

**BEFORE THE
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

Docket No. 05-CE-136

**DAIRYLAND’S
MOTION FOR INTERLOCUTORY REVIEW**

Co-applicant Dairyland Power Cooperative (“Dairyland”), by counsel, respectfully submits this Motion for Interlocutory Review pursuant to Wis. Admin. Code § 2.27 for the Public Service Commission of Wisconsin (“Commission”) to review a ruling made by the Administrative Law Judge in Docket 5-CE-136, granting in part and denying in part, Intervenor Patricia Conway’s Motion to Amend the Prehearing Conference Memorandum stylized as “Formal Request for Issue to be Including in ‘Issues List.’” Originally filed as PSC REF# 156987, re-filed as PSC REF#: 157356. The motion requested the inclusion of an issue in this proceeding that allows, “investigating Dairyland Power Cooperative’s Articles of Incorporation to determine if their application for the proposed project is in violation of the PURPOSES Article and the NATURE OF BUSINESS Article.” *Id.*¹

Although the ALJ did not add the issue to the prehearing conference list of issues, he did so “in part, because the broad scope of existing issues list already covers all relevant aspects of . . .

¹ Dairyland and Commission staff timely filed objections to Ms. Conway’s request. PSC REF# 157385 and 157568. NoCapX 2020 responded that formal declaration of Ms. Conway’s issue was not necessary because the issue is already included by other general issues, and that joint ownership is presumed in the proceedings. PSC REF# 157459. Ms. Conway replied to Dairyland’s response and argued that Dairyland was limited in its scope-of-service and geographical area. PSC REF# 157455.

[Ms. Conway's issue,]" and concludes "the ability of parties and Commission staff to present facts and legal argument on the matter requires no amendment to the issues list." PSC REF# 158070. Dairyland asks the Commission to order the inadmissibility of evidence regarding Dairyland's Article of Incorporation and cooperative powers, and prevent the adjudication of any aspect of the proposed issue by the Commission.

Pursuant to Wis. Admin. Code § 2.27(1), the Commission may review the ALJ's order if it finds that doing so "would further the proper disposition of the proceeding." Review is proper here because the Commission does not possess jurisdiction to make findings of fact and conclusions of law on the proposed issue and the proposed issue is immaterial to the proceedings. Ms. Conway's proposed issue will needlessly complicate the proceedings.

The ALJ recognizes "the Commission may not have the jurisdiction or special expertise to adjudicate the effect of the Dairyland Articles of Incorporation on Dairyland's right to an ownership share of the project," agreeing with both Dairyland and Commission staff comments. Clearly, the Commission cannot make findings of fact and conclusions of law regarding Dairyland's cooperative authority. PSC REF# 158070.

Staff also noted that because all of the co-applicants in this proceeding are "persons" able to apply for a certificate of public convenience and necessity pursuant to Wis. Stat. § 196.491(3)(a), even if Dairyland was to withdraw as a co-applicant, "the application would still be properly before the Commission and the proceeding would continue." PSC REF# 157568 at 1-2. This echoes Dairyland's assertion of the immateriality of Ms. Conway's issue.

Finally, on January 17, 2012, the Commission denied Ms. Conway's request for intervenor compensation (PSC REF#: 158365) "on the basis that the proposed work would either not be relevant to the Commission's decision...."

Accordingly, the Commission should reverse the ALJ and order the inadmissibility of evidence regarding Dairyland's Article of Incorporation and cooperative powers, and prevent the adjudication of any aspect of the proposed issue by the Commission.

Respectfully submitted this 20th day of January, 2012.

/s/ Jeffrey L Landsman

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