

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 05-CE-136
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

**COMMENTS AND FACTUAL CORRECTIONS REGARDING BRIEFING MEMORANDUM AND DECISION
MATRIX
STATE OF WISCONSIN, DEPARTMENT OF TRANSPORTION**

The Wisconsin Department of Transportation (WisDOT) respectfully submits the following comments on the briefing memorandum (memo) and the decision matrix provided by staff. WisDOT believes that the record clearly demonstrates there are four permissible, buildable, and viable routes for the proposed 345KV transmission line. Likewise, there are five non-permissible routes, which should be removed from consideration for that and other reasons.

Briefing Memorandum

In General

The memo does not provide a one-to-one reiteration of the issues presented in the case. As such, the alternatives presented do not align well with the original issues for hearing. This in turn causes the alternatives to be less than satisfactory as to meeting the stated statutory requirements.

Specific References

Page 8 – The list of route options does not properly identify the routes. The list of routes should be:
Q1-Highway 35, Q1-Highway 35 with STH 88 Option A, Q1-Highway 35 with STH 88 Option B,
Q1-Galesville with STH 88 Option A, Q1-Galesville with STH 88 Option B, Arcadia, Arcadia-Ettrick,
and Original Q1. (FEIS p. XXV PSC 158956)

Page 10/Page 17 – The memo combines hearing issue question 3 and question 5 into two disparate questions in the memo and ignores a primary requirement of hearing issue 5. Nowhere in either question is there an adequate analysis of the requirements of 196.491(3)(d) or an alternative decision option that adequately analyzes the testimony and briefing on the same. Failure to address the requirements of 196.491(3)(d) in either question 1 or 2 of the memo is a fatal flaw in the memo.

As to factual corrections, these two questions omit required information for making a decision on the statutory requirements of 196.491(3)(d). The following are facts not presented in the memo which are required to select an alternative under these questions. (PSC 162551 p. 14-15 (land use), p. 7, 12, 15, PSC 162969 p. 6-8, 17, PSC 160637 p. 6-8, PSC 160639 p. 4, PSC 160891 p. 343)

Likewise the alternate selections are insufficient to properly capture the requirements of 196.491(3)(d). None of the alternatives provided addresses whether the applicants' proposed project meets the requirements of 196.491(3)(d). (PSC 162969 p. 17)

Page 19 – Question 4 of the memo does not properly state the issues under consideration for the corridor priority requirement of 1.12(6). The memo focuses almost exclusively on right-of-way width and alignment neither of which was a primary issue in the presentation of evidence at hearing or in briefing. The primary issue with respect to 1.12(6) is whether the applicants have followed the priority path by considering all factors in siting and moving through the priority list where certain facts prevent a particular option from being feasible. (PSC 162969 p. 2, 4)

WisDOT's argument is improperly stated. WisDOT states that the current highway right-of-way (first priority to be analyzed under 1.12(6)) will not accommodate the new facilities. This is because applicants will need to rely on WisDOT for permitting and facility placement in WisDOT scenic easements. WisDOT will not permit overhead facilities along the GRRNSB (in highway right-of-way or in scenic easements) *except* in limited areas. (PSC 162969 p. 1-2, 5-6)

Accordingly, the alternatives provided for Commission decision are wholly insufficient and must individually assess each route as to whether compliance under 1.12(6) has been met.

Q1-Galesville with STH 88 Option A, Q1-Galesville with STH 88 Option B, Arcadia, Arcadia-Ettrick meet the requirements of 1.12(6). Q1, Q1-Highway 35, Q1 Highway 35 with STH 88 Option A, Q1 Highway 35 with STH 88 with Option B, and Q1-Galesville do not. (PSC 162969 P. 5-6)

Page 21 – Question 5 of the memo does not include WisDOT's facts regarding GRRNSB land use requirements. (PSC 162969 p. 10, 14)

Page 26-28 - WisDOT's position is incorrectly stated. WisDOT stated that it would not permit the Q1-Highway 35 route for overhead facilities but that it would permit the route for underground facilities. WisDOT also stated that because applicants had not provided adequate cost information for underground facilities, the Commission cannot consider a buried condition for this route making it unpermittable by WisDOT. (PSC 162969 p. 1-2, 5-6, PSC 160791 p. 166, 210)

Reference to applicants' statement that DNR and WisDOT are permittable is incorrect. Discretion to permit *does not equate* to permitability. If WisDOT has discretion to permit, it also has the discretion to deny a permit. The memo also incorrectly states that applicants assert that WisDOT's statement of inability to permit does not represent reasoned agency decision making. The memo confuses applicants' comments on WisDOT's attempts to offer a buried alternative with WisDOT's clear authority to deny a permit for overhead facility placement. (PSC 162969 4, 7, 14-15, PSC 160891 p. 301)

Page 29 – DATCP does not provide a legal analysis of WisDOT's scenic easements. Nothing in DATCP's analysis cites to any statute, case law or code for its assertion that WisDOT's scenic easements are not enforceable. As such, it is not a legal analysis and merely an unsubstantiated opinion. DATCP's information on WisDOT's scenic easements should be regarded with very minimal weight or disregarded altogether. (PSC 160995)

Page 30-32 – WisDOT has not recommended the Q1-Hwy35 with STH 88 Options A and B, rather it recommended that applicants study the Hwy 88 corridor as another option to the Hwy 35 routes. (PSC 160638 P. 12, PSC 143009)

Page 33 – Q1-Galesville route. WisDOT’s position is incorrectly stated. WisDOT stated that it would not permit the Q1-Highway 35 route for overhead facilities but that it would permit the route for underground facilities. WisDOT also stated that because applicants had not provided adequate cost information for underground facilities the Commission cannot consider a buried condition for this route making it unpermittable by WisDOT. (PSC 162969 p. 1-2, PSC 160791 p. 166, 210, PSC 160891 p. 296)

Page 40 – Original Q1 Route - WisDOT’s position is incorrectly stated. WisDOT stated that it would not permit the Q1-Highway 35 route for overhead facilities but that it would permit the route for underground facilities. WisDOT also stated that because applicants had not provided adequate cost information for underground facilities the Commission cannot consider a buried condition for this route making it unpermittable by WisDOT. (PSC 160638 p. 8-9, PSC 162969 p. 1-2, PSC 160791 p. 166, 210, PSC 160891 p. 296)

Page 41-42 – The applicants’ statement that WisDOT may issue permits but not deny them is incongruent and nonsensical. Also, this section misstates WisDOT’s position. WisDOT stated that it would not permit the Q1-Highway 35 route for overhead facilities but that it would permit the route for underground facilities. WisDOT also stated that because applicants had not provided adequate cost information for underground facilities the Commission cannot consider a buried condition for this route making it unpermittable by WisDOT. (PSC 161077 (FDM, & Utility Accommodation Policy), PSC 162551 p. 4, PSC 160791 p. 166, 210, PSC 160891 p. 296)

Page 45 – Requiring a condition for applicants to “work with landowners and holders of conservation easements” is ineffective as to the legal rights of those land right owners. The memo fails to cite to facts regarding property owners, easement holders and the public’s right to litigate these easements. Merely requiring applicants to work with land owners will not alleviate the damage to the land rights nor prevent legal action by the land rights owners or the public. (PSC 162969 p.5-6, PSC 160639 p. 4-5)

Page 52-54 – The memo does not include WisDOT’s stated position on granting of a CPCN for this project. WisDOT as required under state and federal statues, code, and policies cannot and will not permit placement of overhead facilities along or across highway right-of-way or in WisDOT scenic easements on the following alternative routes due to the adverse and unacceptable impact on the Great River Road National Scenic Byway and National Parkway and the public investment therein: Q1; Q1-Highway 35; Q1 Highway 35 with STH 88 Option A; Q1 Highway 35 with STH 88 with Option B [Q1 Hwy 35, STH 88 with options A and B are not permittable by the DNR and as such not permittable by WisDOT]; and Q1-Galesville. (PSC 162551 p. 22, PSC 162969 p. 5-6)

In order to accommodate the applicants, WisDOT is ready and able to permit overhead placement of the transmission line along and across highways under its jurisdiction in the following routes: Arcadia; Arcadia with Ettrick Connector; Q1-Galesville with STH 88 Option A; Q1-Galesville with STH 88 Option B

Therefore, WisDOT fully supports issuance of a CPCN with the proviso that it be approved only as to one of the following routes: Arcadia; Arcadia with Ettrick Connector; Q1-Galesville with STH 88 Option A; Q1-Galesville with STH 88 Option B.

The alternatives provided for the Commission should include an option to grant a CPCN only with respect to certain routes. Adding alternatives in this manner would allow the Commission to fully consider permissible options.

Briefing Matrix

The following citations should be added.

Page 4, Issue 5.

PSC 162551 p. 14-15 WisDOT Initial Brief, PSC 160637 Carrola Direct p. 3

Page 6, Issue 8 (8a) Q1-Highway 35

Add PSC 162969 Reply Brief p. 1-2 WisDOT *does not* support this route as it cannot permit the buried facilities due to applicant's failure to provide adequate cost information for this condition.

Page 8, Issue 8 (8b) Q1 Highway 35 STH 88 Option A

PSC 162969 Reply Brief p. 3-14, WisDOT *does not* support this route as DNR testifies and briefs that it cannot permit the same.

Page 8, Issue 8 (8c) Q1 Highway 35 STH 88 Option B

PSC 162969 Reply Brief p. 3-14, WisDOT *does not* support this route as DNR testifies and briefs that it cannot permit the same.

Page 9, Issue 8 (8d) Q1 Galesville

PSC 162969 Reply Brief p. 2-14, WisDOT *does not* support this route as it cannot permit buried facilities due to applicant's failure to provide adequate cost information for this condition.

Page 12, Issue 8 (8g) Arcadia

Add PSC 162969 Reply Brief p. 5-6

Page 13, Issue 8 (8h)

Add PSC 162969 Reply Brief p. 5-6

Page 13, Issue 8 (8i) Original Q1

Add PSC 162969 Reply Brief p. 5 WisDOT *does not* support this route as it cannot permit buried facilities due to applicants failure to provide adequate cost information for this condition.

Page 15, Issue 9

Add PSC 162969 Reply Brief p. 1-2

Page 21-22, Issue 17

The alternatives provided fail to provide the Commission the opportunity to grant the CPCN only for certain routes. The Commission should be provided an alternative which allows them to grant a CPCN for only those routes permissible by WisDOT as provided in PSC 162969 at p. 5-6.

Dated April 6, 2012

State of Wisconsin
Department of Transportation

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