



Wisconsin Department of Transportation

www.dot.wisconsin.gov

Scott Walker
Governor

Mark Gottlieb, P.E.
Secretary

Office of the Secretary
4802 Sheboygan Avenue, Room 120B
PO Box 7910
Madison, WI 53707-7910

Telephone: 608-266-1113
FAX: 608-266-9912
E-mail: sec.exec@dot.wi.gov

November 22, 2011

George Poirier, Administrator
Federal Highway Administration
Wisconsin Division
525 Junction Road, Suite 8000
Madison, WI 53717

**RE: Federal Law Interpretation
New Aboveground Utility Installations in
Scenic Areas
CapX 2020 Electric Transmission Project**

Public Service Commission Docket No. 5-CE-136:
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

Dear Mr. Poirier:

The State of Wisconsin, Department of Transportation (WisDOT), has reached a critical point in determining how Federal law affects permit issuance and authorizing scenic easement use or impacts for aboveground utility facilities. The issue involves the proposed CapX 2020 transmission line project in which one alternate route uses portions of WIS 35 along with directly impacting or conflicting with many of the numerous Wisconsin scenic easements adjacent to the highway. WIS 35 is designated as the Great River Road National Scenic Byway (GRRNSB) and a National Parkway throughout the project area.

The Federal regulation in question is 23 CFR 645.209(h) and is **Attachment 1** to this letter. Based upon our interpretation of this law, WisDOT believes that we cannot authorize exceptions to issue utility permits in WIS 35 right-of-way (R/W) nor authorize use of Wisconsin scenic easements in the GRRNSB viewshed for a new aboveground electric transmission line similar to what is currently proposed in the CapX 2020 project. We also believe that since FHWA approves WisDOT's *Utility Accommodation Policy* along with exceptions to that policy, FHWA would not approve the aforementioned exceptions either if so requested by WisDOT. Before presenting facts to support this position, the paragraphs below provide some background information on the project.

CapX 2020 is a major transmission line project that starts in the Dakotas and runs through Minnesota. It is not a distribution or service line that serves customers directly. The line will likely cross the Mississippi River between Minnesota and Wisconsin at Alma since it is the preferred location of the U.S. Fish and Wildlife Service. Other crossings at Winona, Trempealeau and La Crosse were already ruled out due to environmental concerns. From Alma, the line travels south with a proposed endpoint for the Wisconsin segment in Holmen.

The proposed transmission line will be 345kV and may upgrade the current 161kV lines between Alma and Holmen if one of the alternate routes between those two cities is approved. The alternate route of primary concern to WisDOT is known as Q1 and is described by CapX 2020 as follows:

- Convert an existing 161kV Dairyland Power Cooperative (DPC) transmission line from Rochester, MN crossing the Mississippi River at Alma, WI and traveling south to La Crosse on WIS 35 (GRRNSB) in Buffalo¹, Trempealeau¹ and La Crosse² Counties, WI. Approximately 11.5 miles of this route follows an existing transmission line corridor from a mile north of Merrick State Park (north of Indian Creek Road) to the Buffalo – Trempealeau County line.

Xcel Energy of Minneapolis is leading the Wisconsin portion of the project in cooperation with DPC of La Crosse. DPC has existing easements and permits along the Q1 route that it would turn over to Xcel if and where possible for Xcel to use for the new 345kV line in exchange for Xcel also reconstructing portions of DPC's transmission line along this alternate route.

¹ Served by WisDOT's Northwest Region – Eau Claire office

² Served by WisDOT's Southwest Region – La Crosse office

Xcel submitted an application for a Certificate of Public Convenience and Necessity (CPCN) to the Wisconsin Public Service Commission (WPSC), which deemed the application complete on June 9, 2011. In accordance with the required WPSC process, Xcel submitted two viable route alternatives for the project segment between Alma and Holmen along with variations of those routes. See **Attachment 2**, CapX 2020 Route Map Alternatives. Subsequently, WPSC has one year from June 9, 2011 in which to make a formal decision on the route location. WPSC developed a draft environmental impact statement (EIS) and released it to the public on November 8, 2011. After a 45-day review period, the draft EIS is revised and becomes final. WPSC then conducts public hearings to solicit testimony on the proposed routes. Once the hearings are over, the Commissioners use all of the information to make a final route decision (order).

WisDOT plays an important role in this process since project route alternatives run longitudinally on or cross our highway R/W and scenic easements. The Q1 route is visible for approximately 19 miles along the GRRNSB viewshed, with the primary visual impact in Buffalo County between Alma and Fountain City. As part of the process, WisDOT informs WPSC, the applicants and interested parties of WisDOT concerns and requirements so that there are no unresolved conflicts between the final WPSC route decision and WisDOT requirements.

The following are the main facts behind our interpretation of the referenced Federal law:

- (1) A number of the scenic easements, overlooks, or other scenic attributes on the GRRNSB were acquired or improved with Federal-aid funds. Such lands are also located within or adjacent to areas of scenic enhancement and natural beauty.
- (2) The proposed 345kV line will require a 150-foot path (75 feet either side of the line) in which trees and other vegetation will be clear cut to achieve National Electric Safety Code Clearances. This facility is substantially different than the existing DPC Q1 facility requiring larger structures and greater clearances in different or additional locations.
- (3) Due to the high voltage, the new CapX line cannot be economically built underground using today's technology and thus must be aboveground. The proposed Q1 line will have 150-foot supporting poles placed approximately 600-900 feet apart, and it would also rebuild an existing H-frame 161 kV line that was originally constructed in 1950. Xcel Energy has presented a visual assessment of the proposed design of which seven pages of photos are attached for your review, **Attachment 3**, CapX 2020 Visual Assessment Pictures. As you can see, the new poles have a significant negative impact on the existing viewscape along the GRRNSB.
- (4) Xcel has developed two viable route alternatives between Alma and Holmen along with variations of those routes as required in their CPCN application to the WPSC. The range of distances of all the routes between the two cities, including the Q1 route, is about 40-55 miles depending upon the route selected.
- (5) Also, from the Federal Utility Program Guide, the following is referenced:

Scenic Areas

Section 645.209(h) maintains the same basic philosophy of not permitting the installation of utilities on highways within or adjacent to scenic areas except under special conditions. However, the method of administering this requirement was revised in 1985.

Under former PPM 30-4, if utility use was to be allowed in scenic areas under special conditions, the State was required to clear this matter through the Division Administrator. Sections 645.209(h) and 645.211(c)(3) change this process. Now the State is allowed to address the scenic areas issue, including special conditions under which exceptions will be allowed, within its utility accommodation policy. Thus, FHWA's acceptance of the State's utility accommodation policy should eliminate the need for clearance of individual exceptions through the Division Office.

In interpreting 23 CFR 645.209(h), WisDOT believes that sub. (1) and all three items under sub. (2) must be fulfilled in order to merit an exception for aboveground utility permit issuance and accordingly, authorizing use of scenic easements. WisDOT's review shows that only one of the four requirements, sub. (2)(ii) is currently met by Xcel for the Q1 route. Therefore, WisDOT believes that it cannot authorize exceptions to issue utility permits in WIS 35 R/W, nor authorize use of, or direct impacts to or conflicts with its scenic easements in the GRRNSB viewshed for a new aboveground electric transmission line.

We also believe that FHWA would not approve the aforementioned exceptions either if so requested by WisDOT. The relevant provisions of WisDOT's FHWA approved *Utility Accommodation Policy* contain the same requirements as 23 CFR 645.209(h): WisDOT *HMM 09-15-25 Location Requirement, Section 8.1 (December 2010)*, **Attachment 4**, formerly *Utility Accommodation Policy 96.26(B) (1995)*, **Attachment 5**. Attachment 5 has been included to show that WisDOT has had a policy on utility accommodation in scenic areas for many years.

WisDOT requests a letter of concurrence from FHWA with regard to our determination that exceptions are not warranted and thus WisDOT lacks authority to issue permits or authorize use of its Wisconsin scenic easements in the GRRNSB viewshed. One of the strongest reasons for supporting our position is that Xcel has developed two viable route alternatives between Alma and Holmen along with variations of those routes. Simply stated, there are other alternatives available that are less difficult and do not cost a significant amount more than the Q1 route. By comparison, the Q1 route has an estimated cost of \$194.5 million. The highest alternative route is estimated at \$233.5 million.³

Should FHWA reach a different conclusion, WisDOT requests a letter documenting the reasons why FHWA believes an exception to policy could be approved in order for WisDOT to allow and the WPSC to select the Q1 route alternative. WisDOT understands that this federal law is primarily intended to address longitudinal installations such as the proposed Q1 alternate route, but there may be locations where a proposed transmission line would merely need to cross highway R/W and thus could be permitted to do so.

Sincerely,



Mark Gottlieb, P.E.
Secretary

cc: Wisconsin Public Service Commission (Electronic Docket)
Jim Thiel, Office of General Counsel
David Vieth, Bureau of Highway Maintenance
Robert Fasick, Bureau of Highway Maintenance
Jane Carrola, Bureau of Planning & Economic Development
Southwest-La Crosse and Northwest-Eau Claire Region Offices

Attachments:

- 1 - 23 CFR §645.209(h)
- 2 - CapX 2020 Route Map Alternatives
- 3 - CapX 2020 Visual Assessment Pictures
- 4 - *HMM 09-15-25 Location Requirement, Section 8.1 (December 2010)*
- 5 - *Utility Accommodation Policy 96.26(B) (1995)*

³ Draft EIS Table 12.6-1 page 259

ATTACHMENT 1

23 CFR § 645.209

(h) Scenic Areas. New utility installations, including those needed for highway purposes, such as for highway lighting or to serve a weigh station, rest area or recreation area, are not permitted on highway right-of-way or other lands which are acquired or improved with Federal-aid or direct Federal highway funds and are located within or adjacent to areas of scenic enhancement and natural beauty. Such areas include public park and recreational lands, wildlife and waterfowl refuges, historic sites as described in 23 U.S.C. 138, scenic strips, overlooks, rest areas and landscaped areas. The State transportation department may permit exceptions provided the following conditions are met:

(1) New underground or aerial installations may be permitted only when they do not require extensive removal or alteration of trees or terrain features visible to the highway user or impair the aesthetic quality of the lands being traversed.

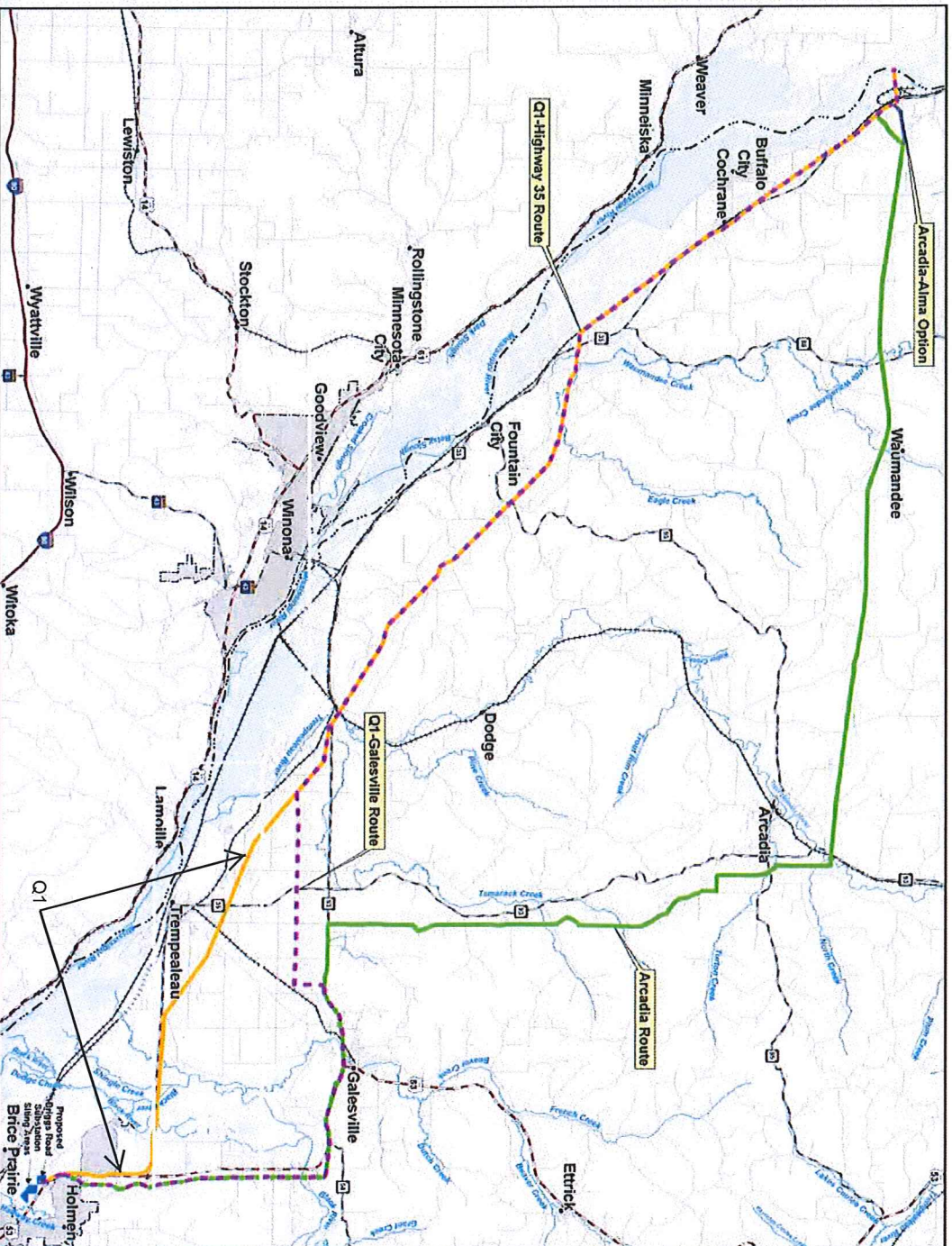
(2) Aerial installations may be permitted only when:

(i) Other locations are not available or are unusually difficult and costly, or are less desirable from the standpoint of aesthetic quality,

(ii) Placement underground is not technically feasible or is unreasonably costly, and

(iii) The proposed installation will be made at a location, and will employ suitable designs and materials, which give the greatest weight to the aesthetic qualities of the area being traversed. Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable.

Figure 2:
Alternative Routes Included in Application



2.2 Project Development and Alternatives Considered

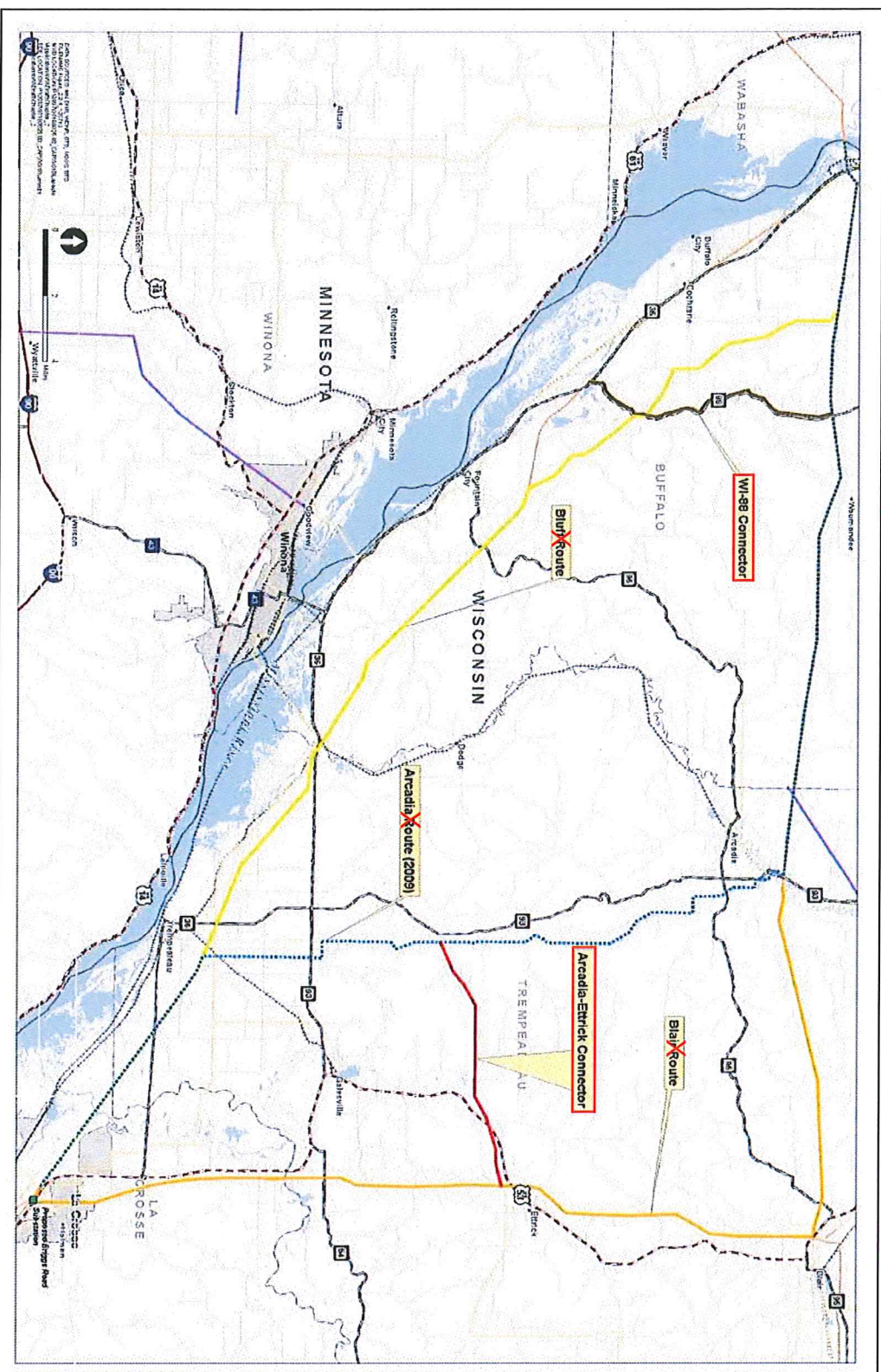
CapX2020

Attachment 2, Page 2 of 2

Figure 2.2-4:

Considered but Eliminated Routes

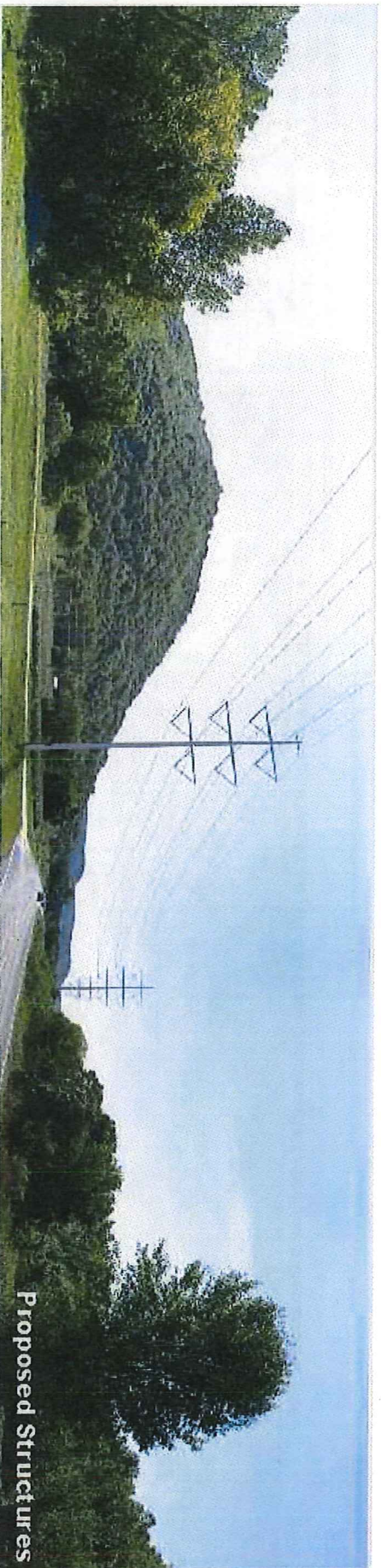
Note: The PSC has ordered Xcel to investigate the STH 88 Connector and Arcadia-Ettrick Connector routes.





Photopoint 174 - The existing DPC Q1 161 kV transmission line crosses the Great River Road (WIS 35) at the Dairyland Power Road intersection.
View looking north.

Existing Condition



Photopoint 174 - 2.0 miles southeast of Dairyland's Alma power plant, looking southeast. The existing Dairyland Q1 161 kV transmission line would be rebuilt as a double-circuit 161 kV / 345 kV transmission line.

Proposed Structures

Existing Condition



Photopoint 65 - The existing DPC Q1 161 kV transmission line parallels the Great River Road (WI-35) from Creechville to the Alma Generation Site. This photo was taken 0.5 mile south of Cochrane, looking northwest.

Proposed Structures



Photopoint 65 - One-half mile south of Cochrane looking northwest. The existing Dairyland Q1 161 kV transmission line would be rebuilt as a double-circuit 161 / 345 kV transmission line.

Existing Condition

Photopoint 93. The Great River Road (WIS 35) crosses the Black River in the Van Leen Wildlife Area. View looking east.

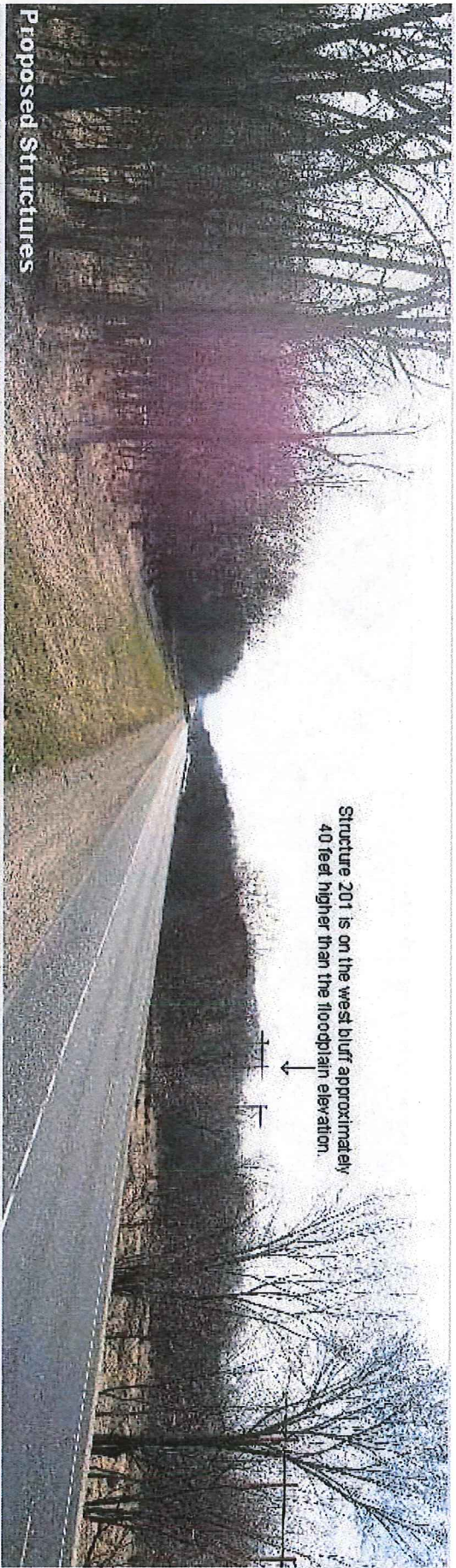


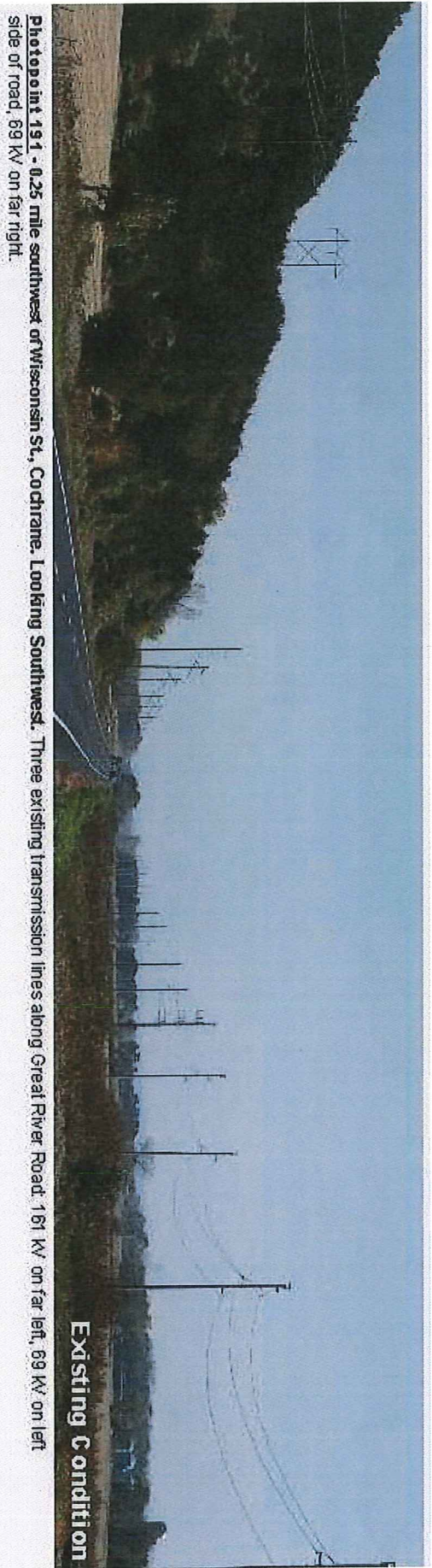
Structure 201 is on the west bluff approximately
40 feet higher than the floodplain elevation.



Proposed Structures

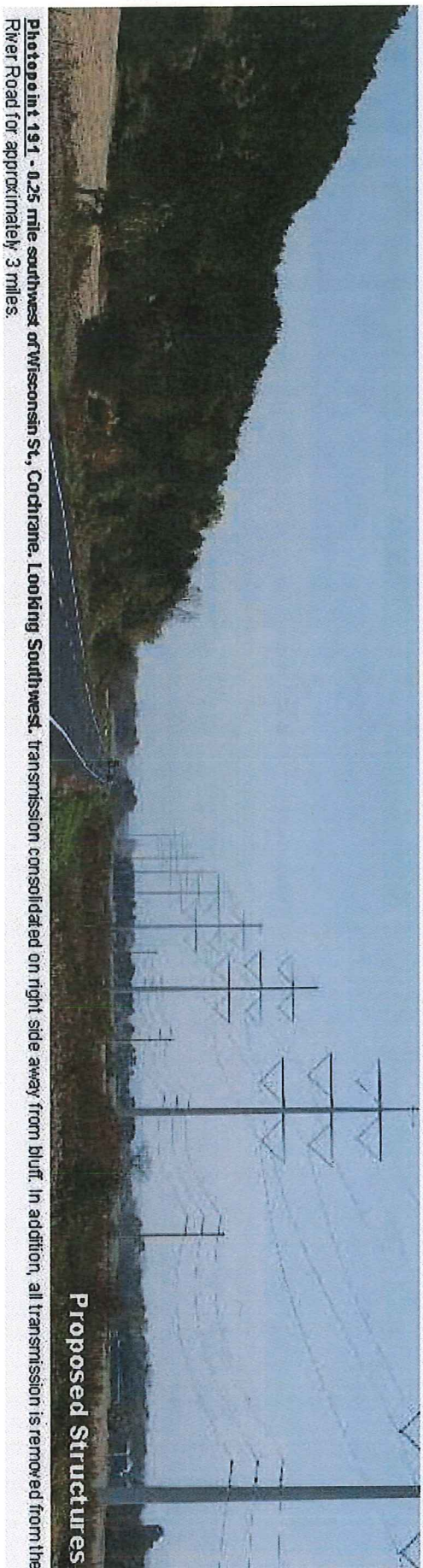
Photopoint 93. Great River Road 1.0 mile east of Black River, looking east. 345 / 161 KV line constructed on low profile H-frame structures 350 feet north (right) of road.





Photopoint 191 - 0.25 mile southwest of Wisconsin St., Cochran. Looking Southwest. Three existing transmission lines along Great River Road. 161 kV on far left, 69 kV on left side of road, 69 kV on far right.

Existing Condition



Photopoint 191 - 0.25 mile southwest of Wisconsin St., Cochran. Looking Southwest. transmission consolidated on right side away from bluff. In addition, all transmission is removed from the River Road for approximately 3 miles.

Proposed Structures

7.0 Median Installations

On both crossing installations and longitudinal installations, poles, guys, or other related facilities shall not be located in a highway median. WisDOT may grant an exception for a crossing installation on a controlled-access highway. See HMM 09-15-40, 5.1.

7.1 Median Work

No work shall be performed in the median of any highway without prior approval from WisDOT. When median work is authorized, it shall conform to the following provisions unless otherwise stated within a utility's permit:

- 1) The permittee or their contractor shall follow its approved traffic control plan, which will likely include a lane closure system notification. See HMM 09-15-60, 4.0. It may also include State Patrol or other county/local law enforcement agency notification of the expected start and finish time of the median work.
- 2) All equipment, operations, and spoil material shall be located within the center of the median.
- 3) No openings, vehicles, equipment, nor materials of any type shall be located within the median overnight.
- 4) All vehicles used to conduct the work operation shall be equipped with conspicuously visible roof-mounted revolving or strobe lights. These lights shall be in operation just prior to and during the work operation. Hazard warning lights on the vehicles shall also be operating.

8.0 Scenic Considerations

When feasible, WisDOT strives to enhance visual qualities of the highway system by:

- The retention and/or planting of trees, shrubs and other vegetation.
- The selection of special alignments and corridors.
- The acquisition of scenic easements.

Utilization of highways by utilities requires that the type and size of its facilities and the manner and extent of its installations shall not materially impair the scenic quality, appearance, or view of highway roadsides and adjacent areas. A utility shall reimburse WisDOT the value of any scenic easement that is released for a utility installation. The value shall be determined by a qualified appraiser hired or employed by WisDOT.

8.1 Scenic Areas

Areas which have been acquired or set aside for their scenic quality, such as scenic strips, overlooks, rest areas, recreation areas, public parks, historic sites, etc., and the R/W which traverses these areas, are in a special category and new utility installations shall not be permitted except as provided in this section.

- 1) New underground utility installations may be permitted within scenic areas when the installation does not require extensive removal or alteration of trees or other natural features visible to the highway user and does not impair the visual quality of the lands being traversed.
- 2) New overhead installations shall be prohibited at such locations where there is a feasible and prudent alternative to the use of scenic areas by the overhead facility. When this is not the case, installations will be considered only where:
 - Other locations are unusually difficult, unreasonably costly, or are undesirable from the standpoint of visual quality,
 - An underground installation is not technically feasible or is unreasonably costly, and
 - The proposed installation can be made at a location (and will employ suitable designs and materials) which gives adequate protection to the visual qualities of the area being traversed.
- 3) These controls shall also be followed in the location and design of utility installations that are needed for a highway purpose, such as for continuous highway lighting, or to serve a weigh station, rest or recreational area.

Effective: April 1, 1995	96.00 Utility Accommodation
Supersedes: March 1, 1992	96.20 Location Requirements
	96.26 Scenic Considerations

By: Director, Bureau of Highway Operations

Page 1 of 1

A. General Policy

When feasible, the Department strives to enhance visual qualities of the highway system by:

1. The retention and/or planting of trees, shrubs and other vegetation.
2. The selection of special alignments and corridors.
3. The acquisition of scenic easements.

Utilization of highways by utilities requires that the type and size of its facilities and the manner and extent of its installations shall not materially impair the scenic quality, appearance, or view of highway roadsides and adjacent areas.

B. Scenic Areas

Areas which have been acquired or set aside for their scenic quality, such as scenic strips, overlooks, rest areas, recreation areas, public parks, historic sites, etc., and the right-of-way which traverses these areas, are in a special category and new utility installations shall not be permitted except as provided in this section.

1. New underground utility installations may be permitted within scenic areas when the installation does not require extensive removal or alteration of trees or other natural features visible to the highway user and does not impair the visual quality of the lands being traversed.
2. New overhead installations shall be prohibited at such locations where there is a feasible and prudent alternative to the use of scenic areas by the overhead facility. When this is not the case, installations will be considered only where:
 - a. Other locations are unusually difficult, unreasonably costly, or are undesirable from the standpoint of visual quality,
 - b. An underground installation is not technically feasible or is unreasonably costly, and
 - c. The proposed installation can be made at a location (and will employ suitable designs and materials) which gives adequate protection to the visual qualities of the area being traversed.
3. These controls shall also be followed in the location and design of utility installations that are needed for a highway purpose, such as for continuous highway lighting, or to serve a weigh station, rest or recreational area.