

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Joint Application of American Transmission Company LLC, ITC Midwest LLC, and Dairyland Power Cooperative, for Authority to Construct and Operate a New 345 kV Transmission Line from the Existing Hickory Creek Substation in Dubuque County, Iowa, to the Existing Cardinal Substation in Dane County, Wisconsin, to be Known as the Cardinal-Hickory Creek Project.

Docket No. 5-CE-146

**PSCW RESPONSE TO JEWELL JINKINS INTERVENORS' MOTION FOR EIS
SUPPLEMENT TO INCLUDE HIGHWAY 151 ROUTE**

The Administrative Law Judge (ALJ) should deny Jewell Jinkins Intervenors' (JJI) Motion for EIS Supplement to Include Highway 151 Route (Motion) because the Motion seeks relief that the ALJ cannot grant, and also fails to demonstrate that there exists substantial changes or significant new circumstances not already addressed in the Draft Environmental Impact Statement (DEIS) or Final Environmental Impact Statement (FEIS) that compel the Public Service Commission of Wisconsin (Commission) to prepare a supplemental EIS (SEIS). Wisconsin Admin. Code § PSC 4.35 vests the authority and discretion to determine whether to prepare a SEIS solely in the Commission, not the Commission ALJ, and Wis. Admin. Code § PSC 4.50 vests in the Commission the sole authority to determine the adequacy of the FEIS prepared for any proposed action. Further, while the FEIS addresses the possibility that further study of another route following the U.S. Highway 151 corridor could identify whether such a hypothetical route would have less impacts than the proposed alternatives, this additional route would only be viable were the project to include a proposed intermediate substation location near Platteville, Wisconsin in addition to, or instead of, the proposed location near Montfort,

Wisconsin. The discussion of the hypothetical route alternative is not a substantial change to the project since the route is hypothetical and not selectable by the Commission unless and until the proposed project is amended. Therefore, JJI fails to demonstrate that any substantial changes or significant new circumstances concerning the project and routes actually analyzed in the FEIS have been raised that compel the Commission to supplement the FEIS's analysis of the proposed project or routes.

ARGUMENT

I. THE ALJ DOES NOT HAVE AUTHORITY TO DIRECT THE COMMISSION TO PREPARE A SUPPLEMENTAL EIS.

The Commission does not render a final decision determining the adequacy of an FEIS prepared for any proposed action until after it has conducted a public hearing as a contested case proceeding. Wis. Admin. Code § PSC 4.50(3). The Commission has the obligation to prepare a supplement to the FEIS only when the Commission identifies any of the following conditions:

- “1. Substantial changes to the proposed action, or significant new circumstances, that would affect the quality of the human environment in a significant manner or to a significant extent not already considered in the draft EIS.
2. New information about whether the proposed action would affect the quality of the human environment in a significant manner or to a significant extent not already considered in the draft EIS.”

Wis. Admin. Code § PSC 4.35(2)(a) and (c). Therefore, it is clear that the determination of whether an FEIS prepared for a proposed project is adequate, and whether substantial changes to the proposed actions or significant new circumstances or information have been presented to the Commission is solely the Commission's decision.

JJI's Motion, alternatively, seeks to have the ALJ find that as a matter of fact and law that the alternative route identified by Commission staff and that forms the basis for JJI's Motion requires the Commission to perform an SEIS. This would require the ALJ to make a factual

finding and conclusion of law on an issue to be decided by the Commission. *See Wisconsin's Env'tl. Decade, Inc. v. Pub. Serv. Comm'n*, 79 Wis. 2d 409, 423, 256 N.W.2d 149, 157 (1977) (negative threshold determinations under WEPA will in general be a matter of both law and fact). The ALJ, however, is not allowed to make findings of fact, conclusions of law, or final decisions on the ultimate issues to be decided by the Commission. Wis. Admin. Code § PSC 2.04(2)(c). The ALJ is limited to those powers provided in Wis. Stat. § 227.46(1)(a) to (g) and (i). Wis. Admin. Code § PSC 2.04(1). JJI does not assert that the Commission has delegated the authority to decide whether to prepare an SEIS to the ALJ. Rather, as with any other issue that will be included in the Commission's final decision in this docket, JJI's remedy is to seek review of the Commission's final decision under Wis. Stat. § 227.53 once it is rendered. JJI has submitted testimony in this matter discussing its issues with the FEIS, which is the appropriate method of raising the issue of the need for an SEIS before the Commission.

[\(PSC REF#: 367170.\)](#)

II. NO SUBSTANTIAL CHANGES TO THE PROPOSED ACTION HAVE OCCURRED OR SIGNIFICANT NEW INFORMATION BEEN PRESENTED SINCE THE COMPLETION OF THE FEIS THAT REQUIRE THE COMMISSION TO PREPARE A SUPPLEMENTAL EIS.

Even assuming the ALJ could grant the relief requested, the hypothetical route alternative referenced in JJI's Motion is not a substantial change to the proposed action, nor does it constitute a significant new circumstance or information that has been presented since the completion of the FEIS. While Commission staff identified the hypothetical alternative route and presented testimony regarding the potential attributes of the route, this route is not part of the applicants' project application. The purpose of the FEIS is to "inform the commission and the public of significant environmental impacts of a proposed action and its alternatives, and reasonable methods of avoiding or minimizing adverse environmental effects." Wis. Admin.

Code § PSC 4.30(1)(a). The content of what must be described in the FEIS is provided in Wis. Admin. Code § PSC 4.30(3). JJI does not assert in its Motion that the Commission has failed to adequately describe the environmental impacts of the proposed project and routes as provided in the applicants' project application. Furthermore, JJI's Motion does not allege that the hypothetical route alternative presents significant new circumstances or information regarding the actual routes studied in response to the project application.

JJI's Motion also fails to recognize that viability of the hypothetical route alternative only arises if the project were to include an additional proposed intermediate substation location somewhere near Platteville, Wisconsin. Commission staff stated that, "[l]ocating the intermediate substation in the Platteville, Wisconsin area would enable additional routing options for the 345 kV transmission line from the proposed Hill Valley Substation to the Cardinal Substation. (Direct-PSC-Vedvik-25.) With the intermediate substation location being proposed in Montfort, the U.S. Highway 151 corridor is not a reasonable alternative for study. Commission staff went on to identify the U.S. Highway 151 route as a hypothetical alternative were there a proposed intermediate substation location in Platteville. *Id.* However, this alternative is not part of the project application, and whether the location of the intermediate substation in Montfort is appropriate remains an issue for further testimony and determination as part of the Commission's final decision. Therefore, the hypothetical route alternative that JJI seeks to have the Commission study under an SEIS is not viable as part of the currently proposed project.

Accordingly, JJI's Motion fails because it does not demonstrate that that substantial changes to the proposed actions or significant new circumstances or information has been found since the PSC completed the FEIS. If the applicants had proposed an additional intermediate

substation location in Platteville or some other location, or agreed to include an additional location in response to Commission staff's inquiries, such a change could reasonably present a substantial change to the proposed action. This is not the case. Therefore, the ALJ should deny JJI's Motion.

CONCLUSION

Based on the foregoing, the ALJ should deny JJI's Motion.

Dated this 31st day of May, 2019.

PUBLIC SERVICE COMMISSION OF WI.

By: /s/ Drew S. Jelinski
Drew S. Jelinski
Attorneys for Public Service Commission of WI
4822 Madison Yards Way, 6th Floor
Madison, WI 53701-0927
Phone: 608-267-9229
Email: Drew2.Jelinski@wisconsin.gov

DJ:mc;jlt:DL: 01687139