

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

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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

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05-CE-146

**JEWELL JINKINS INTERVENORS REPLY TO APPLICANTS ATC AND ITC  
REQUEST TO RESCIND AND REOPEN**

**AND**

**JJI REQUEST FOR REMOVAL OF AGENDA ITEM 41 AND A STAY TO PRESERVE  
STATUS QUO PENDING CIRCUIT COURT REVIEW**

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Jewell Jinkins Intervenors (hereinafter “JJJ”), a party in the above-captioned docket, submits this Reply to what the Commission deems as ITC and ATC’s “Request” ... “to Rescind the Final Decision and Reopen Docket 5-CE-146,” filed on June 28, 2021; the Dairyland letter of support to rescind and reopen (PSC REF #414398); a “CS memorandum of 6/29/2021” to which parties are not privy; and which has been abruptly added to the June 30, 2021 Commission “open” meeting as item #41 and 42, tomorrow morning.

JJI requests that Agenda Item 41 be removed from the docket. At this time, Jewell Jinkins Intervenors take no position on the merits of the Applicants’ request, but have strong objection to the Commission discussing and making any decision in such haste, without explanation of what “reopening” means procedurally, and without broad public input, It’s impossible to tell what the applicants are asking the Commission to Do. More importantly, no action should be taken by the Commission while judicial review is pending, other than to review its own records

and provide the Court with any additional “new information” it can find.

The Commission’s rush to address the Applicants’ request gives the appearance of a Commission desire to make an end run around the Circuit Court which may well be on the verge of issuing its own order to rescind or revoke the CPCN. To the extent that it is an effort to circumvent a judicial order to rescind the CPCN, JJI strongly objects. The Commission would only hurt its case, reputation, and credibility with such an act.

**I. A MATTER OF THIS IMPORTANCE SHOULD NOT GO FORWARD PRIOR TO INPUT OF PARTIES.**

Applicants ATC and ITC have filed a request that the Commission “on its own motion” rescind the Cardinal-Hickory Transmission Final Decision. That’s misleading. As the Commission notes in its Agenda #41, this is properly regarded by the Commission as a request from ATC and ITC, as an “interested party” motion. See Wis. Stat. 227.49<sup>1</sup>.

The ATC/ITC Request was filed on June 28, 2021 (PSC REF #414396), with Dairyland filing a “me too” concurrence nine minutes later (PSC REF #414398). The PSC staff issued a “CS memorandum of 6/29/2021” and the PSC Agenda was altered, with items 41 and 42 added at 3:15 p.m. that same day (PSC REF #414620).

41. 5-CE-146 - 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

Request of American Transmission Company LLC and ATC Management Inc., and ITC Midwest LLC to Rescind the Final Decision and Reopen docket 5-CE-146 (suggested minute) (CS memorandum of 6/29/2021)

This Agenda Item 41 is followed by Agenda Item 42, a appropriately closed session item to

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<sup>1</sup> Inarguably, the communications of former Commissioner Huebsch are “new information” as one key to reopening a hearing: “The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.” Wis. Stat. 227.49(c). However, it is not clear that this information “could not have been previously discovered by due diligence,” particularly where issues of conflict were raised long ago.

discuss legal strategy regarding the DALC/WWF suit, Huebsch and Valcq, and conflict of interest, but this is the heart of what is at issue in Agenda Item 41:

CLOSED SESSION - The Commission may recess the open meeting, go into closed session under Wis. Stat. § 19.85(1)(g) to discuss the litigation matters noted below with legal counsel, and reconvene the open meeting pursuant to Wis. Stat. § 19.85(2).

*42. Driftless Area Land Conservancy and Wisconsin Wildlife Federation v. Michael Huebsch and Rebecca Valcq, Case Nos. 3:19-cv-1007 (W.D Wis.) and No. 20-3325 (7<sup>th</sup> Cir.)*

Discussion with Legal Counsel Regarding Status and Strategy

The notion of this ATC/ITC request being taken up before the CLOSED SESSION Agenda Item 42 is procedurally, if not legally, unsound.

By putting these items on the agenda in this order, it is proof that legal strategy has been discussed behind closed doors. Clearly there was much communication between Applicants, and likely with Commission staff, if not Commissioners themselves, to bring this up on the Commission's agenda this quickly.

Parties have not been provided time to respond to this request of the Applicants. It is a gross violation of the public interest to go forward with agenda item 41, and particularly because it's the Applicants' request, without public input. It is betrayal of the public trust to address Agenda Item 41 prior to Agenda Item 42. JJI requests that Agenda Item 41 be removed from the docket, and requests a stay in this docket to preserve the status quo given the pending Circuit Court review -- the Commission shouldn't be rescinding and/or reopening this docket now.

**II. THE TIMING OF THIS REQUEST TO RESCIND AND REOPEN APPEARS TO BE AN ATTEMPT AT AN END RUN TO CIRCUMVENT A JUDICIAL ORDER RESCINDING THE CPCN.**

As Intervenor Klopp notes in her objection filed yesterday (PSC REF #414660), the Commission joined ATC and ITC in their request for a stay in Circuit Court, not surprising as embarrassing and detrimental new information has been discovered, demonstrating that the

Commission's claim that "The charges they have levied against Commissioner Huebsch are nothing more than unsupported, conclusory allegations and lack any indicia of credibility," is flat-out false. See PSC Brief, p 66, Circuit Case No. 19-CV-3418.

JJI, a party in this docket, believes that the Circuit Court is the wrong venue for a stay. The stay should be a stay of any activity by the Commission and/or applicants under the CPCN Order, a pause in administrative action as matters are sorted out in the Circuit Court's review of the CPCN. Again, JJI requests that Agenda Item 41 be removed from the docket.

**III. THE COMMISSION SHOULD NOT RESCIND THE CPCN, AND SHOULD ISSUE NOTICE REQUESTING INPUT FROM PARTIES ON PROCEDURAL NEXT STEPS.**

JJI requests that Agenda Item 41 be removed from the docket, and requests a stay to preserve the status quo given the pending Circuit Court review, prohibiting the Commission from Rescinding and/or Reopening this docket.

The Commission should immediately issue notice requesting input from parties on procedural next steps prudent during this period of judicial review. The Applicants' request both that the CPCN Order be rescinded and that the docket be reopened. What does that mean, procedurally? There's been no opportunity for input from parties. Legally, rescinding the order could mean that the Circuit Case pending is moot. Legally, it is possible that the Commission could also rescind the current CPCN, and then reopen the docket, and then grant a "new" CPCN seconds later! Legally, intervening parties, particularly including those parties engaged at the Circuit Court, should be offered opportunity to weigh in, not be shut out by an instant appearance on the Commission's agenda. Legally, the Commission is treading on thin ice.

As Intervenor Klopp notes, any action by the Commission that would derail the statutory right to the judicial review process would infringe upon the rights of the public and Intervenors

in their appeal.

**IV. REMOVE ITEM 41 FROM THE COMMISSION AGENDA.**

Jewell Jinkins Intervenors requests that Agenda Item 41 be immediately removed from the Commission's July 1, 2021 meeting agenda, and that no decision be made regarding Applicants' request that the CPCN Order be rescinded and the hearing reopened. JJI also requests that the Commission issue notice requesting input from the public and parties regarding Applicant's request to rescind and reopen, following an explanation of the Applicants' and Commission's plan procedurally of "reopening," and for input as to next steps from public and parties after opportunity to consider Applicants' and the Commission's explanation.

Dated this 30th day of June, 2021



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