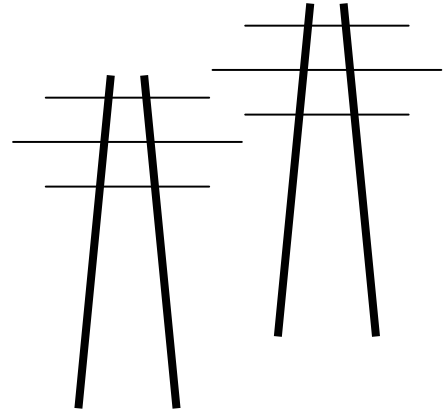


Legalelectric, Inc.

Carol Overland Attorney at Law, MN #254617
Energy Consultant—Transmission, Power Plants, Nuclear Waste
overland@legalelectric.org

1110 West Avenue
Red Wing, Minnesota 55066
612.227.8638



June 23, 2019

Adam Ingwell, WEPA Coordinator
Public Service Commission of Wisconsin
4822 Madison Yards Way
P.O. Box 7854
Madison, WI 53707-7854

RE: Request to Supplement EIS
Cardinal Hickory Creek Transmission Project, PSC Docket 5-CE-146

Dear Mr. Ingwell:

.On behalf of Jewell Jenkins Intervenors, at this time, we request a Supplement of the Environmental Impact Statement and a revised Final Environmental Impact Statement to include the U.S. Highway 51 Route as discussed in Data Requests, Testimony, and the FEIS. The reasons and authority for a Supplemental EIS are laid out in the attached Motion for Interlocutory Review, also filed at the same time as this correspondence.

Specifically, the U.S. Highway 151 route is in the record at FEIS-PSC-31, 93-94, 538 (PSC REF PSC REF 366195); Direct-PSC-Vedvik-25-26 (PSC REF #365153)(fn. omitted); also see Ex.-PSC-Data Request: Response 8.1(PSC RE#360184); Ex.-PSC-Data Request: Response 8.2 (PSC REF #360974, 360975) and Ex.-PSC-Data Request: Response 8.3(PSC REF#360184; and Surrebuttal-PSC-Vedvik-17 (PSC REF #368839); Ex.-PSC-Vedvik-7 (PSC RE #368843).

We are filing a simultaneous Motion for Interlocutory, with this request attached, in the interest of assuring all parties are aware of these filings.

Please let me know if you have any questions or require anything further.

Very truly yours,

A handwritten signature in cursive script that reads "Carol A. Overland".

Carol A. Overland
Attorney at Law

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Joint Application of American Transmission Company, 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

05-CE-146

**JEWELL JINKINS INTERVENORS MOTION FOR INTERLOCUTORY REVIEW
REQUEST FOR FEIS SUPPLEMENT TO STUDY, DEVELOP, ANALYZE, AND
EVALUATE HIGHWAY 151 ROUTE IN COMPLIANCE WITH WEPA AND NEPA**

Jewell Jinkins Intervenors (JJI), as provided by Wis. Admin. Code §2.27 and §2.04(2), hereby request interlocutory review of the Order of the Administrative Law Judge on Thursday, June 13, 2019, denying JJI's Motion to Supplement the EIS (PSC REF #367901). The FEIS was released on May 8, 2019 (PSC REF #366195). Both Applicants (PSC REF #368343) and the PSC staff (PSC REF #368366) responded and oral argument was held. The transcript of that status conference has not yet been filed. During the Status Conference, JJI's Motion was denied, and JJI was told that the matter was not within the authority of the Administrative Law Judge, and that this matter should be raised with the WEPA Coordinator. A request to Adam Ingwell, the PSC's WEPA Coordinator, is being made and filed separately at this time, and is attached here for informational purposes, and this Motion is attached to the request to the WEPA Coordinator.

With this Motion for Interlocutory Review, Jewell Jinkins Intervenors again requests that the U.S. Highway 151 alternate route from a Platteville, Wisconsin Hill Valley Substation along

U.S. Highway 151 to Dodgeville, towards the Cardinal substation be fully developed and analyzed in a supplement to the Environmental Impact Statement. Because the Final EIS has been issued, JJI requests that the commission prepare both a draft Supplement and a final as required by rule. Wis. Code PSC 4.35(2)c.

I. BACKGROUND

On April 26, 2019, Alexander J. Vedvik, electrical engineer in the Division of Energy Regulation, Public Service Commission of Wisconsin, submitted Direct Testimony in the above-captioned docket. In this testimony, he proposed a route alternative along U.S. Highway 151 corridor (hereinafter “Hwy. 151”). Direct-PSC-Vedvik-25-26. This route alternative was discussed in the Environmental Impact Statement, but not in enough detail for the Commission to formally consider it as a route. The EIS stated that “If the proposed Hill Valley Substation could instead be placed in the Platteville area, the USH 151 corridor from Platteville to Dodgeville could be a viable route alternative that may have a lower cost than Western-South and may have less associated impacts than Western-North.” FEIS-PSC-31 (PSC REF #366195).

The specifics of the “Hwy 151” route alternative were addressed by PSC’s Vedvik in his testimony.

Locating 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. One route for study that is electrically viable could include the U.S. Highway 151 corridor from Platteville, Wisconsin to Dodgeville, Wisconsin. For purposes of assessing whether the location of the Hill Valley substation could have a meaningful impact on the proposed project’s costs, I assumed a hypothetical route that would follow the applicants’ alternative route from Cassville, Wisconsin to a new Hill Valley Substation located near Platteville, Wisconsin, then follow the U.S. Highway 151 corridor from Platteville, Wisconsin to Dodgeville, Wisconsin, and then follow the applicants’ preferred route along the U.S. Highway 151 corridor from there on.

Ex.-PSC-Data Request: Response 8.3 states that this route would add approximately 5.5 miles of 345 kV transmission line, as compared to the

applicants' preferred route. The applicants' applied an approximately \$3.6 million/mile cost to calculate the cost of this route to be \$19.8 million more than the preferred route. However, the applicants have pointed out that as the project is eligible for MVP cost sharing, this \$19.8 million increase in capital cost would cost Wisconsin transmission network customers approximately \$2 million on a net present value basis. The applicants' alternative route is approximately \$51 million more than the applicants' preferred route.

Q. Would siting the proposed Hill Valley Substation adjacent to, and electrically connected to, the existing Hillman 138 kV Substation in the Platteville, Wisconsin area, impact the performance of the proposed Cardinal-Hickory Creek project?

A. No. Ex.-PSC-Data Request: Response 8.2 provided PowerWorld modeling of the proposed Cardinal-Hickory Creek project, with the proposed Hill Valley Substation located adjacent to the Hillman 138/69 kV Substation. The applicants' response also states that "changing the intermediate substation location from Montfort to Platteville would not impact the avoided reliability benefits included in the joint application." In summary, siting the proposed Hill Valley Substation adjacent to the Hillman 138/69 kV Substation would not impact the performance or general electrical characteristics of the proposed Cardinal-Hickory Creek project.

Direct-PSC-Vedvik-25-26 (PSC REF #365153)(fn. omitted); also see Ex.-PSC-Data Request: Response 8.1(PSC RE#360184); Ex.-PSC-Data Request: Response 8.2 (PSC REF #360974, 360975) and Ex.-PSC-Data Request: Response 8.3(PSC REF#360184).

This Hwy. 151 route alternative, using information provided in the Data Requests, was discussed in the FEIS. FEIS-PSC-31 (PSC REF #366195).

Specifically, the EIS stated:

The applicants' stated in the response to Data Request 8.1 that they "did not consider a new 345/138 kV substation in the vicinity of the Hillman 138/69 kV Substation in Platteville, Wisconsin. The Montfort/Eden Substation area is stronger electrically and is therefore better situated to provide regional support to the ATC system." The applicants' response to Data Request 8.2 included PowerWorld modeling with the proposed Hill Valley Substation located in the Platteville area. The modeling showed no significant changes to power flows in southwestern Wisconsin. The applicants' response states that "based on these results, changing the intermediate substation location from Montfort to Platteville would not impact the Avoided Reliability Benefits included in the Joint Application." If the proposed Hill Valley Substation could instead be placed in the Platteville area, the USH 151 corridor from Platteville to Dodgeville could be a viable route alternative that may have a lower cost than Western-South and may have less associated impacts than Western-North. This route alternative was not considered by the applicants.

The applicants siting process included a multi-stage process to narrow the initial project corridor down to the proposed route alternatives presented in docket 5-CE-146. As stated by the applicants, the preliminary route corridors were based on the siting priorities listed in Wis. Stat. § 1.12(6).

FEIS-PSC-31 (fn. omitted)(see Ex.-PSC-Data Request: Response 8.1. 8.2 and 8.3, PSC REF # 560184, 360794, 360975).

Locating the intermediate substation in the Platteville area could enable additional routing options for the 345 kV transmission line from the proposed substation to the Cardinal Substation. One such route could include the USH 151 corridor from Platteville to Dodgeville. For purposes of assessing whether the location of the proposed substation could have a meaningful impact on project costs, this route alternative could follow Western-South from Cassville to a new substation near Platteville, then follow the USH 151 corridor from Platteville to Dodgeville, and then follow Eastern-South along the USH 151 corridor from there on. The applicants' response to Data Request 8.3 states that this route would add approximately 5.5 miles of 345 kV transmission line, as compared to the Western-North with Eastern-South alternative.

The estimated total increase in cost for such an option is estimated to be approximately \$19.8 million, for a total estimated cost of approximately \$512 million. For comparison, this route would be less costly than any route alternative supplied by the applicants that uses the entire Western-South route from Cassville to Montfort, since the lowest cost proposed route alternative involving Western-South is estimated to be approximately \$51 million more than using the Western-North with Eastern-South alternative. Wis. Stat. § 1.12(6) requires as a first priority use of existing utility corridors to the greatest extent feasible for new transmission lines. The second-highest priority listed in Wis. Stat. § 1.12(6) is highway and railroad corridors. Much of Western-North is existing transmission corridor, and the USH 151 corridor is a highway corridor.

FEIS-PSC-31-32 (fn. omitted)(see Ex.-PSC-Data Request: Responses 8.1. 8.2 and 8.3).

Commission staff worked with the applicants to refine their PowerWorld modeling to ensure that it accurately reflects the configuration of the current electric system, specifically around the proposed new Nelson Dewey Mississippi River crossing location in the models, and other changes proposed as part of the Cardinal-Hickory Creek project. The applicants' response to Data Request 8.2 stated that "changing the intermediate substation location from Montfort to Platteville would not impact the Avoided Reliability Benefits included in the Joint Application." If the proposed Hill Valley Substation could be located in the Platteville area with no change to the electrical performance of the Cardinal-

Hickory Creek project, then the USH 151 corridor from Platteville to Dodgeville could be a viable route alternative.

In order to consider such a route, potentially affected landowners along the corridor would need to be given notice in this proceeding, and the applicants would need to develop a route alternative that follows this corridor. For the Commission to authorize such a route, the route would need to fit within the siting priorities listed in Wis. Stat. § 1.12(6). The proposed Cardinal-Hickory Creek project would likely be delayed due to the time required to develop this route alternative and give landowners along this possible route alternative notice and a chance to participate in the CPCN process. While it is unknown how much this could delay the in-service date of the proposed Cardinal-Hickory Creek project, a delay in the in-service date could impact the costs and benefits associated with the proposed Cardinal-Hickory Creek project.

FEIS-PSC-93-94 (fn. omitted)(PSC REF #366195)(see Ex.-PSC-Data Request: Response 8.1. 8.2 and 8.3, PSC REF #360184, 360974, 360975).

And finally, in the FEIS summary:

If the proposed Hill Valley Substation could instead be placed in the Platteville area, the USH 151 corridor from Platteville to Dodgeville could be a viable route alternative that may have a lower cost than Western-South and less associated impacts than Western-North. This route option was not considered by the applicants. The applicants siting process for the proposed project is discussed in Section 2.1. In order for the Commission to consider such a route, potentially affected landowners along the corridor would need to be given notice in this proceeding, and the applicants would need to develop a route alternative that follows this corridor. For the Commission to authorize such a route, the route would need to fit within the siting priorities listed in Wis. Stats. 1.12(6).

FEIS-PSC-538 (PSC REF #366195).

Because this route alternative, as a highway corridor, falls high within the siting priorities listed in Wis. Stats. 1.12(6), because it satisfies the stated project purpose, does not have negative reliability impacts, and provides benefits to Wisconsin landowners by utilizing an existing corridor, the EIS should be supplemented with a thorough analysis of this alternative to be included in a revised FEIS.

This proposal of an alternative is significant new information which is relevant to environmental concerns and has bearing on the transmission project proposed -- it provides a

means to avoid substantial impacts to Wisconsin agricultural landowners potentially affected by other routes and it does so at a nominal cost to Wisconsin electric customers due to the MISO MVP cost allocation scheme, which would allocate only a small percentage of increased cost to Wisconsin electric customers. In short, Wisconsin would benefit through fewer harmful impacts achieved at a relatively low cost. This is sufficient reason to supplement the EIS. Wis. Code PSC 4.35 (2)(a)1, 2. WEPA and NEPA provide even more reason, and an imperative.

II. SUPPLEMENTATION OF THE EIS IS NECESSARY

The purpose of an EIS is to address alternatives to the proposed action and to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available.” Wis. Stat. §1.11(2)(c)3; Wis. Stat. §1.11(2)e. This route is a reasonable alternative that could provide benefits to Wisconsin landowners that outweigh the nominal costs to Wisconsin electric customers, and the EIS should be supplemented. Wis. Code PSC 4.35 (2)(a)1, 2.

A. COMMISSION MUST INDEPENDENTLY STUDY AND DEVELOP ALTERNATIVES.

As it stands, the EIS is inadequate because it failed to develop a known project alternative to a reasonable degree of comparability, and did not compare this alternative against the project, Which is contrary to Wisconsin and federal environmental law and policy. Instead, the EIS relies on and reviews only the Applicants’ alternatives, and did not identify an “environmentally preferred alternative,” and did not issue a “record of decision” as required. Adequate development and consideration of alternatives was an issue in the recent Badger-Coulee MVP docket (PUC Docket 5-CE-142), and lessons learned in that docket have not been carried forward.

Wisconsin’s Environmental Policy Act (hereinafter “WEPA”) was modeled after the

National Environmental Policy Act (hereinafter “NEPA”), and NEPA and PSC Code requires that environmental analysis be consistent with, “substantially following the guidelines issued by the United States Council on Environmental Quality (hereinafter “CEQ”) under P.L. 91-190, 42 USC 4331. Wis. Stat. §1.11(2)(d); 40 C.F.R. pts. 1500-1508; see also Wis. Admin. Code § PSC 4.30(1)(a); see also *Wisconsin's Environmental Decade, Inc. v. Public Service Commission*, 79 Wis.2d 161, 175 - 176, 255 N.W.2d 917, 926 (1977); *Wis.'s Env'tl. Decade, Inc. v. Wis. Dep't of Nat. Res.*, 115 Wis. 2d 381, 403, 340 N.W.2d 722 (1983). There are both substantive and procedural requirements:

[The EIS] should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. Guidelines, §15.02(14)

The purposes of this "study, develop and describe" requirement is to assure that alternatives are adequately explored in the **initial** decision-making process, to provide an opportunity for those removed from that process to evaluate the alternatives, and to provide evidence that the mandated decision-making process has taken place.

Wisconsin's Environmental Decade, Inc. v. Public Service Commission, 79 Wis.2d 161, 175 - 176, 255 N.W.2d 917, 926 (1977) (emphasis added)¹. “Initial” is emphasized above because all parties would agree that it is easier, more practicable, to address a potential alternative earlier in the process than later – as administrative processes move forward, consideration of options narrows.

WEPA establishes procedural protections through the steps of decision making. Its evaluative and determinative purpose, “action forcing,” becomes possible when an agency develops a sufficient Environmental Impact Statement (“EIS”). An inadequate EIS does not fulfill the requirements of WEPA and NEPA.

¹ Responses to JJI’s initial Motion for Supplement to EIS state that this need for a supplement should be addressed in briefing regarding adequacy of the EIS, which of course it should, but that is too late for the record to be developed for a Commission decision scheduled within a few months. In an administrative proceeding, delay is never a good option, particularly in record development. This is further addressed below.

It is also the Public Service Commission's charge to route transmission using its own routing hierarchy:

SITING OF ELECTRIC TRANSMISSION FACILITIES. In the siting of new electric transmission facilities, including high-voltage transmission lines, as defined in s. 196.491 (1) (f) it is the policy of this state that, to the greatest extent feasible that is consistent with economic and engineering considerations, reliability of the electric system, and protection of the environment, the following corridors should be utilized in the following order of priority:

- (a) Existing utility corridors.
- (b) Highway and railroad corridors.
- (c) Recreational trails, to the extent that the facilities may be constructed below ground and that the facilities do not significantly impact environmentally sensitive areas.
- (d) New corridors.**

Wis. Stat. §1.12(6) (emphasis added).

The routes proposed for this project are primarily “new corridors” not in keeping with the state's routing hierarchy. The Agricultural Impact Statement says it clearly:

Most of the potential routes for this project are cross-country. They run across fields, woodlots, and open areas, following no particular boundaries.

Agricultural Impact Statement, p. 2 (PSC REF #367010).

Where “most of the potential routes for this project are cross-country,” with new corridors dead last in the order of statutory priorities, additional alternatives are necessary.

The Commission's environmental charge is to:

- (e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

Wisc. Stat. 1.11(2)(3).

The directive is rooted in federal law. NEPA is persuasive authority on WEPA.

Wisconsin's Environmental Decade, Inc. v. Public Service Commission, 79 Wis.2d 161, at 174; 255 N.W.2d 917, at 925 (1977). The PSC's rule requires its analysis to be consistent with guidelines issued by the Federal Council on Environmental Quality's (“CEQ's”) “CEQ

Guidelines.” Wis. Admin. Code § PSC 4.30(1)(a); 40 C.F.R. pts. 1500-1508. The Wisconsin Supreme Court explicitly described CEQ Guidelines as requirements “to be followed” in environmental review:

WEPA must be interpreted to advance substantive environmental goals, which include “... assur[ing] . . . aesthetically and culturally pleasing surroundings” and “minimiz[ing] degradation, risk to health or safety, or other undesirable and unintended consequences.” Wis. Stat. § 1.11(1); Chapter 274, laws of 1971, section 1. For the PSC, the environmental considerations of CPCN law are in play. The PSC cannot approve a CPCN if a facility that will “have undue adverse impact on other environmental values such as, but not limited to, ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water and recreational use.” Wis. Stat. § 196.491(3)(d)4. It must also implement the State’s energy priorities, which emphasize, as a first option, energy efficiency and conservation. Wis. Stat. § 1.12(4). Wis. Stat. § 196.025. WEPA’s substantive goals are accomplished through procedural protections in decision making. Its “action forcing” purpose becomes possible when an agency develops a sufficient Environmental Impact Statement (“EIS”).

“The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government.” 40 CFR § 1502.1

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349, 109 S.Ct. 1835, 1845 (1989).

Again, the Commission’s statutory environmental charge is to:

(e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

Wisc. Stat. 1.11(2)(3). The Commission is to “study.” The Commission is to “develop.” In this case, the Commission has not.

B. THE COMMISSION IMPROPERLY RELIES ON APPLICANTS’ ROUTE ALTERNATIVES AND HAS NOT INDEPENDENTLY DEVELOPED ROUTE ALTERNATIVES.

The Commission has improperly relied on the Applicants’ alternatives, has not developed alternatives, and has unreasonably dismissed what appears to be a practicable and reasonable alternative route – U.S. Highway 151. Nowhere does it say that only Applicants’ alternatives are

the alternatives to be considered, and instead the converse is clearly stated in law, yet in this proceeding, Applicants' "alternatives" offered the only ones sufficiently studied to be considered by the Commission as a choice for routing.

The heading in the DEIS is "APPLICANTS' ALTERNATIVES TO THE PROPOSED PROJECT." DEIS, p. III, 80-86 (PSC REC #360500). This section is wrapped up with this statement:

As such, the proposed Cardinal-Hickory Creek project is the applicants' preferred transmission system alternative.

DEIS, p. 86 (PSC REF #360500). The "Summaries and Comparisons of Route Alternatives" is also exclusively focused on "applicants" route alternatives. DEIS, Chapter 10 (PSC REF #360500). Information regarding additional project options and alternatives were not included. The Applicant's preference is not dispositive or a limitation to alternatives considered.

Months ago, JJI raised this issue of consideration of only "Applicants' Alternatives" in Comments to the DEIS:

Alternatives

Non-Transmission System Alternatives: From the section heading to the end of the DEIS, the alternatives considered, and their consideration, is inadequate. First and foremost, the system alternatives section is improperly "APPLICANTS' ALTERNATIVES TO THE PROPOSED PROJECT." The DEIS is not, should not be, limited to "APPLICANTS' ALTERNATIVES." That is NOT the statutory mandate. "The applicants studied..." "In particular, the applicants studied..." "The applicants designed..." The main components to the applicants' designed NTA..." "The applicants' NTA would..." "... about the applicants' studied NTA..." "The applicants dismissed..." "The applicants..." "The applicants..." "The applicants..." "The applicants..." "The applicants..." "The applicants..." "The applicants..." "The applicants..." "The applicants..." More than "the applicants" alternatives should be considered. Good grief...

Transmission System Alternatives: Again, "The applicants considered..." This is inadequate. DEIS Comments of Jewell Jinkins Intervenors, 4/14/2019 (PSC REF #364157).

Apparently DEIS comments were not seriously considered – there was no change. The heading in the FEIS remains "APPLICANTS' ALTERNATIVES TO THE PROPOSED

PROJECT.” FEIS p. 94 (PSC REF #366195). This section is wrapped up again with this statement:

The applicants selected their preferred transmission system alternative by evaluating each alternative and selecting the one that provides the greatest projected quantitative benefits and achieves as many of the qualitative benefits listed above as possible. The applicants state that the proposed Cardinal-Hickory Creek project has the greatest net quantitative benefits of all the alternatives considered and best provides all the qualitative benefits listed above. As such, the proposed Cardinal-Hickory Creek project is the applicants’ preferred transmission system alternative.

DEIS, p. 86 (PSC REF #360500). That is followed by “Commission’s analysis” but only a nominal analysis of the economics of the project. Information regarding additional project options and alternatives were not included. “The applicants are not proposing these additional project options as siting alternatives for the Commission in this proceeding.” FEIS, XXVII (PSC REF #366195).

Adequate development of alternatives has been litigated in Wisconsin:

Several courts have found the description of alternatives to be the heart of the environmental impact statement. *Environmental Defense Fund, Inc. v. Froehlke*, 473 F.2d 346, 350 (8th Cir. 1972); *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 834 (D.C. Cir. 1972); *I-291 Why? Association v. Burns*, 372 F. Supp. 223, 247 (D. Conn. 1974), *aff’d*, 517 F.2d 1077; see also, 40 CFR sec. 1502.14.

Milwaukee Brewers Baseball Club v. Wis. Dep’t of Health & Soc. Services, 130 Wis. 2d 56, 73, 387 N.W.2d 245, 252 (1986). The Commission’s responsibility, requirement, to study and develop alternatives is supported by case law:

[The EIS] should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. Guidelines, §15.02(14)

The purposes of this "study, develop and describe" requirement is to assure that alternatives are adequately explored in the initial decision-making process, to provide an opportunity for those removed from that process to evaluate the

alternatives, and to provide evidence that the mandated decision-making process has taken place.

Wisconsin's Environmental Decade, Inc. v. Public Service Commission, 79 Wis.2d 161, 175 - 176, 255 N.W.2d 917, 926 (1977).

By allowing the Applicants to define the range of “alternatives,” based on the Applicants limited “purpose and need” of the project, that has the impact of limiting alternatives studied. In this case:

The analysis of need provided in the project application relied heavily on the planning process of the Midcontinent Independent System Operator (MISO). This stated need could be summarized under the following three categories of benefits that MISO’s multi-value (MVP) projects are required to provide: 1) improve electric system reliability locally and regionally; 2) deliver economic savings for Wisconsin utilities and electric consumers; and 3) expand infrastructure to support the public policy of greater use of renewables. More information about the MISO process and purpose of the proposed project is included in Chapter 3.

FEIS, XXIX (PSC REF #366195). Again, it is neither the Applicants’ choice of alternatives nor the Applicants “purpose and need” at issue. Those factors can be a consideration, a launching point, but the Commission is to be guided by the statutes and for an EIS, also NEPA and its guidelines, as referenced in Wisconsin law.

[A]gencies must look hard at the factors relevant to the definition of purpose . . . Perhaps more importantly [than the need to take private interests into account], an agency should always consider the views of Congress, expressed, to the extent that the agency can determine them, in the agency's statutory authorization to act, as well as in other congressional directives.

Nat'l Parks & Conservation Ass'n v. BLM, 606 F.3d 1058, 1070 (9th Cir. 2010).

The PSC’s charge is protection of the environment, protection of the public and ratepayers from risks, costs, hardships, and impacts beyond those necessary to ensure the adequate supply of electricity, to comply with the state’s energy priorities, and to comply with the state’s siting and routing hierarchy. The Commission’s task is to “accept but verify” and to develop reasonable alternatives, under law, under NEPA Guidelines, to “develop alternatives to a

point of reasonable comparability.” Although the status conference transcript has not yet been released, JJI was told that alternatives were to be proposed by Applicants or that Intervenors could develop and provide alternatives, but Intervenors do not have the burden of proof, that is the Applicants’ to establish, and the Commission has the obligation to develop the alternatives and to weigh them against the other alternatives such that an evaluation can be made. Wisc. Stat. 1.11(2)(3). Beyond the obligation, the Commission has the resources and expertise to develop these alternatives, resources and expertise that Intervenors do not.

However, even when considering the limited notion of “purpose and need” inherent in this transmission project, and the narrow range of alternatives, the U.S. Highway 151 alternative does appear to fulfill the Applicant’s claimed “need,” and Applicants have provided information indicating that the U.S. Highway 151 alternative does not appear to inflict harm on the grid.

The CEQ guidelines cited above, and the PSC rules adopting those guidelines, require the PSC to prepare a “record of decision” which: (i) identifies “all alternatives considered by the agency in reaching its decision,” (ii) indicates the “environmentally preferable,” alternative(s), and (iii) states “whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted” and if not, why not. 40 C.F.R. § 1505.2(b) and (c). Alternatives must be “rigorously explore(d) and objectively evaluate(d).” Guidelines, §1502.14(a). Alternatives must be explored in enough detail “so that reviewers may evaluate their comparative merits.” (Guidelines, §1502.14(a)). Alternatives that must be analyzed within EIS include “alternatives not within the jurisdiction of the lead agency.” (Guidelines, §1502.14(c)).

In the environmental review for this docket, the U.S. Highway 151 route alternative is an obvious and cited alternative raised in the Data Request responses, the FEIS, and staff testimony,

and yet has not been rigorously explored. The record also reflects some consideration of the cost of delay, and the record of potential cost of delay should be developed in tandem with development of the U.S. Highway 151 alternative. Surrebuttal-PSC-Vedvik-17 (PSC REF #368839); Ex.-PSC-Vedvik-7 (PSC RE #368843).

The Commission has yet to make a “record of decision” in this case. The Commission has the ability to correct the fundamentally flawed environmental review before such a record of decision is issued.

Based on the details of the Final Environmental Impact Statement, responses to WPSC Data Requests 8.1, 8.2 and 8.3 in the record, and PSC’s Vladvik’s testimony, this Highway 151 route alternative is cost effective and technically feasible, without negative impact on the transmission system, and it would provide benefits to landowners affected by this Cardinal-Hickory Creek transmission proposal. The U.S. Highway 151 route, its practicality, electrical impact, and PowerWorld modeling as described by PSC staff and applicants’ Data Request responses showed that siting of the substation “would not impact the performance or general electrical characteristics of the proposed Cardinal-Hickory Creek project. The requisite more detailed and rigorous evaluation of the Hwy. 151 alternative route has not yet been performed and included in the FEIS.

Per the statutory annotation for Siting of Electric Transmission Facilities:

When the Public Service Commission (PSC) makes a determination under the plant siting law, s. 196.491, it applies sub. (4) in the context of determining whether to approve the requested plant siting. The question the PSC should ask is: Given the requirements of the plant siting law, what is the highest priority energy option that is also cost effective and technically feasible? *Clean Wisconsin, Inc. v. PSC*, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768, 04-3179.

Annotation, Wisc. Stat. §1.12(6). The Commission cannot determine the highest priority energy option without analysis regarding cost effectiveness and technical feasibility of a range of

alternatives, and by studying and developing that range of alternatives.

Noteworthy is that the U.S. Highway 151 route is an option raised by PSC staff and demonstrated through modeling by applicants to not have a detrimental impact on avoidable reliability benefits, performance or electrical characteristics. This is not a last minute Intervenor's back-of-the-napkin route alternative tossed out by intervenors seeking to delay the process – PSC staff partially developed this alternative route with information over time, through analysis of the application and presentation of scenarios in Data Requests, with the Applicant modeling demonstrating its potential.

III. CONCLUSION: THE ENVIRONMENTAL IMPACT STATEMENT REQUIRES A SUPPLEMENT.

A route alternative with the benefits as described above should have been incorporated into the EIS immediately upon discovery, and although the PSC had this information, it was not. This is not in compliance with the intent and the letter of WEPA and NEPA. P.L. 91-190, 42 USC 4331; Wis. Stat. §1.11(2)(d); 40 C.F.R. pts. 1500-1508; see also Wis. Admin. Code § PSC 4.30(1)(a); see also Wisconsin's Environmental Decade, Inc. v. Public Service Commission, 79 Wis.2d 161, 175 - 176, 255 N.W.2d 917, 926 (1977); Wis.'s Env'tl. Decade, Inc. v. Wis. Dep't of Nat. Res., 115 Wis. 2d 381, 403, 340 N.W.2d 722 (1983).

PSC staff and Applicants argue that “the authority and discretion to determine whether to prepare a SEIS solely in the Commission, not the Commission ALJ,” PSCW Response, p. 1, et seq. (PSC REF #368366) (agents of the Commission not addressed); see also Applicants' Response, p. 1, et seq. (PSC REF #368343). Staff notes that “[t]he discussion of the hypothetical route alternative is not a substantial change” in testimony, then uses the claim of lack of “substantial change” in its mobius response to state it does not meet criteria for an EIS Supplement because it is not a substantive change, and isn't “selectable by the Commission

unless and until the proposed project is amended.” *Id.*, p. 2. Amended? By whom? The Commission has a WEPA and NEPA obligation to develop, study, and comparably weigh those alternatives, including designation of an environmentally preferred alternative, and that has not been done. Wisc. Stat. 1.11(2)(3); see also 40 CFR 1505.2. See also P.L. 91-190, 42 USC 4331; Wis. Stat. §1.11(2)(d); 40 C.F.R. pts. 1500-1508; see also Wis. Admin. Code § PSC 4.30(1)(a).

The Commission cannot approve a transmission project CPCN if the project will “have undue adverse impact on other environmental values such as, but not limited to, ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water and recreational use.” Wis. Stat. § 196.491(3)(d)4. The project must be in compliance with the state’s routing priorities – and this project utilizes primarily the lowest of the listed statutory routing priorities, “new corridors” “following no particular boundaries.” Agricultural Impact Statement, p. 2 (PSC REF #367010); Wis. Stat. §1.12(6). The project may also only be approved if it is compliance the State’s energy priorities, which emphasize, as a first option, energy efficiency and conservation. Wis. Stat. § 1.12(4). Wis. Stat. § 196.025. And, again, environmental review must comply with WEPA and NEPA. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349, 109 S.Ct. 1835, 1845 (1989).

It may be that the ALJ, though acting as an agent of the Commission in conducting the hearing, does not have direct authority to order a Supplemental EIS. Authority to Order a Supplement to the EIS under the PSC Code rests with the Commission, if it finds:

“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). Prior to denial of its Motion to Supplement the EIS

during the Status Conference, Jewell Jinkins Intervenors were advised during the oral argument that the WEPA Coordinator holds the authority to make this decision. A request is being made.

At this time, the only route to the Commission is after an Order and then through a request for Interlocutory Review such as this. Jewell Jinkins Intervenors, through its request of the WEPA Coordinator and this simultaneous Motion to the Commission for Interlocutory Review, requests that the EIS for the Cardinal Hickory Creek transmission project be supplemented, that it comply with WEPA and NEPA in its study, development, and review of transmission alternative routes and include the U.S. Highway 151 route as an alternative.

There has been no determination by the Commission regarding the adequacy of the EIS, no “record of decision,” and there remains time to correct the shortcomings of the EIS. At this point, the EIS is only “progress towards compliance with the Public Service Commission’s requirements under Wis. Stat. § 1.11 and Wis. Admin. Code § PSC 4.30.” PSC statutes, regulations, rules and the EIS state that for the Commission to consider a route alternative, potentially affected landowners along the corridor would need to be given notice in this proceeding, and the applicants and the Commission would need to develop the route alternative. That work has been described in the EIS, has not yet been completed, and should be, post haste. The Commission should not let this reasonable, viable, and economic route alternative be rejected by default.

At this time, Jewell Jinkins Intervenors request that the Commission direct the WEPA Coordinator and PSC staff to immediately supplement the FEIS with a full analysis of the Highway 151 route alternative, from Platteville, Wisconsin and the proposed Hill Valley Substation along U.S. Highway 151 to Dodgeville, Wisconsin, as provided by PSC 4.35 (2)(a)1 and PSC 4.35(2)(a)2, which requires both a draft Supplement and a final Supplement to the Environmental Impact Statement. These steps of alternative review and analysis are required by

WEPA and NEPA. P.L. 91-190, 42 USC 4331; Wis. Stat. §1.11(2)(d); 40 C.F.R. pts. 1500-1508;
see also Wis. Admin. Code § PSC 4.30(1)(a).

Dated this 23rd day of June, 2019.



Carol A. Overland MN Lic. 254617
Attorney for Jewell Jenkins Intervenors
1110 West Avenue
Red Wing, MN 55066
(612) 227-8638
overland@legalelectric.org