

**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

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

INTRODUCTION

On Tuesday, May 28, 2019, the Jewell Jenkins Intervenors (JJI) filed a motion requesting that the Public Service Commission of Wisconsin (Commission) issue an order directing staff to supplement the Final Environmental Impact Statement (FEIS) in the above-captioned proceeding. (See PSC REF#: 367901) (Motion) Specifically, JJI requested that Commission staff supplement the FEIS with a “full analysis” of siting the Cardinal-Hickory Creek 345 kV Transmission Line Project’s (Project) intermediate substation in Platteville, Wisconsin and constructing a portion of the Project along a hypothetical route from Platteville to Dodgeville, Wisconsin. JJI believes that another witness speculating on a different intermediate substation location and routing options constitutes “significant new information” that requires that the FEIS be supplemented. (Motion at 1)

The Motion lacks merit. First, it is procedurally improper. Only the Commission can make substantive determinations about the sufficiency of the FEIS, not the Administrative Law Judge. Wis. Stat. § 196.025(2); Wis. Admin. Code § PSC 2.04. If JJI believes the FEIS is somehow deficient, the proper procedure to challenge it is to file supplemental FEIS testimony (which JJI

did) and then to raise concerns regarding its sufficiency in briefing after the technical hearing is complete.

Second, and in any event, JJI misrepresents the facts in the records. The Applicants have explained at length in the CPCN Application, data request responses, and testimony the long and detailed routing and siting process for the Project. The Applicants used this process to determine how to best meet the identified electrical needs of the Project and select routes that most effectively meet the state's siting priorities, while balancing a multitude of engineering, environmental, cost and other factors. The FEIS describes this process in detail and discusses the hypothetical route from Platteville to Dodgeville. As JJI admits, information concerning several examined intermediate substation locations and routes, including an alternative location for the Project's intermediate substation and a hypothetical Project route between Platteville and Dodgeville, is not "new." So, there is no legal basis to supplement the FEIS with additional analysis concerning these issues. Therefore, the Motion should be denied.

ARGUMENT

I. JJI's Motion is procedurally improper and premature.

The Legislature has delegated all decisions under the Wisconsin Environmental Policy Act (WEPA), Wis. Stat. § 1.11, to the Commission. *See* Wis. Stat. § 196.025(2) ("The Commission shall promulgate rules establishing the requirements and procedures for the commission to carry out the duties under s. 1.11.") The Commission has not delegated these duties to the ALJ. An ALJ only has authority specifically granted to him or her under the administrative code. *See* Wis. Admin. Code §§ PSC 1.04, 2.04. Specifically, the Commission's General Counsel is authorized to assign to any ALJ "the conduct of hearings and taking of testimony bearing upon any particular investigation or hearing made or held by the commission." *Id.* § 1.04. Moreover, the ALJ cannot make findings of fact, conclusions of law, or issue final

decisions. *See* Wis. Admin. Code § PSC 2.04. As such, JJI’s Motion requesting that the ALJ do just that is procedurally improper.

JJI’s Motion is also premature. As the ALJ is aware, technical evidence regarding the sufficiency of the FEIS is still being pre-filed and will be entered into the record at the technical hearing in mid-June. As such, if JJI believes the FEIS is insufficient in some way, the proper place to raise that concern is at the technical hearing and then through briefing directly to the Commission.

II. The Motion fails as a matter of law because the issues discussed therein do not constitute “new information” that warrants the preparation of a supplemental EIS.

The Motion should also be denied because the information that JJI references does not meet the criteria for preparation a supplemental EIS. Under Wisconsin law, all state agencies must consider the environmental impacts of “major actions” that could significantly impact the quality of the human environment. *See* Wis. Stat. § 1.11; *Wis. Environmental Decade, Inc. v. Dept. of Natural Resources*, 94 Wis. 2d 263, 267, 288 N.W.2d 168 (Ct. App. 1979). The Commission’s regulations provide that an Environmental Impact Statement (EIS) must be prepared for all “Type I Actions,” a term that is defined to include transmission projects such as the Cardinal-Hickory Creek Project. *See* Wis. Admin. Code § PSC 4.10(1). No matter how exhaustive an EIS is, “a challenger can always point to a potentiality that was not addressed.” *Clean Wisconsin v. Pub. Serv. Comm’n*, 2005 WI 93, ¶ 191, 282 Wis. 2d 250, 306, 700 N.W.2d 768 (internal quotation marks and citations omitted). And although the EIS must examine reasonable alternatives, it need “furnish only such information as appears to be reasonably necessary under the circumstances for evaluation of the project” *Id.*

After the Commission issues a final EIS, the Commission must prepare a supplemental EIS only if it identifies one 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 [final] 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 [final] EIS.

Wis. Admin. Code § PSC 4.35(2)(c). As discussed in further detail below, the information referenced in the Motion does not satisfy either of the foregoing criteria. And in any event, the Applicants have explained why it is necessary to site the intermediate Project substation in the Montfort area, and why the Preferred Route they have proposed for the Project is superior to the hypothetical alternative between Platteville and Dodgeville referenced in the Motion.

The FEIS that the Commission filed in this docket on May 8, 2019 contains a detailed discussion regarding siting the proposed Hill Valley Substation in Platteville instead of Montfort, Wisconsin; the FEIS also discusses how siting the intermediate substation in Platteville could facilitate development of a hypothetical route for the Project along the U.S. Highway 151 corridor, between Platteville and Dodgeville. (*See* FEIS at 31-33, 93-94, 538-39) JJI acknowledges as much by quoting directly from these portions of the FEIS, but argues that “the FEIS should be supplemented with a thorough analysis of this alternative.” (Motion at 4-6) However, the Applicants are not proposing to construct the Hill Valley Substation in Platteville, or to construct the Project route along U.S. Highway 151 in this area, because the routes proposed in the CPCN Application are superior routes and more consistent with Wisconsin’s Siting Priorities Law. Accordingly, there is nothing further for the FEIS to analyze or consider.

The Applicants are not proposing to construct the Project along this hypothetical route between Platteville and Dodgeville, and the information concerning this route was explicitly addressed and discussed in the FEIS, therefore, it does not qualify as a “substantial change,” “new

circumstance,” or “new information” regarding the Project that would warrant a supplemental EIS under Wis. Admin. Code § PSC 4.35. Therefore, the Motion should be denied.

III. Siting the intermediate Hill Valley Substation in Montfort, Wisconsin and constructing the Project along one of the routes proposed in the CPCN Application is preferable to the hypothetical “Highway 151 route” referenced in the Motion.

The Applicants have explained why it is necessary to site the Project’s intermediate substation in Montfort, Wisconsin and why they developed the routes proposed in the CPCN Application. An intermediate substation is necessary to relieve thermal overloads on low-voltage transmission lines in southwest Wisconsin. (*See* Rebuttal-Applicants-Dagenais-89 to 90) Locating that substation in Montfort is preferable from an electrical perspective because that area also hosts the Eden Substation, which is stronger electrically and better suited to provide regional support to the ATC system than the Hillman Substation in Platteville. (*See* Ex.-PSC-Staff Data Request: Response 8.1) In particular, the Eden Substation supports a 138 kV connection and three networked 69 kV lines: one proceeding east toward Dodgeville, another proceeding southeast toward Mineral Point, and another proceeding south toward Platteville through the Belmont area. (*Id.*) Moreover, several renewable generators are proposed in the vicinity of Montfort; changing the location of the intermediate Project substation from Montfort to Platteville could result in different required network upgrades or additional costs for those generators’ interconnection requests. (Rebuttal-Applicants-Dagenais-91)

Siting the Hill Valley Substation in Montfort is also preferable from a routing and siting perspective. First, this location enables the Project to be routed along the Preferred Route or the Alternate Route, both of which follow existing 138 kV transmission line corridors. Existing transmission corridors are the highest priority corridors under Wisconsin’s Siting Priorities Law. *See* Wis. Stat. § 1.12(6)(a). By contrast, siting the intermediate substation in Platteville would (as the FEIS acknowledges) facilitate a Project route along the U.S. Highway 151 corridor, which is

a lower-priority corridor under the Siting Priorities Law. (*See* FEIS, at 539) Second, while the FEIS states that siting the intermediate Project substation in Platteville would result in an estimated \$20 million premium to the Project’s overall costs, (*see* FEIS 32-33), this is a preliminary estimate with several unknown cost impacts not accounted for in that estimate. (*See* Ex.-PSC-Staff Data Request: Response 8.3) And of course, the Applicants have not quantified the costs of constructing the Project along U.S. Highway 151 between Platteville and Dodgeville, which could be higher than the cost of constructing the Project along the routes proposed in the CPCN Application. As stated in the FEIS, there is no evidence that this hypothetical route from Platteville to Dodgeville, Wisconsin “would have any meaningful difference in impacts as compared to the route alternatives proposed by the applicants.” (FEIS, at 33) Finally, ATC has already purchased property for the Hill Valley Substation in Montfort, and have not conducted any outreach to the Platteville community regarding locating an intermediate substation in that area. (Rebuttal-Applicants-Schaeve-5 to 6)

CONCLUSION

For these reasons, the Applicants respectfully request that the ALJ deny the Motion.

[The remainder of this page is intentionally left blank]

Respectfully submitted this 31st day of May, 2019.

American Transmission Company

/s/ *Brian H. Potts*

Brian H. Potts

Perkins Coie LLP

33 East Main Street, Suite 201

Madison, WI 53703-5118

Tel: (608) 663-7460

Fax: (608) 663-7499

Email: BPotts@perkinscoie.com

Dairyland Power Cooperative

/s/ *Jeffrey L. Landsman*

Jeffrey L. Landsman

Justin W. Chasco

Wheeler, Van Sickle & Anderson, S.C.

44 East Mifflin Street, Suite 1000

Madison, WI 53703

Tel: (608) 255-7277

Fax: (608) 255-6006

Email: JLandsman@wheelerlaw.com

Email: JChasco@wheelerlaw.com

ITC MIDWEST LLC

/s/ *Lisa M. Agrimonti*

Lisa M. Agrimonti

Fredrikson and Byron, P.A.

200 South 6th Street, Suite 4000

Minneapolis, MN 55402

Tel: (612) 492-7000

Fax: (612) 492-7077

Email: Lagrimonti@fredlaw.com

Valerie T. Herring

Briggs and Morgan PA

2200 IDS Center

80 South 8th Street

Minneapolis, MN 55402-2157

Tel: (612) 977-8400

Fax: (612) 977-8650

Email: VHerring@briggs.com