

# **PUBLIC SERVICE COMMISSION OF WISCONSIN**

## **Memorandum**

June 29, 2021

### **FOR COMMISSION AGENDA**

TO: The Commission<sup>1</sup>

FROM: Cynthia Smith, Chief Legal Counsel

RE: 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 5-CE-146

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: The Commission (took action/did not take action) on the request of American Transmission Company LLC and ATC Management Inc. (ATC) and ITC Midwest LLC (ITC) to rescind the Final Decision granting the Certificate of Public Convenience and Necessity (CPCN), and reopen the above-captioned docket to consider next steps.

### **Background**

On April 30, 2018, pursuant to Wis. Stat. § 196.491 and Wis. Admin. Code chs. PSC 4 and 111, American Transmission Company LLC (ATC), ITC Midwest LLC (ITC), and Dairyland Power Cooperative (DPC) (together, applicants) filed with the Commission an application for a Certificate of Public Convenience and Necessity (CPCN) to construct new 345 kilovolt (kV) electric transmission facilities known as the Cardinal-Hickory Creek project (Project).

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<sup>1</sup> Commissioner Tyler Huebner has recused himself from participating in this docket pursuant to his recusal policy due to his prior involvement in the docket before his appointment to the Commission.

On September 26, 2019, the Commission served its Final Decision granting, with conditions, a CPCN for the construction of the Project. ([PSC REF#: 376391](#).) Certain parties to the proceeding before the Commission sought judicial review of the Commission's Final Decision in state and federal court. *See Dane County, et al v. Public Service Commission of Wisconsin*, Case No. 19-CV-3418 (CHC State Court Case); *Driftless Area Land Conservancy et al. v. Public Service Commission of Wisconsin, Michael Huebsch, Ellen Nowak, and Rebecca Valcq*, Case No. 3:19-cv-1007 (W.D. Wis.), Case No. 20-3325 (7<sup>th</sup> Circuit).

On June 28, 2021, ATC and ITC requested that the Commission rescind the Final Decision granting the CPCN for the Project, and reopen docket 5-CE-146 to consider next steps. ([PSC REF#: 414396](#).) DPC filed a letter in support of the request to rescind the Final Decision and reopen the proceeding. ([PSC REF#: 414398](#).) Any other filings in the docket that may be received will be separately forwarded as any such filings are received on the Commission's Electronic Records Filing system.

On June 28, 2021, applicants filed in the CHC State Court Case a Notice of Motion for Status Conference and Limited Stay. The Commission filed a letter joining that request, indicating that the Commission is evaluating the various filings from June 28<sup>th</sup> both before the Commission and before the Court, agreeing that a status conference in 10 to 14 days (or thereafter at the Court's earliest convenience) is advisable, and requesting further proceedings in the CHC State Court Case be temporarily stayed. Driftless Area Land Conservancy and Wisconsin Wildlife Federation (Petitioners) filed a response indicating that Petitioners do not presently support the request to stay proceedings and indicated plans to file a more detailed response with the Court.

## ATC and ITC Cited Legal Basis for Request

ATC and ITC cite Wis. Stat. § 196.39 in support of their request. Wisconsin Stat. § 196.39 provides:

### **196.39 Change, amendment and rescission of orders; reopening cases.**

- (1) The commission at any time, upon notice to the public utility and after opportunity to be heard, may rescind, alter or amend any order fixing rates, tolls, charges or schedules, or any other order made by the commission, and may reopen any case following the issuance of an order in the case, for any reason.
- (2) An interested party may request the reopening of a case under s. 227.49.
- (3) Any order rescinding, altering, amending or reopening a prior order shall have the same effect as an original order.
- (4) Within 30 days after service of an order, the commission may correct an error or omission in the order related to transcription, typing or calculation without hearing if the correction does not alter the intended effect of the order.
- (5) This section does not apply to an order issued under s. 196.371.

## Commission Alternatives

**Alternative One:** Take action on the request, consistent with the Commission's discussion.

**Alternative Two:** Take no action on the request at this time.

CES:DL: 01817946

### Key Background Documents

[Final Decision Signed and Served 09-26-19 - PSC REF#: 376391](#)

[ATC and ITC Request to Reopen Record - PSC REF#: 414396](#)

[Dairyland Power Cooperative's Request to Reopen Docket - PSC REF#: 414398](#)