

**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

Docket No. 05-CE-146

**DANE COUNTY’S REPLY COMMENTS ON AMERICAN TRANSMISSION CO., ITC
MIDWEST LLC, AND DAIRYLAND POWER COOPERATIVE’S REQUEST TO
RESCIND THE CPCN AND REOPEN THE RECORD**

American Transmission Co. (“ATC”), ITC Midwest LLC, and Dairyland Power Cooperative’s (“Transmission Companies”) proposed solution to the chaos created by former Commissioner Huebsch’s *ex parte* communications is for the Public Service Commission (“Commission”) to rescind the Certificate of Public Convenience and Necessity (“CPCN”) for the Cardinal-Hickory Creek Transmission Line, but ignore the grave due process violations implicated by such communications. According to the Transmission Companies, a simple re-vote on the CPCN with the same Commissioners who discussed the merits of the CPCN with former Commissioner Huebsch and on the same record would “remove all questions of potential bias in the proceeding.” (PSC REF#: 415806 at 2) The Transmission Commission’s proposed solution is designed to serve their own interests, and would create a precedent whereby applicants can flout the Commission’s due process protections in CPCN proceedings. The Commission should reject the Transmission Company’s proposal and reopen the docket so that the merits of the CPCN can be evaluated objectively on a record not tainted by former Commissioner Huebsch’s influence.

What is unfolding before the Commission is nothing short of an existential crisis. A former Commissioner was forced to disclose that he had engaged in a years-long pattern of *ex parte* communications with an ATC employee, a former independent contractor for ITC, and other individuals while considering the CPCN. However, the substance of those communications is shrouded in secrecy as a direct result of former Commissioner Huebsch's decision to use a software application specifically designed to keep messages encrypted and subject to automatic deletion. (PSC REF#: 414396) Furthermore, the Transmission Companies have avoided identifying the other individuals who may have been part of these communications. In short, the impact of former Commissioner Huebsch's potential bias or appearance of bias on the CPCN and in other cases that occurred during former Commissioner Huebsch's tenure remains unknown.

Yet, despite the potential harm that this significant lapse of judgment may have created, the Transmission Companies suggest a way forward that would leave the Commission's integrity in tatters. The Transmission Companies' proposal boils down to this: the Commission should rescind the CPCN, but not as an admission of wrongdoing by one of its former officers. Instead, the Commission should rescind the CPCN to avoid any further disclosures, and then take a quick revote on the CPCN in the hopes that it can undermine the pending judicial review. As an added bonus, the Transmission Companies' proposal would also allow construction to stay on schedule. Clearly, the Transmission Companies' sole objective in proposing this solution is to salvage the CPCN and their own financial interests.

If the Commission's interest in reopening the docket on its own accord is genuine, it must be based on the agency's desire to address the damaging revelations regarding one of its former officers. The Transmission Companies' proposal, in contrast, does nothing to repair the integrity of the CPCN proceedings at issue or that of the Commission itself. In fact, adopting the

Transmission Companies' proposal would result in the exact opposite: rescinding the CPCN in order to ram through a revote would only serve as a way for the Commission to avoid accountability. No one can reasonably argue that what former Commissioner Huebsch did was appropriate. Yet, if the Commission adopts the Transmission Companies' proposal, it would essentially be endorsing the practice of *ex parte* communications. What would the hesitation among current and future Commissioners be in using an application like Signal, if the end result is that the Commission can "cure" its own violations by simply rescinding the CPCN and taking a quick revote?

If the Commission were to rescind the CPCN, it must do so because of the damage done to the integrity of the CPCN proceedings. It must not rescind the CPCN just because the Transmission Companies believe it would provide a way for it to shield the CPCN from judicial inquiry. The Commission is not an agent of the Transmission Companies. It is an independent body authorized to protect the public interest in these matters. *See City of Princeton v. Public Service Com'n*, 268 Wis. 542, 555, 68 N.W.2d 420, 427 (1955). When there is evidence that one of its officers may have undermined the due process protections in place, the Commission must take action to preserve its integrity. Since the scope and extent of former Commissioner Huebsch's communications remain unknown, the Commission's only choice in this matter is to rescind the CPCN and reopen the docket so that the parties can supplement the record with evidence that has not been tainted by former Commissioner Huebsch's prior participation.

For these reasons, Dane County requests that if the Commission decides to rescind the CPCN, it should do so for its own reasons and not at the request of the Transmission Companies whose only interest is to avoid the loss of the financial benefit stemming from the CPCN. The

only reasonable avenue left for the Commission to repair its integrity is to permit the parties to reopen the record and provide additional evidence.

Respectfully submitted this 19th day of July, 2021.

Dane County, Wisconsin

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