

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

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

Docket No. 5-CE-146

INTERVENOR JOE SCHWARZMANN'S REBUTTAL COMMENTS ON AMERICAN TRANSMISSION CO., ITC MIDWEST LLC, AND DAIRYLAND POWER COOPERATIVE'S REQUEST TO RESCIND THE CPCN AND REOPEN THE RECORD FOR DOCKET NO. 05-CE-146

With such a meaningful impact on the State, the need for public trust in a fair and impartial process before the PSC cannot be understated. The need to protect public confidence that the PSC acts impartially is equally a vital state interest. Judge Frost made these statements in his May 5, 2021 opinion, (case 2019CV003418).

Without Public confidence in the integrity and fairness of the Regulatory Process, the PSC Commission is a relic of past *deals in the backroom* organizations.

On June 28, 2021, American Transmission Co. ("ATC") and ITC Midwest LLC ("ITC") (applicants) admitted that former Commissioner Michael Huebsch engaged in years-long *ex parte* communications with an ATC employee, a former independent contractor for ITC, and

other individuals. These communications occurred while the Commission was considering the Cardinal Hickory Transmission Line (CHC) application for a Certificate of Public Convenience and Necessity (“CPCN”). Because of this admitted impropriety, ATC and ITC requested that the PSC Commission rescind the CPCN, and reopen the matter to “consider next steps.” (PSC REF#: 414396) For the following reasons, the Public Service Commission (Commission) should immediately rescind the CPCN, and terminate the CHC project.

In their comment filing (ERF #415806) Applicants freely confess their guilt and intent to circumvent the legal process, by manipulating the Commission into acquiescing to their demands.

Judge Frost stated in his May 5, 2021 opinion, (case 2019CV003418) that ***The right to an impartial decision maker is fundamental to due process. Violation of that right would taint the entire proceeding and require I vacate the PSC decision and remand for further proceedings conducted in accordance with due process.*** Now that Applicants have confessed, the only action the Commission can take is to rescind the CPCN. and recuse themselves from any further decision making in this matter.

THE APPLICANTS CASE

Applicants make weak arguments to reinstate the CPCN without any meaningful review of the facts, which have changed over the last few years. They are without shame or legal rationale to demand that the Commission take such action. They state in their Comments (ERF# 415806) that they “do not make this request lightly.” It is in fact a *Hail Mary* of enormous proportion, to

make *moot* the court cases against themselves and the Commission. In fact what is *moot*, is the CPCN for the CHC.

Applicants propose that the commission perform 5 steps.

- Applicants want the current decision rescinded. I agree. Rescind the CPCN and terminate the unnecessary CHC project, issuing an immediate cease and desist order. Any land damaged must be restored to its original condition. All ill gotten gains must be returned. Easements granted by the landowners must be immediately nullified. The easements and all other work must be considered “abandoned” and legal abandonment proceedings started to nullify any easements granted for this project. These easements were obtained only through the authority of the CPCN with the accompanying threat of the use of eminent domain under the broad powers of Wis. Stat. §§ 32. Without that threat of “a taking”, applicants would not have the easements they have today. This is a clear violation of landowners’ Fifth Amendment rights. Funds paid to the landowners will be forfeited. Landowners negotiated as required by the very law that the utilities used with the CPCN in hand.
- Reopen the evidentiary record. Having rescinded the CPCN, the Commission shall await a reapplication for the CHC project, if Applicants choose to attempt to do so. Such a reapplication shall require a reopening of the evidentiary record. Applicants state reopening the record has never happened before. That’s because there has never been a situation like this before.

- If applicants resubmit an application the evidentiary record must be reopened to address those areas where technology, electrical need, and environmental issues have evolved over the last few years.
- Applicants do not want Chair Valq or Commissioner Nowak to recuse themselves from reconsideration of this case. Of course not. They are the tainted panel that Applicants have involved in their criminal activities. After rescinding the CPCN, Chair Valq and Commissioner Nowak must recuse themselves from any further comments or decision making on the CHC project. Applicants try and assert that the mere removal of Huebsch will somehow negate his presence at the Final decision and his dominating influence over other members of the commission. The taint can never be removed. In the District Court hearing, presiding Judge Frost said that if Huebsch was involved, that the PSC Commissioners were a “tainted” panel. Huebsch was involved by the applicants own confession. The actions of the applicants have undermined the Commission and rendered the CHC CPCN moot.
- Applicants request a CPCN “including the same conditions with which the Applicants have already been diligently complying. (See, e.g., PSC REF#: 410100).” This is not true and if Applicants reapply, this “compliance” is one area that should be thoroughly investigated in great detail. Two such examples are my troubles with ITC. To get ITC to honor their separate easement commitment, I had to petition the Commission to have them perform this. Their contract drilling crews damaged a hillside, and I had to complain to their contract JCG to have it repaired. The PSC Commission has no enforcement capability or authority. The

Commission does not investigate complaints, they forward them to the Applicants. New restrictions would have to be put in place.

Applicants have not proved that that the project needs to be placed in service as soon as possible. If they reapply, applicants can attempt to make a case for this. Applicants are merely trying a legal maneuver to hide their crimes and by association, those of the Commission. The Commission should clearly understand the heinous nature of this thinking, and therefore recuse themselves of any future decision making in this case.

Applicants claim that “until the Project goes into service, MISO may place limits on the electrical output from numerous existing renewable generators in the region” without explanation. Are they threatening to create electricity shortages? The Applicants’ claims that the project is needed are based on flawed and contrived data. Some of these flaws include: assumption of growth in electricity usage; assumption of additional natural gas power plant construction; no evidence that the fuel mix delivered by the MISO grid would deliver more than a few percentage point gains in renewable generation (current data suggests only a few percentage points of renewable generation increases followed by billions spent on transmission and renewable power plant additions); flawed economic benefit analysis because many costs to ratepayers were not included and modeling was stacked in favor of the project (evidenced by the PSC staff analysis showing costs in the majority of the scenarios analyzed), etc. While demand has been negative in Wisconsin over the last year, paper mills continue to curtail production or shut down, and the Foxxcon project has been greatly downsized. These actions are examples of further negating the need for additional electricity.

Need for the project has been challenged by many expert witnesses and PSC staff analysis. In their surrebuttal testimony, both DALC/WWF expert Konidena and PSC engineer, Dr. Grant, testified that delaying the project would not create problems. Delaying the many MW's of renewable generation that is being proposed to line the pockets of big investors and utilities, leading Wisconsin electricity generation far over capacity, with no proof that these facilities are significantly reducing carbon emissions.

Applicants state "The Commission has a duty to protect Wisconsin's ratepayers and ensure that those ratepayers receive adequate, affordable and reliable electric service. Wis. Stat. §§ 196.487(2) and 196.491(3)(d). Yes, please protect the ratepayers of Wisconsin from this CHC monstrosity by rescinding and terminating the application.

What the Applicants don't call for is an investigation into their *ex parte* communications with a member of the Commission, Huebsch. It is incumbent on the Commission to request a Federal investigation of these activities to restore the Public trust and confidence in the Commission. If they have done nothing wrong, as claimed, the Commission should welcome such an investigation. To deny or undercut efforts to do so, and expose the truth, further erodes the very Public trust they need to fulfill their mission.

If the applicants wish list is fulfilled by the Commission, what message does this send to the citizens and landowners of Wisconsin? That in the absence of due process, we don't have to follow the law, that we can ignore the Applicants and stop their presence on our land.

CONCLUSIONS

1. Rescind the CPCN, terminate the CHC, and not reinstate it.

2. Nullify ill-gotten easements from landowners.
3. Request a Federal investigation into the matter of the *ex parte* communications
4. Issue cease and desist orders on work and the restoration of land harmed.
5. After rescinding the CPCN for CHC, Commission Chair Valq and Commissioner Nowak should recuse themselves from further comments, actions and votes on CHC.

The right to an impartial decision maker is fundamental to due process. Violation of that right would taint the entire proceeding and require I vacate the PSC decision and remand for further proceedings conducted in accordance with due process. Judge Frost- May 5, 2021

Dated July 19, 2021

/s/ Joe Schwarzmenn

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Landowner and Intervenor