

**BEFORE THE**

**PUBLIC SERVICE COMMISSION OF WISCONSIN**

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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-LaCrosse Project, Located in Buffalo, Trempealeau, and LaCrosse Counties, Wisconsin

Docket No. 5-CE-136

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**CLEAN WISCONSIN'S INITIAL POST-HEARING BRIEF**

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**INTRODUCTION**

The Western Wisconsin landscape between Alma and La Crosse is a state and national treasure. The area contains miles of national scenic byways, nationally and internationally recognized areas of exceptional resource value, hundreds of native fish and bird species, and is rich with historical and cultural resources. Because of its special value, the region is subject to multiple management and conservation programs. Any construction projects considered in this part of the state receive careful scrutiny to ensure that these unique resources are protected.

The Joint Applicants for this Project propose to construct a 345kV transmission line extending from a Mississippi River crossing at Alma, Wisconsin, to a new substation in LaCrosse County, a distance of 41 to 57 miles, depending on the route. Clean Wisconsin was granted intervenor status and compensation to evaluate and offer evidence regarding the environmental impacts of the Project, particularly as they relate to wetlands and habitat. This evaluation demonstrates that the Applicants have not adequately assessed or accounted for all potential impacts of the Project, have underestimated the impacts that have been identified, and have not adequately addressed how they would avoid and/or mitigate those impacts that have been identified. Because the impacts and mitigation have not been

adequately assessed, the Public Service Commission (“Commission” or “PSC”) does not have enough information to grant this project a Certificate of Public Convenience and Necessity under 196.491(3), Wis. Stats.

### **STATEMENT OF THE FACTS**

Joint Applicants Northern States Power-Wisconsin, Dairyland Power Cooperative, and Wisconsin Public Power, Inc. (“Applicants”) have applied for a Certificate of Public Convenience and Necessity (“CPCN”) under Wis. Stat. §196.491 to construct and place in service a 345kV transmission line extending from a river crossing at Alma to a new substation near La Crosse, Wisconsin. Applicants have proposed a total of 8 possible routes for the project which would require at least 377 and potentially more than 636 acres of new right-of-way (ROW), affect at least 60 and potentially more than 143 acres of wetlands, require the clearing of at least 87 and potentially more than 148 acres of upland forest, and would involve 41 to 57 stream crossings. (FEIS, p. 280; Mosca Direct, p. 4-6.)

The Commission has a duty to ensure that construction and maintenance of a high voltage transmission line will not adversely impact the environment. Wis. Stat. § 196.491(3) and Ch. PSC 111 require the Commission to ensure that environmental impacts are thoroughly evaluated by applicants before issuing a CPCN. The Wisconsin Environmental Policy Act (“WEPA”), Wis. Stat. §1.11(2)(c) and Wis. Admin. Code Ch. PSC 4, requires the Commission to conduct its own review of potential environmental impacts, in cooperation with the Department of Natural Resources. (“Department” or “DNR”) Wis. Stat. §196.025(2m). A joint Environmental Impact Statement (“EIS”) must “include all of the information required for both the Commission and the Department to carry out their respective duties under s. 1.11.” Wis. Stat. §196.025(2m). Therefore, the EIS must also comply with the requirements in Wis. Admin Code Ch. NR 150.

In order to approve transmission line projects, the Commission must find that the design and location of the route is in the public interest, considering a number of factors, including environmental impact. Wis. Stat. § 196.491(3)(d)(3). The routing and design of a high-voltage transmission line must minimize environmental impacts. Wis. Stat. §196.491(3)(d)3r. The PSC must also find that the proposed facility will not have “other undue adverse impacts on other environmental values such as, but not limited to, ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water and recreational use.” Wis. Stat. §196.491(3)(d)4. The PSC must make these findings upon the evaluation of at least one alternative to the proposed project. Wis. Stat. §196.491(3)(d)3; *see also* Wis. Stat. §196.025(2m)(c).

DNR has a similar duty under WEPA to evaluate alternatives to the proposal, “including a rigorous exploration and objective evaluation of the environmental impacts of all reasonable alternatives, particularly those that might avoid all or some of the adverse environmental effects of the proposed action.” Wis. Admin. Code NR 150.22(2)(e). DNR must consider those alternatives that “might avoid some or all of the adverse environmental effects of the proposed action.” *Id.* It is critically important that the environmental impacts are thoroughly evaluated in this proceeding, because once the CPCN is issued, the DNR is precluded from considering other alternatives for the purpose of issuing waterway permits under Wis. Stats. Ch. 30. Wis. Stat. §30.025(2s).

#### **ANALYSIS OF THE EVIDENCE**

##### **I. APPLICANTS PROPOSE TO CONSTRUCT THE CAPX PROJECT THROUGH NATIONALLY AND INTERNATIONALLY RECOGNIZED AREAS OF EXCEPTIONAL NATURAL RESOURCE VALUE, CONTRARY TO STATE AND FEDERAL MANAGEMENT PLANS.**

Construction and maintenance of large, high-voltage transmission line corridors through sensitive sedge meadows and the Van Loon Bottoms contradicts and undermines years of state and

federal planning and investment in the conservation of these valuable and irreplaceable resources. The following are just a few examples of such investments:

- A. The Department of Natural Resources *Wisconsin All-Bird Conservation Plan* (Mosca Ex. 6) describes the importance of Bottomland Hardwoods to support a rich and diverse abundance of avian species. The Plan states:

“These forests....have declined greatly in extent since European settlement. Remaining tracts have been fragmented and degraded by a variety of human activities including high- grade logging, grazing, ditching, clearing for agriculture, invasion by exotic species....the exotic, highly invasive reed canary grass is a major threat to bottomland hardwoods, spreading quickly after a disturbance that opens the canopy, such as timber harvest, windthrow, or disease. It can quickly dominate the ground layer and impede tree regeneration.” (Mosca Ex. 6, p.2-4.)

Among the “key sites” listed as priorities for management of Bottomland Hardwoods and prevention of the spread of invasive species are the Upper Mississippi River/Trempealeau National Fish & Wildlife Refuges (Buffalo, Crawford, Grant, LaCrosse, and other counties) and the Van Loon Bottoms (Mosca Ex. 6, p. 8.)

- B. The U.S. Fish and Wildlife Service *Upper Mississippi River and Great Lakes Joint Venture (UMRGLJV) Implementation Plan* notes that “Wisconsin holds the most extensive and high-quality floodplain forests...in the entire Great Lakes region, which affords both opportunity and responsibility.” (Mosca Ex. 6, p. 6-7.) The Plan recommends, among other things:

- Maintenance and protection of existing large contiguous tracts of bottomland hardwoods
- Retain large live trees
- Avoid the introduction and spread of invasive species, particularly reed canary grass, to the understory

- C. Wisconsin’s *Strategy for Wildlife Species of Greatest Conservation Need* was developed to proactively address the needs of declining wildlife species before they required listing as Endangered or Threatened. The State Wildlife Grant program, administered by the U.S. Fish and Wildlife Service, has provided Wisconsin with about \$1 million per year since 2001 to

fund a variety of conservation initiatives. Out of the 16 statewide “Ecological Landscapes” identified in the *Strategy*, the Western Coulees and Ridges Ecological Landscape hosts the second largest concentration of species of greatest conservation need. (Mosca Ex. 7, p.ix.)

D. Wisconsin’s *All-Bird Conservation Plan* notes that Southern Sedge Meadows and marshes are very important habitat and are also highly sensitive to disruption. The Plan makes several recommendations regarding these types of wetlands:

- Avoid soil disturbance within and adjacent to sedge meadows to prevent the establishment of invasive plant species
- Maintain wetland function and biodiversity by minimizing impervious surfaces, limiting development, and reducing soil loss and nutrient delivery within watersheds
- Develop property-specific plans to control invasive species such as reed canary grass and cattail. (Mosca Ex. 8.)

Construction of a 345-kV line through the habitat described in these studies will undermine the conservation and management plan work that has been achieved in these areas to date, and therefore should be avoided.

## **II. CONSTRUCTION AND MAINTENANCE OF HIGH VOLTAGE TRANSMISSION LINES WILL RESULT IN SIGNIFICANT IMPACTS TO RARE WETLAND COMMUNITIES AND HABITAT.**

As noted in the FEIS, construction and maintenance of transmission line project has the potential to result in a number of environmental impacts, including but not limited to:

- Destroying individual plants or animals or their habitat by crushing or digging with heavy equipment, blasting for construction of foundations, surface disturbance or soil and vegetation during clearing, drilling, or from traffic. (FEIS, p. 71.)
- Degrading water quality through soil erosion and siltation into rivers and wetlands that provide habitat for rare plants and animals. (FEIS, p. 71.)
- Introducing and encouraging the growth of invasive or common species resulting in a reduction in species diversity. (FEIS, p. 71.)
- Clearing trees used as perching or nesting sites by rare birds and creating an open area out of a closed canopy that allows more predation or invasives. (FEIS, p. 71.)
- Disturbing habitats during the active nesting or spawning period of protected species. (FEIS, p. 71.)

- Degrading woodland or wetland quality through removal of trees and brush and increasing edge effects, making the area unsuitable for rare plants or animals (FEIS p. 71.)
- Permanent conversion of forested wetlands to wet meadows (FEIS p. 86.)
- Rutting and soil compaction, permanently altering the wetland's soil structure and hydrologic function (FEIS p. 87.)
- Increasing edge effects within sensitive habitats, including changes in vegetation structure, light conditions, and moisture conditions further into the interior of forested wetlands. (FEIS p. 109.)
- Providing conduits for introduction of invasive plant and animal species and resulting in barriers to the movement of local wildlife, including increased exposure to predators. (FEIS, p. 109.)

**a. Impacts to Southern Sedge Meadows**

Southern Sedge Meadows are listed as "Rare or Uncommon" natural communities and are in decline in Wisconsin. (Mosca Direct, p.13.) The primary feature of Southern Sedge Meadows is the presence of tussocks, a unique formation of soil, litter, roots, and live shoots of *Carex stricta* that accumulate to form a mound of live matter, up to 1 m in height and 1 m in diameter. (Mosca Ex. 3, p. 323.) These tussocks create vital micro-habitats in the Southern Sedge Meadows, and are responsible for stabilizing the community's species richness and composition. (Mosca Ex.3, p. 333.) Applicants have admitted that construction activities will cause impacts to Southern Sedge Meadows (Hillstrom Rebuttal, p. 19), but assert that the use of construction matting and winter construction will minimize these impacts (Hillstrom Rebuttal, p. 20). This is not likely to be true, for the following reasons.

Because of their unique above-ground root structure, construction matting, which is placed directly on top of the plants, will crush the tussocks, killing the roots of the tussocks and their colonized species. Tussocks are not resilient when crushed, and are difficult to re-establish. (Mosca Direct, p. 7, Mosca Ex. 3.) Some Tussocks might survive construction matting in winter if they are submerged under ice, but not all tussocks are submerged. (Mosca Ex. 3.) In fact, one of the distinguishing features of Southern Sedge Meadows is that they have relatively little standing water (Mosca Direct, p. 13) and thus there would be little ice to protect vegetation. Further, wetlands with extensive organic matter may not

freeze fully during winter months because of thermal loading, making winter construction dangerous and likely to cause significant damage to the resource. (FEIS, p. 87.)

Applicants have not proposed a safe or proven method to construct or maintain the line in Southern Sedge Meadow habitats that will avoid or minimize impacts to tussock sedge.

**b. Impacts to the Van Loon Bottoms**

The Applicants' preferred route (Q1-HWY 35) and other route options (Q1-STH 88 Option A with Q1-Hwy 35, and any other route that includes segments 8A, 8B and 8C) include crossing the Van Loon Bottoms. The Black River bottoms and Van Loon State Wildlife Area in LaCrosse County has been designated a Wisconsin State Natural Area, WI Land Legacy Place, WI Wildlife Action Plan Reference Site, The Nature Conservancy Priority Conservation Area, WI Bird Conservation Initiative Important Bird Area, and a Wetland Gem. (Mosca Ex. 5.) In addition, the lower Black River is designated a Ramsar Wetland of International Importance, one of only 29 wetlands within the United States with a similar designation (Thompson Direct, p. 5.) The value of these high-quality wetlands is well-documented in the record. (*see, e.g.* FEIS section 7; Mosca Direct, p. 10-15; Mosca Ex. 5; Thompson Direct, p. 4-6.)

The Van Loon's floodplain forests are dominated by large silver maple, white oak, and green ash, which provide excellent habitat for rare and uncommon bird species such as red-shouldered hawk and cerulean warbler. (Mosca Ex. 5.) This high-quality wetland complex features extensive and mature floodplain forests which flank many channels, sloughs, and oxbow lakes, creating ideal stopover habitat conditions for thousands of migratory waterfowl each year. (Mosca Ex. 5.)

The proposed route segments 8A, 8B, and 8C would result in the loss of approximately 18.5 acres of forested wetlands within the Van Loon. (FEIS, p. 132.) The transmission corridor for this portion of the route would be separated by about 245 to 263 feet of wooded wetland from the existing Highway 35, expanding the effective corridor width from the existing 110 to 140 feet to 523 to 535 feet for the

road, transmission ROW, and tree buffer. (FEIS, p. 132.) This corridor expansion would have significant impacts to the Van Loon, including increasing edge effects, increasing the spread of invasive species, and acting as a barrier to the movement of local wildlife. (FEIS p. 132.)

In addition, the Van Loon will be vulnerable to construction damage. (Mosca Direct, p. 12.) Even if the Applicant fully commits to construction practices that would minimize environmental harm, the Van Loon would be impacted by construction through:

- Conversion of forested wetland to other community type
- Equipment compaction of soils
- Disruption in hydrology
- Introduction of invasive species

(Mosca, direct p. 12-13)

**III. FAILURE TO CONSIDER ALTERNATIVE RIVER CROSSINGS IN THIS CPCN PROCEEDING VIOLATES WIS STAT. §§ 196.491 AND 1.11, AND WIS. ADMIN. CODE CH. PSC 4.**

The consideration of alternatives is at the heart of the Environmental Impact Statement required under WEPA. Wis. Stat §1.11(2)(c). The minimum requirements of WEPA and Wis. Stat. §§196.025, 196.491 reinforce that at least one alternative must be considered for the proposed route. The Commission must evaluate the “significant environmental consequences” of each alternative, including those alternatives that might avoid “some or all of the proposed action’s environmental effects” and the no action alternative. *Id.*

Failure to consider more than one river crossing location in the context of the CPCN proceeding illegally eliminates the alternatives analysis required by Wis. Stat. §§ 1.11, 196.025(2m)(c), and Wis. Admin. Code Chapters NR 150 and PSC 4. The Mississippi River crossing segment of the proposed project requires the same treatment as any other segment under consideration in this proceeding. It is no more acceptable to “winnow” river crossing alternatives down to one, with no proposed alternatives, prior to



submittal of the project application than it would be to similarly predetermine, without public input, a single route for the entire project.

However, aside from a short statement in the FEIS dismissing this option, the FEIS did not address a river crossing alternative. The FEIS simply states: “By the time the project CPCN application was submitted to the Commission, the four (river crossing) alternatives had been narrowed to one, at Alma.” (FEIS, p. 43). Failure to consider at least one alternative and its environmental consequences to the Mississippi River crossing violates the PSC’s duty under WEPA, Wis. Admin. Code PSC 4 and Wis. Stat. §196.025. *See also State ex rel. Boehm v. Wisconsin Dept. of Natural Res.*, 174 Wis. 2d 657, 665, 497 N.W. 2d 445, 449 (1993) (Holding that WEPA “requires that agencies consider and evaluate the environmental consequences of alternatives available to them and undertake that consideration in the framework provided by sec. 1.11.”)

**IV. THERE IS NOT ENOUGH INFORMATION IN THE RECORD TO ADEQUATELY COMPARE AND EVALUATE THE ENVIRONMENTAL IMPACTS OF ALL PROPOSED LINE ROUTES.**

Wisconsin law mandates that the agency’s discussion of reasonable alternatives must allow for adequate comparison of the different options. The goal of an EIS is to “inform...the public of significant environmental impacts of a proposed action and its alternatives, and reasonable methods of avoiding or minimizing adverse environmental effects.” Wis. Admin. Code PSC 4.30(1)(a). Thus the presentation of alternatives in an EIS must illustrate the differences between each alternative in a way that is understandable to the public. The EIS must present the alternatives in “comparative form, thus sharply defining the issues and providing a clear basis for choice among the options.” 40 C.F.R. § 1502.14, Wis. Admin Code PSC 4.04.

The FEIS in this case did not contain an alternatives analysis that adequately described different potential alternatives and their consequences, for the following reasons:

**a. Inconsistencies and information gaps in the Application and FEIS indicate Applicants' estimates for permanent and temporary wetland impacts are low.**

The Applicants have underestimated the wetlands impacts for every proposed route. There are multiple inconsistencies and information gaps in the case documents that make it impossible to accurately assess the real environmental impacts of constructing this project. For example, the Application states that there will only be 4.94 acres of temporary and permanent wetland impact for the Arcadia route, but the FEIS indicates that there will be at least 116.7 acres of affected wetland acres, and the rare species report states that there will be at least 110.9 acres of permanent or temporary habitat modification. (Mosca Ex. 2.) Applicants have failed to distinguish the difference between a wetland "habitat modification," an "affected acre" and "impact," despite repeated requests to do so, (Mosca Direct, p. 8;; Mosca Surrebuttal, p. 2) but it is clear from the analysis in the FEIS and the Rare Species Report that the wetland impacts will be much greater than stated in the CPCN application. (Mosca Direct, Table 1; *see also* FEIS, Table 12.5-1; Rare Species Report, Table 7c) Further, the FEIS relies heavily on the NIH database to identify the natural communities along the route, and visual surveys done from an existing ROW, but these methods inherently underestimate the amount of wetland habitat present because "the connector segments are located in relatively remote settings on private lands where natural habitat patches persist in an agricultural matrix with little or no existing information on endangered resources." (Koslowski Direct, p. 7.)

Applicants also omit other important information about the impacts to segment 8B, which is especially significant because of its location in the Van Loon. For example, the Application's "Environmental Inventory Table: Wetlands and Waterways Q1-Hwy 35 Route" fails to identify the wetland crossing lengths, impact justifications, or proposed permanent structures in this segment. (Mosca Direct, p. 10.) However, the Environmental Features Map (CPCN Application: Appendix D) depicts conversion of forested wetland to non-forested wetland, crossings of streams and open water,

permanent structures, and at least 3 access routes into the corridor that will affect the Van Loon. (Mosca Direct, p. 10.) The lack of clarity about these impacts in a segment of such great natural resource value is unacceptable.

Remarkably, Table 12.2.1 of the FEIS lists “unknown” in every category for habitat impacts to the State Road 88 segment. This complete absence of information regarding impacts for that route does not meet the standard for an alternatives analysis under WEPA, and clearly does not provide the PSC with enough information to determine whether the proposed route can meet the standards in Wis. Stat. § 196.491.

**b. Applicants incorrectly characterize permanent wetland impacts as temporary.**

Applicants have improperly characterized all construction impacts as “temporary,” even when construction practices will permanently impact the wetland or habitat. As described above, the use of construction matting or ice roads for construction in the Southern Sedge Meadow will result in permanent habitat modification. Applicants have listed this as a “temporary” impact in the CPCN application, and by mischaracterizing it have underestimated the permanent impacts to wetlands in their application. (Mosca Direct, p. 6-7.)

**c. Environmental impact mitigation measures suggested by applicants are insufficient, vague, and based on inadequate data.**

It is possible to avoid, minimize, and mitigate the damage to natural resources resulting from construction. (FEIS, p. 71-72) However, while Applicants have offered a litany of possible mitigation measures, they are careful to commit to none:

- No staging or stringing setup areas would be placed within or adjacent to water resources, *as practicable*;
- Applicants would avoid major disturbance of individual wetlands...*where possible*;
- *When possible*, construction would be scheduled during frozen ground conditions;
- Crews would *attempt* to access the wetland with the least amount of physical impact to the wetland;

- Structures would be assembled on upland areas before they are brought to the site for installation, *when practicable*;
- *Applicants have access to low impact or tracked construction vehicles designed to minimize soil impacts in wet areas* (Hillstrom Direct, p. 23, emphasis added.)

In addition, as required by the Guidelines for Wetland Compensatory Mitigation in Wisconsin (Mosca Ex. 10) and Compensatory Mitigation for Losses of Aquatic Resources found at 33 C.F.R. Parts 325 and 332 (Mosca Direct, p. 18), the Applicants must propose compensatory mitigation for unavoidable wetland impacts. NSPW witness Hillstrom asserts that the wetland impacts of new ROW construction through the Van Loon would be “mitigated” by the removal of poles from existing ROW, which would presumably allow trees to re-grow there. (Hillstrom Direct, p.26.) However, as noted by DNR witness Thompson, simply abandoning the existing Q1 provides no certainty that it will re-vegetate successfully (Tr. Vol.4, p.542). In fact, he notes that:

“Much of the ground layer under the existing Q1 line is dominated by a monotype of reed canary grass. Monotypes of that species have the ability to persist indefinitely, preventing site colonization by desirable, native floodplain forest species. Thus, without intensive, long-term vegetation management, habitat quality for the abandoned Q1 line will remain diminished and fragmentation will remain in areas where reed canary grass infestations persist.” (Thompson Direct, p. 6-7.)

As of the technical hearing dates, Applicants had not submitted a long-term vegetation management plan for the Q1-Hwy. 35 route. (Tr. Vol. 4, p.568-69.)

Clean Wisconsin witness Mosca points out other deficiencies in the application with regard to avoidance, minimization, and mitigation of wetland impacts, as follows:

- No adequate description of dewatering operations to avoid pumping sediment-laden water into wetlands or streams;
- No adequate description of what will be done to prevent invasive species from being introduced during construction and post-construction maintenance, and what provisions will be made for invasive species monitoring and control;
- No adequate description of standards to be employed governing re-grading and re-vegetation of disturbed areas, and what financial commitments have been made for monitoring, management, and reporting;

- No adequate description of what commitments have been made to soil erosion and sediment control, or what provisions will be made to ensure that soil erosion and sediment controls are inspected and repaired regularly until work zones stabilize (Mosca Direct, p. 21-22.)

The Applicants' response to these and other questions has been that "all of the missing items will be addressed with the DNR after issuance of the CPCN" and that "this timing of the submittal of this information is standard process for transmission line construction projects in Wisconsin." (Hillstrom Rebuttal, p.23.) However, failing to analyze the impacts and potential mitigation before a CPCN is issued violates Wis. Stat. § 196.491(3)(d)4, which requires that *in order to issue a CPCN*, the Commission must first make a determination that "facilities must not have undue adverse impact on environmental values such as, but not limited to: ecological balance, public health and welfare, historic sites, geologic formations, aesthetics of land and water, and recreational use." In addition, it violates the requirement in Wis. Stat. §196.025(2m) that the environmental analysis performed must contain sufficient information for both the Commission's and the Department's decision-making processes.

Without knowing whether and to what extent Applicants can and will avoid, minimize, and mitigate adverse environmental impacts, it is impossible for the Commission to make a determination that those impacts will not be "undue," and it is impossible for the DNR to determine which permit conditions must be imposed on subsequently-issued DNR permits.<sup>1</sup> Because of this lack of information in the record, the application does not satisfy the requirements for a CPCN and does not provide the Commission with sufficient information to take action.

DNR witness Koslowski addresses the inappropriateness of this approach in her discussion of Applicants' proposed minimization measures for impacts to endangered resources along the Q1-Highway 35 Route. She notes:

"Mr. Hillstrom's direct testimony appears to forego route siting as a means of avoidance and relies on a post-route-selection approach. In other words, select a route and then

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<sup>1</sup> This inadequacy of the environmental review is especially important because of the requirement for the DNR to issue navigable waterway permits within 30 days of the CPCN approval. Wis. Stat. §30.025(4). All environmental impacts must be fully evaluated in the CPCN proceeding so that DNR can meet this deadline.

determine whether or how impacts to rare species can be avoided. Specifically for utility projects where an incidental take authorization/permit may be required, the Department has consistently interpreted the requirement under Wis. Stats., 29.604(6m)4, to require consideration of other routes that would avoid a take in order to meet the legal requirement that “A description of the alternative actions to the taking that the parties in par. (d) have considered and the reasons that these alternatives will not be utilized” (Koslowski Direct, p.8.)

The logic used by the Department to comply with incidental take regulations should be applied to all environmental impacts; that is, to thoroughly examine the potential for adverse impacts *and* the degree to which such impacts can be avoided or minimized *before a route is selected*. It may well be that none of the proposed routes can adequately avoid undue environmental impacts. In that case, the Department and Commission should both understand the availability of avoidance and minimization to properly decide which route, if any, can meet the statutory standard. If none of the routes can meet the standard, the application should be denied. Without an adequate description of the mitigation that will be used to offset environmental impacts of specific alternatives, the Commission does not have the “clear basis for choice among options” that is required for an EIS. 40 C.F.R. 1502.14, incorporated by Wis. Admin. Code PSC 4.30(1)(a).

**V. IF THE PROJECT IS APPROVED, THE COMMISSION SHOULD REQUIRE APPLICANTS TO RETAIN AN INDEPENDENT ENVIRONMENTAL MONITOR WHO REPORTS TO THE COMMISSION.**

Because there is not enough reliable information in the record about the environmental impacts of this project, the Commission should deny a CPCN. If, however, the Commission chooses to issue a CPCN for one of the line routes, it should condition its approval on a requirement that Independent Environmental Monitors are used during the construction process. As DNR witness Koslowski notes,

“It has been my experience that while construction minimization measures may be optimally described in the CPCN, the measures perform less than optimally in the field.”

(Koslowski direct p. 10.) As previously discussed, while Applicants have listed a number of construction practices they may use to mitigate environmental damage, they have not firmly committed to using any

of them in all necessary circumstances. An independent monitor who reports to the Commission will ensure that natural resources are protected. (Mosca Direct, p. 22; Rineer Direct, p. 7.)

### **CONCLUSION**

It is undisputed in this case that any route selected for the construction of this 345 kV transmission line will have significant environmental impacts. Because the record contains contradictory and inadequate information about potential environmental impacts, the Commission should:

- 1) Deny a CPCN for this project.
- 2) If the Commission decides to approve the project, condition approval of any proposed route on the use of Independent Environmental Monitors.

Respectfully submitted this 30<sup>th</sup> day of March, 2012.

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