

**PUBLIC SERVICE COMMISSION OF WISCONSIN**

Joint Application of Dairyland Power Cooperative, Northern States Power Company-Wisconsin, and Wisconsin Public Power, Inc., for Authority to Construct and Place in Service 345 kV Electric Transmission Lines and Electric Substation Facilities for the CapX Twin Cities-Rochester-La Crosse Project, Located in Buffalo, Trempealeau, and La Crosse Counties, Wisconsin

5-CE-136

**FINAL DECISION**

On January 3, 2011, pursuant to Wis. Stat § 196.491 and Wis. Admin. Code chs. PSC 4 and 111, Northern States Power Company-Wisconsin (NSPW), Dairyland Power Cooperative (DPC), and WPPI Energy (WPPI) (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. The project, known as the CapX2020 Alma-La Crosse Transmission Project, includes construction of a 345 kV transmission line crossing the Mississippi River at Alma, Wisconsin, which will then continue to a new substation near Holmen, Wisconsin. The CPCN application is APPROVED subject to conditions and as modified by this Final Decision.

**Introduction**

The Commission found the application in this docket to be complete on June 9, 2011. A Notice of Proceeding was issued on June 20, 2011. Wisconsin Stat. § 196.491(3)(g) requires that the Commission take final action within 180 days after it finds a CPCN application complete unless the Commission receives an extension from the Dane County Circuit Court. On July 13,

2011, the Circuit Court granted the Commission a 180-day extension. The Commission must take final action on or before June 4, 2012, or the application is approved by operation of law.

A prehearing conference was held on December 5, 2011. Requests to intervene in the docket were granted to American Transmission Company LLC, and its corporate manager, ATC Management, Inc. (collectively, ATC), Citizens' Energy Task Force (CETF), Citizens Utility Board (CUB), Clean Wisconsin (Clean WI), Ms. Patricia Conway, Midwest Independent Transmission System Operator, Inc. (MISO), NoCapX 2020, and Wisconsin Department of Transportation (WisDOT). As a result of requests by the Commission for additional information regarding CETF's intervenor compensation application, NoCapX 2020 and CETF participated in the docket together as NoCapX 2020/CETF.

The parties, for purposes of review under Wis. Stat. §§ 227.47 and 227.53, are listed in Appendix A.

The Commission issued a draft environmental impact statement (EIS) on November 8, 2011. With publication of the draft EIS, a 45-day comment period began and was scheduled to end December 23, 2011. During this original comment period, Commission staff added extra comment days, extending the comment period to January 23, 2012, to allow time for comment by members of the public who were inadvertently left off of the original Commission project mailing list. On January 31, 2012, the Commission issued its final EIS regarding the project, pursuant to Wis. Stat. § 1.11 and Wis. Admin Code chs. NR 150 and PSC 4.

The Commission held hearing sessions in Madison on March 5, 6, and 8, and in Alma and Centerville on March 13, and 14, 2012, respectively. At the technical sessions, expert witnesses offered testimony and exhibits on behalf of the applicants, ATC, MISO, CUB,

Clean WI, and WisDOT. The Commission conducted its hearings as Class 1 contested case proceedings, pursuant to Wis. Stat. §§ 196.491(3)(b), 227.01(3)(a), and 227.44. The Commission also requested and received comments from members of the public through its Internet website.

At the public hearing sessions in Alma and Centerville, the Commission accepted both oral and written testimony from members of the public.

The issues for hearing, as determined during the December 5, 2012, prehearing conference, were:

1. Is a 345 kV transmission line needed to satisfy the reasonable needs of the public for an adequate supply of electric energy?
2. Does the proposed project provide usage, service or increased regional reliability benefits to wholesale and retail customers in Wisconsin that are reasonable in relation to its cost?
3. Does the proposed project comply with the requirements of Wis. Stat. §§ 196.49(3)(b) and 196.491(3)(d)?
4. What is a reasonable cost for the proposed project?
5. What route for the proposed project is in the public interest, considering the requirements of Wis. Stat. §§ 1.12(6), 196.025(1m), and 196.491(3)(d)?
6. Should all or any part of the construction be subject to other specific design requirements or other conditions and, if so, how will they be enforced?
7. Has the proceeding complied with the requirements of Wis. Stat. § 1.11 and Wis. Admin. Code § PSC 4.30?

Initial and reply briefs were filed on March 30 and April 6, 2012, respectively. Initial briefs in support of the project were filed by the applicants, ATC, and MISO. Initial briefs opposing the project, or aspects of it, were filed by CUB, Clean WI, NoCapX 2020/CETF, and WisDOT. Reply briefs were filed by the applicants, CUB, Clean WI, NoCapX 2020/CETF, and WisDOT.

The Commission discussed the record in this matter at its May 10, 2012, open meeting. At that time, the Commission requested a delayed exhibit and comments on the delayed exhibit.

### **Findings of Fact**

1. NSPW is a public utility, DPC is a generation and transmission cooperative, and WPPI is a municipal joint action agency organized as a municipal electric company under Wis. Stat. § 66.073, all engaged in providing electric service in Wisconsin. Pursuant to Wis. Stat. § 196.491(3), these entities are subject to the Commission's jurisdiction over their application for a CPCN for the proposed project.

2. The applicants' project consists of constructing new transmission line facilities, as described in the final EIS and Ex.-Applicants-Hillstrom-23, and as modified by this Final Decision, at an estimated cost of \$211,100,000.

3. Construction and operation of the facilities at the estimated cost will not impair the efficiency of the applicants' service, will not provide facilities unreasonably in excess of probable future requirements, and when placed in operation, will not add to the cost of service without proportionately increasing the value or available quantity thereof.

4. The facilities approved by this Final Decision are necessary to provide adequate and reliable service to present and future electric customers.

5. The facilities approved by this Final Decision will adequately address the present needs of the applicants' electric systems and are necessary to satisfy the reasonable needs of the public for an adequate supply of electrical energy.

6. The facilities approved by this Final Decision provide usage, service or increased regional benefits to the wholesale and retail customers or members in this state and the benefits of the facilities are reasonable in relation to their cost.

7. The facility design, location, and route approved by this Final Decision are in the public interest considering alternative sources of supply, alternative locations or routes, individual hardships, engineering, economic, safety, reliability, and environmental factors.

8. The facilities approved by this Final Decision will not have undue adverse impacts on environmental values including ecological balance, public health and welfare, historic sites, geological formations, aesthetics of land and water, and recreational use.

9. The facilities approved by this Final Decision will not unreasonably interfere with the orderly land use and development plans for the area.

10. The facilities approved by this Final Decision will not have a material adverse impact on competition in the relevant wholesale electric service market.

11. Energy conservation, renewable resources, or other energy priorities listed in Wis. Stat. §§ 1.12 and 196.025 are not cost-effective, technically feasible, or environmentally sound alternatives to the proposed facilities.

12. The approved transmission line route utilizes priority siting corridors listed in Wis. Stat. § 1.12(6) to the greatest extent feasible, consistent with economic and engineering considerations, reliability of the electric system, and protection of the environment.

13. The approved transmission line route will affect local farmland, and the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) will be issuing an agricultural impact statement.

14. The approved transmission line route will affect state highways and will require permits from WisDOT.

15. The approved transmission line route will affect waterways and wetlands, and will require permits from the Wisconsin Department of Natural Resources (DNR) for construction in waterways and wetlands, construction site erosion control, and storm water handling.

16. The approved transmission line route may affect endangered and threatened species, and the applicants will need to consult with the DNR Bureau of Endangered Resources to ensure compliance with the state's endangered species law.

17. The approved transmission route may affect historic properties listed with the Wisconsin Historical Society (WHS), and in accordance with Wis. Stat. § 44.40, its direction will be required to avoid or minimize adverse impacts to archeological resources.

18. The facilities approved by this Final Decision are not located in the Lower Wisconsin State Riverway.

19. Approval of the project is in the public interest and is required by the public convenience and necessity.

### **Conclusions of Law**

The Commission has jurisdiction under Wis. Stat. §§ 1.11, 1.12, 44.40, 157.70, 196.02, 196.025, 196.395, and 196.491, and Wis. Admin. Code chs. PSC 4 and 111, to issue a CPCN authorizing the applicants to construct and place in operation the proposed electric transmission

facilities described in this Final Decision and to impose the conditions specified in this Final Decision.

### **Opinion**

The Commission has a responsibility to ensure that Wisconsin receives adequate and reliable electric service, now and going forward. The applicants' proposed project addresses the need to improve the transmission service to avoid serious reliability problems in the La Crosse local area in the near future, while also providing important regional benefits.

The Commission's proceeding on this CPCN application developed an extensive record from the public and parties on all of the issues that the Commission must consider in reviewing a proposed project. Members of the public commented both in writing and through appearances at the public hearing about the impact that this line may have on them and their communities. Parties representing a variety of interests intervened in the proceeding to present expert testimony on issues ranging from the need for the project to the environmental impacts. These intervenors included ATC, MISO, Ms. Patricia Conway, Clean WI, CUB, NoCapX 2020/CETF, and WisDOT. The Commission acknowledges the thoughtful and helpful testimony from both the public and intervenors. This information assisted the Commission in its review of the application, understanding the different perspectives toward the proposed project, and making its determinations on this application.

### **Project Description, Purpose, and Cost**

The applicants propose to construct a new 345 kV electric transmission line and substation. The 345 kV line extends from the Wisconsin border at the Mississippi River west of Alma, Wisconsin, in Buffalo County, through Trempealeau County to a new

345/161 kV substation to be built on the southwest side of Holmen, Wisconsin, in La Crosse County. The new substation will be referred to as the Briggs Road Substation.

The proposed project is part of a larger multi-utility project called the “Hampton-Rochester-La Crosse 345 kV Transmission Project.” The Hampton-Rochester-La Crosse project, in turn, is part of the CapX2020 Transmission Expansion Initiative (CapX2020), which will serve the state of Minnesota and parts of Iowa, the Dakotas, and Wisconsin.

The CapX2020 Alma-La Crosse Transmission Project requires construction of a new 345 kV electric transmission line and a new 345/161 kV substation. The proposed route alternatives for the new 345 kV transmission line are from 40 to 55 miles long. The proposed route alternatives mostly follow existing 161 or 69 kV transmission line corridors. The new line begins at the Mississippi River crossing, where it will connect with the Minnesota portion of the Hampton-Rochester-La Crosse 345 kV line, and terminate at the new Briggs Road Substation. In most places, the line in Wisconsin will carry the new 345 kV circuit plus the existing 161 or 69 kV circuit on single poles. The right-of-way (ROW) will be widened to about 150 feet. ROWs wider than 150 feet will be necessary for specialty poles such as those for the Mississippi River crossing or those needed for supporting long spans between hilltops in the coulee landscape. The Briggs Road Substation comprises the eastern endpoint of the project and would have a 69 kV line and other facilities linking it to the existing DPC North La Crosse substation. The link would address future projected overloading of the Briggs Road-Mayfair 161 kV line and French Island voltage limitations following construction of the Briggs Road station.

The Hampton-Rochester-La Crosse project will serve the following purposes:

- Local reliability – to serve increasing electric demand in the La Crosse, Wisconsin, and Winona and Rochester, Minnesota, areas.



- Regional reliability – to maintain the reliability of the regional electrical system.
- Generation support – to provide a means for getting local electric generation output onto the electric grid.
- Regional benefits – to enhance power transfers from states located west of the Mississippi River, access to more economical generation, and access to sources of renewable generation.

The primary basis of the need for the Wisconsin portion of the proposed project is local reliability and regional benefits.

The La Crosse local area includes La Crosse, Onalaska, Holmen, Sparta, Arcadia, Trempealeau, Buffalo City, Cochrane, and the surrounding rural areas in Wisconsin, and the areas of Winona/Goodview, La Crescent, Houston, and Caledonia in Minnesota. The area is currently served by the Alma-Marshland-La Crosse Tap, Alma-Tremval-La Crosse, Genoa-Coulee, and Genoa-La Crosse Tap 161 kV transmission lines. In addition, the existing power plants shown in Table 1 provide or could provide electric generation capacity in the local area.

Table 1 Power plants serving the La Crosse local area

Plant	Capacity (MW)	Fuel Type	Distance from La Crosse (miles)
John P. Madgett	395	Coal	40
Alma Units 1-5	208	Coal	40
Genoa Unit 3	377	Coal	20
French Island Units 1 and 2	26	Refuse	Within the city of La Crosse
French Island Unit 4	70	Oil	Within the city of La Crosse
French Island Unit 3	70	Oil	Currently not operational

Normal transmission system operation requires that an outage of a single transmission element or equipment component (transformer, transmission line, or generator) not imperil the transmission system. This operating mode is based on the N-1 criterion, or the ability of the transmission system to sustain operation with the failing of one element. The sudden unplanned failure of a transmission system element is called a contingency event. NERC<sup>1</sup> Operating

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<sup>1</sup> NERC stands for North American Electric Reliability Corporation.

System Guidelines require that an area transmission system continue to operate successfully in the event of the failure of two transmission system elements. Such a failure of two elements is called an N-2 contingency. The applicants identified an N-2 critical contingency that limits load serving capability to 430 megawatts (MW) in the La Crosse local area. The applicants state that additional electric infrastructure is needed to provide local area load serving capability for local area customer loads greater than 430 MW.

The applicants evaluated several transmission system alternatives to serve local area need. These alternatives are compared in Table 2. The costs included in the table are planning level costs used primarily for comparison purposes.

**Table 2** Cost and performance comparison of transmission line alternatives based on 2010 dollar planning level estimates

Alternatives	La Crosse/Winona Area Load Serving Capability (MW)	Minnesota Portion Project Cost (\$ million)	Wisconsin Portion Project Cost	Transmission Losses Cost (\$ million)	Total Project Cost (\$ million)*
Proposed 345 kV Project	750 MW	258	135	0	393
Reconductor Option	600 MW	47	151	36	234
Transmission Line Option: 161 kV Red Wing-La Crosse	750 MW	189	260	3	452
Transmission Line Option: Single-Circuit 161 kV North Rochester-La Crosse	550 MW	192	65	32	289
Transmission Line Option: Double-Circuit 161 kV North Rochester-La Crosse	600 MW	224	94	23	341
Transmission Line Option: Single-Circuit 230 kV North Rochester-La Crosse	550 MW	214	89	18	321

\* For this comparison, Total Project Cost = Minnesota Portion Project Cost + Wisconsin Portion Project Cost + Transmission Losses Cost. Costs of transmission losses were calculated using the proposed 345 kV project as a basis. The costs for transmission losses shown in the table are over and above the estimated cost of transmission losses for the proposed 345 kV project.

The applicants developed the following route alternatives for the proposed project:

- Q1-Highway 35
- Q1-Highway 35 with STH 88 Connector Option A

- Q1–Highway 35 with STH 88 Connector Option B
- Q1–Galesville
- Q1–Galesville with STH 88 Connector Option A
- Q1–Galesville with STH 88 Connector Option B
- Arcadia
- Arcadia–Ettrick
- Original Q1

The applicants also developed several alignment changes in response to WisDOT permitting concerns.

The proposed project cost estimated as the sum of year of occurrence dollars ranges from about \$195 million to about \$234 million, depending upon the transmission line route. These costs were estimated by the applicants from 2010 dollar costs escalated to represent 2014-15 construction years. They include the new substation cost, existing transmission and distribution line relocation cost, and allowance for funds used during construction (AFUDC).

## **Project Need**

### **Existing La Crosse Local Area Critical Load Level**

An existing N-2 critical contingency limits load serving capability to 430 MW in the La Crosse local area. Above 430 MW, the area will experience low voltages under an N-2 contingency. NERC standards require that load be interrupted after the first outage to put the system in a condition where it can withstand the next contingency. The La Crosse area local load has surpassed 430 MW every year since 2003, with the exception of 2004. As such, additional electric infrastructure is needed to reliably provide local area load serving capability above this critical load limit of 430 MW. The proposed project will meet local area load levels up to 750 MW.

The applicants did not consider French Island Units 3 and 4 as available resources in the critical load limit analysis. Although NSPW has allocated \$1.9 million for the repair of the mothballed French Island Unit 3 in order to make it operational, this repair is neither scheduled nor planned with certainty. French Island Unit 4 has numerous operational problems which result in its reduced availability. If French Island Unit 3 is included, the critical load limit could increase to 500 MW calculated consistent with NERC standards.

The Commission finds the critical load limit for the La Crosse local area to be 430 MW. Because the applicants observed a peak level of 465 MW in 2011, the critical load level has already been exceeded. In addition, MISO's analysis shows line loadings and voltages more than 10 percent out of design range without the proposed project as load levels approach 500 MW. The Commission acknowledges that the applicants, intervenors, and Commission staff differ in their estimates of the local area critical load level. Even at the most conservative estimate of annual load growth (0.7 percent), line loadings and voltages will be out of tolerance within the five- to ten-year planning horizon without the proposed project.

#### **Future Load Forecasts**

The applicants' load forecast for the La Crosse local area was developed from anticipated load growth estimates at individual substations for NSPW and at individual member cooperatives for DPC. These individual increases were based on distribution planners' knowledge of each location. Using these individual load growth estimates, the applicants arrived at estimated average annual load growth rates of 1.46 percent for the period 2011 to 2020, and 1.24 percent for the period after 2020.

MISO took the position that demand in the area is likely to be very close to, or exceed, the critical load level before the project is placed in service, and concluded that the project should commence as soon as possible. Further, MISO considered the applicants' expected average annual load growth rates to be reasonable.

CUB witness Richard Hahn found that a reasonable load growth rate for the La Crosse area for the entire study period would be 1.0 percent. In addition, Mr. Hahn did not consider the applicants to have adequately explained the higher load growth rate used for the period 2011 to 2020. NoCapX 2020/CETF argued that the original CapX 2020 transmission plan is predicated on a 2.49 percent annual demand increase, which is more than double the applicants' growth projection. It contended that since the CapX 2020 transmission plan was first developed, load growth has slowed dramatically due to economic conditions, and that the need for the proposed project is based on a past, higher growth projection which is now too high, and as a result does not support the need for the project.

Commission staff witness Dr. Julie Urban found a reasonable range of average annual load growth rates to be from 0.78 to 1.28 percent. Dr. Urban further testified that this range was based on the MISO scenarios developed for transmission planning for MISO Transmission Expansion Plan 2011 (MTEP11). She also pointed out that for the relatively similar years of 2002 and 2010, when the peak temperature was 94°F in both years, the historical average annual growth rate was 0.75 percent.

Similar to the critical load level, the Commission acknowledges that the applicants, intervenors, and Commission staff differ in their estimates of annual average load growth rates.

Yet even at the lower projected annual growth rates, it is undisputed that the La Crosse local area needs require additional electric infrastructure to provide adequate system reliability.

### **Local Area Load Serving Alternatives**

The applicants evaluated several project alternatives, and considered the proposed project as the best solution to meet La Crosse local area needs for the long-term, as well as to provide regional benefits.

Intervenors CUB and NoCapX 2020/CETF argued that the proposed project is excessive to meet La Crosse local area needs, and that either a hybrid 345/161 kV project including a new 345/161 kV substation at Alma and a new 161 kV transmission line from Alma to La Crosse, or reconductoring existing transmission lines serving the area would meet the long-term needs of the area.

Commission staff witness Dr. Udaivir Singh Sirohi analyzed local load serving alternatives over a 20-year planning period. Based on this analysis, the following are the least-cost alternatives for serving the La Crosse local area need for the 20-year planning period:

- Reconductor Option, for a local area load growth rate of 0.78 percent.
- Reconductor Option, for a local area load growth rate of 1.0 percent.
- Alma-La Crosse 345 kV Transmission Line Option (proposed project), based on MTEP11 load growth rate of 1.28 percent.
- Alma-La Crosse 345 kV Transmission Line Option (proposed project), for the local area load growth rate described by the applicants.

As mentioned previously, even at the lower projected annual growth rates, it is undisputed that the applicants need to take action to address La Crosse local area needs. The Commission also notes that at the MTEP11 load growth rate of 1.28 percent, the proposed project is the least-cost alternative for serving the La Crosse local area need for a 20-year planning period. The Commission finds that neither the lower-voltage alternatives nor the hybrid

alternative meet the long-term needs of the La Crosse local area. As such, the Commission finds the proposed 345 kV project to be the best alternative to address the long-term needs of the La Crosse local area, while also providing regional benefits.

### **Regional Benefits**

The applicants state that the proposed 345 kV project is the best solution for providing regional efficiency, reducing wholesale prices, and increasing access to renewable energy while supporting the La Crosse local area need. The project reduces electrical system losses by 10 MW, which represents a present value savings of about \$45 million over the life of the project. The project by itself will increase transfer capability by 800 MW, and, if the 345 kV transmission network is extended to the east, the transfer capability will rise to 1,200 MW. A 161 kV local alternative, however, has a negative transfer capability if the 345 kV network is extended to the east.

Using MISO's regional models, the 345 kV project has superior performance compared to a 161 kV alternative. Using the PROMOD market modeling software over the 20 to 40 years beginning in 2019, the project will provide approximately \$354 to \$445 million in present value benefits. The value of accessing additional wind resources with the increased transfer capability is estimated to be from \$130 to \$250 per kW based on the wind resources in Minnesota compared to those in Wisconsin.

MISO forecasts that without the proposed project, 23 different transmission facilities will overload or load to near their emergency capability for any of 17 single contingencies, and 24 events could occur involving forced outages as a result of a prior outage of another facility.

With the proposed project in service, all of these transmission facilities would operate within applicable ratings.

ATC supports the proposed project crossing into western Wisconsin and running toward the La Crosse area. The proposed project will provide significant reliability and service benefits to Wisconsin customers and a continuous 345 kV interconnection for potential future projects such as the possible Badger-Coulee 345 kV project.

The increased transfer capability has a positive impact that will facilitate commerce and not adversely affect competition in the wholesale electric market. The transfer capability and design of the project match long range plans for the area and are not in excess of probable future requirements.

CUB disagrees that the local benefits to Wisconsin ratepayers justify the cost of the proposed project into the La Crosse area, and CUB proposed a hybrid alternative that would not only bring new 161 kV facilities to La Crosse, but preserve the attributes of a continuous 345 kV network for later connection if and when desired. NoCapX 2020/CETF argues that the 345 kV project is not needed for regional reliability and that transfer capability and congestion relief are market, not reliability issues. NoCapX 2020/CETF argued that the proposed project would, instead, bring system instability, voltage and dynamic issues, and require the addition of a line to Madison to stabilize the system. NoCapX 2020/CETF contended that the local load can be reliably served by reconductoring existing transmission in the area.

The proposals of CUB and NoCapX 2020/CETF, however, fail to provide the level of regional benefits, including transfer capability and the equivalent local reliability benefits, offered by the proposed project.



When considering the regional benefits of the project, the Commission concludes that sufficient need exists for the proposed project to be constructed at 345 kV for its entire length from the crossing of the Mississippi River to the proposed Briggs Road Substation near Holmen, Wisconsin. The Commission also finds that, given today's electric industry structure, an analysis of the need for the proposed project should include not only local area needs, but also consider long-term regional benefits.

### **Energy Efficiency and Conservation and Alternative Sources of Electric Supply**

In making this decision, the Commission considers whether there are technically feasible and environmentally sound alternatives to building the proposed project, per Wis. Stat. §§ 1.12(4) and 196.025(1). Specifically, the Commission must consider whether energy efficiency and conservation are reasonable alternatives to the proposed project.

The applicants stated that the availability of energy efficiency and conservation, load management, and generation were studied as alternatives to meet the need for the proposed project. The applicants concluded that these alternatives would not accomplish this goal.

As alternatives to the proposed project, the applicants evaluated renewable and non-renewable generation alternatives. The renewable alternatives evaluated were wind, photovoltaic, biomass, and landfill gas. The applicants concluded that wind is not a feasible alternative because its variability prevents it from providing capacity support. Photovoltaic was determined not to be a feasible alternative, not only due to its cost, but also because voluntary construction of new systems would likely not provide sufficient capacity within the required timeframe to ensure transmission grid reliability. The applicants also concluded that multiple

biomass plants would be needed to ensure reliability, would not be cost-effective, and that there is not sufficient available landfill gas in the study area to ensure reliability.

The applicants' analysis of the ability of load reduction to meet the needs identified an immediate need to reduce peak load in the study area by 3 MW. Load growth would need to remain stagnant until 2020, which would require a 98 MW load reduction based on the applicants' load forecast.

Commission staff witness Carol Stemrich conducted an independent analysis of the ability of energy efficiency and conservation to alleviate the need for the project. Ms. Stemrich's analysis indicated that an approximate 8 percent reduction in peak load is needed immediately. This is in addition to the approximate 0.5 percent annual reduction to be achieved by Focus on Energy programs that are already reflected in the forecast submitted by the applicants. It is unlikely that this level of load reduction can be achieved through energy efficiency and conservation. This level of load reduction is substantially higher than the annual potential identified in the August 2009 *Energy-Efficiency and Customer-Sited Renewable Resource Potential in Wisconsin Study* conducted by the Energy Center of Wisconsin. It is also substantially higher than the annual savings goals established by various Midwestern states, which range from 1.0 to 2.0 percent.

The Commission finds that energy efficiency and conservation and other sources of electric supply are not technically feasible, cost-effective alternatives to the project.

## **Routing**

### **Project Permitting by Other Wisconsin State Agencies**

#### ***WisDOT***

The Commission recognizes the scenic value and importance of the Great River Road National Scenic Byway to the state of Wisconsin. Further, WisDOT has permitting authority if a utility wishes to cross a state highway with utility facilities. However, the Commission must balance scenic value with many other values also in the public interest. WisDOT advanced several arguments to support its conclusion that it cannot permit the transmission line along the Great River Road due to aesthetic reasons. The Commission did not agree with any of WisDOT's arguments.

First. The Commission is not persuaded by WisDOT's arguments that its scenic easements, which allow for "electric lines" as a permitted use, prohibit transmission line construction. WisDOT provided no persuasive reason as to why a transmission line is not encompassed in the more general term "electric line." The scenic easements at issue generally state that a permitted use within the scenic easement is "[t]elephone, telegraph, electric or pipe lines or micro-wave relay structures for the purpose of transmitting messages, heat, light or power." The plain reading of this portion of the easement permits a transmission line such as the one proposed by the applicants since they are seeking an "electric . . . line . . . for the purpose of transmitting . . . power."

WisDOT, however, argued that "electric" is different from "transmission" and that, based on this interpretation, it has authority to withhold permits. This is a narrow and incorrect interpretation that WisDOT does not support with case law or previous WisDOT interpretations

of similar scenic easements. “Electric line” is a generic term that encompasses both distribution and transmission lines and, furthermore, the fact that the easements also use the term “transmitting” bolsters the argument that “electric” encompasses a transmission line such as the one proposed by the applicants as a permissible use.

WisDOT also argued that the general intent of the easements controls over the specific language in the easements. In other words, WisDOT argued that despite the specific language permitting certain activities, of which electric lines are one, use of electric lines should not be permitted because the general intent of the easements is to ensure the continuing view from the Great River Road. This, on its face, is an illogical conclusion, defies the plain meaning and defies well-established rules in both contract law and statutory interpretation that if a general provision conflicts with a specific provision, the specific provision controls. *Goldmann Trust v. Goldmann*, 26 Wis. 2d 141, 131 N.W.2d 902 (1965). See *Pertzsch v. Upper Oconomowoc Lake Ass’n*, 2001 WI App 232, ¶ 17, 248 Wis. 2d 219, 635 N.W.2d 829 (2001). When an express activity is permitted in a restrictive covenant, the language permitting the use controls.)

The case cited by WisDOT as support for its position that the general intent of the restrictive covenant is paramount, *Zinda v. Krause*, 191 Wis. 2d 154, 165-166, 528 N.W.2d 55 (1955), does not apply to the facts of this case because in *Zinda*, the reviewing court was not asked to interpret a restrictive covenant that had both a general intent, followed by specific language, as is the case here. Rather, the restrictive covenant in that case only expressed a general intent, leaving to interpretation what actions or uses were allowable. Such is not the case here.

Only four of the myriad easements at issue in this case do not contain a provision allowing for “electric lines.” The applicants indicated that, of these four easements, one of the

easements appears to not cover the land in question for the applicants' line; for two of the easements, the crossings are located along the Q1 line where DPC already has easements; and, for the last easement, the alignment of the line could be changed to avoid the easement. The applicants are largely un-rebutted on this point.

Although WisDOT suggested undergrounding the transmission line, placement of the line underground is not a feasible option. At a cost of roughly \$20 million per mile, compared to the \$2 million per mile for an above-ground line, this option is prohibitively expensive.

Second. WisDOT argued that Wis. Stat. §§ 84.30, 86.16, and 182.017(2) provide it with the authority to refuse to permit along the Great River Road solely for aesthetic reasons. However, these statutes do not provide WisDOT with this authority. For example, WisDOT asserted that it has authority to withhold overhead permits under Wis. Stat. §182.017(2), which states that “no such line or system or any appurtenance thereto shall at any time obstruct or incommode the public use of any highway, bridge, stream or body of water.” WisDOT interpreted this to mean that a line cannot disturb or inconvenience. Such an interpretation is not only unreasonably narrow, it conflicts with the Wisconsin Supreme Court’s interpretation of this statute. In *Weiss v. Holman*, 58 Wis. 2d 608, 619, 207 N.W.2d 660 (1973), the court held that this statute is “concerned with the safety of those traveling upon the highways who are subject to injury should a utility pole or similar appurtenance be placed on the highway.”

Third. WisDOT further pointed to Wis. Stat. §§ 84.30 and 86.16 as sources of its authority to withhold permits. However, Wis. Stat. § 84.30 applies to restrictions on outdoor advertising signs, not utility facilities; Wis. Stat. § 86.16 is a grant of agency police powers to protect against the obstruction of highways by utility facilities; that is, it is essentially concerned

with highway safety. Furthermore, WisDOT's witness Ms. Jane Carolla offered an opinion that seemed at odds with WisDOT's opinion of aesthetic impacts in this proceeding. She conducted two empirical analyses of the visual impacts of the line to the Great River Road and concluded that the area along the Great River Road with which WisDOT is most concerned is a nice stretch of road, but that it also has several manmade structures already impacting it, including power plants, transmission lines, and railroads.

Fourth. WisDOT also asserted that the CPCN law, in conjunction with the Siting Priorities Law (Wis. Stat. §§ 1.12(6) and 196.025(1m)), prevents the Commission from finding that any of the Q1-Highway 35 Routes or the Q1-Galesville Route is in the public interest because of the public interest in preserving the aesthetic value of the Great River Road. However, the Commission's authority over route determinations is broad, and its decisions in this realm are generally afforded great weight by reviewing courts. Wisconsin Stat. § 1.12(6) is clearly not a bar to the Q1-Highway 35 Route; of all the route alternatives, the Q1-Highway 35 has the highest percentage of shared ROW, a fact that would seem to favor it, given the statutory preference for using existing ROW. Furthermore, the Q1-Galesville Route is, after the Q1-Highway 35, the shortest and least expensive alternative. If in fact DNR does not permit the Q1-Highway 35 alternative, there are both economic and environmental justifications for choosing the Q1-Galesville alternative, also consistent with the Commission's obligations under the CPCN and Siting Priorities Laws.

To be clear, the Great River Road is in an area of scenic value. However, this designation does not immunize it from all activities that may impact any aspect of its appearance, especially in areas of this extensive road network that have already been impacted by man-made

infrastructure. WisDOT and some other intervening parties discussed the economic benefits that the Great River Road brings to Wisconsin. However, nothing in the record substantiates that the economic benefits, including tourism-related dollars and federal dollars, would disappear or even diminish if the 345 kV line was placed near the Great River Road.

***DNR***

The Commission recognizes DNR's statutorily-granted jurisdiction over granting permits in this case. Wisconsin Admin. Code § NR 103.08(4)(a) requires a project applicant to show that "no practicable alternative exists which would avoid adverse impacts to wetlands" in order to receive a permit. Under Wis. Admin. Code § NR 103.07(2), "practicable alternatives" means available and capable of being implemented after taking into consideration cost, available technology and logistics in light of overall project purposes. If no practicable alternative exists, an applicant must demonstrate that all practicable measures to minimize adverse impacts to the affected wetlands are taken and, finally, DNR must also find that the permitted activity will not have significant adverse impacts to wetland functional values or water quality, or have other significant environmental consequences.

DNR built a strong record as to the value of the Van Loon State Wildlife Area (Van Loon), not only to Wisconsin residents, but to a broader community. The Van Loon is, in DNR staff's professional opinion, a valuable resource that will be irrevocably harmed by a new line north of Highway 35. The Clean WI expert agreed. As early as 2010, DNR made it clear to the applicants that it would not permit the line through the Van Loon. It has remained constant in this opinion, and there is no reason to believe it will change its view on this issue. Therefore, if DNR does not issue a permit, the line cannot go down the Q1-Highway 35 Route.

Besides the Q1-Highway 35 Route, all of the routes under consideration have the potential for construction in wetlands to some degree, as discussed in the EIS. Although the potential impacts to wetlands and endangered or threatened species along the other routes would likely be less than on the Q1-Highway 35 Route, the applicants will still need to obtain appropriate DNR permits for construction in wetland and waterways, construction site erosion control, and storm water control. Under Wis. Stat. § 30.025(4), these permits must be issued within 30 days of the issuance of this Final Decision.

Connected with these permits, the applicants must consult with the Bureau of Endangered Resources regarding state-listed threatened or endangered species to determine whether the habitat assessments and surveys that were completed and summarized in the Rare Species and Natural Communities Analysis and Survey Summary Report (Rare Species Report) of January 2011 are adequate. The Bureau will determine whether additional consultation is needed to ensure compliance with the state's endangered species law, Wis. Stat. § 29.604, and to define appropriate avoidance and minimization measures. Potentially affected species may include the wing-snaggletooth terrestrial snail, red-shouldered hawk, great egret, Acadian flycatcher, Bell's vireo, Blanding's turtle, Eastern Massasauga Rattlesnake, Pecatonica River Mayfly, various mussel and fish species, or other state listed threatened or endangered species that the Bureau determines are reasonably likely to be impacted by the project.

In addition, the applicants must consult with the Bureau of Endangered Resources and the U.S. Fish and Wildlife Service (USFWS) to determine appropriate measures to avoid or minimize impacts to the bald eagle and to determine the location and type of bird diverters to be placed on portions of the route to minimize bird collisions with the transmission line. The



Commission also finds it reasonable for the applicants to consult with the Bureau to determine any additional assessments, surveys, and measures needed to avoid or minimize impacts to the timber rattlesnake and rare plant species.

### ***WHS***

The Commission must comply with Wis. Stat. § 44.40 for protection of archeological, historic, and cultural resources. As discussed in the EIS, the applicants have stated that they will locate transmission structures outside of the historic properties listed with WHS and avoid impacts by spanning them. In compliance with Wis. Stat. § 44.40, the Commission must also require that the applicants employ qualified archeologists to conduct field investigations of the identified sites in the ROW along the approved transmission line route to assess each site's location and boundaries and its current integrity.

In addition, where human remains are involved, it is in the public interest for the applicants to comply with the Wisconsin Burial Sites Preservation Law, Wis. Stat. § 157.70.

### **Substation Site**

The applicants proposed two sites for the Briggs Road Substation, an East Site and a West Site. Two of the four main 161 kV lines serving the La Crosse area converge near the intersection of U.S. Highway (USH) 53 and Briggs Road. The existing DPC 69 kV North La Crosse Substation is also located near this intersection. The new Briggs Road Substation will require a fenced area of approximately 700 feet by 900 feet, totaling approximately 15 acres, with a total site area of about 1,100 feet by 1,300 feet, approximately 32 acres, to include space for grading, driveways, storm water ponds, property line setbacks, and sufficient space to route transmission lines into the substation. The two Briggs Road sites are each about 40 acres in area.

The West Site is currently cropland and would require less grading and woodland clearing. It is also the lower-cost alternative. The applicants ask that the West Site be selected.

DNR noted that the East Site contains habitat that may be suitable for rare plant or bird species while the West Site does not. Some members of the public indicated that both proposed sites are too close to Holmen residences, a park, and proposed building sites.

Based on this record, the Commission finds that the Briggs Road Substation at the West Site is the better alternative and is in the public interest.

### **Mississippi River Crossing**

The applicants identified four potential crossings of the Mississippi River in the vicinity of the project area, three of them places where existing electric transmission lines already cross. In order to locate a crossing place, the applicants worked with USFWS and DNR to determine if obstacles existed. As described in the project application and summarized in the joint final EIS, the applicants worked with those agencies to winnow the four potential crossings of the Mississippi River to one crossing at the city of Alma. The application showed how the crossings were evaluated and how the applicants worked with the two agencies. Once it became the sole remaining crossing location, the Alma crossing was accepted by cooperating state agency staff in Minnesota and Wisconsin for the purpose of route application review in each state. The applicants, in developing their Wisconsin and Minnesota applications, developed details of the Alma crossing for agency review.

Clean WI and NoCapX 2020/CETF argued that the process for choosing the crossing location was inadequate for the Wisconsin CPCN process and, therefore, the crossing location is not legal or viable. They asserted that the coverage of the process in the final EIS did not

comply with the requirements of the Wisconsin Environmental Policy Act (WEPA) and Wis. Admin. Code chs. NR 150 and PSC 4. Both intervenors indicated that the four crossing alternatives originally examined by the applicants and USFWS should have been evaluated anew in the Wisconsin process. NoCapX 2020/CETF pointed out that the Minnesota Certificate of Need proceeding<sup>2</sup> considered four potential crossings and that the U.S. Department of Agriculture Rural Utilities Service draft EIS initially addressed the four river crossings and narrowed them to three. NoCapX 2020/CETF did note that the four crossings were evaluated early on by the USFWS.

The Wisconsin CPCN application includes a history and analysis of the four crossings, and the joint Wisconsin EIS includes an appropriate summary of that analysis and history. The Commission needs to cooperate with Minnesota so that the Minnesota and Wisconsin projects join at the same location on the river. The application and the EIS both discuss this effort to agree.

The agreed-upon location of the river crossing provides the western endpoint for the proposed 345 kV electric transmission line in Wisconsin as well as the eastern endpoint for the proposed 345 kV electric transmission line in Minnesota. The Commission finds that it is reasonable for all the Wisconsin routes to share the same river crossing segment at that project endpoint.

### **Transmission Line Route**

As noted previously, the Commission analyzed nine route alternatives, including three proposed in the original application, five resulting from suggestions by WisDOT or DNR, and the original route of DPC's Q1 161 kV transmission line. The applicants stated that the Q1 line

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<sup>2</sup> The Minnesota Certificate of Need proceeding and decision both precede the Minnesota routing process.

must soon be rebuilt regardless of the route chosen for the proposed project. The nine route alternatives are described below.

***Q1-Highway 35, Q1-Galesville, and Arcadia Routes***

In the project application, the applicants proposed three transmission route alternatives: the Q1-Highway 35, Q1-Galesville, and Arcadia Routes. Each would connect the Mississippi River crossing and the Briggs Road Substation.

Two of the routes, the “Q1 Routes,” follow the existing DPC Q1 161 kV transmission line corridor southeastward from Alma. Portions of the existing Q1 Route run roughly parallel to the Great River Road. Both the Q1-Highway 35 and Q1-Galesville Routes share common route segments from the Mississippi River crossing southeastward to a point east of the Trempealeau River, where the routes diverge. Both Q1 Routes would include the reconstructed DPC Q1 161 kV transmission line on 345/161 double-circuit, single-pole, steel structures along these segments.

The Q1-Highway 35 Route continues along the existing Q1 ROW to a point east of the village of Trempealeau, then turns east and parallels State Highway (STH) 35 through the Black River bottomlands. STH 35 along these segments is also designated as the Great River Road. Near the intersection of STH 35 and USH 53, the Q1-Highway 35 Route turns south and follows the USH 53 corridor south to the Briggs Road Substation site. The Q1-Highway 35 Route would include the reconstructed DPC Q1 161 kV transmission line on 345/161 double-circuit, single-pole, steel structures along these segments.

The Q1-Galesville Route separates from the existing Q1 ROW east of the Trempealeau River. From that point, it extends east parallel to STH 54. Along the way, it passes to the south

of the city of Galesville and north of the Van Loon and the Black River bottomlands. The line would be constructed as a single-circuit, 345 kV line on single-pole steel structures along these segments. The route then turns south along an existing 161 kV electric transmission line ROW to a point east of the intersection of STH 35 and USH 53. The line would be constructed on 345/161 double-circuit, single-pole, steel structures along these segments. At that point, the Q1-Galesville Route would leave existing electric transmission ROW and proceed south along a combination of new cross-country segments and existing road ROW to the Briggs Road Substation sites. The line would be constructed as a single-circuit, 345 kV line on single-pole steel structures along these segments.

The Arcadia Route runs eastward from the Mississippi River crossing along an existing DPC 161 kV line to a point northeast of the village of Arcadia. The route then turns southward along an existing DPC 69 kV transmission line ROW to STH 54. The line would be constructed on 345/161 or 345/69 double-circuit, single-pole, steel structures along these segments. The Arcadia Route then turns eastward along new ROW to a point where it proceeds along the same segments as the Q1-Galesville Route to the proposed Briggs Road Substation.

### ***Q1-STH 88 Routes***

A set of alternatives to the Q1 Routes, the “STH 88 Connector” segments, were developed by the applicants in response to a suggestion from WisDOT to use the STH 88 corridor to avoid the Great River Road south of Alma. The STH 88 segments would utilize one of two optional paths in the Waumandee Creek valley through which STH 88 runs. Option A follows the winding STH 88 from its intersection with the existing 161 kV transmission line ROW that would be used for the Arcadia Route in the north to the Q1 Routes in the south.

Option B is a straighter route proposed by the applicants that would be easier to design and construct than Option A. The STH 88 segments were intended to be used with either the Q1-Highway 35 Route or the Q1-Galesville Route. Combinations of the two STH 88 Connector Options and the two Q1 Routes result in four additional route alternatives:

- Q1-Highway 35 with STH 88 Connector Option A
- Q1-Highway 35 with STH 88 Connector Option B
- Q1-Galesville with STH 88 Connector Option A
- Q1-Galesville with STH 88 Connector Option B

***Arcadia-Ettrick Route***

Another route alternative using the “Ettrick Connector” segment, was provided by the applicants in response to DNR’s suggestion to provide the Commission with a second route alternative that avoids the Black River bottomlands and the Van Loon. This alternative diverges from the Arcadia Route where the existing 69 kV line crosses Fox Coulee Lane. From this point, it follows an existing DPC 69 kV transmission line ROW from its tap at Fox Coulee Lane eastward to an existing north-south DPC 161 kV transmission line ROW west of the village of Ettrick. At that point, it turns south along the existing 161 kV transmission line ROW to a point north of the Black River. The line would be constructed on either 345/161 or 345/69 double-circuit, single-pole, steel structures along these segments. From the point north of the Black River, the route would share common segments with the Q1-Galesville and Arcadia Routes southward to the Briggs Road Substation site.

***Original Q1 Route***

During development of the CPCN application, the applicants considered a route that would follow the original existing DPC Q1 161 kV ROW the entire distance from Alma to the new Briggs Road Substation site. This route was not included in the application as a proposed

route, but information characterizing the route was included in an appendix to the CPCN application. Many members of the public from the Holmen area submitted comments favoring the Original Q1 Route, because it was the only route alternative that did not pass through the village of Holmen. Information regarding this route was included in the application, and the Commission's draft EIS characterized the route. In comments on the draft EIS, USFWS indicated that it would not renew the recently-expired Q1 line permit through the Upper Mississippi River National Wildlife and Fish Refuge (Refuge). For this reason, even though the Original Q1 Route remained in the final EIS for the project, it is no longer under consideration as a route for the project.

#### **Authorized Project Route**

Although nine routes were considered during the preparation of the EIS, the Commission finds that several are not appropriate. The Q1-Highway 35 Route, which otherwise appears reasonable, includes a large route segment that crosses the Black River bottomlands and wetlands associated with the Van Loon. The Commission acknowledges that DNR will not permit construction in these wetlands under Wis. Admin. Code ch. NR 103, because it has concluded practicable alternative routes exist in the Q1-Galesville, Arcadia, and Arcadia-Ettrick Route alternatives. The Commission also finds that the four route alternatives using the STH 88 connector segments are not appropriate because the environmental, agricultural, social, and aesthetic impacts of those segments would be too great. The Commission finds that the Arcadia Route and the Arcadia-Ettrick Route are longer, more costly, and have greater potential adverse impacts on rural lands and farmlands. In addition, the Commission finds the Original Q1 Route

cannot be considered because USFWS will not renew the permit to utilize the existing Q1 ROW through the Refuge.

The Commission finds that the Q1-Galesville Route, with the modifications described in this Final Decision to avoid unreasonable adverse impact on the orderly land use and development plans for the village of Holmen, and to mitigate impacts in the village, is the most reasonable route. In selecting this route for the proposed project, the Commission notes that of all the route alternatives (excluding the Original Q1), the final EIS lists the Q1-Galesville Route as the one with the second lowest impacts in each of the following categories: total length, acres of new ROW, agricultural acres crossed, stream crossings, new upland forest area cleared, and estimated total construction cost. The final EIS also lists the Q1-Galesville alternative as having the fewest new woodland acres affected and the third lowest amount of wetland area affected. With any route selected in this case, the appropriate DNR permits and associated work on endangered and threatened species will be necessary. There will also be a need for field examinations by a qualified archeologist as directed by WHS. Nevertheless, this route, with the modifications in Holmen, is still the most reasonable.

#### ***Holmen Area Route Adjustment***

Wisconsin Stat. § 196.491(3)(d)6. requires the Commission to determine that a proposed project requiring a CPCN not unreasonably interfere with orderly land use and development plans for the area involved. The applicants acknowledged that the proposed project will have some impact on existing land use and development plans, but state that none of the route alternatives would unreasonably interfere with such plans.



Some members of the public provided comments regarding the impacts of the proposed project on local land use plans. Nancy Proctor, representing the village of Holmen, submitted comments regarding the possible effects of the project on the village of Holmen's tax incremental financing district. Many members of the public provided comments stating that route alternatives through or near the developed areas of the village of Holmen should be avoided. Route alternatives that pass through developed areas of Holmen include all of the proposed route alternatives except the Original Q1 Route.

The Commission finds that some route segments through the village of Holmen would unreasonably interfere with local land use and development plans, and would have unreasonable impacts on the village, and that those route segments should be avoided. Specifically, the Commission finds that Segments 18B, 18C, 18D, 18E, 18F, and 18G, as included in the Q1-Galesville Route alternative, should not be used. Instead, the Commission finds that the authorized route shall transition from Segment 18A of the Q1-Galesville Route alternative to Segment 8C of the proposed Q1-STH 35 Route at a point north of the USH 53-STH 35 interchange. The authorized route shall then use Segments 9 and 18H to pass through the developed areas of the village of Holmen. (Segment designations are identified in the record in this proceeding.) The Commission intends this route adjustment to minimize interference by the project with local land use and development plans. This route also complies with higher priority routes in the siting priority statute.

Using Segment 9 will take the transmission line past the New Amsterdam Grasslands. The Commission finds it reasonable for the applicants to consult with the Mississippi River

Valley Conservancy to determine appropriate measures to avoid or minimize impacts to the New Amsterdam Grasslands.

The new route segments to make the transition from Segment 18A to Segment 9 are designated route Segments 19 and 20. Segment 19 begins about 300 feet north of the node between Segment 18A and Segment 18B. From that point, it extends westward about 0.4 miles along property lines to a point just west of USH 53. Segment 20 runs about 0.2 miles between that point and the node between Segment 8C and Segment 9. The new segments and route adjustment are illustrated in Ex.-Applicants-Stevenson-22.<sup>3</sup>

In addition to the Holmen area adjustment, the applicants proposed several small alignment changes during the proceeding. These changes were offered by the applicants in response to WisDOT's assertion that it would not be able to permit any of the new transmission that overlapped scenic easements held by WisDOT for the Great River Road. They have been detailed in exhibits from the applicants' witness Tom Hillstrom.<sup>4</sup> The alignment changes are identified in Mr. Hillstrom's exhibit. They include route Segments 2A3R, 2A4R, 2BR, 2CR, and 2DR.

#### ***Final Authorized Route Description***

The Commission finds that the Q1-Galesville Route, as modified by this Final Decision, is reasonable, appropriate, and in the public interest. With the Holmen area adjustment and the realignments related to the Great River Road, the approved route is identified by the following

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<sup>3</sup> By order dated May 10, 2012, the Commission directed the applicants to provide a delayed exhibit that included information characterizing a short connecting segment north of Holmen between the Q1-Galesville and the Q1-STH 35 Routes. On May 18, 2012, the applicants filed exhibit Ex.-Applicants-Stevenson-22. Parties in the docket were provided an opportunity to file comments regarding the exhibit, which were filed with the Commission on May 24, 2012.

<sup>4</sup> Ex.-Applicants-Hillstrom-23 and 24. Maps showing the revised alignments are found in Ex.-Applicants-Hillstrom-23 and also in the final EIS, Figure Vol. 2-48.

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route Segments: 1, 2A1, 2A2, 2A3R, 2A4R, 2BR, 2CR, 2DR, 2E, 2F, 2G, 2H, 2I, 6, 12, 13B2, 13C, 13D, 13E, 17A, 17B, 18A, 19, 20, 9, and 18H.

### **Underground Construction**

Several intervenors and members of the public expressed a preference for the line to be installed underground in various places along the proposed routes. Some members of the public requested that the line generally be placed underground to avoid aesthetic impacts. WisDOT stated that, except for short segments of certain route options, it intends to withhold the utility permit for any new overhead transmission construction along the Great River Road as part of the Q1-Highway 35 Route, the Q1-Galesville Route, and any crossings of the Great River Road by the line. NoCapX 2020/CETF preferred that the segment crossing the Mississippi River, route Segment 1, be installed underground. It argued that the cost of undergrounding Segment 1 would be reasonable in light of the applicants' proposed cost of overhead construction. It maintained that the cost of the overhead Segment 1 is already higher than the cost of other overhead segments of the project, and that the incremental cost to construct the Mississippi River crossing in an underground configuration would be minimal.

The applicants opposed underground construction of any portion of any of the routes under consideration as being too expensive. In response to WisDOT's stated intentions, they noted that underground construction of transmission crossings of the Great River Road would still create aesthetic impacts from the transition stations needed on either side of the road ROW. The applicants disagreed with WisDOT's stated authority for managing scenic easements along the Great River Road, stating that WisDOT has the authority and discretion to issue permits for the proposed construction, but not to withhold permits or require underground installation. In

response to NoCapX 2020/CETF's argument, the applicants argued that, while underground construction of Segment 1 would not add overhead facilities in the Mississippi flyway, it would create impacts in the river bed and would not remove the transmission lines already overhead across the flyway.

The Commission finds in general that underground construction is expensive, has its own environmental impacts, and is not a viable transmission construction option unless engineering considerations require it or circumstances leave no other reasonable option available. As noted earlier, the Commission disagrees with WisDOT about the potential aesthetic impacts of the overhead line on the Great River Road in the project area and finds that the transition stations required for underground crossings of the Great River Road would present undesirable aesthetic impacts of their own. It also finds that the underground construction of Segment 1 in the Mississippi River would be too expensive, create unnecessary impacts in the river bed, and would not remove the overhead transmission line that exists there now. The Commission agrees with the applicants that the cost of an underground line in this case is too high and not justified.

## **Environmental Factors**

### **Independent Environmental Monitors**

Commission and DNR staff, DATCP, and Clean WI each request employment of an independent environmental monitor (IEM) for this project to ensure compliance with Commission order conditions, other state agency permits, farmland protection agreements, property rights, and practices agreed to by the applicants. DATCP has pointed out that there will be an agricultural monitor to oversee construction through farmland under an agreed-upon Agricultural Impact Mitigation Plan, but that the agricultural monitor will not have stop-work

authority and will need to “work in coordination with the independent environmental monitor” that has such authority. Clean WI stated, “An independent monitor who reports to the Commission will ensure that natural resources are protected.”

The applicants have agreed that environmental monitors are needed, but argue that the monitors would not need stop-work authority and that independent monitors would add unnecessary costs to the project.

An IEM has been utilized successfully during the construction of three recent 345 kV electric transmission projects in Wisconsin. The IEM has been compensated by, but independent of, the applicants and their contractors, answerable instead to the Commission, DNR, and DATCP. The IEM has had the authority to stop work on the project until a problem is rectified at places where a concern arises.

The Commission finds that, because the proposed project includes a number of locations with environmental and agricultural issues and because of the complexity of the project, it is reasonable to employ an IEM on the proposed project. Places where special attention might be required could include but would not be limited to the various locations where threatened or endangered species’ habitat may potentially be affected, wetlands, vulnerable farmlands or farm crops, and the New Amsterdam Grasslands administered by the Mississippi River Valley Conservancy.

It is also reasonable that the IEM have stop-work authority and be contracted through the Commission, but compensated by the applicants.

### **Minor Routing Flexibility**

Whether the applicants should be granted minor routing flexibility was uncontested during the proceeding. Commission staff and the applicants each proposed that the Commission allow a process for minor route adjustments after the project is approved based on the processes used for other recent 345 kV construction cases. Any modification to the approved transmission line route must be submitted to the Commission by the applicants via a formal letter describing:

1. The nature of the requested change.
2. The reason for the requested change.
3. The incremental cost difference from that of the approved route.
4. The incremental difference in any environmental impacts.
5. The applicants' communications with the potentially-affected landowners.

The requests will be reviewed by Commission staff knowledgeable about the project, and Commission staff will decide whether to grant or deny the change.

The Commission finds that it is reasonable that the applicants be granted minor routing flexibility. The Commission also finds that the applicants shall follow the described process.

### **Environmental Impact Fees**

Wisconsin law imposes a one-time environmental impact fee and an annual impact fee for construction of high voltage lines with a nominal voltage of 345 kV or more. Wis. Stat. § 196.491(3g)(a). Under Wis. Stat. § 16.969(2), the applicants must pay the Department of Administration (DOA) 0.3 percent of the cost of the approved line annually for the annual impact fee and 5 percent of the cost of the approved line for the one-time environmental impact fee. DOA distributes these fee payments among cities, towns, villages, and counties through which the transmission line passes, allocated proportionate to the number of miles of transmission line that will be built within each municipality. The Commission is responsible for determining the base

cost from which the impact fees will be calculated and the percentage of the high-voltage line cost that will be attributed to the affected municipalities and counties. Wis. Stat. § 196.491(3)(gm).

The statute defines “high voltage transmission” as “a conductor of electric energy . . . together with associated facilities,” but does not specifically define “associated facilities.” The question is whether the relocation of lower-voltage transmission and distribution lines and the lower-voltage components at Briggs Road Substation should be included in the cost basis for calculating the high-voltage impact fees. The applicants argued that all lower-voltage costs should be excluded.

The Commission finds that for the proposed project, the cost basis for the environmental impact fees is \$179,461,000. This includes the estimated \$33,665,000 for 345, 161, and 69 kV substation components at the Briggs Road Substation. It does not include the estimated costs for relocating the lower-voltage transmission and distribution lines (\$2,532,000 and \$1,820,000, respectively), or the estimated \$9,771,000 in costs for constructing the 161 kV and 69 kV lines along segments that will be built using double-circuit configurations.

To verify the appropriate distribution of the impact fees, the applicants shall work with Commission staff to determine the percentage of the route that passes through each municipality. The applicants shall provide adequate information to determine the distribution of impact fees within 30 days after the date this Final Decision is issued. Commission staff shall then provide to DOA the base cost from which the impact fees will be calculated and the percentage of the high voltage line cost that will be attributed to the affected municipalities and counties.

### **Impact on Wholesale Competition**

In making its decision, the Commission must consider whether the proposed project will have a material adverse impact on competition in the relevant wholesale electric service market under Wis. Stat. § 196.491(3)(d)7. Dr. Urban of Commission staff testified that a transmission line that expands transfer capability will facilitate commerce and promote, not adversely affect, competition in electric markets in Wisconsin. The proposed line should both increase transfer capability and provide a higher voltage path into the service area. No parties provided evidence of a material adverse impact on competition from construction of the project. Therefore, the Commission finds that the addition of the proposed project by the applicants will not have a material adverse impact on competition in the relevant wholesale electric service market.

### **Siting Conditions and Individual Hardships**

#### **Effects of Herbicide Treatment in ROW on Certified Organic Farms and Agri-Tourism Businesses**

Several operators of organic farms and agri-tourism businesses submitted public comments expressing concern that application of herbicides in the project ROWs could affect organic certification or agri-tourism crops. A member of the public, Lynita Docken, submitted in public comments a paper that stated that airborne drift of certain herbicides can “injure grapes half a mile (sometimes up to ten miles) away from the application site.”

For electric transmission lines designed for operation at a nominal voltage of 100 kV or more, Wis. Stat. § 182.017(7)(d) states:

The utility shall control weeds and brush around the transmission line facilities. No herbicidal chemicals may be used for weed and brush control without the express written consent of the landowner. If weed and brush control is undertaken by the landowner under an agreement with the utility, the landowner shall receive from the utility a reasonable amount for such services.



This provision applies only to landowners with whom the utility holds an easement. Some of the members of the public that submitted comments in this regard do not have properties that would be under easement, and consequently would not normally have the opportunity to consent to herbicide application under Wis. Stat. § 182.017(7)(d).

The Commission notes that pesticide application (including herbicides) is a highly regulated activity at both the state and federal levels, and that DATCP rules prohibit pesticide overspray and significant pesticide drift. Wis. Admin. Code § Ag 29.50(2). The Commission finds it reasonable to require that the applicants work with operators of organic farms and agri-tourism businesses to minimize the likelihood of injury to crops or loss of organic certification from herbicide application within the authorized route ROW. The Commission further finds that the applicants should work with the operators to determine the most effective techniques for minimizing the likelihood of injury to crops or loss of organic certification.

#### **Radio and Other Communications Interference**

Members of the public provided comments regarding possible interference with radio communications services, such as Emergency Medical Services communications, cellular telephone services, and AM radio reception.

State law requires utilities to control this kind of interference. For electric transmission lines designed for operation at a nominal voltage of 100 kV or more, Wis. Stat. § 182.017(7)(g) states:

The utility shall employ all reasonable measures to ensure that the landowner's television and radio reception is not adversely affected by the high-voltage transmission lines.

Also, Wis. Admin. Code § PSC 113.0707(3) states:

Each utility shall, upon notification or detection of the presence of radio and/or television interference, survey its lines and equipment for possible sources of radio and television interference. When significant interference is found,

reasonable measures shall be taken to locate the source and, if on the utility's system, to mitigate the interference. Where the magnitude and nature of the interference is found to be so small, intermittent or insignificant that it affects only a few customers or a particular, unique piece of customer equipment that may have limited capabilities to receive weak signals, it may be necessary to limit the utility's responsibility for mitigation to reasonable, cost-effective measures.

Wisconsin Stat. § 182.017(7)(g) applies only to landowners with whom the utility holds an easement. The Commission has the authority to interpret and enforce Wis. Admin. Code § PSC 113.0707(3), and does so frequently.

The Commission finds that the requirements included in Wis. Stat. § 182.017(7)(g) and Wis. Admin. Code § PSC 113.0707(3) adequately protect any radio communications services that experience interference from the proposed project.

### **Conservancies**

Several members of the public submitted public comments regarding properties that are currently under conservation easement. A representative of the Mississippi Valley Conservancy provided a comment regarding the properties it has sought to protect. A representative of West Wisconsin Land Trust, Inc., submitted a comment that stated that the easement terms for the Salwey-White property prohibit new structures and improvements, including utility poles. Several properties in the project area are known to be under conservation easements.

The Commission finds it reasonable to require that the applicants work with the Mississippi River Valley Conservancy and the landowners and holders of conservation easements regarding facilities placement to minimize the effects on properties under conservation easement. Along the Q1-Galesville Route with modifications, these would include the Dairyland Power Cooperative and New Amsterdam Grasslands properties managed by the Mississippi River Valley Conservancy.

**Placement of Project Facilities on Individual Landowners' Properties**

Two members of the public, Frank Allen and John Scheidegger, submitted public comments regarding specifics of project facilities' placement on their properties, and requesting that the proposed placement be altered. The properties are affected by Segments 3 and 2G, respectively.

The Commission finds it reasonable to require the applicants work with all landowners, to the extent practicable, regarding the placement of facilities on their properties.

**Drinking Water Well Protection**

A member of the public, Susan Suhr, submitted a comment expressing her concern regarding well contamination resulting from construction of the proposed project. Ms. Suhr's property is affected by Segment 88E which is not a part of the approved transmission line route. However, the Commission finds it reasonable to require the applicants to use best construction practices to avoid impacts to drinking water wells.

**Center Pivot Irrigation**

A member of the public, Steven Wright, submitted a comment expressing concern that the proposed project would affect operation of center pivot irrigation systems on his properties. Mr. Wright's properties are affected by Segment 13A, which is not a part of the approved transmission line route. However, the Commission finds it reasonable to require the applicants to work with operators of any center pivot irrigation systems that lie along the approved route, to the extent practicable, to avoid impacts from project facilities on operations of those systems.

### **Stray Voltage**

There are numerous confined animal operations in the area in which the proposed project would be located. Since it is unclear whether the project would have any effect on such operations, it is reasonable for the applicants to coordinate testing on those operations before and after the project is placed in service. It is also reasonable for the applicants to provide to Commission staff reports of the results of the testing. If, as a result of the testing, it is noted that problems have developed as a result of the project, it is reasonable for the applicants to work with the applicable distribution utility and affected owners to resolve the problems. Specifically, the applicants shall coordinate tests for stray voltage at all dairy operations along the approved route prior to construction and again after the project is energized. Applicants shall work with the distribution utilities and farm owners to rectify any stray voltage problems arising from the construction and operation of the project. Prior to any testing, the applicants shall work with the applicable distribution utility and Commission staff to determine the manner in which stray voltage measurements will be conducted and on which properties.

### **Public Health and Welfare**

As the Wisconsin Supreme Court has declared, issuing a CPCN is a legislative determination involving public policy and statecraft. *Clean Wisconsin*, 282 Wis. 2d 250, ¶ 35, 700 N.W.2d 768 (2005). Wisconsin Stat. § 196.491 assigns to the Commission the role of weighing and balancing many conflicting factors. Applying Wisconsin's Siting Priority Laws requires a similar weighing and balancing. In order to choose a transmission line route that is reasonable and in the public interest, the Commission must not just apply the priority list in

Wis. Stat. § 1.12(6), but also must examine the conditions written into that law and consider the purpose of the legislation.

These statutes demand that when the Commission reviews a CPCN transmission line application, it must consider the reasonable needs of the public for an adequate supply of electric energy, alternative routes, individual hardships, engineering, economics, safety, reliability, a host of environmental factors, the use of existing ROW, corridor sharing, the effect on electric rates, any interference with orderly local land use and development plans, and potential impacts to wholesale electric competition. Ultimately, the Commission must determine whether granting or denying a CPCN applicant's request will promote the public health and welfare. After weighing all of these factors and all of the conditions it is imposing, the Commission finds that issuing a CPCN for this project promotes the public health and welfare and is in the public interest.

### **Compliance with WEPA**

Wisconsin Stat. § 1.11 requires all state agencies to consider the environmental impacts of "major actions" that could significantly affect the quality of the human environment. In Wis. Admin. Code ch. PSC 4, the Commission has categorized the types of actions it undertakes for purposes of complying with this law.

The Commission has fulfilled its requirements under WEPA through the preparation and issuance of the EIS and the creation of the record of the technical and public hearings held in the project area. The joint EIS was prepared by the staffs of the Commission and DNR.

NoCapX 2020/CETF indicated that the Commission's review has not complied with WEPA requirements. Clean WI stated that the review "violates the PSC's duty under WEPA" in part because it did not adequately and publicly examine the four crossings of the Mississippi River

that were originally considered. NoCapX 2020/CETF argued that it is “not sufficient under WEPA for the Commission to have only one route crossing of the Mississippi River under consideration.” As described previously in this Final Decision, the Commission finds that it is reasonable for all the Wisconsin routes to share the same river crossing segment at that project endpoint.

Clean WI also stated that a lack of adequate description of wetland impacts and mitigation potential for each route alternative has resulted in a lack of “clear basis for choice among options” as required for an EIS under Wis. Admin. Code § PSC 4.30(1)(a). WisDOT witness Jay Waldschmidt stated that the discussion of the indirect and cumulative effects on environmental resources in the final EIS, particularly regarding route Segment 8B, was inadequate and failed to comply with the National Environmental Protection Act and WEPA. DNR witness Cheryl Laatsch, however, stated that the EIS was adequate in this regard.

The Commission finds that its review of the proposed project is adequate in both of these respects.

### **Project Cost and Construction Schedule**

The applicants estimate the total gross project cost of the proposed project as modified by this Final Decision, including AFUDC, to be \$211,100,000. The estimated total gross project cost is detailed as follows:

**Estimated Project Cost****Line Construction****Material**

Poles	\$24,740,000
Wire	5,770,000
Other Material	13,780,000

**Labor**

ROW Prep	2,380,000
Foundations	19,230,000
Line	21,170,000

**Other**

Real Estate	4,210,000
Technical Support Services	13,200,000
Environmental	1,440,000
Removal	1,890,000
Distribution Relocations	1,820,000
Escalation	19,579,000
Overheads	7,380,000
AFUDC	20,410,000

**Subtotal**

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\$156,999,000**Substation**

Briggs Road 345/161 kV Substation	\$27,285,000
Briggs Road 69 kV Substation	5,340,000
North La Crosse 69 kV Substation	1,040,000

**161 kV Re-Routes to Substation**

Material	\$646,000
Labor	998,000
Other	1,267,000

**Subtotal**

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\$36,576,000**Other Costs**

Pre-Certification Costs	\$7,476,000
One-Time Environmental Impact Fee	8,973,000
Annual Impact Fees (Three Year Construction Period)	1,076,000

**Subtotal**

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\$17,525,000**Total Gross Project Cost**

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\$211,100,000

The applicants intend to begin construction of the proposed project in January 2013, and place the facilities in service by December 2015.

### **Certificate**

The Commission grants the applicants a CPCN for construction of the CapX2020 Alma-La Crosse Transmission Project using the Q1-Galesville Route, as described in the final EIS and Ex.-Applicants-Hillstrom-23, and as modified by this Final Decision, at an estimated cost of \$211,100,000.

### **Order**

1. The applicants are authorized to construct the facilities as approved by this Final Decision at a total estimated cost of \$211,100,000.
2. The applicants shall construct the proposed project using the Q1-Galesville Route, as described in the final EIS and Ex.-Applicants-Hillstrom-23, and as modified by this Final Decision.
3. The West Site for the Briggs Road Substation is approved.
4. The applicants shall demonstrate to the Commission by a subsequent filing that they can acquire, by easement or condemnation, the connector between segments 8C and 18A at a reasonable price. If the applicants do not make this demonstration within one year from the date this order takes effect, the CPCN application is denied.
5. If the applicants cancel the project or enter into any arrangement with another party regarding ownership or operation of the proposed facilities, the applicants shall provide prior notice to the Commission. All of the applicants' commitments and all conditions of this Final Decision apply to the applicants and to their successors, assigns, agents, and contractors.
6. All necessary federal, state, and local permits shall be secured by the applicants prior to beginning construction.



7. The applicants shall work with the applicable distribution utility to test for stray voltage at each agricultural, animal confinement operation along the approved route, prior to construction and after the project is energized. The applicants shall work with the distribution utility and farm owner to rectify any identified stray voltage problem arising from the construction or operation of the project. Prior to testing, the applicants shall work with the applicable distribution utility and Commission staff to determine where and how it will conduct the stray voltage measurements. The applicants shall report the results of its testing to Commission staff.

8. The applicants shall consult with the Bureau of Endangered Resources and follow its direction regarding the potential effects on endangered and threatened species to ensure compliance with the state endangered species law, as discussed in this Final Decision. The applicants shall also seek mutual agreement with the Bureau on assessments, surveys, and measures to employ to minimize impacts to the timber rattlesnake and rare plant species.

9. The applicants may propose minor adjustments in the approved route for the protection of social, cultural, or environmental resources, but any changes in alignment from the approved centerline may not affect resources or cause impacts not discussed in the EIS, nor may they affect new landowners who have not been given proper notice and hearing opportunity. For each proposed minor centerline adjustment, the applicants shall submit, for Commission staff review and approval, a letter describing the nature of the requested change, the reason for it, the incremental cost and environmental impact differences based on the approved route, and the applicants' communications with the affected landowners.

10. The applicants shall assist Commission staff in preparation of a request for proposals to hire an IEM that shall report directly to Commission staff. The request for proposals shall include the scope of duties, responsibilities, and authority of each position. The applicants shall fund the salaries and expenses of the monitor. The IEM shall have the authority to stop work at any construction spread if a violation of this Final Decision or any regulatory permit condition is identified. The applicants and their contractors shall promptly stop work on a construction spread if directed to do so by the IEM.

11. The applicants shall work cooperatively with staffs of the Commission, DNR, DATCP, and WisDOT to provide information regarding construction scheduling and help formulate a plan to utilize the IEM most effectively. The applicants shall provide monthly statements to the Commission related to the costs of the IEM.

12. This authorization is for the specific project as described in this Final Decision at the stated cost. Should the scope, design, or location of the project change significantly, or if it is discovered or identified that the project cost, including *force majeure* costs, may exceed the estimated cost by more than 10 percent, the applicants shall promptly notify the Commission as soon as they become aware of the possible change or cost increase.

13. The applicants shall consult with DATCP and use DATCP's agricultural impact statement as guidance in resolving farm operators' construction issues. The applicants shall document results and status in their monthly reports to the Commission.

14. The applicants shall work with operators of organic farms and agri-tourism businesses to minimize the likelihood injury to crops or loss of organic certification from herbicide application within the authorized route ROW. The applicants shall work with the

operators to determine the most effective techniques for minimizing the likelihood of injury to crops or loss of organic certification.

15. The applicants shall work with operators of center pivot irrigation systems, to the extent practicable, to avoid impacts from project facilities on operations of those systems.

16. The applicants shall consult with the Mississippi River Valley Conservancy and the landowners hosting the Dairyland Power Cooperative and New Amsterdam Grasslands conservancies to determine appropriate measures to avoid or minimize impacts. The applicants shall document the results of this consultation to the Commission.

17. The applicants shall work with all landowners, to the extent practicable, regarding the best placement of facilities on their properties.

18. The applicants shall use best construction practices to avoid impacts to drinking water wells.

19. The applicants shall identify the location of each transmission structure using global positioning system technology and transfer this data to a geographic information systems database, using software compatible with state government standards. The applicants shall provide this data to the Commission as soon as it becomes available.

20. Not more than 30 days from the date of this Final Decision, the applicants shall provide to Commission staff adequate information to determine the distribution of environmental impact fees. Commission staff shall then provide to DOA the base cost from which the impact fees will be calculated and the percentage of the high voltage line cost that will be attributed to the affected municipalities and counties.

21. Beginning with the quarter ending June 30, 2012, and within 30 days of the end of each quarter thereafter and continuing until the facilities are fully operational, the applicants shall submit quarterly progress reports to the Commission that include all of the following:

- a. The date that construction commences.
- b. Major construction and environmental milestones, including permits obtained, by agency, subject, and date.
- c. Summaries of the status of construction, the anticipated in-service date, and the overall percent of physical completion.
- d. Actual project costs segregated by line item as reflected in the cost breakdown listed in this Final Decision.
- e. Once each year, a revised total cost estimate for the project.
- f. The date that the facilities are placed in service.

22. Upon completion of the project, the applicants shall notify the Commission and report the actual costs segregated by plant account and comparable to the cost breakdown included in this Final Decision. For any account or category where actual cost deviates significantly from those authorized, the final cost report shall itemize and explain the reasons for the deviation.

23. The CPCN is valid only if construction commences no later than one year after the latest of the following dates:

- a. The date this Final Decision is mailed.

- b. The date when applicants have received every federal and state permit, approval, and license that is required prior to commencement of construction under the CPCN.
  - c. The date when the deadlines expire for requesting administrative review or reconsideration of the CPCN and of the permits, approvals, and licenses described in par. (b).
  - d. The date when the applicants receive the Final Decision, after exhaustion of judicial review, in every proceeding for judicial review concerning the CPCN and the permits, approvals, and licenses described in par. (b).
24. This Final Decision takes effect the day after the date of mailing.

Dated at Madison, Wisconsin, this 30<sup>th</sup> day of May, 2012.

By the Commission:



Sandra J. Paske  
Secretary to the Commission

SJP:JAL:jlt:DL:00569726

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN  
610 North Whitney Way  
P.O. Box 7854  
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE  
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE  
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

*PETITION FOR REHEARING*

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of mailing of this decision, as provided in Wis. Stat. § 227.49. The mailing date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

*PETITION FOR JUDICIAL REVIEW*

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of mailing of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of mailing of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission mailed its original decision.<sup>5</sup> The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: December 17, 2008

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<sup>5</sup> See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

## APPENDIX A

In order to comply with Wis. Stat. § 227.47, the following parties who appeared before the agency are considered parties for purposes of review under Wis. Stat. § 227.53.

### XCEL ENERGY

Lisa Agrimonti  
Valerie Herring  
Briggs and Morgan, P.A.  
2200 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402  
(Agrimonti Phone: 612-977-8656 / Fax: 612-977-8650)  
(Herring Phone: 612-977-8501 / Fax: 612-977-8650)  
(Email: [lagrimonti@briggs.com](mailto:lagrimonti@briggs.com); [vherring@briggs.com](mailto:vherring@briggs.com))

### WPPI ENERGY

Tim Noeldner  
1425 Corporate Center Drive  
Sun Prairie, WI 53590  
(Phone: 608-220-1263)  
(Email: [tnoeldner@wppienergy.org](mailto:tnoeldner@wppienergy.org))

### DAIRYLAND POWER COOPERATIVE

Jeffrey L. Landsman  
Wheeler, Van Sickle and Anderson, S.C.  
25 West Main Street, Suite 800  
Madison, WI 53703  
(Phone: 608-255-7277)  
(Email: [JLandsman@wheelerlaw.com](mailto:JLandsman@wheelerlaw.com))

### AMERICAN TRANSMISSION COMPANY

Lee Cullen  
Jeffrey L. Vercauteren  
Cullen Weston Pines & Bach LLP  
122 West Washington Avenue, Suite 900  
Madison, WI 53703  
(Phone: 608-251-0101 / Fax: 608-251-2883)  
(Email: [cullen@cwpb.com](mailto:cullen@cwpb.com); [vercauteren@cwpb.com](mailto:vercauteren@cwpb.com); [psmith@atcllc.com](mailto:psmith@atcllc.com); [sparker@atcllc.com](mailto:sparker@atcllc.com))

Docket 5-CE-136

CITIZENS ENERGY TASK FORCE

George R. Nygaard

PO Box 3571

La Crosse, WI 54602

(Phone: 608-483-2693)

(Email: [gnygaard@mwt.net](mailto:gnygaard@mwt.net))

CITIZENS UTILITY BOARD

Kira E. Loehr

Dennis Dums

16 North Carroll Street, Suite 640

Madison, WI 53703

(Phone: 608-251-3322)

Email: [loehr@wiscub.org](mailto:loehr@wiscub.org); [dums@wiscub.org](mailto:dums@wiscub.org))

CLEAN WISCONSIN

Katie Nekola

634 West Main Street, Suite 300

Madison, WI 53703

(Phone: 608-251-7020 ext. 14)

(Email: [knekola@cleanwisconsin.org](mailto:knekola@cleanwisconsin.org))

PATRICIA A. CONWAY

21715 Nordale Avenue

Ontario, WI 54651

(Phone: 608-337-4404)

(Email: [Pat@pro-eco.org](mailto:Pat@pro-eco.org))

MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.

Warren Day

Day Law Offices

2010 Hawkinson Road

Oregon, WI 53575

(Phone: 608-877-1369)

(Email: [warrenday1@hotmail.com](mailto:warrenday1@hotmail.com))

NOCAPX 2020 and

CITIZENS ENERGY TASK FORCE

Carol A. Overland

Legalelectric

1110 West Avenue

Red Wing, MN 55066

(Phone: 612-227-8638)

(Email: [overland@legalelectric.org](mailto:overland@legalelectric.org))



Docket 5-CE-136

WISCONSIN DEPARTMENT OF TRANSPORTATION

James S. Thiel

4802 Sheboygan Avenue, Room 115B

PO Box 7910

Madison, WI 53707-7910

(Phone: 608-266-8928)

(Email: [Jim.Thiel@dot.wi.gov](mailto:Jim.Thiel@dot.wi.gov))

PUBLIC SERVICE COMMISSION OF WISCONSIN

*(Not a party, but must be served)*

610 North Whitney Way

P.O. Box 7854

Madison, WI 53707-7854

Please file documents using the Electronic Regulatory Filing (ERF) system which may be accessed through the PSC website: <https://psc.wi.gov>.

John Lorence

Diane Ramthun

William Fannucchi

James Lepinski

Wisconsin Public Service Commission of Wisconsin

PO Box 7854

Madison, WI 53707-7854

(Email: [John.Lorence@wisconsin.gov](mailto:John.Lorence@wisconsin.gov); [Diane.Ramthun@wisconsin.gov](mailto:Diane.Ramthun@wisconsin.gov);

[Jim.Lepinski@wisconsin.gov](mailto:Jim.Lepinski@wisconsin.gov))