

**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

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**NORTHERN STATES POWER COMPANY, A WISCONSIN CORPORATION,  
DAIRYLAND POWER COOPERATIVE AND WPPI ENERGY'S RESPONSE TO  
PETITIONS FOR REHEARING**

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**I. Introduction**

Northern States Power Company, a Wisconsin corporation (“NSPW”), on behalf of itself and its co-applicants, WPPI Energy and Dairyland Power Cooperative (“DPC”), submits the following response to the 12 Petitions for Rehearing filed by non-party individuals and the Town of Stark (“Non-Party Petitioners”)<sup>1</sup> and the two Petitions for Rehearing filed by parties, NoCapX2020/Citizens Energy Task Force (“NoCapX/CETF”)<sup>2</sup> and Patricia Conway (“Conway”)<sup>3</sup> (collectively, “Petitioners”).

The Commission granted a Certificate of Public Convenience and Necessity (“CPCN”) for the Wisconsin portion of the Hampton – Rochester – La Crosse 345 kV Project (“Project”) after a thorough and exhaustive record building process involving Applicants, Commission Staff,

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<sup>1</sup> John Corcoran, PSC Ref. #166653; Dennis Wortman, PSC Ref. # 166780; Bradley Walker, PSC Ref. # 166786; Marilyn Pedretti, PSC Ref. #166846; Debra Severson, PSC Ref. # 166797; James D. and Marcia A. Wine, PSC Ref. #166825; Joanne DeMaster, PSC Ref # 166865; Adena Eakles, PSC Ref. # 166859; Edward Helmueller, PSC Ref # 166864; Sharon Kamrowski, PSC Ref. # 166855; Bradford Price, PSC Ref. # 166847 and Town of Stark-Energy Planning and Information Committee [EPIC] Vernon County, WI, PSC Ref. #166867. With the exception of Ms. Severson’s petition, all of these petitions appear to use the same format.

<sup>2</sup> PSC Ref. # 166866.

<sup>3</sup> PSC Ref. # 166852.

members of the public, and eight intervenors.<sup>4</sup> Technical and public hearings were held before Administrative Law Judge Michael E. Newmark over a period of five days in March 2012. Nearly 200 pages of written comments from the public were received by the Commission via mail and the Commission website. Additional written comments were received by the Commission during the March 13 and 14, 2012 public hearings. The proceedings produced more than 1,000 pages of transcripts over the course of the technical and public hearings through oral testimony of 26 party witnesses and more than 100 members of the public. In addition to oral testimony, parties filed over 500 pages of prefiled testimony and more than 180 exhibits.

Based on our review of the petitions and the requirements of the rehearing standards, there does not appear to be any basis for the Petitioners' request for rehearing. Petitioners have failed to identify any material error of law or fact or any new evidence that could not have been discovered with due diligence and which is sufficiently strong to overturn the Commission's reasoned decision. The Petitioners' request for rehearing, therefore, should be denied.

## **II. Legal Standard**

Any person aggrieved by a final Commission order granted after a contested case hearing may file a petition for rehearing. Wis. Stat. § 227.49.<sup>5</sup> The statute provides that rehearing will be granted only on the basis of:

- (a) Some material error of law.
- (b) Some material error of fact.
- (c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

*Id.* at (3).

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<sup>4</sup> PSC Ref. #165332.

<sup>5</sup> The Non-Party Petitions and the NoCapX 2020/CETF Petition erroneously cite to Wisconsin Statute § 229.49 in the opening sentence.

### **III. Discussion**

#### **A. Non-Party Petitioners**

##### **1. Standing**

Of the 12 Non-Party Petitioners, seven lack standing to seek rehearing. Although they state that they are affected landowners, they live outside the Project area and, therefore, are not “aggrieved” by the CPCN decision.<sup>6</sup>

The Wisconsin Supreme Court has held that a person must be "aggrieved" and "directly affected" by the agency decision, and also that the decision must "directly affect the legal rights, duties or privileges" of the person seeking review. See *Wisconsin Power & Light Co. v. Public Service Comm.*, 45 Wis.2d 253, 172 N.W.2d 639 (1969). Further, in *Greenfield v. Joint County School Comm.*, 271 Wis. 442, 447, 73 N.W.2d 580 (1955), a person aggrieved is defined as "one having an interest recognized by law in the subject matter which is injuriously affected by the judgment." Specifically, the court held:

The right of appeal is statutory and does not exist except where expressly given, and cannot be extended to cases not within the statute. A person is aggrieved by a judgment whenever it operates on his rights of property or bears directly on his interest. . . . The word ‘aggrieved’ refers to a substantial grievance, a denial of some personal or property right or the imposition of a burden or obligation.

*Id.*

The petitions of the seven individuals outside the Project area should be denied because they are not aggrieved and, therefore, lack standing to seek rehearing.

##### **2. Claims**

All of the petitions filed by the Non-Party Petitioners should also be denied because they do not demonstrate there is any new evidence or material errors of fact or law warranting

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<sup>6</sup> A Google map showing the addresses of all Non-Party Petitioners is enclosed as **Exhibit A**.

rehearing.<sup>7</sup> Rather, they generally base their petitions on conclusory statements asserting that there were material errors of fact and law. Upon further review of the petitions, it is apparent that the Non-Party Petitioners simply disagree with the Commission’s analysis of the record facts and the Commission’s conclusions. The Non-Party Petitioners offer no facts, caselaw or other applicable statutory provision that the Commission failed to address.

For example, Mr. Corcoran asserts that the Commission’s 19 Findings of Fact “are not supported by the record.”<sup>8</sup> Yet, he offers no further analysis of this point. Mr. Concoran similarly contends that the evaluation of one Mississippi River crossing was in error, but provides no legal analysis to support this conclusion.<sup>9</sup>

The Non-Party Petitioners also fail to recognize the breadth of the record evidence before this Commission. For example, Mr. Wortman states he has not “seen any independent study that conclusively supports a need for this transmission line.”<sup>10</sup> This is contrary to the record evidence—the Midwest Independent Transmission System Operator, Inc. (“MISO”) provided its own independent analysis of the need for the Project through its witness Jeff Webb.<sup>11</sup>

Another common theme is that the Commission did not “properly consider energy conservation and efficiency.”<sup>12</sup> Personal differences of opinion are insufficient grounds to grant a rehearing. Energy conservation and efficiency were fully developed in the record, including in the Final Environmental Impact Statement and in testimony by Commission staff witness Carol Stemrich, who independently concluded that energy efficiency could not meet the immediate

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<sup>7</sup> All but two of the Non-Party Petitioners participated in the contested case proceeding. **Exhibit B** provides a list of Non-Party Petitioners and references to the comments they provided.

<sup>8</sup> Concoran, p. 2.

<sup>9</sup> Concoran, p. 3; Wine, p. 3.

<sup>10</sup> Wortman, p. 3.

<sup>11</sup> Webb Direct (PSC Ref # 158044); Webb Rebuttal (PSC Ref # 159977).

<sup>12</sup> See *e.g.* Pedretti, p. 3.

local load serving need and whose testimony was unchallenged at hearing.<sup>13</sup> In addition, it is uncontroverted that energy efficiency cannot address the generation support, regional reliability, and production cost savings provided by the Project.

There simply is nothing new offered by the Non-Party Petitioners and no demonstration that an error of fact or law was made or that there is new compelling evidence. Therefore, these petitions should be denied.

**B. NoCapX/CETF**

Instead of applying the appropriate standard for rehearing, NoCapX/CETF reargues its case and contends that the Order should be stayed “because it is not supported by the record”.<sup>14</sup> All but two of the arguments made by NoCapX/CETF repeat the arguments made in briefing and will not be directly discussed here. The two new arguments NoCapX/CETF does advance do not meet the statutory criteria for rehearing and the petition should be denied.

First, NoCapX/CETF argues that the wrong cost figures were used in the findings of fact. However, the Commission is free, as it did, to identify only the costs of the Wisconsin portion of the Project it was approving, \$211 million, rather total project costs in its Order.<sup>15</sup> There is no error.

Second, NoCapX/CETF argues that the Commission should have deferred to the Wisconsin Department of Transportation’s interpretation of its easements and WisDOT’s authority to require undergrounding near the Great River Road.<sup>16</sup> NoCapX/CETF provides no legal citation to support this argument, nor does it identify any record or newly discovered facts to support its rehearing request. The Commission carefully and fully considered WisDOT’s

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<sup>13</sup> Stemrich Direct (PSC Ref. #159425); Stemrich Tr. 602-604.

<sup>14</sup> NoCapX/CETF, p. 1.

<sup>15</sup> Order, p. 4.

<sup>16</sup> NoCapX/CETF, pp. 15-16.

arguments and rightly concluded that the scenic easements authorize transmission lines and WisDOT's call for undergrounding was unjustified and unsupportable.<sup>17</sup> NoCapX2020/CETF has failed to meet the legal standard for rehearing and its petition should be denied.

**C. Patricia Conway**

Ms. Conway essentially seeks reconsideration of the Commission's decision regarding the scope of this proceeding. The Commission thoughtfully considered these issues and rendered a decision on February 21, 2012.<sup>18</sup> Ms. Conway offers no new information warranting revisiting this decision.

Ms. Conway also challenges the denial of intervenor compensation.<sup>19</sup> The Commission's January 7, 2012 order is final and non-appealable.<sup>20</sup>

Ms. Conway further asserts that the fact that the Production Tax Credit has not been renewed is "new information." Ms. Conway does not explain how this fact should change the Commission's decision on this Project, and does not describe how this information could not have been discovered with due diligence. The fact that the credit expires at year-end and the efforts to renew the credit have failed is common knowledge and was well-known by the time of hearing.<sup>21</sup>

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<sup>17</sup> Order, pp. 19-23 and 35-36

<sup>18</sup> PSC Ref. #159960.

<sup>19</sup> Conway, p. 3.

<sup>20</sup> See Notice of Rights for Rehearing or Judicial Review, the Times Allowed for Each, and the Identification of the Party to Be Named as Respondent attached to Order.

<sup>21</sup> See e.g., [http://articles.chicagotribune.com/2012-02-17/business/ct-biz-0217-wind-ptc--20120217\\_1\\_tax-credit-wind-power-wind-projects](http://articles.chicagotribune.com/2012-02-17/business/ct-biz-0217-wind-ptc--20120217_1_tax-credit-wind-power-wind-projects), reporting failure of Washington to reach deal extending credit.

**IV. Conclusion**

Based on our analysis of the relevant facts and law, the Petitioners have not met the statutory requirements for rehearing. The petitions, therefore, all should be denied.

Dated: June 29, 2012

**BRIGGS AND MORGAN, P.A.**

By: /s/Lisa M. Agrimonti

Lisa M. Agrimonti (1032645)

Valerie Herring (1076996)

2200 IDS Center

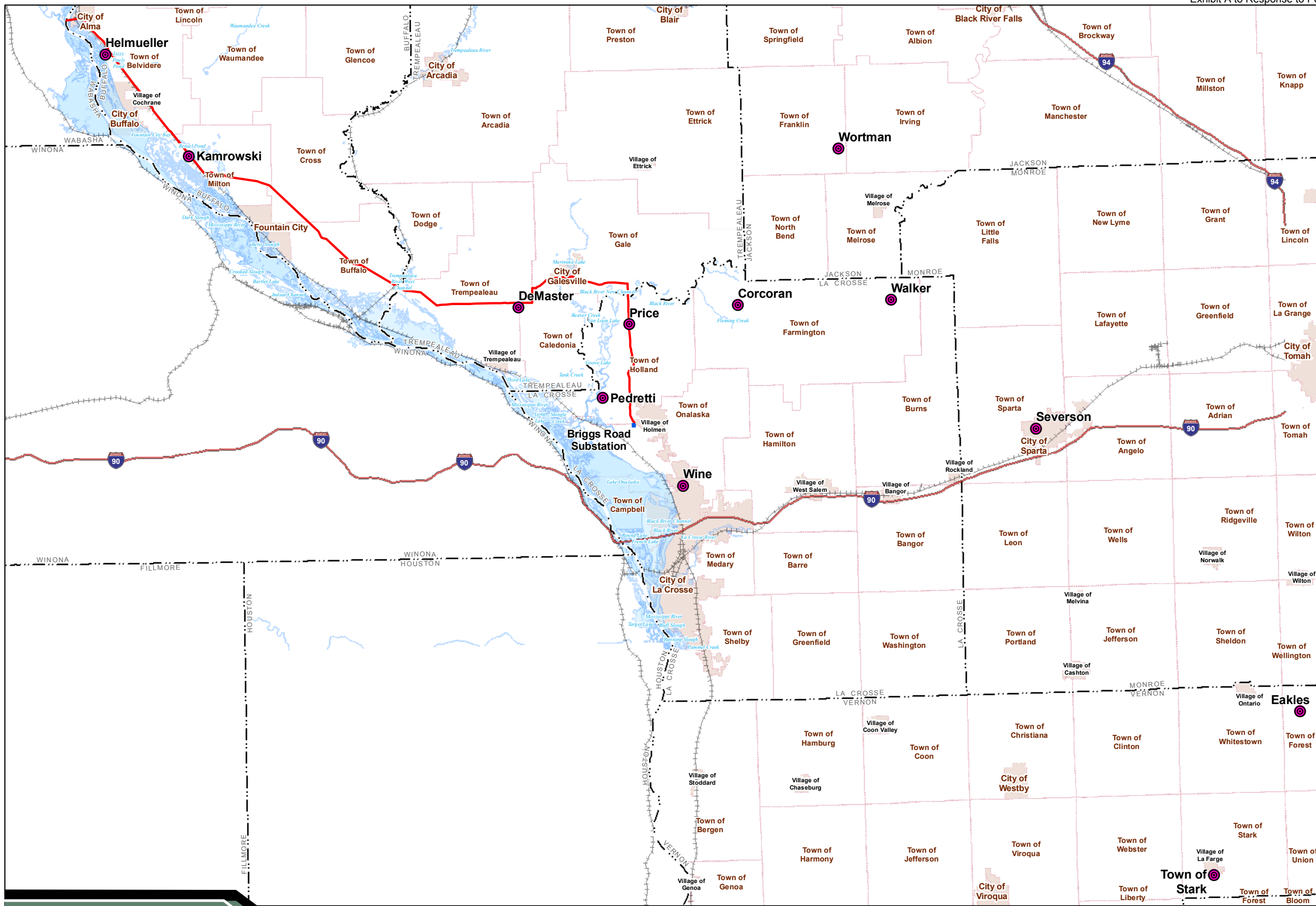
80 South 8th Street

Minneapolis, MN 55402

Telephone: (612) 977-8400

ATTORNEYS FOR NORTHERN STATES  
POWER COMPANY, A WISCONSIN  
CORPORATION

4744829



### Legend

- Wisconsin Petitioner
- PSCW Approved Route 5-10-12**
- Approved Route
- Approved Briggs Road Substation Site
- Transportation (BTS)**
- Interstate Highway
- Jurisdiction (WDNR)**
- City or Village
- Town



Data Sources: WDNR, WisDOT, BTS, HDR, PSCW, Census  
 WI\_Petitioner\_Overview  
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 P:\200707180025\_00\_CAPX\GIS\Map\WI\_CPCN\_Sheetmaps



## Hampton • Rochester • La Crosse 345kV Transmission Project

Xcel Energy • Dairyland Power Cooperative • Rochester Public Utilities • Wisconsin Public Power, Incorporated • Southern Minnesota Municipal Power Agency

## Non-Party Petitioners

June 2012



<b>PSC Ref# of Petition</b>	<b>Petitioner</b>	<b>Comment</b>	<b>Date</b>
166867	Town of Stark	<a href="http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=161647">http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=161647</a> (page 9 by Chair) <a href="http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=161647">http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=161647</a> (page 10 by Co-Chair)	2/1/12
166825	Wine	<a href="http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=160923">http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=160923</a>	3/7/12
166855	Kamrowski	<a href="http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=160190">http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=160190</a> (Sharon)	2/24/12
166865	DeMaster	<a href="http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=161661">http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=161661</a> (page 240-appearance) <a href="http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=161350">http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=161350</a> (page 990 of transcript)	3/14/12
166864	Helmuelier	<a href="http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=160506">http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=160506</a> <a href="http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=154180">http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=154180</a> (page 46)	2/29/12 7/31/11
166859	Eakles		
166847	Price	<a href="http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=154180">http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=154180</a> (page 93-95) (on behalf of ERB Realty Management) <a href="http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=161647">http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=161647</a> (page 25)	7/18/11 2/19/12
166846	Pedretti	<a href="http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=160935">http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=160935</a> <a href="http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=161651">http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=161651</a> (page 51-appearance) <a href="http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=161211">http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=161211</a> (page 738 of transcript)	3/7/12 3/13/12
166797	Severson	<a href="http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=160902">http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=160902</a>	3/7/12
166789	Walker	<a href="http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=161654">http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=161654</a> (page 21-written comment)	3/14/12
166780	Wortman	None	
166683	Corcoran	None	

**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF MINNESOTA        )  
                                          )  ss  
COUNTY OF HENNEPIN        )

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, TREMPLEAU AND LA  
CROSSE COUNTIES, WISCONSIN

PSCW DOCKET NO. 5-CE-136

Jill N. Yeaman, being first duly sworn, deposes and states that on the 29th day of June, 2012, she served a copy of NORTHERN STATES POWER COMPANY, A WISCONSIN CORPORATION, DAIRYLAND POWER COOPERATIVE AND WPPI ENERGY'S RESPONSE TO PETITIONS FOR REHEARING upon:

John F. Concoran  
N9136 County Road V  
Holmen, WI 54636

Dennis Wortman  
N3068 vinger Road  
Melrose, WI 54642

Bradley N. Walker  
W1527 County Road A  
Mindoro, WI 54644

Kirk L. Dettmann  
W7644 Fieldstone Ct.  
Holmen, WI 54636

Marilyn J. Pedretti  
N7097 County Road XX  
Holmen, WI 54636

Debra Severson  
123 S. Thayer  
Sparta, WI 54656

James D. Wine  
Marcia A. Wine  
1219 Greenridge Dr.  
Onalaska, WI 54650

Joanne DeMaster  
N14739 Wright Road  
Galesville, WI 54630

Adena Eakles  
E 14604 County Road F  
Ontario, WI 54651

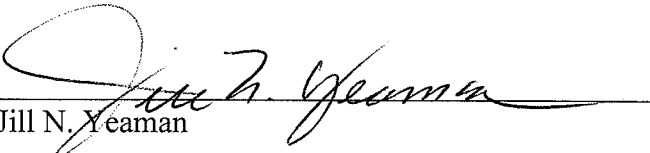
Edward Helmueller  
W1733 Indian Point  
Cochrane, WI 54622

Sharon Kamrowski  
S2819 Kamrowski Road  
Fountain City, WI 54629

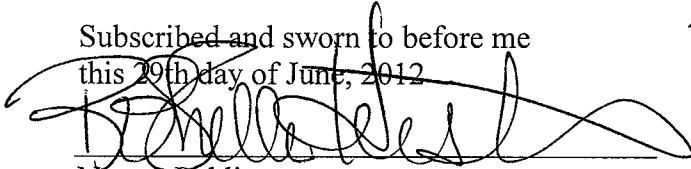
Committee on Energy Planning  
and Information (EPIC)  
S3987 Plum Run Road  
La Farge, WI 54639

Bradford R. Price  
514 Coulee Ct.  
Onalaska, WI 54650

via email and by depositing true and correct copies in the United States Mail in Minneapolis,  
Minnesota, postage prepaid.

  
Jill N. Yeaman

Subscribed and sworn to before me  
this 29th day of June, 2012

  
Notary Public



*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*

*PSCW Docket No. 5-CE 136*

**CERTIFICATE OF SERVICE**

Jill N. Yeaman certifies that on the 29th day of June, 2012, she filed a true and correct copy of NORTHERN STATES POWER COMPANY, A WISCONSIN CORPORATION, DAIRYLAND POWER COOPERATIVE AND WPPI ENERGY'S RESPONSE TO PETITIONS FOR REHEARING by posting it on <http://psc.wi.gov>. Said document was also served via E-Mail as designated on the PSCW Service List on file with the Public Utilities Commission of Wisconsin in the above-referenced docket.

*/s/ Jill N. Yeaman* \_\_\_\_\_  
Jill N. Yeaman