

**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

**PETITION FOR REHEARING
JEWELL JINKINS INTERVENORS**

Jewell Jinkins Intervenors (hereinafter “JJI”) submit this Petition for Rehearing as provided by Wisconsin Statute §227.49, allowing for a petition upon errors of law and/or fact. JJI requests that the Commission immediately stay its decision and reconsider its determinations regarding the joint application for the above-captioned Cardinal-Hickory Creek transmission project. JJI requests the Commission reopen the CPCN and reconsider its position on several issues. Due to the predicted and extensive impacts, the conditions set forth in the Order do not provide for the range of compensation and mitigation that affected landowners deserve.

JJI’s primary concerns through this intervention have been those of individual hardship, impacts on agriculture, the visual and aesthetic changes inherent in the project and the impact these changes would have on the land and property, and the property values of other nearby parcels. Landowners, including homeowners and farmers’ agricultural property and associated business property, would be affected. The Commission’s conditions do not sufficiently prevent or mitigate impacts of this project.

I. THE COMMISSION SHOULD REHEAR AND IMPLEMENT MORE PROTECTIVE CONDITIONS TO MITIGATE IMPACTS TO LANDOWNERS.

Individual hardships are to be considered by the Commission. Impacts on landowners and agriculture are to be considered by the Commission. There are 895 affected landowners (not parcels), and 692 own agricultural properties. Agricultural Impact Statement, p. 1-2, 12.

Jewell's have an interest in 48 parcels in Iowa County, itemized in his Testimony. Direct-JJI-Jewell-4-7. There were 45 parties intervening in this docket, which is not even mentioned in the Final Order. Order, p. 2. The extreme impacts on landowners and agriculture, on their use and enjoyment of their property, compelled so many to intervene. The Commission consideration of these issues has been inadequate, and are errors of both fact and law.

The Commission may issue a CPCN only where it determines that the route chosen is in the public interest, considering, among other things, individual hardships and impacts to landowners and agriculture that are both preventable and which cannot be mitigated. Wis. Stat. § 196.491(3)(d)3. These individual particularized hardships were documented in Jewell's testimony, and were unchallenged by the Applicants or Commission staff. Direct-JJI-Jewell; Direct-JJI-Jewell-s; Rebuttal-JJI-Jewell; Surrebuttal-JJI-Jewell. The impacts that are both preventable and which cannot be mitigated were well documented in the Draft and Final Environmental Impact Statement and the Agricultural Impact Statement, supported by testimony of multiple intervenors, but more importantly, the impacts and issues raised were documented and supported by Commission staff. FEIS, particularly p. 66-68, 71-73 (PSC REF# 366195); Agricultural Impact Statement, p. 2 (PSC REF #367010); Direct-PSC-Weiss-5-6. (PSC REF# 367009).

The Commission admits the impacts to the land and agriculture. "Most of the potential

routes for this project are cross-country and will impact agricultural resources.” Order, p. 66.

Because this project traverses agricultural land, and is primarily new easement, the impacts fall on landowners and in particular, landowners whose property is used for agricultural production and services. There was much testimony from intervenors and the public regarding the impacts, yet the Commission’s generic and specific “conditions” brushed aside important recommendations of staff and do not provide adequate compensation or relief.

The Commission incorporated these general conditions into the CPCN regarding landowners and their property:

- The applicants shall work with landowners to develop mitigation strategies that optimize minimization of impacts to residences and property to the extent practicable.
- Depending on the route selected, the applicants shall consult with Alliant Energy, the DNR, the Prairie Enthusiasts, the Nature Conservancy, the Driftless Area Land Conservancy and any other landowners that have established/managed prairies to determine appropriate measures to avoid or minimize impacts during construction and ongoing management. The applicants shall document the results of this consultation to the Commission.

Order, p. 71. These admittedly would only “mitigate some of the impacts that would occur,” and that is insufficient and inadequate. Wisconsin law allows for placement of transmission easements over people’s property, including buildings and even homes.

The Commission also included some provisions to mitigate agricultural impacts, the impacts to agricultural lands and to the landowners that would occur as a result of the construction, operation, and maintenance of the project:

- a. The applicants shall decompact soils in agricultural areas to allow soil structure to redevelop and reduce impacts to crop yields;
- b. Significant rutting shall be defined in environmental documents as ruts of 6 inches or greater. If project construction causes significant ruts in cropland or pasture, the applicants shall repair the ruts as soon as

practicable.

- c. The applicants shall avoid or mitigate impacts to agricultural erosion controls and water management practices and facilities in farmland.
- d. The applicants shall keep renters of agricultural land, if known, as well as farm owners affected by the project up-to-date and informed of construction schedules and potential impacts so that farm activities can be adjusted accordingly;
- e. The applicants shall train and document appropriate construction procedures for lands with organic practices;
- f. The applicants shall work with landowners with agricultural buildings located within the approved ROW to minimize and mitigate impacts to farming operations.
- g. The applicants shall work with landowners with properties enrolled in tax incentive programs so as to minimize the impacts to their participation in the program and compensate them for any reduction in payments because of the project.
- h. The applicants shall work with the county drainage boards to minimize impacts to properties within drainage districts.
- i. If project construction activities during the growing season create inaccessible cropland or cropland that is too small or irregularly-shaped to be farmed, the applicants shall properly compensate the property owners for the temporary loss of the use of the land;
- j. Many of the proposed routes include double-circuiting an existing lower-voltage line onto the new poles with the new 345 kV line. This will require the removal or "wrecking out" of the existing structure. During the process of removing these poles, top soil can be mixed with poorer quality subsoils, topsoil can be lost, and compaction can occur to a greater extent than during typical construction techniques. Construction personnel shall be trained on the proper protection of agricultural fields and soils during the removal of existing poles (i.e. "wrecking out") and a project-specific wreck out procedure document shall be included with the construction and mitigation plan(s). The applicants shall follow the procedure from a previous 345 kV ATC project;
- k. The applicants shall consult with affected landowners to determine the

least damaging locations for transmission structures and off-ROW access roads.

1. The applicants shall undertake post-construction monitoring to ensure that any damage to agricultural fields or operations from construction activities has been repaired or mitigated. Where construction activities have caused damage to agricultural fields or operations, the applicants shall work with landowners to address the problems as soon as practicable. Problems could involve construction debris, erosion control devices, altered or damaged fencing, altered field drainage, settled areas, or newly wet areas. This post-construction monitoring could be within the scope of work for the IEM/IAM and/or included in the construction and mitigation plan(s).

Order, p. 66, 93.

The testimony of Jewell and others raised the issue of individual hardships, and in particular, those suffered as landowners and farmers. Jewell's concern is a general concern regarding these issues for all affected landowners, and for his specific impact, for that part of the route along the Q-02 route section planned over the Oakdale Farms/Bloomfield grain facility at 2232 US Highway 18, in Dodgeville, and the Walter and Anderson home at 504 E. Main St., Cobb, partners in the grain operation. Direct-JJI-Jewell-r-7. The property at 2232 US Highway 18 includes large grain bins, a shop, and an office building, and is located up against the highway and beneath the transmission easement. *Id.* The AIS notes that only an 18 foot clearance is required for transmission over grain bins. AIS, p. 136, Ex.-DATCP-Weiss-1(PSC REF# 367010). This proximity is not only unacceptable, but it may preclude new construction and expansion, and would make maintenance or repair of the grain bins and buildings difficult with so little room to maneuver.

The record shows that agricultural parcels could be hit hardest by value loss, perhaps 17-44%. *Id.*; see also Kielisch Tr. 1916-1918 (re: Surrebuttal-Rolling-3-4). Losses would be not "just" a loss of value, but also a loss of opportunity for further development and will affect future

marketability. Routing over the grain facility would have a severe impact on agricultural operations.

As above, the Commission's Order states:

f. The applicants shall work with landowners with agricultural buildings located within the approved ROW to minimize and mitigate impacts to farming operations.

...

k. The applicants shall consult with affected landowners to determine the least damaging locations for transmission structures and off-ROW access roads.

Order, p. 67. This statement is too generic to offer any potential for mitigation or compensation or to offer any direction of what mitigation or compensation could or should be offered.

The EIS gave examples of "General Mitigation Strategies" including:

Make minor adjustments to structure locations to avoid archaeological sites or minimize effects on agricultural operations.

EIS, pps. 109, 539.

In response to the question "What additional conditions related to landowner rights and community impacts should be attached to the construction of the proposed project to meet the requirements of Commission approval," the DRAFT Decision Matrix proposed mitigation including:

9. Offering additional compensation to mitigate loss of screening vegetation.

10. Offering additional compensation to residences located within ROW.

11. Offering at least full property value compensation for relocation of landowners with residences within ROW.

DRAFT Decision Matrix, p. 38. Staff recommendations for the Eastern Southern segment specifically included recommendations for identified landowners and properties, consisting of

four recommendations of “additional compensation to mitigate impacts to residence, or offer to purchase the property at total appraised value;” seven recommendations to “determine additional compensation to mitigate loss of screening vegetation;” and three more general recommendations to “determine appropriate mitigation options.” DRAFT Decision Matrix p. 39. These recommendations were not applied equally to all affected landowners, and were not adopted by the Commission.

Jewell Jinkins Intervenors asks that the Commission rehear this matter, and adopted the following recommendations to affected landowners:

- Offer additional compensation to mitigate loss of screening vegetation.
- Offer additional compensation to residences located within ROW.
- Offer additional compensation to landowners with agricultural business buildings and structures located within ROW.
- Offer at least full property value compensation for relocation of landowners with residences within ROW.
- Offer at least full property value compensation to landowners with agricultural business buildings and structures located within ROW.

It is an offensive act to take someone’s land for any reason, but to take someone’s property and to affect a person’s property by subjecting it to use to further a company’s market desires, all efforts must be made to fairly compensate the landowner and to prevent impacts as much as possible. In the event that prevention is not possible, that alters the compensation equation, and additional compensation must be offered, as above, including but not limited to full property value compensation and relocation benefits to the landowners. PSC staff recognized the legitimate claims and objections of landowners, and the Commission should adopt the staff concerns and proposed resolutions. Further, the Commission’s decision did not provide an opening for routing adjustments around agricultural operations and protection of landowner interests, and it should.

The Commission must provide sufficient protections and compensation to affected

landowners to fully and justly compensate them for their losses.

II. EMINENT DOMAIN SHOULD NOT BE USED FOR HAZARD TREE EASEMENTS.

JJI requests that the commission reconsider its decision regarding use of eminent domain for removal of hazard trees. The Commission's Order misrepresents the positions taken in testimony, stating:

JJI, SOUL, and J. Schwarzmann supported an order condition that would prohibit use of eminent domain authority granted through a Commission CPCN to acquire hazard tree easements for properties not encumbered by a standard transmission line ROW easement. (Ex.-PSC-FEIS-r, [PSC REF#: 366195](#) at 143; Valentine Tr. 1767:3-8; Initial Br.-Joe Schwarzmann at 17.)

Order, p. 59. What the Order fails to state is the Commission's own staff's recommendation:

The applicants shall not use eminent domain authority granted through a Commission Certificate of Public Convenience and Necessity (CPCN) to acquire hazard tree easements for properties not encumbered by a standard transmission line right-of-way easement.

Surrebuttal-PSC-Burtley-8.

There is no evidence supporting a decision to allow utilities the power of eminent domain regarding hazard trees, and there is evidence and staff recommendation that utilities be prohibited from the use of eminent domain in this situation. The Commission should pay attention to its own staff's testimony and recommendations and prohibit utility use of eminent domain for removal of hazard trees.

III. WEPA AND NEPA REQUIRE DEVELOPMENT OF ALTERNATIVES SUFFICIENT FOR CONSIDERATION BY THE COMMISSION.

The Commission's failure to sufficiently develop alternatives, both system and route alternatives, is an error of law. Two aspects of alternatives analysis are missing from the FEIS, and these must be further developed for the Environmental Impact Statement to comply with WEPA and NEPA. JJI raised these issues in briefing, and again requests that the Commission

take this opportunity to reconsider its position on the Environmental Impact Statement, and require a Supplemental EIS be drafted regarding these two issues.

One specific route alternative and analysis that is missing is the U.S. Highway 151 route alternative, discussed in Commission staff testimony. Direct-PSC-Vedvik-25-26. This omission was raised in a Motion by Jewell Jinkins Intervenors. .Motion-JJI (PSC REF# 367901); see also Wis. Code PSC 4.35(2)c.. 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. As a highway corridor, the U.S. Highway 151 route falls higher within the siting priorities listed in Wis. Stats. 1.12(6) than the primarily cross-country routing offered by Applicants.

JJI's Motion to supplement the EIS was denied (See Tr. Status Conference, PSC REF#370362), and that was followed by a request by JJI to the WEPA Coordinator and a Request for Interlocutory Review (PSC REF#370239), also denied.

The second facet missing in the FEIS is development of a combined "Staff Base Asset Renewal" and "Non-Transmission Alternative (NTA)" alternative, one that is feasible, by combining renewal of assets scheduled for rebuild with use of viable non-transmission alternatives in already in consideration in this docket. This analysis would demonstrate that the claimed need for the Cardinal-Hickory Creek transmission line is overstated and that the line is not needed.

Because the probable result of this analysis demonstrates that the line is not needed, the omission of this analysis and subsequent refusal to supplement the EIS is a fatal flaw, calling the Commission's Order into question. The EIS must be supplemented with a thorough analysis of this system alternative to be included in a revised FEIS. A system alternative with the benefits

near to those provided by the project, and in combination with another alternative with benefits near to those provided by the project, can fulfill the need, and should have been incorporated into the EIS. The Commission now has the opportunity to correct this error of law and omission of determinative facts.

Again, restating our prior argument in briefing and to preserve this issue, the FEIS is not in compliance with the intent and the letter of WEPA and NEPA, and the alternatives should be developed and the FEIS supplemented. 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). The Commission has improperly relied on the Applicants' alternatives, and only the Applicants' alternatives, in the FEIS. The Commission avoided and omitted determinative facts. The Commission has not developed alternatives, and has unreasonably dismissed what appears to be a practicable and reasonable alternative route – U.S. Highway 151, and a practicable and reasonable system alternative, the “Base with Asset Renewal” **AND** “Non-Transmission Alternatives” alternative combination. Nowhere does it say that only Applicants' alternatives are the alternatives to be considered – instead the converse is clearly stated in law, that alternatives must be developed. In this proceeding, Applicants' “alternatives” offered the only ones sufficiently studied to be considered by the Commission as a choice for routing, skewing the decision.

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

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

DEIS, p. 86 (PSC REF #360500). Applicant's preferred transmission system alternative isn't a valid criteria, nor should review be limited to that applicant preference. The "Summaries and Comparisons of Route Alternatives" is also exclusively focused on "applicants" route alternatives, and again, Applicant's preference is not a routing criteria. DEIS, Chapter 10 (PSC REF #360500). Information regarding additional project options and alternatives available and being discussed were not included or developed, an unlawful limitation of facts for consideration. The Applicant's preference is neither dispositive nor a limitation to alternatives considered. JJI raised this issue in its DEIS comments, yet there was no change. The heading in the FEIS remains "APPLICANTS' ALTERNATIVES TO THE PROPOSED PROJECT," and the many instances of "Applicants' Alternatives" remain. FEIS p. 94, et seq. (PSC REF #366195). Other alternatives remain missing.

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." *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

constrained “purpose and need” for the project, that inherently limits alternatives studied, and is a material error of law.

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 are a reasonable consideration, a launching point, but the Commission is to be guided by the statutes, and for an Environmental Impact Statement, NEPA and its guidelines apply:

[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, through regulation, 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, to “develop alternatives to a point of reasonable comparability.” The Applicants have the burden of proof, 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). The Commission also has the resources and expertise to develop these alternatives, resources and expertise that Intervenors do not possess.

The CEQ guidelines cited above, the PSC rules adopting those guidelines, and Wisconsin case law requires 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.” Id. “Alternatives that must be analyzed within EIS include “alternatives not within the jurisdiction of the lead agency.” Id.

The Commission’s “record of decision” in this case is flawed. This is a material error of law. Through Rehearing, the Commission has the ability to correct the fundamentally flawed environmental review.

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 more practicable to address a potential alternative earlier in the process than later – as administrative processes move forward, consideration of options narrows. The process has moved forward, and the Commission has issued its Order, but the inadequate FEIS has not been supplemented.

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.

It is also the Public Service Commission’s charge to route transmission using its own routing hierarchy. Wis. Stat. §1.12(6).

The routes proposed for this project are primarily “new corridors” not in keeping with the state’s routing hierarchy. As noted above, 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

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 FEIS, which has been done, but that so late in the CPCN process that the process itself tends to limit options. In an administrative proceeding, delay is never a good option, particularly in record development. This is further addressed below.

dead last in the order of statutory priorities, additional alternatives are necessary. There is a clear alternative avoiding much of the cross-country routing. The Commission has studiously avoided consideration of the U.S. Hwy. 151 route alternative.

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).

As above, the directive is rooted in federal law. NEPA is persuasive authority regarding 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. Federal CEQ Guidelines are requirements "to be followed" in environmental review. See *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).

It is a settled matter of law -- the Commission is to "study." The Commission is to "develop." In this case, the Commission has not. This error of law must be corrected.

IV. THE COMMISSION HAS DEFERRED TO MISO AND HAS ABDICATED ITS AUTHORITY IN NEED DECISION, AND BY INFERENCE, ROUTING DECISIONS

There are two errors of law made by the Commission – failure to utilize its jurisdiction

and abdication of the Commission's responsibilities. One is the practice of presenting projects to the Commission after MISO "approval" of transmission projects and subsequent transmission owners' assumption of an "obligation" to build those projects; another is the passing on of costs as set out in the MISO cost allocation to Wisconsin customers, those of this project specifically, and also the Wisconsin share of the balance of the \$6.651 billion portfolio without direct or specific Commission approval.

The Public Service Commission has broad powers set forth in statute -- the "jurisdiction to supervise and regulate every public utility in this state and to do all things necessary and convenient to its jurisdiction." Wis. Stat. §196.02(1). These broad powers also convey broad obligations and responsibilities. By approving the MISO MVP projects based on MISO process and "approval," the Commission has saddled Wisconsin ratepayers with costs of the entire MVP 17 project portfolio. See Ex.-MISO-Ellis-1, MTEP 2011 MVP Portfolio, p. 2 (PSC REF# 364901); Ex.-MISO-Ellis-3, MTEP 2017 Triennial Review, p. 8 (PSC REF# 364903). Those costs of the other 16 of the 17 MVP projects assessed to Wisconsin far outweigh those costs of this project. Rates are increasing due to the cost of infrastructure such as the MVP Portfolio.

The Commission has consistently refused to address the costs of the MVP 17 project portfolio to Wisconsin ratepayers and has considered only the relatively nominal costs of the specific MISO MVP project before it, ignoring the costs to Wisconsin of 16 MVP projects. This is neglect of the Commission's responsibilities to "supervise and regulate every public utility in this state and to do all things necessary and convenient to its jurisdiction." Wis. Stat. §196.02(1). Passing on this burden to ratepayers while approving associated transmission with a nominal cost ignores the MVP elephant in the room. Ignoring the Commission's enabling statute and ignoring those responsibilities to ratepayers is an error of law.

V. **REHEARING OF THE CPCN MUST BE GRANTED, LANDOWNER AND AGRICULTURAL COMPENSATION AND MITIGATION OPTIONS EXPANDED, AND ENVIRONMENTAL REVIEW AND AIS BE SUPPLEMENTED FOR FURTHER REVIEW.**

Jewell Jinkins Intervenors request that the Commission reopen this CPCN, reconsider its positions, and that landowner and agricultural compensation and mitigations options be expanded. The Commission has not adequately addressed the legitimate concerns of the many intervenors working to preserve their land, secure just compensation, and facilitate their right to full use and enjoyment of their property. Ultimately, JJI requests that the Applicants' request for a Certificate of Public Convenience and Necessity be stayed because the Applicants have not met the burden of proof or the requirements of Wisconsin law. The Commission has not adequately addressed the less tangible but expected costs, such as property value loss, community character, environmental harms, and interference with agricultural product, costs which overshadow the nominal benefits, nor has it properly provided for compensation and mitigation of unavoidable harms to landowners and to agricultural production and related businesses. The project cannot go forward until the environmental review is in compliance with state and federal law, until alternatives are developed, analyzed, and until determination made regarding the least impactful alternative based upon a fully informed record. The Commission must revisit its decision – the Cardinal-Hickory Creek transmission project should not be granted a Certificate of Public Convenience and Necessity.

Dated this 16th day of October, 2019



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