

**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 REPLY COMMENTS
NOTICE TO RESCIND AND REOPEN**

Jewell Jenkins Intervenors (hereinafter “JJJ”), a party in the above-captioned docket, offers this Reply Comment to the Public Service Commission as requested in its July 1, 2021 Notice of Intent and Request for Comments, specifically “regarding the Commission’s intent to rescind the Final Decision and/or take other action authorized by Wis. Stat. Ch. 196.” Reply Comments will pertain to specific Comments of others.

The Commission’s discussion, deliberation, Orders, and the Comments regarding potential action filed in response to the Notice of Intent to Rescind should all be filed with the Circuit Court. All parties to each of these proceedings need to be aware of all of the filings, Comments, and Orders, and decisions should not be made without full awareness and disclosure.

I. REPLY REGARDING APPLICANTS’ COMMENTS

The applicants’ bottom line is to rescind and re-vote “expeditiously,” i.e., as soon as possible. Applicants Initial Comment, p. 2, 7 10. That is absurd, and a “rescind and re-vote” is

not acceptable.

Applicants continue to frame their June 28, 2021 Request as urging the Commission to “rescind the CPCN on its own motion.” The Commission thankfully differs, referring to it as a “request of American Transmission Company LLC and ATC Management Inc. and ITC Midwest LLC, and supported by Dairyland Power Cooperative (collectively, applicants), to rescind the Final Decision... and to reopen the docket...” Notice of Intent, PSC REF #415003. Again, this is a request of the applicants, for an action by which admittedly they, and the Commission, would benefit.¹ As a reason why the CPCN should be rescinded, applicants state that rescinding the CPCN renders the Circuit Court appeal moot:

Second, rescinding the CPCN and then re-voting will moot the pending state court action and/or deprive the circuit court of jurisdiction over that action because the Final Decision that the challengers appealed, if rescinded, will no longer be a final appealable agency action under Wis. Stat. § Ch. 227.

Applicants Comment, p. 3, PSC REF #415806. The applicants’ footnote clarifies their rationale for rescinding:

At this time, the Applicants take no position on whether further investigation into Commissioner Huebsch’s alleged bias is warranted; however, **that investigation cannot occur in a moot judicial review proceeding for a CPCN that has been rescinded.**

Id., fn. 3 (emphasis added).

For the Commission to take up the Applicant’s request, to even consider rescinding the CPCN, much less intending to rescind the CPCN as was stated at the July 1, 2021 Commission meeting and in the Notice of Intent, knowing that such an action would render judicial review moot and prevent investigation into Commissioner Huebsch’s (and others’) bias -- this is a demonstration of self-protection, bias, and self-interest. This “intent to rescind” alone should

¹ It’s unfortunate that the PSC does not file comments, as a clear statement of the rationale for the Commission’s stated “intent to rescind” would be useful.

constitute an admission of bias and trigger removal of Commissioners from their Commission seats.

“Expeditiously” is a key focus of the applicants, and that “expeditiously” is parroted by other Commenters... that the CPCN be rescinded, and that the Commission “re-vote as expeditiously as reasonably possible.” Applicant Comment, p. 2, see also p. 7, 10; see also "Clean Energy Organizations," p. 1. The applicants push for “rescinding the CPCN and then re-voting, **if the vote occurs in a timely fashion and the project is re-approved,**” because that “would allow the Project to keep its current construction schedule and meet its scheduled in-service date.” Applicant Initial Comment, p. 4 (emphasis added). Applicants make much of the “nearly two years” of “extensive discovery,” “thousands of pages of pre-filed written testimony,” “week-long technical hearing,” “more than a dozen witnesses,” and claim that “if the Project’s in-service date is delayed, Wisconsin’s ratepayers and thousands of megawatts of renewable generators will suffer.” Applicant Comment, p. 1, 2.

Common synonyms for expeditiously are fast, fleet, hasty, quick, rapid, speedy, and swift, none of which convey thoughtful consideration required by the deep conundrum of potential, likely, appearance of or actual bias and the specter of a tainted panel. See JJI Exhibit A, Order, Circuit Court, May 25, 2021. Instead, “expeditiously” fits a “process” initiated by Applicants to obtain a result from which the Defendants in the Circuit Court benefit, the applicants and the Commission, and which harms the PSC Intervenors, the Circuit Court Plaintiffs, and the public interest. This self-interested gambit blatantly strips Plaintiffs of their due process rights—the applicants’ request must be denied.

Applicants argue that because the Circuit Court proceedings at this time “only involve

Commissioner Huebsch,² who is no longer on the Commission and cannot re-vote on the CPCN,” therefore the Commission should re-vote. They also argue that “Applicants do not believe that Chair Valcq or Commissioner Nowak need to recuse themselves from reconsideration of this case.” Applicants Initial Comment, p. 2; see also p. 8-9. The applicants are willfully ignoring the Circuit Court’s warning in its most recent Order of structural error, a potentially tainted Commission, and reminder that an impartial panel is essential to due process. JJI Exhibit A, Order, Section II, p. 2-9. May 25, 2021. In light of the comments at the Commission’s July 1, 2021 meeting and issuance of a Notice of Intent to Rescind and Reopen, it appears the Commission is following applicants’ lead. Notice of Intent to Rescind, PSC REF #415003.

The Applicants also fail to address the influence of MISO and OMS, which the Circuit Court raised in noting the fact of Commissioner Huebsch’s participation in MISO and OMS, and where Commissioner Valcq specifically requested or directed Huebsch to lead the discussion:

As Commissioner Huebsch is our delegated Commissioner for MISO and OMS [I]t makes sense for him to lead the discussion since the project before us is due to MISO’s MVP process. Thank you Commissioner Huebsch for leading the discussion today and for your efforts with OMS and MISO.

JJI Exhibit A, Order, p. 8, July 1, 2021. There is high potential for bias on the parts of both Commissioners Valcq and Huebsch toward MISO, MISO plans, and this Cardinal-Hickory

² Chair Valcq, as both in-house for Wisconsin Electric Power Company, and out-house at Quarles & Brady, where she represented utilities that regularly appear before the Commission, a point raised by Jewell Jinkins Interveners in the Badger Hollow docket, where a utility formerly represented by Chair Valcq was to purchase the project. Commissioner Valcq served on MISO’s Advisory Committee and on the board of Organization of MISO States. Further, Commissioner Nowak’s comment lauding DALC/WWF initial agreement with applicants that CPCN should be rescinded (support since abandoned) and her defensive protest regarding potential bias at the July 1, 2021 Commission meeting was a nearly verbatim rehash of her statement at a public meeting, quoted and cited in the May 25, 2021 Circuit Court Order. JJI Ex. B, Order, p. 3 (citing Dkt. 290 at 6); see JJI Initial Comment, p. 5, 7, 11-12 (PSC REF #415694). The fact of consideration as “noteworthy” only ONE Comment, the one that agreed with applicants, and the duplicative objection and protest at a perceived inference of bias, only draws attention to the possibility of bias.

transmission line as part of MISO's MPV plan. The Circuit Court judge noted:

That she chose Comm. Huebsch to lead the discussion due to his role with OMS and MISO also confirms this was a discussion and the other two commissioners apparently wanted to specifically hear from and have Comm. Huebsch **lead the meeting based on his specific knowledge and experience.**

Id. (emphasis added). How is this anything but evidence of bias or appearance of bias?

The Court went on to say:

At the very least, these comments imply or create the appearance that Comm. Huebsch's comments and insights carried some importance to the other two commissioners. Appearances matter. Any neutral observer who heard these comments from Commis. Valcq and Nowak surely believed that the commissioners wanted to hear from Comm. Huebsch to consider his comments when reaching their decisions. We know that many active public participants in the PSC proceedings heard these comments first hand. They surely considered these comments why Comm. Huebsch led the discussion as showing the other commissioners' interest to hear from him. Because of this, even if no actual harm occurred by virtue of Comm. Huebsch's alleged bias, meaning that the other commissioners would still have reached the same discussion regardless of his comments, there is still a real harm by the proceedings forever appearing tainted due to his involvement. Allowing a decision rendered in violation of the parties' due process rights to stand damages the public's ability to trust the PSC process and the integrity of its decisions.

Id. p. 8-9.

We have heard much about Commissioner Huebsch's ties to Robert Garvin, WEC Energy Group's Executive Vice President, and to Brian Rude, Dairyland's former Vice President. We've heard not nearly enough about Huebsch's participation in MISO, an intervening party in this docket, or the Organization of MISO States (OMS). JJI did address this potential source of bias in Initial Comments:

There is always a Commissioner representative to MISO³, a transmission planning, marketing, and promotional organization that frequently intervenes in Commission dockets. MISO was an intervenor and very active participant in the Cardinal-Hickory Creek docket. PSC REF #353201⁴. There is also always a

³ MISO Mission: www.misoenergy.org/about/

⁴ Per MISO's intervention: MISO's planning process includes the development of MISO's Transmission Expansion Plan, which analyzes and approves transmission projects such as the one proposed in this proceeding by the

Commissioner representative in Organization of MISO States, another transmission lobbying and promotional organization.⁵

At the time of the Cardinal-Hickory Creek Commission decision on the Final Order, Commissioner Huebsch's involvement in both of these transmission promotional organizations was front and center...

JJI Initial Comment, p. 7.

DALC\WWF also raised Commissioner Huebsch's ties with MISO and OMS in Initial Comments:

Commissioner Huebsch served as an officer of the Organization of MISO States and then as a formal member of the MISO Advisory Committee during the CPCN proceeding for which he served as an adjudicator. MISO entered into a joint litigation agreement with the Transmission Companies and intervened as a full party in the CPCN proceedings to advocate for the Transmission Companies' desired CPCN for the Cardinal-Hickory Creek transmission line. Commissioner Huebsch attended meetings, social events, and private dinners, and had extensive *ex parte* communications with MISO senior officials throughout the CPCN proceedings in which MISO, itself, was an active litigating party and was working closely with the Transmission Companies through the joint litigation agreement. Chair Valcq designated Commissioner Huebsch to lead the deliberations in the case explicitly *because of his connections to MISO, one of the parties to the case.*

DALC/WWF Initial Comment, p. 7, PSC REF #415816 (emphasis in original).

This potential for bias, or actual bias, is evidenced in this interchange with Commissioner Valcq directing Huebsch to lead the discussion, in reliance on his experience in MISO and OMS. As above, MISO and OMS are transmission planning and marketing organizations. As a member of the MISO Advisory Committee, Huebsch was privy to the inner workings of MISO, and participated in transmission planning decisions.

MISO's mission is to "[w]ork collaboratively and transparently with our stakeholders to enable reliable delivery of low-cost energy through efficient, innovative operations and planning."⁶ MISO's strategy is available online as well on the same webpage:

Applicants. Accordingly, MISO will be affected by any order issued by the Commission in the above-captioned proceeding. PSC REF #353201, p. 2.

⁵ About Organization of MISO States: www.misostates.org/index.php/about/

⁶ Mission: www.misoenergy.org/about/miso-strategy-and-value-proposition/MISO_Strategy/

Our Strategic Plan focuses on three areas through which we believe MISO will provide the most value. We will work with our members and market participants to develop innovative market solutions, helping them navigate the regulatory landscapes of the future. We will continue to create alliances with our customers as we strive to better understand their needs and how we can provide value in the coming years. Finally, we will use our 360-degree view of the transmission system and the industry at large to provide data and analysis that enable our stakeholders to make knowledgeable, impactful decisions that will result in lower-cost energy for customers throughout the MISO region.

Organization of MISO States is more of the same. OMS is a “non-profit” funded entirely by MISO, at roughly \$1.36 million annually.⁷ Its purpose? Marketing! Promotion! Lobbying!

The OMS and the Midwest ISO in crafting this agreement look forward to establishment of a long and productive relationship between the two organizations, working together with all industry participants to create and maintain efficient and reliable wholesale electric markets throughout the Midwest region.⁸

Despite assurances of independence contained in the financing agreement, according to its budget⁹, MISO is OMS’ **only** source of income:

	2021 Budget	2022 Budget	2023 Budget
INCOME			
MISO Grant	\$ 1,366,894.67	\$ 1,351,068.29	\$ 1,360,471.24
Interest - Bank Accounts		\$ -	\$ -
Miscellaneous Revenue		\$ -	\$ -
TOTAL INCOME	\$ 1,366,894.67	\$ 1,351,068.29	\$ 1,360,471.24
Monthly Allotment	\$ 113,907.89	\$ 112,589.02	\$ 113,372.60

The problematic MISO and OMS connections of Commissioner Huebsch also apply to Commissioner Valcq:

She previously served on the Advisory Committee of the Midcontinent Independent System Operator (MISO), a Regional Transmission Organization which administers the wholesale electricity market in all or parts of 11 U.S. states and the Canadian province of Manitoba. She also served on the Board of

⁷ See OMS Budget: www.misostates.org/images/financial/Budgets/2021-2023_Budget_Website.pdf

⁸ See OMS Funding Agreement: www.misostates.org/images/OrgDoc/OMS_Funding_Agreement_with_Amendment_Final.pdf

⁹ OMS Budget: www.misostates.org/images/financial/Budgets/2021-2023_Budget_Website.pdf

Directors of the Organization of MISO States (OMS).¹⁰

Again, MISO is a party in this docket, and Commissioner Huebsch is requested by Chair Valcq, to lead the discussion, apparently due to his participation as the “delegated Commissioner for MISO” and his heightened knowledge of MISO, a transmission planning and marketing¹¹ organization¹², and MISO plans, process, wants, and desires. Commissioner Valcq did not bring up her own participation in MISO and OMS¹³ and her own heightened knowledge due to this participation. The potential for appearance of bias and actual bias, in light of Commissioners’ participation in transmission promotion, planning, and marketing organizations is undeniable. While the Commission may not care about this potential, the Circuit Court clearly does, and as a part of the initial focus of judicial review on bias, it must investigate and allow Discovery. The Commission must not shut down judicial review through rescission.

In their Initial Comment, applicants claim there is no reason to reopen the record, both in their original Request and Initial Comment. Applicant Initial Comment, p. 2, 4-7. Applicants claim that “[t]his is not necessary, nor is it required by existing law or consistent with the Commission’s past practice,” and that reopening the evidentiary record “is a matter entrusted to agency discretion.” *Id.*, p. 4. The applicants also argue that reopening the evidentiary record is not consistent with past Commission practice. *Id.*, p. 5. This does not take into account that a remand is based on a court Order, and in this case, includes the potential for a determination of bias, or appearance of bias, and the potential for a determination that the entire panel is tainted with bias. Rather than a determination at Commission discretion after remand, this appeal has as a large component the matter of Commission indiscretion, and no decision should be made about

¹⁰ See Wisconsin PSC Site, “Our Commissioners,” at <https://psc.wi.gov/Pages/AboutPSCW/Commissioners.aspx>

¹¹ See MISO LMP: <https://api.misoenergy.org/MISORTWD/lmpcontourmap.html>

¹² See “About MISO” online: www.misoenergy.org/about/

¹³ <https://psc.wi.gov/Pages/AboutPSCW/Commissioners.aspx>

reopening the record prior to judicial review establishing whether or not this panel is tainted by bias, and prior to judicial direction regarding “next steps” on remand.

Applicants argue that “the Commission typically only reopens the record and conducts a hearing if doing so is necessary to address the Court’s specific concerns.” *Id.* Yet at the same time, applicants are pushing the Commission to “**expeditiously**” rescind and re-vote, which renders judicial review moot, which means the Court’s specific concerns would not appear in an Order. How convenient for the applicants and the Commission. This is another obvious reason that judicial review must continue, another obvious reason the Commission must not rescind and re-vote – the Court’s review must continue and deliver its specific concerns to the Commission. See *Heartland Reg’l Med. Ctr. V. Leavitt*, 415 F.3d 24, 29-30 (D.C. Cir. 2005) (on remand, agency required to address specific issues identified by the court). It is the Court’s job to raise the issues and manner to address them on remand. The applicants repeatedly reinforce that it is the Court’s responsibility to set out specific issues for the Commission, while at the same time, arguing for Commission rescission before the Court completes its job, and preventing the Court from doing its job. These circular arguments are not justification to utilize this joint orchestrated “rescission” to remove jurisdiction from the Court. *Id.*, p. 4-7. The court’s review must go forward, pending identification of issues and procedures on Order for remand, and not be short-circuited by rescission and re-vote by a Commission being investigated for bias.

II. REPLY REGARDING DALC/WWF COMMENTS

Jewell Jenkins Intervenors support the Comments of DALC/WWF and generally adopt as if fully related here. In particular, JJI soundly agrees with DALC/WWF’s Comment regarding the following:

- “...Chair Valcq should, in any event, recuse herself from participation de to the conflicts of interests and lack of impartiality issues that DALC and WWF have

raised.” DALC/WWF Comment, p. 2-3.

- “***Appearances matter.***” Id., p. 5, quoting May 25, 2021 Decision and Order at 8-9 (emphasis added). Appearances, in this case, are not looking good for the Commission, and the issues need to be investigated by the parties and the Circuit Court.
- DALC/WWF raises the Organization of MISO States and the MISO Advisory Committee and the problematic participation of Commission in these marketing and lobbying organizations. Id., p. 7. As above, both Commissioners Huebsch and Valcq have participated in these organizations, and MISO is a party in this proceeding. Just as Commissioner Huebner has recused from pending dockets where RENEW intervened, Commissioners tied to MISO and OMS should recuse from dockets where MISO has intervened.
- “This case has revealed serious irregularities at the Public Service Commission that appear to also extend far beyond the proposed Cardinal-Hickory Creek transmission line and cannot be simply swept under the carpet. **There should be a full open-to-the-public review and accounting of the extent of misconduct and *ex parte* communications between commissioners and regulated parties – here, transmission companies and utilities, and their owners, as well as MISO – in order to provide a record of what happened and create public confidence that it won’t happen again.**” DALC-WWF Comment, p. 10.

There is no defensible rationale for any “Intent to Rescind.”

III. REPLY REGARDING DANE COUNTY COMMENTS

Dane County misses the mark in recommending that the CPCN be rescinded. It digs further into the rabbit hole by requesting that parties be allowed to “provide updated modeling and other data relevant to whether there is a need for the transmission line.” Dane County Initial Comment, p. 1, 2, and 3. The notion that “the Commission’s only choice in this matter is to rescind the CPCN if it wants to preserve the integrity of the proceedings before it” is unsupported. See Id., p. 2. It is only by delving into the Commissioners’ unethical acts, through Discovery and review by the Circuit Court, that will bring this into the open and provide an opportunity for remand and direction of next steps by the Circuit Court Judge. The Commission has failed in its duty to all of Wisconsin.

This is not about need. This is not an issue of entry of new evidence and modeling. And unfortunately, despite the statutory requirement, the Commission has failed to take a serious look at whether the project is in the public interest. Wis. Stat. §196.491(3)(d)3.

The Cardinal-Hickory Creek transmission line is a matter of the utilities business plan, the ability to ship energy from any Point A to any Point B,¹⁴ and for lucrative utility recovery for capital expenditures at the high rate authorized by FERC.¹⁵ Recently, a utility attorney, participating in a “Grid North Partners” webcast said it well:

Transmission line development started with NERC reliability criteria and we said, “if you want reliable power, we need to build this transmission line,” and it was a pretty simple story. It’s now gone to, “we need this transmission line to deliver generation more broadly,” and I think that you’re going to see more applications, at least if I’m involved on the transmission side, talking about the local benefits in a more concrete and broad way. That’s just going to have to happen for the need story. It’s not going to be a NERC reliability issue that we can simply explain. It’s going to be a more complex need story.¹⁶

NERC reliability criteria, and NERC related transmission planning based on electric reliability, was the basis for demonstrating electric “need,” but that scheme went out the window not long after the utility dream of a massive buildout of transmission lines, known as the Wisconsin Reliability Assessment Organization (WRAO) Report¹⁷, was issued. NERC draws a crucial distinction between “reliability principles” and “market principles.” The Commission should, but does not.

Shortly thereafter was the advent of MISO, the MISO market, and market based

¹⁴ Frequent checks of MISO’s LMP demonstrates the available generation supply and transmission capacity: <https://api.misoenergy.org/MISORTWD/lmpcontourmap.html> Similarly, PJM: <https://www.pjm.com/library/maps/lmp-map.aspx>

¹⁵ See [In Grist today: Transmission Lies](https://www.legalelectric.org/weblog/2836/) at [legalelectric.org/weblog/2836/](https://www.legalelectric.org/weblog/2836/).

¹⁶ <https://www.legalelectric.org/weblog/21831/> - the youtube, starting 1:25 thereabouts.

¹⁷ WRAO Report online at: <https://nocapx2020.info/wp-content/uploads/2013/05/wrao-report1.pdf>

planning, as found in the MTEP reports, and the MVP Portfolio¹⁸, which includes this Cardinal-Hickory Creek as part of MVP 5. The very name “MTEP” exposes the purpose – MISO Transmission Expansion Plan – it’s a TRANSMISSION **EXPANSION** PLAN!

¹⁹ Transmission buildout and use is presumed. NERC Reliability Assessments are no longer even entered into the record by parties in a transmission case, and likely the Commissioners and parties have not even reviewed a recent NERC Reliability Assessment.²⁰

The distinction between reliability and marketing is important. Reliability principles, and reliability as a basis for need, could arguably be in the public interest. Wis. Stat. §196.491(3)(d)3. Marketing is a private interest, a corporate interest, a special interest, and it’s difficult to legitimately couch a marketing want/desire as a “public” interest, nor is it a justification for transmission and taking of land through eminent domain.

The MISO MTEPs and MVP Portfolio transmission lines are nothing more than a wish list for bulk power transfer transmission – construction, operation, and return on investment that cements utility control of electricity and which prohibits any significant distributed generation development.

Jewell Jinkins Intervenors strongly disagrees with the focus of Dane County’s Initial Comment because it misses the point – rescission is not an option.

IV. REPLY REGARDING SOUL OF WISCONSIN COMMENTS

SOUL starts its Initial Comment with a false statement, without citation, saying that “the

¹⁸ <https://www.misoenergy.org/planning/planning/multi-value-projects-mvps#t=10&p=0&s=&sd=>

¹⁹ <https://www.misoenergy.org/planning/planning/>

²⁰ NERC Reliability Assessments: <https://www.nerc.com/pa/RAPA/ra/Pages/default.aspx>

Applicants’ state their intent for the Commission to also rehear their transmission line proposal on the basis of need.” SOUL Initial Comment, p. 1. Applicants’ filings instead state the opposite, that need should not come up as an issue in rehearing, and request that the Commission “reconsider the existing evidentiary record, and re-vote as expeditiously as reasonably possible.” Applicants’ Initial Comment, p. 2 (emphasis added) (also “because there is no reason to reopen the underlying evidentiary record, the Applicants respectfully request that the Commission decline to do so.” Id.).

As does Dane County, SOUL misapprehends the notion of “need,” evident in its statement that:

The claim of need is very marginal. When read literally, the Applicants describe only unquantified degrees of improvement which, SOUL observes, could be expected, in *some* amount, from the addition of almost any new transmission line in almost any location.

Id., p. 2. That is indeed the state of transmission “need” review in 2021. The notion of “need” has been morphing and transitioning to this point for twenty years. Need is now market based, focused on cornering the market in transmission, reaping high returns on capital investment on infrastructure, provision of transmission service, and retaining control of generation and transmission of electricity cross-country. There is not even an appearance of any basis or justification using the principles of electric reliability – it’s all about the market.

Jewell Jenkins Intervenors strongly agrees with SOUL’s initial recommendation, that “[a]ction on Applicants’ request should be tabled until the appeal proceeding has concluded.” Id., p. 8. JJI also strongly agrees with SOUL’s conclusion, objecting “to the Commission taking action on the Applicants’ request at this time as it would interfere with the Courts inquiry into the matter of bias and the appeal.” Id., p. 10. The Commission must not interfere with parties’ due process right to appeal and with the ongoing appeals in Circuit and federal court.

V. REPLY REGARDING KLOPP COMMENTS

Jewell Jenkins Intervenors supports the bulk of Klopp's comments, and in particular her comments on the Commission's unbridled anxious determination to act:

Ms. Klopp notes that the Commissions rush to place the Applicants Request on their Commission Open Meeting agenda, with very little notice to intervening parties and almost no notice to the Public,[fn. omitted] leads to the impression that the Commission was trying to push through action on the Applicants Request, without public input or knowledge... Ms. Klopp objects to PSCW actions on the Applicants Request that are taken hastily without fully investigation (sic) of the facts and participation by parties and the public.

Klopp Initial Comment, p. 2, also see fn. 5. Further:

The handling and statements made during the Commission's Open Meeting on July 1, 2021, regarding the Applicants Request indicate a strong possibility that the Commission has already decided what it intends to do [fn omitted], and is rushing through steps that seem obligatory, so they can act as quickly as possible. The only reason it is important to rush this through (in Ms. Klopp's opinion) is to avoid the looming discovery and depositions. The impression this gives the public is one of collusion and bias.

Id., p. 9. The omitted footnote notes:

Within moments of opening the agenda item for the Co-Owners Request to Reopen, Chairperson Valcq stated, "My inclination is to issue a notice of intent to rescind the final decision and request comments," ... Commissioner Nowa held that action on the Request to Reopen should progress quickly.

Id., fn. 19.

The Commission should consider Klopp's perception of the Commission's handling of Applicant's Request thus far and the focus that brings to Commission action:

Throughout the appeal proceeding, both the Commission and the Applicants have staunchly denied the possibility of bias by Commissioner Huebsch, even when evidence was presented from discovery in a federal proceeding showing a strong possibility of bias. Now that discovery and depositions (seeking information regarding bias) in the appeal are imminent, the Applicants and the Commission are willing to accept unsubstantiated evidence [fn. omitted] as fact, leading the Commission to seek immediate action on these "allegations." Given that the Commission has joined the Applicants in support of a "temporary stay of all deadlines in the case," [fn. omitted] and that the current deadlines are for

discovery and depositions, the Commission’s rush to action gives the impression that there is an attempt to avoid the transparency of discovery and deposition findings. The Honorable Judge Frost, presiding over the appeal, has made it quite clear what the outcome would be if the alleged biases of former Commissioner Huebsch were proven.[fn. omitted].

Id., p. 6.

Jewell Jinkins Intervenors strongly agree with Klopp’s objection and opposition to “any PSCW action at this time that would interfere with the Courts inquiry into the matter of bias.”

VI. REPLY REGARDING CLEAN ENERGY ORGANIZATIONS COMMENTS

Jewell Jinkins Intervenors disagree with nearly every aspect of the Clean Energy Organizations’ Initial Comment. The CEOs are heavily funded Minnesota organizations, which for the last 20 years have been advocating for transmission²¹ – transmission permitting, construction, and operation, including CapX 2020 lines,²² MVP Portfolio transmission lines including MVP Lines 3 and this part of Line 5 – always taking up the mantle of applicants and MISO. The CEOs are particularly active in Minnesota, but also in other states of the Midwest. See CEO Intervention, Cardinal-Hickory Creek, PSC REF #353628.

CEO supports Applicants’ request, echoing the notion of the rush to rescind, stating that “CEOs request the Commission implement a procedure that brings the CPCN before the Commission for a new vote **expeditiously** and without accepting new evidence or proceeding down factual rabbit holes.” CEO Initial Comment, p. 1 (emphasis added); see also p. 2. JJI strongly disagrees with CEO’s request to rescind and ram a re-vote through.

CEOs argue that “the only remedy the court could grant would be remand back to the Commission for “further action.” Clearly the CEOs have not read the Circuit Court Order of

²¹ See e.g., TRANSLink Settlement Agreement <https://nocapx2020.info/wp-content/uploads/2007/12/settlement-agreement-02-2152-me3-waltons-mcea-nawo.pdf>

²² See e.g., WI PSC Docket 05-CE-142; MN PUC Dockets CN-01-1958; CN-06-1115; TL-08-1474; CN-12-1053/TL-12-1337; etc., and MAPP and MISO “stakeholder” groups.

May 25, 2021. A court order of remand would not “place this case in the same procedural posture it would be if the legal claims of alleged bias of former Commissioner Huebsch were to succeed.” CEO Initial Comment, p. 2. CEOs also argue that “The Commission should reject opponents’ attempts to expand this procedural action into something more than it is – a new vote to ensure the integrity of the process and eradicate any concerns of a biased decision-maker.” Id., p. 3. Another non-sensical statement is that “... if there are indeed reasons for the record to be reopened, this is a determination for the reviewing court who may remand the matter back to the PSC for such a process. Today, there is no such direction from a reviewing court...” so rescind, make the Circuit Court case moot, and take jurisdiction from the court? This circular and convoluted argument does nothing to address “transparency, fairness, and integrity of the process,” and instead only conflates and confuses.

JJI finds the CEOs’ Initial Comment is neither logical nor credible.

VII. REPLY REGARDING RENEW WISCONSIN COMMENTS

RENEW Wisconsin did not file Initial Comments, but filed a Reply Comment dated July 19, 2021 on July 16, 2021. Like the CEOs, RENEW has intervened in transmission dockets in support of the applicants’ proposals. See e.g., PSC Docket 05-CE-142. RENEW’s former Executive Director, Tyler Huebner, is now a Public Service Commissioner, and “is currently Wisconsin’s representative on the Board of the Organization of MISO States.”²³ Commissioner Huebner had the sense to recuse from discussion and decisions in this docket. RENEW Wisconsin should also take a step back, and for the duration of Commissioner Huebner’s term, refrain from intervening in PSC dockets.

The arguments made by RENEW in support of rescission, claiming rescission “is

²³ <https://psc.wi.gov/Pages/AboutPSCW/Commissioners.aspx>

necessary to alleviate concerns of any bias influencing the outcome of the original vote, and to preserve the transparency, impartiality, and integrity of the Commission’s review process,” are not supported in any manner. RENEW’s statements regarding “taint” ‘taint consistent with the Circuit Court’s Order of May 25, 2021.

Jewell Jinkins Intervenors strongly opposes RENEW’s conclusory support of “Commission actions that would (a) rescind the existing Final Decision and (b) put in place a procedure that leads to a new vote based on the existing factual record.” RENEW Reply Comment, p. 2. RENEW’s urging for “expeditious process” is grossly misplaced.

VIII. CONCLUSION

Jewell Jinkins Intervenors, is grateful for the Commission’s solicitation of Reply Comments and the opportunity to weigh in, and trust that our comments are considered. Rescission of the Cardinal-Hickory Creek Final Order, by a likely “tainted” decider, making judicial review moot, would subject the Commission to an even higher level of scrutiny and legal challenge than is currently underway. Swift action to rescind would put the Commission in an even more untenable position than it is in right now. The Circuit Court proceeding must move forward, and the Commission must not take action to thwart that process.

The Commission’s discussion, deliberation, Orders, and the Comments regarding potential action filed in response to the Notice of Intent to Rescind should all be filed with the Circuit Court. This is particularly important given the impact of a rescission, rendering the Circuit Court action moot. Parties should also assure that Circuit Court Orders, and Commission filings in the Circuit Court, are filed in this docket so that the public is aware of the interplay of these proceedings and the apparent collaboration of the Applicants and the Commission. JJI is not a party in the Circuit Court appeal, and like others not a party, has limited access.

Knowledge of the Commission’s filings in that Circuit Court docket influences our perception and position on Commission actions in this docket. Our presumption is that the Circuit Court judge would be interested in the filings in response to the Notice of Intent to Rescind and the stated anxiousness of the Commission and Applicants to “expeditiously” rescind and re-vote.

The Court should know what the Commission is doing, just as the Commission, parties, and the public should be informed of Circuit Court activities.

The Commission should stop and take a deep breath, and deny or table the Applicants’ Request to Rescind. In the meantime, in the interest of transparency, the Commission should file, as above, everything pertaining to Applicant’s Request to Rescind, Commission discussion recording and Notice of Intent to Rescinds, and all Comments received with the Circuit Court.

Dated this 19th day of July, 2021



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