event a hazardous road condition exists that presents a safety hazard to the public use of the road and is not promptly repaired by Badger Hollow after receipt of notice of the hazardous condition, the applicable road authority may make emergency road repairs, or order emergency road repairs to be performed by qualified contractors, and Badger Hollow will promptly reimburse the road authority for reasonable emergency road repairs.
6. At or near the end of Project construction, Badger Hollow, at its expense, shall have prepared and provide to the Parties, a Post Construction Road Condition Report. The Post Construction Roads Report will be the basis for preparation of the Final Roads and Drainage Restoration Plan ("Final Repairs Plan"). The Final Repairs Plan will be provided to the Parties. The Project will cause repair of any damage to Haul Roads or drainage systems due to any cause connected with the Project, to as good or better than the condition they were in prior to construction, as documented in the Initial Evaluation. If no objections to the Final Repairs Plan are stated by the Parties within 30 days of receipt, Badger Hollow, at its expense, may commence work. The Parties shall rely upon the Initial Evaluation for purposes of determining the type of repair required. Weather permitting, the final road repairs obligations shall be completed to the reasonable satisfaction of the Local Governments within 120 days of no frost condition, after the completion of construction of the Project or as mutually agreed upon by the Parties. Road repairs shall include restoration of original condition of ditches, slopes, embankments or fills within the right-of-way unless special circumstances dictate otherwise, and specific approval has been requested by Badger Hollow and granted by the Local Governments. All materials and construction methods shall comply with the standards established by AASHTO for "utilities within highway right-of-way." All warning and work zone signs shall comply with the "Uniform Manual for Traffic Control Devices." Temporary road closures shall only be allowed after specific request by Badger Hollow and approval by road owner. Within 60 days of satisfactory completion of all work specified in the Final Repair Plan the County and each of the Towns shall provide Badger Hollow with a letter stating acceptance of satisfaction with work performed.
7. **Disputes.** Should a dispute arise between the Parties on whether the Final Repairs Plan adequately and completely describes repairs needed, the Parties agree that a final determination shall be made by an independent civil engineer licensed in Wisconsin and selected by mutual agreement (the "Independent Engineer"). If the Parties cannot agree on an Independent Engineer, they shall each select an independent engineer and the two independent engineers shall select a third independent engineer within thirty days, and this selected third independent engineer shall be the Independent Engineer for settling such disputes. Compensation for the Independent Engineer shall be shared by the Parties.
8. **Cooperation.** Badger Hollow and the Local Governments agree to communicate and cooperate in good faith concerning the safe construction and operation of the Project and preventing or correcting any adverse conditions that may be created by the Project.

shall furnish security initially in the form of a bond. The bond shall remain in an amount equal to \$150,000, subject to allowable draws by the County or Towns.

*Not enough to cover any significant costs*

After issuance of the Certificate of Completion, the security shall be reduced to an amount equal to \$50,000 in the form of a bond or other form of security determined by mutual agreement or shall remain as a bond if the Parties cannot agree, to complete any outstanding obligation of Developer under this Agreement. The security shall remain in place throughout the term of this Agreement to ensure compliance with Developer's warranty obligations.

**16. Compliance with Laws.** Badger Hollow shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments, and other valid orders of any government authority with respect to Badger Hollow's activities associated with the Project and shall obtain all permits, licenses, and orders required to conduct any and all such activities.

**18. Signs and Lighting.** The Project Facilities and properties shall not be used for any type of advertising. The Project may erect and maintain a single project identification sign. The Project shall be minimally lighted so as not to disturb neighboring properties. Necessary lighting to provide safety and security of facilities shall be allowed. Badger Hollow will provide the Parties with a description of permanent Project lighting plans when available.

**19. Relevant Law.** Any and all disputes arising under this Agreement and/or relating to the actual development and/or construction of the Project shall be resolved pursuant to the laws of the State of Wisconsin.

**20. Notices.** Notices, requests, demands, and other communications shall be sent to the following addresses:

*If to Badger Hollow:*

Badger Hollow Solar Farm LLC  
c/o INVENERGY LLC  
Attn: Dan Litchfield  
One South Wacker Drive  
Suite 1900  
Chicago, IL 60606  
dlitchfield@invenergyllc.com  
773-318-1289

*If to Iowa County:*

County Administrator  
222 N. Iowa Street

Dodgeville, WI 53533  
608.935.0318

If to Town of Eden:

[insert]

If to Town of Mifflin:

[insert]

If to Town of Linden:

[insert]

All notices shall be in writing. Any notice shall be deemed to be sufficiently given (i) on the date, if delivered in person; (ii) five (5) days after being sent by United States registered or certified mail, postage prepaid, return receipt requested; or (iii) on the next Business Day if sent by overnight delivery service (e.g. Federal Express) to the notified Party at its address set forth above. These addresses shall remain in effect unless another address is substituted by written notice. Notices may be sent via email transmission the email addresses provided, however, notice sent via email shall be followed by notice delivered by personal service or by registered or certified mail, return receipt requested, or by overnight delivery.

Signature page follows.

What about:  
Noise limits  
EMF limits  
Set backs  
Buffering  
height restrictions  
glare  
visibility  
ground cover  
tree removal  
grading limitations  
burial of power lines  
Interference w/ radio, internet,  
phone, tv, ...  
Soil + water testing  
decommissioning  
END date

REQUIREMENT to return to farmland  
Property Value guarantees  
Remedies if noise, emf limits are exceeded  
Remedies for interference  
Remedies if they are wrong +  
property values ARE affected  
Remedies for soil + water contamination



1 officials and non-governmental organization ("NGO") staff were also often  
2 provided the same academic and industry studies or articles on important project  
3 issues such as environmental, operational, land use, economic impact and  
4 property value questions plus materials created by Badger Hollow for the general  
5 public. Ex.-Badger Hollow-Palmer-3.

6 **COMPATIBILITY WITH LAND USE AND DEVELOPMENT PLAN**

7 **Q. What are the land use priorities in the project area as expressed by local**  
8 **development plans and objectives?**

9 A. The townships that are within the Badger Hollow Project area in Iowa County  
10 have been primarily in agricultural use for many years. Each township – Eden,  
11 Linden, and Mifflin -- has established a separate land use element for inclusion in  
12 the Iowa County Comprehensive Land Use Plan. Ex.-Badger Hollow-  
13 Application: Appendix I. All three town land use plan elements seek to protect  
14 active agricultural lands from incompatible uses and maintain rural, small town  
15 character and generally restrict conversion to residential or other use.

16 Iowa County's Comprehensive Plan states that "[s]mall-town atmosphere,  
17 being near family and friends, and natural beauty are the top reasons why people  
18 choose to live in Iowa County." The Comprehensive Plan also acknowledges that  
19 "existing homes and buildings will need remodeling, repairs, or improvements;  
20 new buildings, businesses, and homes will be constructed." In addition, the Iowa  
21 County Farmland Preservation Plan adopted December 1, 2016 reports on the  
22 high value Iowa County residents place on preservation of farmland and points  
23 out the challenges of how to preserve farmland.

1 **Q. Is the Badger Hollow Project compatible with each affected Township's**  
2 **comprehensive plan?**

3 A. Yes. Each township's comprehensive plan identifies similar principal goals  
4 relating to land use. These goals are echoed in the general statements found in  
5 Iowa County's Comprehensive Plan. Each of those goals is met by the Badger  
6 Hollow Project:

7 One goal is to "protect active agricultural lands from encroachment by  
8 incompatible uses." The temporary land use for solar farming is a compatible use  
9 in the agricultural zone. Economic benefits to farmers from the solar leases assist  
10 family farms to remain economically viable during periods of low prices for  
11 agricultural products. And, the beneficial insects that can be attracted by the  
12 habitat creation proposed in the vegetation management strategy can boost yields  
13 on adjacent land.

14 A second goal is to "maintain the small-town character of the jurisdiction  
15 by avoiding developments that would alter its character." In operation, solar is  
16 low-profile visually, emits no odors, is virtually silent, does not require large  
17 amounts of water, does not require ongoing waste disposal systems, does not  
18 create significant impact on traffic nor promote other residential, commercial or  
19 industrial development in the area. Therefore, I don't think the project would alter  
20 the local character. Rows of corn and soybeans would be transitioned to rows of  
21 solar panels.

22 A third goal is to "restrict location of new development from areas shown  
23 to be unsafe or unsuitable for development due to natural hazards, contamination,

1 access, or incompatibility problems.” The Badger Hollow project site design has  
2 avoided all such unsuitable areas.

3 A fourth goal is to “encourage commercial activities to develop in existing  
4 commercial locations where public roads/facilities and services have capacity to  
5 accommodate high volumes of traffic, parking, and other public needs.” Existing  
6 infrastructure is suitable for activities associated with the construction and the  
7 subsequent operation of the Badger Hollow Project.

8 A fifth goal is to “encourage development in areas where adequate utilities  
9 and community services exist or can be provided in a cost-efficient manner.”  
10 Existing electric transmission infrastructure is a primary reason Badger Hollow  
11 has chosen to develop in this area. All other existing utilities and services are  
12 adequate to support Badger Hollow operations.

13 A sixth goal is to “assure to the greatest extent possible that all proposals  
14 for future development or development enhance the overall quality of life.” The  
15 Project will enhance quality of life through additional prosperity from landowner  
16 lease payments, new state Utility Aid Shared Revenue payments to fund local  
17 government services and potentially reduce local property tax burden, and the  
18 community and health benefits that can come from inexpensive solar energy  
19 displacing other more polluting sources of energy.

20 A seventh goal is to “encourage new development to be compatible with  
21 surrounding land uses.” Solar energy is compatible with surrounding agricultural  
22 land use and its low visual profile and near silent operation make it compatible  
23 with surrounding residential uses. Photovoltaic solar development is compatible

1 and does not impair neighboring agricultural uses. In certain locations, residential  
2 neighbors to the Project expressed concern about incompatibility and Badger  
3 Hollow negotiated in good faith with the neighbors to address their concerns,  
4 ultimately moving solar panels away from these homes. Badger Hollow wishes to  
5 keep those lines of communication open and is willing to consider additional,  
6 reasonable changes requested by neighbors. Most importantly, as witness  
7 MaRous addresses in his testimony, there is no market data that supports the  
8 potential for decreased property values at residences adjacent to the Project.

9 An eighth goal is to “review all new development for impacts on Town  
10 roads.” Badger Hollow has developed a Joint Development Agreement in concert  
11 with the three towns and Iowa County to establish policies and ensure Badger  
12 Hollow’s responsibility for management and repair of area roads during  
13 construction. Once in operation the facility will have little impact on existing  
14 road infrastructure.

15 **Q. Have the affected townships stated whether the Badger Hollow Project is**  
16 **compatible with their respective land use plans?**

17 **A.** The Town of Linden and the Town of Eden have acted to specifically find that the  
18 Badger Hollow Project follows the intent of each respective township’s land use  
19 plan. Badger Hollow also has engaged significantly with the Town of Mifflin and  
20 its residents and has taken actions to demonstrate compliance with its land use  
21 plan. In light of Iowa County’s decision to not conduct a Conditional Use Permit  
22 zoning process, the Mifflin Town Board determined that it likely would not act on