

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Joint Application of American Transmission Company )  
LLC and Northern States Power Company-Wisconsin, )  
as Electric Public Utilities, for Authority to Construct )  
and Operate a New 345 kV Transmission Line from the )  
La Crosse Area in La Crosse County to the Greater )  
Madison Area in Dane County, Wisconsin )

Docket No. 5-CE-142

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**ATC AND NSPW'S REPLY BRIEF  
IN SUPPORT OF ITS JOINT CPCN  
AND UTILITY PERMIT APPLICATION**

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## INTRODUCTION

Of the 18 initial briefs filed in this proceeding, only four contest the need for the Badger Coulee 345 kV Transmission Line Project (“Badger Coulee Project” or “Project”). One of those four briefs was filed by Save Our Unique Lands of Wisconsin, Inc. (“SOUL”); another was filed by the Citizens Energy Task Force, Inc. (“CETF”); and the two remaining need-related briefs were filed by a non-party (“No CapX 2020”) and the Environmental Law and Policy Center (“ELPC”), neither of whom provided any testimony or written evidence in the proceeding. These four briefs do not in any way refute or even really contest the Project’s estimated \$118 to \$702 million in net economic benefits to Wisconsin ratepayers. The opponents’ arguments at best call into question the Project’s estimated \$153.4 million in *reliability* benefits, which the Applicants’ did not include when calculating the Project’s estimated net economic benefits of \$118 to \$702 million.

As the Applicants’ noted in their initial brief, no party provided any technical evidence that can refute the Project’s net economic benefits. These economic benefits have been validated by the Public Service Commission of Wisconsin (“Commission” or “PSCW”) staff and cited with support by the Midcontinent Independent System Operator (“MISO”), the Clean Energy Intervenors (“CEI”), the Wisconsin Business and Labor Intervenor Group, Dairyland Power Cooperative (“DPC”), WPPI Energy (“WPPI”), and SMMPA Wisconsin, LLC (“SMMPA Wisconsin”) (the last three parties are collectively the “Co-Applicants” or “La Crosse Owners”). The only technical evidence before the Commission shows that the Project is needed and should be built. Ultimately, that is why the Commission should issue a certificate of public convenience and necessity (“CPCN”) to the Applicants and the La Crosse Owners.

With regard to the route for the Project, while all of the routes as modified in this proceeding are constructible and permissible, the Applicants continue to believe that the record

supports selection of the Northern Route because it best meets Wisconsin's statutory requirements and minimizes environmental and stakeholder impacts. Based on the initial briefs filed in this case, the majority of the intervenors agree with the Applicants' routing assessment.

Between the Cardinal Substation and the end of Segment M near Lyndon Station, Wisconsin, there is almost unanimous support for the Northern Route. Only two briefs contest any of the segments of the Northern Route between the Cardinal Substation and Lyndon Station, and those concerns relate to a single segment. (Kunze Initial Br. at 2-23, 25-26; Town of Middleton Initial Br. at 6-9.) Ms. Kunze and the town of Middleton both have concerns with Northern Route Segment A because it would impact them. But no party raises concerns with any other Northern Route segments between the Cardinal Substation and Lyndon Station.

The Commission's decision between the remainder of the Northern Route (Segments N and P) and the Southern Route (Segment O) will be more difficult. After reviewing the initial briefs, the Applicants' still believe Segments N and P are superior to Segment O based on the amount of existing corridor sharing and an assessment of the environmental and stakeholder impacts. In addition, only two briefs support the selection of Segment O over Segments N and P: the town of Holland's and the Holland Neighborhood Preservation Association's ("HNPA") briefs. Both parties would be directly impacted by Segment P-East or Segment P-West. Meanwhile, Clean Wisconsin again reiterated the fact that Segments N and P are superior to Segment O from an environmental standpoint, and the Applicants, the city of Onalaska, and the Concerned Citizens of Highway 33 ("CCH") all agree that Segments N and P would have fewer overall impacts than Segment O.

For these reasons and the reasons articulated in the Applicants initial brief, the Commission should approve the Project and choose the Northern Route with Segment P-East over the Southern Route.

## **ARGUMENT**

### **I. THE EVIDENCE IN THIS PROCEEDING SHOWS THAT THE PROJECT IS NEEDED AND CETF, SOUL, ELPC, AND NO CAPX 2020 HAVE FAILED TO REBUT THIS SHOWING**

Under every plausible future scenario analyzed, the Project will provide hundreds of millions of dollars in net economic benefits to Wisconsin ratepayers, cost effectively resolve reliability issues in western Wisconsin, improve competition in Wisconsin's wholesale electricity markets, facilitate the importation of renewable resources from the west of the state and provide reliability benefits to the La Crosse/Winona area. (Applicants' Initial Br. at 6-18.) Most, if not all, of the intervenors' criticisms of the Applicants' planning and reliability analyses are based on either misrepresentations of the record or on fundamental misunderstandings of the manner in which the transmission system is planned and operated in Wisconsin.

#### **A. The Project Meets All Of The Necessary Statutory Requirements To Receive A CPCN**

The record demonstrates that the Project satisfies the relevant criteria of the CPCN statute. (Applicants' Initial Br. at 17-18.) The Applicants conducted a robust economic analysis of the aggregate economic benefits of the Project to Wisconsin ratepayers. (*See generally* Direct-Applicants-Burmester-14:18-28:15; Ex.-Applicants-Henn-1: Joint Application, Section 2.0 & Appendix D, Exhibit 1.) The methodology underlying this analysis is consistent with the applicable law and the planning analyses provided in previous transmission projects that the Commission ultimately approved. (*See* Final Decision, Docket No. 137-CE-161, at 10-11 (PSCW May 7, 2012); Final Decision, Docket No. 137-CE-149, at 8-10 (PSCW Jun. 13, 2008).)

The parties to this proceeding opposing the Project prepared no modeling or studies of their own, and have introduced no evidence to rebut or otherwise undermine the validity of the Applicants' analysis. (Rebuttal-Applicants-Burmester-11:12-19; Powers Hearing Tr. Vol. 10 at 39:17-24.)

1. Calculating The Project's Impacts On An Individual Retail Ratepayer Level Would Not Inform The Commission's Decision-Making

The Applicants calculated the Project's benefits on a system-wide basis—rather than an individual retail ratepayer basis—because that is how the Commission reviews these types of transmission projects. SOUL, CETF, and, to some extent, No CapX 2020 argue that it is impossible for both the public and the Commission to evaluate the Project because the Applicants failed to translate the Project's aggregate economic benefits into economic benefits on an individual retail ratepayer basis. (*See* SOUL Initial Br. at 2-6, 9-10; CETF Initial Br., at 31-32; No CapX 2020 Initial Br. at 10.) This argument misses the mark.

To begin with, from a practical perspective determining the Project's impact on individual retail ratepayers would be extremely difficult to calculate and would not yield useful results. ATC is a transmission-only company that serves local distribution companies ("LDCs"), which in turn serve retail customers. (Hodgson Hearing Tr. Vol. 8 at 205:7-10.) This means that, to determine the Project's benefits to individual retail ratepayers of the ATC LDCs, one would have to determine the incremental benefits and changes in transmission charges for each Wisconsin LDC and how each Wisconsin LDC would incorporate each category of benefits (energy cost savings, RIB, line loss savings, and insurance value) into each of its retail tariffs for each customer class. (*Id.* at 205:-161015; *see also* Rebuttal-Applicants-Hodgson-2:6-9.) This is not an analysis that the Applicants are capable of conducting, and in any event, it would be of marginal value to the Commission because the planning analysis that the Applicants' submitted



demonstrates that, in the aggregate, the Project will produce savings for the entire State of Wisconsin. (Hodgson Hearing Tr. Vol. 8 at 206:-13314.)

SOUL and CETF's method of calculating the individual ratepayer benefits of the Project is highly misleading and should be disregarded. Mr. Lanzalotta took the \$130.54 million NPV in benefits that Badger Coulee would produce in the Slow Growth scenario, divided that figure by 40 years, and then divided that result by the amount of retail ratepayers in Wisconsin. (*See* Direct-CETF/SOUL-Lanzalotta-7:12-16.) SOUL repeats this mistake when attempting to calculate the per-ratepayer savings associated with the Project's renewable investment benefits. (SOUL Initial Br. at 31.) The ratepayer impact, however, cannot be calculated using such simple arithmetic. In their planning analysis, the Applicants calculated the present value of the annual benefits to ATC customers over the Project's 40-year life. (Rebuttal-Applicants-Hodgson-2:1-3.) By spreading the Project's total discounted value back over the 40-year benefit period without accounting for the Applicants' discounting, SOUL/CETF "improperly create[] the perception that the annual benefit is a small fraction of the true benefits that the relevant customers would realize." (*Id.* at 2:5-6.) Moreover, any calculation of individual ratepayer impact would also have to recognize the different impacts across customer classes.

In any event, the intervenors' argument that knowing the Project's individual ratepayer benefits is necessary to evaluate the Project gives the public and the Commission far too little credit. Simply because the Applicants' calculated the Project's aggregate benefits to Wisconsin ratepayers does not mean that this analysis is any less comprehensible to the average member of the public or to the Commission staff. Indeed, the fact that the Commission staff, MISO, CEI and various other intervenors and members of the public read and support the Applicants'

planning analysis demonstrates that the Applicants' analysis was, in fact, reasonable and understandable. (*See Applicants' Initial Br.* at 11-12.)

Even if it were useful to calculate individual ratepayer benefits, there is no statute or regulation requiring the Applicants to do so. In fact, in two previous cases, ATC proposed transmission projects that were justified primarily on economic grounds. (*See Final Decision*, Docket No. 137-CE-161, at 5; *Final Decision*, Docket No. 137-CE-149 at 5) In both cases, ATC conducted an economic analysis of the transmission projects that was similar to the one prepared in this case. (*See Final Decision*, Docket No. 137-CE-149 at 8-10; *Final Decision*, Docket No. 137-CE-161 at 10-11.) These analyses focused on the aggregate economic benefits that the transmission projects would provide to Wisconsin ratepayers, and the Commission approved each project on that basis. (*See id.*)

2. The Project Would Provide Benefits Directly to Wisconsin, Not Just Passing Through Wisconsin

CETF and No CapX 2020 have argued that the Project will primarily produce benefits outside of, rather than within, Wisconsin. (*See CETF Initial Br.* at 24; *No CapX 2020 Initial Br.* at 8.) There is no evidence to support this contention. The record demonstrates that the Project will provide significant benefits to Wisconsin *and* the region. (*See e.g.*, *Direct-Applicants-Burmester-6:1-8:20*; *Direct-MISO-Rauch-32r:21-34r:11, 37r:17-38r:19.*)

Simply because the Project has been approved by MISO as an MVP project does not mean that the Project provides benefits to the MISO footprint to the exclusion of Wisconsin ratepayers. Indeed, the Commission has previously recognized that MVP projects can simultaneously produce benefits for both the state of Wisconsin and the region. (*See Final Decision*, Docket No. 137-CE-161 at 10-11 (approving the Pleasant Prairie-Zion Energy Center

project, which had received MVP status and which demonstrated net benefits to Wisconsin ratepayers in four out of six futures analyzed.)

3. The Applicants Do Not Need To Include the Project's Ancillary Costs And Benefits, Such As Construction Jobs Created Or The Attraction Of New Businesses, In The Planning Analysis

SOUL and CETF argue that the Applicants' planning analysis is deficient because it failed to capture all of the costs associated with the Project, such as potential decreased property values and lost tourism revenues. (CETF Initial Br. at 32; SOUL Initial Br. at 17.) There are at least two problems with this argument. First, SOUL and CETF have not introduced any evidence indicating whether and to what extent these external costs exist. Their assertion that the Applicants "grossly underestimate[d]" the costs of the Project is therefore pure speculation. Second, although the planning analysis does not account for these external costs (to the extent they exist), it likewise does not reflect the Project's external benefits, such as increased construction jobs and/or job creation from cheaper electricity rates. (Henn Hearing Tr. Vol. 8 at 103:13-104:10.) Thus, it could just as easily be said that the Applicants' analysis underestimates the Project's benefits.

The question before the Commission is whether the Project benefits Wisconsin ratepayers. The Applicants reasonably limited the scope of the planning analysis to the increase in revenue requirements that each LDC will experience as a result of the Project (on the cost side) and the energy cost savings, RIB, line loss savings, and insurance value of the Project (on the benefit side). (See Hodgson Hearing Tr. Vol. 8 at 212:17-24; Direct-Applicants-Burmester-17:18-23.) By contrast, SOUL/CETF have not done any modeling regarding the Project's costs and benefits, and can only offer hypotheses of potential external costs that have been omitted from the Applicants' analysis. The Commission should not give any weight to these arguments.

4. The Costs of Other MVP Projects Do Not Qualify As A Cost of the Badger-Coulee Project.

Several intervenors attempt to conflate the costs of the Badger Coulee Project with the cost of the other transmission projects that MISO has approved as part of the MVP portfolio. For example, No CapX 2020 argues that the cost of the Badger Coulee Project is larger than what the Applicants calculated because Wisconsin ratepayers “will pay a percentage of the cost of all 17 MVP projects.” (No CapX 2020 Initial Br. at 10; *see also* CETF Initial Brief at 33.)

The costs of the other MVP projects, however, have no relevance to the Badger Coulee Project. None of the other MVP projects is currently before the Commission, and the Commission has no authority to approve or deny the MVP projects that are located outside of Wisconsin. Plus, even if the costs of the other MVP projects were relevant, MISO’s testimony demonstrates that, as a whole, the MVP Portfolio will produce net benefits for both the state of Wisconsin and the MISO region. (Direct-MISO-Rauch-34r:1-11, 38r:6-19.)

5. The Applicants Provided Clear And Concise Information To The Public On The Costs And Benefits Of The Project Versus Its Alternatives

SOUL argues that the Applicants failed to clearly communicate information regarding the Project to both the public and Commission staff. (SOUL Initial Br. 6-10.) It asserts that the Applicants “never provided any [] public-friendly information on the costs and benefits of the Project and its alternatives.” (SOUL Initial Br. at 7.)

In fact, the public and the Commission were provided clear, concise, and understandable information regarding the Project’s need. The Applicants’ held dozens of open houses where planning staff was available to answer questions regarding the Project’s need. (*See Ex.- Applicants-Henn-1: Joint Application, Appendix E.*) The Applicants summarized their planning

analysis in the Joint Application’s Executive Summary, Section 2.0 of the Joint Application<sup>1</sup> and then again in Mr. Burmester’s direct testimony. (Ex.-Applicants-Henn-1: Joint Application, Section 2.0; Direct-Applicants-Burmester.) The environmental impact statement (“EIS”) also summarized the Applicants’ planning analysis. (Ex.-PSC-Weiss-3: Section 3.) And notwithstanding SOUL’s assertion to the contrary, the Joint Application does contain a concise summary of low-voltage transmission, energy efficiency, demand response, and distributed generation alternatives. (Ex.-Applicants-Henn-1: Joint Application at 30-33, 35.)

Finally, SOUL claims that the information that the Applicants provided to the public and Commission staff was “obscure” and full of “technical jargon.” (SOUL Initial Br. at 6-7, 12.) Of course, transmission planning is a complicated and highly technical subject matter. While the Applicants have provided clear, concise, and understandable information regarding the Project to the public, the detailed analysis is best reviewed by professionals with the appropriate expertise. The Commission employs electrical engineers equipped with the PROMOD software, and has also summarized much of the Applicants’ planning analysis in its testimony. SOUL and CETF received \$75,000 in intervenor compensation to hire experts to review and analyze the Application materials in this docket in support of the Project’s need. (*See* Order, Docket No. 1-IC-483 (PSCW Jul. 23, 2014).) Through this funding, SOUL and CETF were able to consult with experts of their choosing, conduct months of discovery, and draft rounds of technical

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<sup>1</sup> SOUL mischaracterizes the Commission’s request for, and the Applicants’ revisions to, Section 2.0 of the Joint Application. In the original submittal, this section contained an abbreviated discussion of the Project’s need because the Applicants chose not to repeat the information from Appendix D of the Joint Application, which contains the detailed planning analyses. (*See* Ex.-Applicants-Henn-1: Joint Application, Section 2.0 and Appendix D.) Commission staff, perhaps anticipating that members of the public would not spend the time to review the entire 300-plus page planning document, requested that the Applicants include a more comprehensive summary of Appendix D in Section 2.0 so that the public could have a better understanding of the need for the Project. (*See* Ex.-Applicants-Henn-2: Data Request Response 1.90.) Accordingly, the Applicants revised and re-submitted the Joint Application, and after all the incompleteness items were satisfactorily responded to by the Applicants, the Commission issued its completeness determination.

testimony in support of their organizations' viewpoints. There is simply no credible reason to believe that SOUL, CETF, or the public were not provided with an adequate explanation of the Applicants' planning analyses.<sup>2</sup>

**B. There Is No Need to Study the Project Using Zero Or Negative Load Growth**

Some intervenors argue that the Commission should decline to issue a CPCN for the Project because the Applicants' planning analysis did not consider future scenarios using zero or negative peak load growth. (*See, e.g.*, ELPC Initial Br. at 3-8; No CapX 2020 Initial Br. at 7.) In their initial brief, the Applicants responded to these contentions and do not intend to repeat those arguments here. (*See* Applicants' Initial Br. at 12-13.) Rather, the Applicants wish to highlight additional problems with the intervenors' position on this issue.

In support of its argument that the Applicants' planning analysis should have included lower load growth assumptions, ELPC cites to the testimony of SOUL/CETF witness Powers, who included a table in his testimony indicating that load growth in ATC's service territory is likely to be lower in 2023 than it was in 2007. (ELPC Initial Br. at 4; Direct-CETF/SOUL-Powers-8-9.)

The data in the table that Mr. Powers included in his testimony, however, does not accurately reflect the future peak load levels that the Applicants incorporated into their MTEP13 sensitivity analysis. It appears that, when creating this table, Mr. Powers relied on Ex.-Applicants-Henn-2: Data Request Response 3.02, which contains peak load data from MISO's MTEP13 data for the entire ATC system. (Ex.-Applicants-Henn-2: Data Request Response

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<sup>2</sup> SOUL also seems to imply that the Applicants ignored municipal requests for additional need-related information, but that is also not true. The Applicants responded to numerous municipal requests for information regarding the Project. (*See* Ex.-Applicants-Justus-3.) These responses included information regarding the Project's benefits, the futures in which the benefits were calculated, the methodology behind the Applicants' economic analyses, as well as hyperlinks to reports with more detailed information regarding the costs and benefits of the Project and its alternatives. (*See, e.g., id.* at 11-13.)

3.02.) In particular, the data request response includes peak load projections for the Upper Peninsula Power Company “PROMOD Area,” which were not included in the Applicants’ MTEP 13 sensitivity analysis but were included by Mr. Powers. (*Id.*) Below is a comparison of the data that Mr. Powers included in his testimony and the peak load projections for ATC-WI that the Applicants actually included in their MTEP 13 sensitivity analysis:

**Table 1: Comparison of Powers and ATC Projections for Weather-Normalized Peak Load (MW) Under Limited Growth Scenario (MTEP13 Sensitivity Analysis)**

Reference	2007 <sup>3</sup>	2013 <sup>4</sup>	2023 <sup>5</sup>	2028 <sup>6</sup>
Powers (Entire ATC System)	12,888	12,788	12,801	-
ATC (Only ATC-WI)	12,888	12,788	12,604	12,683

As this table shows, under the Limited Growth scenario, the Applicants assumed that peak load on the ATC-WI system would actually be lower in 2023 and 2028 than it was in 2007 and 2013. Thus, although the Applicants did not necessarily model a negative load growth rate in this scenario, they did model the Project’s economic benefits under a scenario in which load growth was lower than 2007 levels for more than a quarter of the Project’s useful life (i.e., as far out as 2028.) And in that scenario, the Project continued to provide net benefits of approximately \$195.70 million. (Direct-Applicants-Burmester-27.)

In any event, this sort of comparison is of limited value because load growth rates are developed based on multi-year changes in demand. It is therefore inappropriate to cherry-pick data from non-sequential years to project future growth rates, as Mr. Powers attempts to do. (Rebuttal-Applicants-King-Huffman-5:3-9.) SOUL and CETF’s other expert witness, Mr. Lanzalotta, admitted this fact on cross-examination. (*See* Lanzalotta Hearing Tr. Vol. 10 at

<sup>3</sup> See Ex.-Applicants-Henn-2: Data Request Response 4.02.

<sup>4</sup> *Id.*

<sup>5</sup> Note that Mr. Powers’ figure includes the 197 MW of peak demand projected for the Upper Peninsula Power Company PROMOD Area, whereas ATC’s figure does not.

<sup>6</sup> See Ex.-Applicants-Henn-2: Data Request Response 3.04.

170:18-22 (“Q. Would you agree with me that good planning for transmission purposes requires more than just looking at peak load in two particular years and comparing them? A. Yes.”)) The fact that load growth may be lower in one year rather than another says nothing about the year-over-year load growth rate during the Project’s forty year life, and is certainly no reason to model the Project’s benefits against a near-zero or negative growth-rate.

Perhaps most importantly, Mr. Lanzalotta testified that he was “not aware of any . . . regulatory commission or agency, that uses a zero percent or less growth rate for planning purposes.” (Lanzalotta Hearing Tr. Vol. 10 at 167:24-168:3.) Thus, while the Applicants could have modeled lower load growth rates, it would have been illogical to do so given the information provided to the Applicants by the relevant LDCs and practices in the industry.

**C. The Applicants And The PSCW Did Consider Non-Transmission Alternatives, Including Distributed Resources, Load Management And Energy Efficiency**

CETF and ELPC next argue that the Applicants failed to consider various non-transmission alternatives in their planning analysis. (*See* CETF Initial Br. at 25 (“From the outset, the Applicants have dismissed all alternatives to the Project without meaningful analysis.”); ELPC Initial Br. at 5-6 (arguing that the Applicants understated and failed to account for load management, energy efficiency, and distributed generation to reduce load growth).) Yet again, this argument ignores the clear evidence in the record. The Applicants evaluated a variety of non-transmission alternatives, including distributed generation, load management, and energy efficiency in their planning analysis. (Direct-Applicants-Burmester-34:15-36:13; Ex.-Applicants-Henn-1: Joint Application, Appendix D, Sections 1.5, 10.0-106., and Addendum C; Ex.-Applicants-Henn-2: Data Request Response 4.06.)

The Applicants determined that additional generation and distributed generation were not alternatives to the Badger Coulee Project by including various different generation additions and



distributed generation related assumptions in the six futures analyzed. (Ex.-Applicants-Henn-2: Data Request Response 4.06.) Among other things, the futures included low, middle, and high levels for coal retirements within ATC and various generation additions of gas, coal and renewable generation. (*Id.*) For example, the 2026 Carbon Constrained future, which adds the most renewable generation of all of the futures, assumes that 1,790.5 MW of new wind, 200 MW of new biomass, and 150 MW of new solar capacity will be added in Wisconsin. (*Id.*; *see also* Direct-Applicants-Burmester-34:22-35:2, 35:13-15.) When comparing the no-build alternative in the 2026 Carbon Constrained future to the Badger Coulee Project in that same future, the Project has positive net economic benefits of \$508.65 million. (*Id.*) In other words, even assuming the addition of all the new wind, biomass, and solar capacity in the Carbon Constrained future, the Project would still add approximately \$508.65 million in net benefits. (*Id.*; *see also* Direct-Applicants-Burmester-34:2-8, 15-17.)

The Applicants analyzed demand side management (“DSM”) and energy efficiency in a similar fashion. (Ex.-Applicants-Henn-2: Data Request Response 4.06.) The Carbon Constrained future assumed lower load growth due to increases in DSM and energy efficiency. (*Id.*) The Applicants also utilized a modeling technique in the PROMOD analysis comprised of “Distributed Resources” that mimic demand response and other distributed technologies that may serve to offset load on the transmission system in the future. (*Id.*) Further information regarding these analyses can be found in Ex.-Applicants-Henn-2: Data Request Response 4.06.

Given these analyses, the Applicants eliminated generation and distributed generation as a viable alternative to the Project and screened the alternative from further consideration.<sup>7</sup>

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<sup>7</sup> After determining that these alternatives would not provide nearly the same economic benefits as the Project, the Applicants did not conduct a study of whether these alternatives would provide the same potential RIB, line loss, insurance value or reliability benefits as the Project. (Direct-Applicants-Burmester-36:14-37:6.)

1. Mr. Powers’ “No Wires” Reliability Alternatives Are A Red Herring

SOUL also argues that Mr. Powers’ “No Wires Alternatives,” which is a generalized reference to an undefined combination of load management, energy efficiency, and distributed generation, could more cost-effectively resolve the reliability issues that the Project is intended to address. (SOUL Initial Br. at 16-17.) This argument ignores the fact that the Project is not solely intended to address reliability problems; it is justified primarily on economic (not reliability) grounds.<sup>8</sup> Even if Mr. Powers’ “No Wires Alternatives” resolved the same reliability issues as the Project (which is unlikely, see generally Rebuttal-Applicants-Burmester-8:7-23)), they would not provide the same level of economic benefits.

2. Solar Is Not More Economic Than Wind, And Even If It Were, The Project Would Still Be Needed

Without specifically defining a solar alternative or citing to any empirical evidence in the record, SOUL and CETF argue that distributed solar generation is, from an economic and reliability perspective, a superior alternative to the Project. (SOUL Initial Br. at 22; CETF Initial Br. at 27.) They assert that the Applicants have not rebutted their assertion that solar is cost-competitive with wind and could “alleviate the transmission problems created by the focus on imported power from west to east.” (CETF Initial Br. at 27.)

Although it is true that Mr. Powers testified generally as to the ability of solar power to alleviate “transmission problems that are created by running large amounts of wind power from the west into Wisconsin” and to relieve stress on the transmission system “right when peak loads

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<sup>8</sup> SOUL argues that the Applicants “conceded that increasing energy efficiency and decreasing capacity sales would address reliability concerns,” but this is yet another misrepresentation of the record. During cross-examination, the Applicants’ witness, Mr. Burmester, indicated that, “all things being equal, increasing efficiency would tend to improve your reliability issues.” (Burmester Hearing Tr. Vol. 8 at 153:15-16.)

are occurring,” he offered no actual data and cited no studies to support these assertions. (Powers Hearing Tr. Vol. 10 at 13:21-2414:3.) His testimony is pure speculation.

Even assuming (without conceding) that solar power is more economic than wind power, the Project would still be needed because it will facilitate the transfer of low-cost resources—be they solar, wind, or conventional sources—from areas west of Wisconsin. As Mr. Powers conceded during cross-examination, if solar is indeed cost competitive with wind power, it could just as easily be developed in places such as North and South Dakota, Minnesota, and Iowa, and utilize the Badger Coulee Project to transfer power to the east. (Powers Hearing Tr. Vol. 10 at 85:16-24.)

### 3. The Applicants’ Use of a 0.5% EE Rate Was Appropriate

Both ELPC and SOUL argue that the Applicants should have used an energy efficiency savings rate of 0.7% in their modeling rather than 0.5% because the 2013 data from the Focus on Energy (“FOE”) program shows a savings rate of 0.7%. (ELPC Initial Br. at 5; SOUL Initial Br. at 23-24.) They make this argument even though the 2013 data was not available at the time the Applicants conducted their planning analysis. (Ex.-Applicants-Henn-1: Joint Application, Appendix D.) ELPC and SOUL also fail to acknowledge why the savings went up from 0.5% in 2012 to 0.7% in 2013. (*Id.*) Although the energy efficiency savings associated with the FOE program were approximately 20 percent higher in 2013 than they were in 2012, this is because “there were unspent dollars in 2012 [that were] carried over into 2013.” (Powers Hearing Tr. Vol. 10 at 78:9-16.) Thus, utility expenditures on the program were about 20 percent higher in 2013 than they were in previous years. (*Id.* at 79:22-23:1.)

Setting this anomaly aside, utility expenditures on the FOE program are expected to remain around \$95 million between 2014 and 2020—which is consistent with what was spent in 2012 when the 0.5% savings rate was achieved. (*Id.* at 79:15-19.) Contrary to ELPC’s assertion

that “there is little reason to believe that savings rates will decline to 2012 levels going forward,” Mr. Powers explicitly acknowledged that this is a possibility. (*Id.* at 80:5-10.) Given this evidence, there is no reasonable basis to dispute the Applicants’ assumption that energy efficiency savings in the state will remain around 0.5 percent of retail sales going forward.

**D. The Reliability Projects That Badger Coulee Would Avoid Are Not Caused By the Badger Coulee Project**

Although their argument on this point is not entirely clear, SOUL and CETF appear to argue that, by proposing the Badger Coulee Project, the Applicants are incentivizing the development of wind resources to the west of the state, which increases congestion on the high-voltage transmission system in western Wisconsin and thereby creates the NERC violations that the Project would avoid. (*See* SOUL Initial Br. at 17-18; CETF Initial Br. at 29.) SOUL and CETF’s arguments on this point demonstrate one more time that they fundamentally misunderstand both the nature of the Applicants’ planning process and the history of congestion on the transmission system in western Wisconsin. Much of their argument relies on the testimony of Mr. Powers, who is not an electrical engineer or a transmission planner, has never run a power flow model before, and who did not even review the Applicants’ planning testimony prior to submitting his own direct testimony in this proceeding. (Powers Hearing Tr. Vol. 10 at 32:15-19, 38:9-18.)

The record demonstrates that, over the last decade, there have been a number of studies identifying the need for an additional high-voltage transmission corridor in western Wisconsin to relieve congestion and improve the reliability of the transmission system. (*See* Direct-Applicants-King-Huffman-14:1-20, 16:1-17:24; Ex.-Applicants-Henn-1: Appendix D, Exhibit 2, at 10-13.) It is also widely recognized that there is a notable west-east bias in power flows

through Wisconsin. (See Direct-MISO-Rauch-29r:12-19; Ex.-Applicants-Henn-1: Appendix D, Exhibit 1, at 117, Exhibit 2, at 10-13.)<sup>9</sup>

Thus, the entire foundation for SOUL’s and CETF’s argument is contradicted by the evidence in the record. The contention that the Applicants are “proposing to create NERC violations—and then using those NERC violations to create reliability benefits” is completely unsubstantiated. (SOUL Initial Br. at 17.) The Applicants do not create NERC violations. Rather, they model the transmission system to identify potential issues and then evaluate and propose projects to address those issues.

**E. The Reliability Needs in the La Crosse/Winona Area Are Not Speculative**

SOUL’s argument that the La Crosse/Winona area reliability needs are “too remote and speculative to justify the Project” lacks any engineering evidence supporting it and erroneously relies upon system-wide peak load data. (SOUL Initial Br. at 13.) As detailed in the Applicants’ initial brief, the Applicants provided the only engineering analysis in the record regarding the load serving capability of the transmission system in the La Crosse/Winona area, and that evidence fully supports a finding that the Badger Coulee Project will provide immediate and long-term reliability benefits. (Applicants Initial Br. at 14-15; Ex.-Applicants-Henn-1: Appendix D, Exhibit 2; Ex.-Applicants-Henn-1: Data Request 10.02.)

This unrebutted engineering evidence demonstrated that after the Hampton-Rochester-La Crosse Project (“La Crosse Project”) is constructed, the load serving capability in the La Crosse/Winona area will be 750 MW, after which a new transmission source will be needed to meet NERC criteria. (*Id.*) The fact that the load in the La Crosse/Winona area is growing at a

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<sup>9</sup> Mr. Powers’ assertion that there is over 4,000 MW of “spare transfer capacity” on the ATC system during summer shoulder peak is equally without merit, and has (contrary to CETF’s assertions) been contested by the Applicants. (See Surrebuttal-sur-Applicants-Burmester-4:13-5:2.)

higher rate than the rest of the system is also unchallenged, and therefore SOUL's reliance on the system peak loads to support its argument is misplaced. (Rebuttal-Applicants-King-Huffman-2:1-3:4.) The historical loads in the La Crosse/Winona area compared to the NSPW system load demonstrate this difference in growth rates. For example, between 2012 and 2013 the non-coincident load in the La Crosse/Winona area increased by 1.95 percent, whereas the NSPW System coincident peak declined by 4.2 percent. (Rebuttal-Applicants- King-Huffman, 2:18-22, 3:1-4.)

Indeed, Mr. Lanzalotta, agreed that in the La Crosse/Winona area, the load growth would likely be higher than the zero and negative load growth levels that SOUL advocates for in other parts of the state. (Lanzalotta Hearing Tr. Vol. 10 at 175:18-22.) Mr. Lanzalotta also agreed that the Badger Coulee Project will provide immediate reliability benefits to the La Crosse/Winona area. (Lanzalotta Hearing Tr. Vol. 10 at 176:4-17.) While the specific timing of the need for another source in the La Crosse/Winona area is uncertain, the Badger Coulee Project connection at the Briggs Road Substation, the cost of which will be regionally cost-shared, is a prudent investment to meet the long-term load serving needs in the La Crosse/Winona area.

In all, the intervenors have provided no record evidence refuting the Project's need, and as such, the Project should be approved.

## **II. THE ENVIRONMENTAL IMPACT STATEMENT WAS COMPREHENSIVE, EVALUATED ALTERNATIVES, AND COMPLIED WITH THE WISCONSIN ENVIRONMENTAL POLICY ACT**

Compliance with the Wisconsin Environmental Policy Act ("WEPA") "represents an important procedural step agencies must take during their decision-making process," but "does not directly control agency discretion." (*Clean Wisconsin v. Pub. Serv. Comm'n of Wis.*, 2005 WI 93, ¶ 188, 282 Wis. 2d 250, 700 N.W.2d 768.) This means that "[i]f the adverse environmental consequences of the proposed action are adequately evaluated, WEPA does not

prevent an agency from determining that other values outweigh the environmental costs.” (*Id.*) Accordingly, to the extent CETF or any other intervenor asserts that WEPA requires the PSCW to reject the Project or choose an alternative to the Project, this assertion is incorrect and misunderstands the purpose and requirements of WEPA. All WEPA requires is an adequate consideration and evaluation of the environmental impacts of a proposed action, and the EIS for the Project satisfies this requirement.

The EIS for the Project is well over 600 pages and is exactly the type of comprehensive evaluation of environmental impacts and alternatives that is contemplated and required by WEPA and its implementing regulations. (Ex.-PSC-Weiss-1.) The EIS contains all of the required elements under WEPA and the corresponding regulations and more than adequately addresses all of the concerns raised by intervenors CETF, SOUL, and Ms. Kunze in their initial briefs.

CETF, SOUL, and Ms. Kunze assert that the EIS fails to include adequate analysis of health concerns associated with the Project, improperly describes and/or analyzes the impacts of the Project on the environment, fails to address risks and costs associated with an interconnected grid, and lacks an adequate alternatives analysis, and therefore fails to satisfy WEPA. These assertions are all incorrect, as the EIS contains each of these allegedly missing elements and/or otherwise complies with WEPA and its implementing regulations.

**A. The EIS Adequately Addressed EMF, Corona, And Other Similar Issues**

CETF and Ms. Kunze assert that the EIS fails to adequately address the health risks related to electromagnetic fields (“EMFs”) and corona that may be associated with the Project. This assertion ignores the fact that these issues—including any necessary mitigation measures—are discussed in detail in the EIS. (*See, e.g.,* Ex.-PSC-Weiss-1: FEIS at 100, Appendix B (EMF), 106-107 (corona).)

In addition, Ms. Weiss, an environmental analyst and PSCW staff member who was heavily involved in the preparation of the EIS, testified that the PSCW staff reviewed all of the public comments on the EIS regarding these health concerns, including the public comments by CETF and Ms. Kunze. (Weiss Hearing Tr. Volume 11 at 136:4-139:9.) Perhaps more importantly, the briefs filed by CETF and Ms. Kunze rely exclusively on public comments as “technical evidence” that these health issues even exist, rather than any evidence actually submitted into the record by experts. (CETF Initial Brief at 4-9; Kunze Initial Brief at 7-8.) Regardless, the PSCW staff acted well within their discretion in determining that the final EIS adequately described and analyzed all of the potential risks cited by CETF and Ms. Kunze.

**B. The EIS Properly Describes And Analyzes Potential Environmental Impacts**

CETF and Ms. Kunze also assert that the EIS improperly describes and/or analyzes the Project’s potential environment impacts. These parties base this assertion on the fact that the EIS does not contain detailed geotechnical studies for each proposed pole location, wetland surveys for sections of Segment O, field surveys for certain portions of the Project, or detailed analysis of each individual property affected by the Project, and that the EIS indicates a need to further evaluate potential impacts to endangered and other protected species. (CETF Initial Brief at 9-10; Kunze Initial Brief at 29-31.) Yet none of these detailed studies, analyses or surveys are required to satisfy the requirements of WEPA, as Wisconsin courts have recognized that an EIS is required to “furnish only such information as appears to be reasonably necessary under the circumstances for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well nigh impossible.” (*Clean Wisconsin, Inc. v. Pub. Serv. Comm’n of Wis.*, 2005 WI 93, ¶ 191, 282 Wis. 2d 250, 700 N.W.2d 768.) Furthermore, courts have also held that “an agency may assume that any environmental consequences will be controlled through compliance with the applicable administrative code



provisions.” (*Id.* ¶ 167.) Any concerns CETF has regarding wetlands and endangered species are therefore addressed by the fact that the Project will be required to comply with all regulations governing the protection of these resources. In any event, the EIS does in fact describe the wetlands and endangered species<sup>10</sup> that may be impacted by the Project, as well as the various measures that may be taken to mitigate these impacts. (Ex.-PSC-Weiss-1 at 31-32 (wetlands), 101-103 (endangered species).)

CETF and/or Ms. Kunze also asserts that the EIS fails to account for cultural and socioeconomic impacts (particularly on Amish communities potentially affected by the Project), the consequences of herbicide use and other vegetation management techniques, and potential impacts on avian populations and livestock. (CETF Initial Brief at 11-17; Kunze Initial Brief at 31.) Again, however, the EIS includes significant discussion of each of these issues and proposed mitigation measures.<sup>11</sup> Furthermore, the United States Supreme Court has held that although the National Environmental Policy Act (“NEPA”) (and by extension WEPA<sup>12</sup>) requires discussion of potential mitigation measures for identified environmental impacts, it “does not require a fully developed plan detailing what steps *will* be taken to mitigate adverse environmental impacts.” (*Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352-53, 359 (1989).) The EIS easily satisfies this standard.

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<sup>10</sup> The EIS includes significant discussion of potential impacts to endangered species and mitigation strategies generally (Ex.-PSC-Weiss-1 at 101-103), as well as discussion of potential impacts to endangered species and mitigation strategies for specific segments of the Project (*see e.g., id.* at 180-198).

<sup>11</sup> *See, e.g.,* Ex.-PSC-Weiss-1 at 99-100, 220-224 (discussing cultural concerns generally associated with transmission line projects and specific cultural concerns associated with the Project, including the potential impact of the Project on Amish communities); 93 (discussing vegetative management techniques that will be implemented as part of Project); 33-34 (discussing potential Project impacts on bird habitats and flights); 164-165 (discussing options for mitigating avian impacts of Project on New Amsterdam Grasslands); 262-266 (discussing potential impact on and mitigation options for Leopold Pine Island Important Bird Area); Appendix C (compiling Important Bird Area correspondence and documentation); 94-97 (discussing potential impacts on agricultural lands and potential mitigation strategies).

<sup>12</sup> The Wisconsin Supreme Court has held that “[b]ecause WEPA was patterned on [NEPA], . . . federal law construing NEPA is persuasive authority.” (*Clean Wisconsin v. Pub. Serv. Comm’n of Wis.*, 2005 WI 93, ¶ 188, n. 43, 282 Wis. 2d 250, 700 N.W.2d 768.)

Finally, CETF alleges that the EIS fails to discuss the environmental and health impacts of “pesticide use and vegetation management.” (CETF Initial Br. at 12.) While CETF uses the term “pesticide,” the Applicants want the record to be clear: the Project will not use pesticides and there is no evidence in the record indicating that there will be pesticide use.

The Applicants may use herbicides as one tool for long-term management of ROW vegetation, but its use is not required by NERC as alleged by CETF. Specifically, CETF claims “[c]ompliance with NERC and state standards *requires* the application of herbicide.” (CETF Initial Brief at 14 (emphasis added.)) But a statement in the NERC Standard FAC-003-2<sup>13</sup> that lists effective vegetation management tools is twisted by CETF. The federal standard states what transmission utilities –must do namely, “prevent transmission line outages and resulting blackouts due to vegetation contact” – and provides that there is “a zero-tolerance policy for tree-caused outages.” (Sur-surrebuttal-Applicants-Holtz-5:12-16.) It is up to the utility operating a high-voltage transmission line to determine how to achieve these results, or in other words, to “establish and follow a vegetation management program that eliminates any and all threats to safety and reliability of their high-voltage transmission lines.” (*Id.* at 16-18.)

Consistent with state law and as stated in the FEIS, the Applicants acquire new transmission line easements that are subject to the landowners’ statutory rights. (Ex.-PSC-Weiss-1 at 88.) One such right is that “[n]o herbicidal chemicals may be used for weed and bush control without the express written consent of the landowner.” (*Id.*; *see also* Wis. Stat. § 182.017(7)d.) The Applicants honor this right, which is clear from ATC’s website (CETF’s quote from ATC’s website was again taken out of context). The complete information from the website’s herbicide use section states “[v]egetation that is likely to re-sprout after cutting may be

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<sup>13</sup> NERC Standard FAC-003-02 (2009) is not a part of the record. Additionally, it is an outdated standard. The current standard is FAC-003-03, which became enforceable for transmission owners on July 1, 2014.

treated with herbicides to inhibit re-growth. Herbicides are generally used only with landowner permission.”<sup>14</sup>

### **C. An EIS Does Not Require A Worst-Case Analysis**

CETF also asserts that the EIS is deficient because it lacks discussion of the potential vulnerability of the Project to terrorist attacks or natural disasters due to the fact that the Project is part of a highly interconnected electricity grid with centralized infrastructure. (CETF Initial Br. at 18-19.) This assertion is inapposite for several reasons, most significantly because CETF has again provided no technical evidence in the record to support its apparent assertion that vulnerability to a terrorist attack or natural disaster is a “reasonably foreseeable, significant” environmental effect of the Project that must be addressed in the EIS.<sup>15</sup> CETF instead relies on a single public comment on the EIS, which simply references various publicly available studies without offering any analysis of how or why these studies are relevant to the Project.

In addition, the United States Supreme Court has held that NEPA (and by extension WEPA) “does not require a worst case analysis” of environmental effects, meaning analysis of a potential catastrophic terrorist attack or natural disaster affecting the Project is not required as part of the EIS process. (*Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 359 (1989).)

### **D. The EIS Did Evaluate Alternatives To The Project**

CETF and SOUL also claim that the EIS did not adequately address alternatives to the Project as required by WEPA. This assertion is again simply incorrect, as the EIS includes a

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<sup>14</sup> CETF’s quotation from ATC’s website is also not a part of the record.

<sup>15</sup> An EIS is required to address only “reasonably foreseeable, significant effects to the human environment and significant socioeconomic effects” of a proposed action. (Wis. Admin. Code PSC § 4.30(1)(b); *see also Swain v. Brinegar*, 542 F.2d 364, 368 (7th Cir. 1976) (holding that “[a]n EIS need not review all possible environmental effects of a project. It is sufficient if it considers only those which are reasonably foreseeable”) (emphasis added, quotation omitted).)

detailed analysis of numerous alternatives to the Project. For example, Section 3.8 of the EIS – titled “Alternatives to the Proposed Project” – discusses a number of potential alternatives, including various other transmission system alternatives, energy efficiency, new generation, distributed resources, and the no build alternative. (Ex.-PSC-Weiss-1 at 74-81.) Moreover, the EIS discusses the Applicants’ robust routing and siting process, which evaluated numerous potential routes before proposing the two routes in the Joint Application. (*Id.* at 24.) And the EIS discusses in Section 2 various “Segment and Substation Site Alternatives.” (*Id.* at 23-26.)

**E. The Badger-Coulee Project Is A Properly Scoped and Independent Project for Wisconsin**

CETF also challenges the scope of the environmental review, contending that under WEPA, the Commission must analyze the environmental and financial impacts of the La Crosse Project, the Cardinal-Hickory Creek Project, and potentially the entire MVP Portfolio in one EIS because they are “connected actions.” (CETF Initial Br. 43-44.) While the La Crosse Project, Badger Coulee, and Cardinal-Hickory Creek projects share common connection points on the transmission grid, they are not required to be analyzed as “connected actions” under WEPA. Badger Coulee is appropriately evaluated as an individual project because it meets the independent utility test established under NEPA.<sup>16</sup> Further, intervenors have provided no legal or factual support for their claim that the Commission should be required to evaluate the entire MVP portfolio which crosses many states.

When courts review challenges regarding whether actions are connected and should have been considered in a single EIS, they consider several factors, including whether they have

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<sup>16</sup> WEPA is mirrored after the NEPA and it is therefore appropriate to analyze an agency’s compliance with WEPA by reviewing decisions relating to NEPA. *See* Wis. Stat. § 1.11(2)(c) & Wis. Admin. Code § PSC 4.30(1)(a); *see also* Wis. *Envtl. Decade, Inc.*, 288 N.W.2d at 173. The federal regulations that govern the implementation of NEPA are in Title 40 of the Code of Federal Regulations Section 1500 et seq. (40 C.F.R. § 1500 et seq.)

substantial independent utility. (*Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 298 (D.C. Cir. 1987).) Projects have independent utility “when each of two projects would have taken place with or without the other.”<sup>17</sup>

The La Crosse Project, which was approved by the Commission in a CPCN docket in 2012, was needed to meet immediate load serving needs in the La Crosse/Winona area. The La Crosse Project did not rely on the Badger Coulee Project or any other MVP Project to serve these needs and as such was appropriately evaluated in its own EIS.

Likewise, the Applicants’ economic and reliability analyses show that the Badger Coulee Project will provide benefits regardless of whether Cardinal-Hickory Creek or the other MVPs are ever constructed. (Ex.-Applicants-Henn-2: Data Request Response 1.114.) Each project serves distinct geographic areas. There is no evidence in the record that the Badger Coulee Project is dependent on Cardinal-Hickory Creek or any other MVP Project to provide economic and reliability benefits, and therefore the EIS appropriately evaluated the Badger Coulee Project as an independent project.<sup>18</sup>

The intervenors also make much of the fact that the Badger Coulee Project is being justified primarily on economic grounds, arguing that it is a “new kind of energy expansion” that will “set an important precedent.” (*See* No CapX 2020 Initial Br. at 1; CETF Initial Br. at 1.)

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<sup>17</sup> *Morongo Band of Mission Indians v. F.A.A.*, 161 F.3d 569, 580 (9th Cir. 1998); *see also* *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 976 (9th Cir. 2006) (Thomas, concurring and dissenting) (quoting Wetlands Action Network, 222 F.3d at 1118) (“The benchmark of ‘independent utility’ is whether ‘each of two projects would have taken place with or without the other and thus had ‘independent utility.’”)

<sup>18</sup> Ms. Kunze suggests that the Applicants acknowledged the “interconnected nature” of the Badger Coulee and Cardinal-Hickory Creek projects and that there is somehow a relationship between their costs and benefits. (*See* Kunze Initial Br. at 27.) The Applicants, however, made no such admission. Although both the Badger Coulee Project and the Cardinal-Hickory Creek Project are part of the MVP portfolio, and the Applicants analyzed both Projects as part of their alternatives analysis, the record clearly demonstrates that the Badger Coulee Project can be justified whether or not the Cardinal-Hickory Creek Project is built. (*See, e.g.*, Direct-Applicants-Burmester-23:14-24:9.)

Yet again their assertions are not accurate. As noted, the Commission previously approved two high-voltage transmission projects that were justified primarily on economic grounds—the Pleasant Prairie-Zion Energy Center line and the Paddock-Rockdale line. (*See Final Decision*, Docket No. 137-CE-161 at 5 (approving the Pleasant Prairie-Zion Energy Center line and noting that its purpose was “primarily economic,” in that it was needed “to enhance market economic performance for Wisconsin and the region”); *Final Decision*, Docket No. 137-CE-149 at 5 (granting a CPCN for the Paddock-Rockdale line and noting that its purpose was not to address reliability issues but to “reduce the cost of purchased power for ATC’s customers”).) Thus, the argument that the Badger Coulee Project, which is justified primarily on economic grounds, is somehow a novel or precedent-setting project is simply not true.

In sum, the intervenors have provided no credible evidence that the EIS fails to comply with WEPA.

### **III. NOTHING IN THE INTERVENORS’ BRIEFS REFUTES THAT THE PROJECT ROUTING IS IN THE PUBLIC INTEREST**

#### **A. The Intervenors’ Briefs Confirm That the Northern Route Best Meets the Statutory Criteria Governing the PSCW’s Decision**

The initial briefs filed by the intervenors support the Applicants’ position that the Northern Route best meets the statutory criteria governing the PSCW’s decision. Indeed, the intervenors generally raised issues regarding Project need and Segment O and not on the Northern Route segments. (*See generally*, City of Onalaska Initial Br. at 2; Concerned Citizens of Highway 33 (“CCH”) Initial Br. at 1; Town of Holland Initial Br.) Only two intervenors contest a segment (Segment A) along the Northern Route between the Cardinal Substation and Lyndon Station, Wisconsin (Kunze Initial Br. at 2-23, 25-;27 Town of Middleton Initial Br.) Similarly, only two intervenors would like the Commission to choose the Southern Route Segment O over the Northern Route Segments N and P. (*See generally* Town of Holland Initial

Br.; HNPA Initial Br.) Accordingly, the Applicants still believe that the Commission should select the Northern Route because it shares more existing high-priority corridors and has fewer environmental impacts overall.

**B. Even Though The Applicants Support The Northern Route, Segment O Is Still A Viable, Permittable Route**

Certain intervenors - most of whom would be directly impacted - have voiced opposition to the Southern Route Segment O. While the Applicants generally agree that Segments N and P better meet Wisconsin's transmission line siting criteria, Segment O is still a constructible, permittable, and viable option that the Commission should consider.

The Applicants actively solicited, encouraged and used input from members of the public, elected officials, and affected stakeholders in making routing and siting decisions. (Direct-Applicants-Holtz-27:7-10.) "The routing and siting was in excess of three years' worth of work." (Henn Hearing Tr. Vol. 8 at 108:7-12.) Ultimately, this thorough routing process resulted in the Applicants selecting the Southern Route as one of the two most viable routes for the Project. (Direct-Applicants-Henn-17:12-16.)

1. Contrary to Onalaska's Assertions, Segment O Complies with Wisconsin Law

The city of Onalaska urges the Commission to select Segments N and P rather than Segment O, which traverses through the city. The city of Onalaska identified a number of concerns related to routing along Segment O. These included the steep hilly terrain, the higher population density compared to Segments N and P, and potential impacts to Sandalwood Park, planned development, the city's Airport Overlay Zoning District ("AOZ"), the Buddhist retreat center, and the Amish community in Cashton. The city of Onalaska alleges that such impacts are evidence that Segment O does not satisfy the requirements of Wis. Stat. § 196.491(3)(d). The Applicants disagree.

The Applicants have attempted to mitigate the potential impacts of Segment O where feasible. For instance, the Applicants have agreed to work with the city on design and pole placement to minimize conflicts with existing and planned infrastructure and would work with the city of Onalaska to address its AOZ concerns to the extent practicable. (Applicants' Initial Br. at 31.) Despite these mitigation measures, the Applicants acknowledge that no matter which route is selected by the Commission, there will be impacts to both the natural and the human environment due to construction of the Project, which occurs with many large utility projects. None of the impacts identified by the city of Onalaska rises to the level that suggests that selection of Segment O would fail to satisfy the requirements set forth in Wis. Stat. § 196.491(3)(d).

The city of Onalaska further alleges that Segment O does not comply with Wis. Stat. § 1.12(6) because it does not share as much existing right-of-way as compared to Segments N and P. While the Applicants agree that Segments N and P share existing corridors to a greater extent than Segment O and that the corridors utilized by Segments N and P are high-priority existing transmission line and highway corridors, Wis. Stat. § 1.12(6) does not require the Commission to always select the route with the greatest percentage of corridor sharing.<sup>19</sup> In fact, if this were the case, the route with less corridor sharing would be per se unpermissible and the two route application requirement could never be satisfied. The statute does not intend this absurd result. Rather, "the Commission must balance the criteria for route selection specified in Wis. Stat. § 1.12(6) with those for approving a CPCN in Wis. Stat. § 196.491(3)."<sup>20</sup> The statute "provides a strong policy directive but it does not dictate the Commission's choice of routes when corridor sharing is inconsistent with the specific considerations expressed in that law or with legislative

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<sup>19</sup> *Final Decision*, Docket No. 137-CE-122 and 137-CE-123, at 27 (Jun. 30, 2006).

<sup>20</sup> *Id.*



intent.”<sup>21</sup> The Commission must use existing corridors to the “greatest extent feasible” while also taking into account “economic and engineering considerations” as well as the “reliability of the electric system” and “protection of the environment,” and “balance the criteria for route selection specified in Wis. Stat. § 1.12(6) with those approving a CPCN in Wis. Stat. § 196.491(3).”<sup>22</sup> Accordingly, simply because Segment O does not share as much existing right-of-way as Segments N and P does not mean that selection of Segment O would contravene the siting preference statute; other factors may support the selection of a route with less corridor sharing.<sup>23</sup>

2. If a CPCN Is Issued, Onalaska’s Airport Overlay Zoning District Ordinance Is Not Applicable to the Project

Wisconsin law provides: “If installation or utilization of a facility for which a certificate of convenience and necessity has been granted is precluded or inhibited by a local ordinance, the installation and utilization of the facility may nevertheless proceed.” (Wis. Stat. §196.491(3)(i); *see also RURAL v. PSC*, 239 Wis. 2d 660 (Wis. 2000); *Am. Transmission Co. v. Dane Cnty.*, 321 Wis. 2d 138 (Wis. App. 2009); Henn Hearing Tr. Vol. 8 at 101:16-18 .) In *RURAL*, the Wisconsin Supreme Court construed this statutory provision, stating that the “purpose of [Wis. Stat. §196.491(3)(i)] is clear on its face. Local ordinances, such as *zoning ordinances*, cannot impede what has been determined to be of public convenience and necessity.” (*RURAL*, 239 Wis. 2d at 660, P64 (emphasis added).) Likewise, in *Am. Transmission Co.*, the Wisconsin Court of Appeals determined that the Commission’s approval of a CPCN preempted Dane County ordinances that would have required ATC to obtain a shoreland erosion control permit, a

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *See, e.g., id.* (selecting a route with less corridor sharing due to economic considerations); *Final Decision*, Docket No. 4220-CE-168, at 18 (Apr. 2, 2009) (choosing a route with less corridor sharing due to environmental considerations).

general erosion control permit, and a wetland zoning permit for the installation and utilization of the transmission lines. (*Am. Transmission Co.*, 321 Wis. 2d at 150.) The court concluded that Wis. Stat. §196.491(3)(i) “expressly withdraw[s] the power of municipalities to act, once the PSC has issued a certificate of convenience and necessity, on any matter that the PSC has addressed or could have addressed in that proceeding.” (*Id.*)

The city of Onalaska’s AOZ ordinance is exactly the type of ordinance that *RURAL* and *Am. Transmission Co.* concludes would be preempted by a CPCN. It is a “zoning ordinance” as it is located under Title 13 (Zoning), Section 3-50, of the city code. (City of Onalaska Code of Ordinances, §§13-3-50 – 13-3-61 (2013).) While the Applicants are not necessarily required to meet local requirements if the Commission approves the Project, the Applicants are “always willing to work with municipalities” to address their concerns. (Henn Hearing Tr. Vol. 8 at 102:4-5.) Accordingly, if the Commission issues a CPCN and chooses the Southern Route, the Applicants will work with the city to the extent practicable to address the city’s AOZ ordinance concerns.

3. The Applicants Considered Concerned Citizens for Highway 33’s Concerns

CCH claims in its initial brief that the Applicants failed to consider the impacts of the proposed Badger Coulee Project on the Old Order Amish community in Cashton, Wisconsin. (CCH Initial Br. at 1; Sur-surrebuttal-Applicants-Holtz-2:17-3:13.) This is not the case. Mr. Holtz testified that members of the Amish community submitted public comments during the pre-application process in which they identified their parcels (since such information is not publicly available) and discussed their concerns regarding the routes. (Sur-surrebuttal-Applicants-Holtz- 2:17-3:2). In turn, the Applicants reviewed and considered each of these members’ concerns when developing the routes included in the Joint Application. (*Id.* at 3:3-5.)

The Applicants also drove along the highway in the vicinity of the Amish community during the routing process as part of their due diligence. (Holtz Hearing Tr. Vol. 8 at 296:1-13.)

CCH also contends that the Applicants should have reached out to the Amish “as a group” (*Id.* at 264:16-18.) While not required by statute, the Applicants reached out to many individuals and groups using a plethora of methods including mailings to landowners, public announcements, open houses, and direct communications with public officials and stakeholders. (Direct-Applicants-Holtz-3:4-7:6.) These efforts were sufficient to garner responses from Amish community members. Moreover, the Applicants have no way of knowing which landowners are Amish unless they identify themselves to the Applicants. (Holtz Hearing Tr. Vol. 8 at 296:13-17.)

In any event, the Applicants took into account the concerns of the Amish community raised by individual members, just as it considered the concerns raised by other individuals and groups that are potentially impacted by the Project. The Applicants received a number of comments from Amish property owners, many of whom also attended the Applicants’ open houses. (*See e.g., id.* at 257:2-7; Sur-surrebuttal-Holtz-2:20-21.) The Applicants had to balance all views to determine the best possible routes based on the Wisconsin Siting Priorities Law, and economic, engineering, and environmental factors. (Sur-surrebuttal-Holtz-3:3-7.)

*a. The Applicants’ Cost Estimate For Segment O Is Reasonable*

CCH’s initial brief also argues that Segment O is an unpermissible route because the Applicants’ proposed cost estimate is inaccurate. (CCH Initial Br. at 7-18.) CCH claims that the Applicants’ construction cost estimates were inaccurate because the “applicant did not assume that it would have to do all the construction work during the winter months when the ground was frozen.” (*Id.* at 7.) CCH makes this assertion by citing the “Landowner Bill of Rights.”

However, under the “Landowner Bill of Rights” the Applicants are only required to perform

construction during the winter months on agricultural land “[i]nsofar as is practicable and when the landowner requests... .” (Wis. Stat. 187.017(c) (emphasis added).) Mr. Henn has repeatedly testified that it would be nearly impossible (and thus not practicable) for the Applicants to perform all the construction on agricultural land when the ground is frozen because the Applicants only have a two and a half year window to construct a 150- to 180-plus mile line and there is merely eight to 10 months of frozen conditions. (Henn Hearing Tr. Vol. 8 at 97:8-17; Rebuttal-Applicants-Henn-11:13-23.) Mr. Henn also explained that if the Applicants could not construct in winter months, they would compensate landowners through a crop damage program and reimburse them for soil compaction due to lost yield—which are costs that the Applicants have already accounted for. (Henn Hearing Tr. Vol. 8 at 97:17-21.) CCH then alleges that Segment O’s cost estimate is wrong because the Applicants did not specifically budget for relocation or litigation expenses. (CCH Initial Br. at 10.) As CCH recognizes, however, it is “arguable” whether the Applicants would even have to provide relocation expenses under Wis. Stat. Chapter 32, (*Id.*), and there is no evidence to support a finding that relocation or litigation expenses are more likely on Segment O as compared to any other segment.

According to CCH, the ROW estimates were also inaccurate because they did not take into account that much of Segment O is “inaccessible except by traversing the fields of abutting landowners in order to reach the right of way.” (*Id.* at 14.) Yet, CCH provides no citation to the record supporting this assertion. (*Id.* at 14-15.) Moreover, CCH claims that the Applicants used inaccurate procedures in estimating the cost of acquiring the ROW for Segment O because, if and when applying the “larger parcel” analysis (again an uncited reference), the Applicants should have considered using “all of the land owned by the Old Order Amish community” as the “larger parcel.” (*Id.* at 16-17.) This is because, CCH argues, “the members of the community

use their land in common to a certain degree. All of the land of the members...is considered to be a part of the church...” (*Id.* at 17.) However, CCH’s statements that all the land is considered part of the “church” are unsupported by the record.

For these reasons, CCH’s challenges to the Applicants’ cost estimate for Segment O should be disregarded.

*b. Federal Protection of Religion Laws and Executive Orders Are Not Applicable*

CCH further opposes Segment O by arguing that the Project unjustly burdens the Amish community’s federal right to practice their religion. While the Applicants are sympathetic to CCH’s religious and cultural concerns (Rebuttal-Applicants-Holtz-9:1-4), CCH’s claims of federal protection are unwarranted here. None of the statutes and executive orders CCH cites are applicable or even relevant to the Commission’s decision. (*See e.g.*, Executive Order 12898 (applying to federal agencies only); 42 U.S.C. §§2000bb-1(a), (b) (prohibiting federal government from substantially burdening a person’s “exercise” of religion unless there’s a compelling governmental interest and it is narrowly tailored). Moreover, CCH points to no case law or Commission decision rejecting the construction or routing of a transmission line because it would cross Amish property. Under CCH’s logic, a transmission line could almost never be routed through an Amish-owner’s property.

**C. Ordering The Applicants To Study Additional Corridors Through Or Near Fort McCoy Would Be A Waste Of Resources And Would Delay The Project And Its Benefits**

Despite Clean Wisconsin’s contention, the Applicants should not be ordered to conduct further studies regarding routing options though or near Fort McCoy, between Sparta and Tomah (*see* Clean Wisconsin Initial Br. at 18, 24), because the cost of such activities would outweigh the benefits (if any). (Sur-surrebuttal-Applicants-Henn-4:1-16.) As noted in the Applicants’

initial brief and throughout the record, the Applicants have conducted years of detailed routing and siting analysis (*see generally* Ex.-Applicants-Henn-1: Joint Application, Section 5; Direct-Applicants-Holtz; Direct-Applicants-Langan; Direct-Applicants-Parrett) and stand by their proposed routes. (Sur-surrebuttal-Applicants-Henn-4:9-12.)

Clean Wisconsin claims that the Applicants' decision to eliminate routing options through or near Fort McCoy was "premature," yet the record shows that the Applicants' due diligence process was anything but premature. (Direct-Applicants-Holtz-7:7-11:5.) Indeed, intervenor Clean Wisconsin approaches this issue as if the Applicants were opposed to finding a viable east-west route in this area, which is not the case. The Applicants initially preferred a direct corridor between Sparta and Tomah and only after weighing a variety of factors did they focus on alternative options. (Holtz Hearing Tr. Vol. 9 at 161:8-166:5.)

1. The Applicants Have Conducted Sufficient Due Diligence With Regard to Potential Routing Through Or Near Fort McCoy

There was a time when the Applicants believed routing through or near Fort McCoy along I-90 would be one of the best route alternatives. (Holtz Hearing Tr. Vol. 9 at 161:8-20.) Mr. Holtz testified that siting the line along I-90 seemed viable not only because of the state's siting priorities, but also because it looked like an "easy," straight route to get from east to west. (*Id.*) However, unlike Clean Wisconsin, the Applicants conducted sufficient due diligence to reasonably determine that they should not pursue these routes any further. (*Id.* at 161-166.)

While there is a lot of discussion in the record regarding flight restriction zones near Fort McCoy as being a barrier to selecting a route through this area, this was not the only reason for dismissing routes in this area. Rather, the Applicants testified that the routes through or near Fort McCoy were actually eliminated for a host of reasons. (*Id.* at 162:5-22.) Mr. Holtz explained that there were "unknowns" regarding whether a permit would be needed to site the

line on the Fort McCoy property and whether the Department of Defense (“DOD”) could have the Applicants removed from the property after-the-fact. (*Id.* at 162:5-10.) The Applicants also knew that access to the Project line for maintenance purposes would require specific permission from Fort McCoy and would be an added difficulty. (*Id.* at 162:19-22.)

The Badger Coulee Project routing and siting was not the Applicants’ first experience with the DOD related to Fort McCoy. ATC had experience with the DOD in the Monroe County-Council Creek Project, in which the DOD took in excess of two years to grant certain permissions for an existing, lower voltage line crossing through Fort McCoy. (*Id.* at 162:13-18.) After the DOD in the Monroe-Council Creek Project delayed making a decision, it ultimately forced ATC to use a narrow right-of-way, shorter span lengths, shorter towers, and to build a portion of the line underground. (*Id.* at 162:23-163:5.) Based on this experience, the Applicants testified that it was “not a prudent use of time and resources to approach the DOD ... regarding routing [a larger line] through that area” as it would “delay the project significantly,” especially since the Applicants identified viable routes to the south that “are constructible, are buildable, [and] are permissible.” (*Id.* at 163:6-15.)

With respect to potential corridors near, but not on, the Fort McCoy property, the Applicants also discarded these options for several additional reasons. Notably, the Applicants identified areas (called the “red zone”) where it was not possible to construct any structure because the land consisted of very hilly, steep bluffs and was impacted by height restrictions from Fort McCoy. (*Id.* at 163:16-164:8.) Further, Mr. Holtz testified that there was a lack of routes that went directly east and west. (*Id.* at 165:17-166:1.) These potential routes also traversed through highly sensitive environmental areas, which further supported screening these alternatives from further consideration. (*Id.*)

2. Even If CW-Modified Segment O or Something Like It Could Be Routed Through Or Near The Fort McCoy Area, It Would Still Be Significantly Inferior to Segments P and N

Even if CW-Modified Segment O (or something substantially similar) could be constructed through or near the Fort McCoy area, Northern Route Segments N and P would still better meet Wisconsin's transmission line statutory criteria. The Northern Route segments would continue to share a greater percentage of existing ROW than any southern route option, including CW-Modified Segment O. (Direct-CW-Mosca-10:4-5.) Likewise, Segments N and P are superior from an environmental perspective as CW-Modified Segment O and Segment O cross "highly sensitive" environmental areas. (Holtz Hearing Tr. Vol. 9 at 169:1-6.) Clean Wisconsin's modified Southern Route segments would also not eliminate the concerns raised by the city of Onalaska and would create additional issues of their own.

For example, Mr. Mosca explains that CW-Modified Segment O would be directly adjacent to Ho-Chunk Nation lands. (Mosca Hearing Tr. Vol. 10 at 248:17-21.) While there may be existing ROW along the east or west side of the Ho-Chunk Nation territory, if the ROW is not wide enough, then the Applicants would need to obtain an additional easement from the Ho-Chunk Nation. (*Id.* at 249:12-15.) This would involve complying with federal regulations dealing with obtaining easements from Indian tribes. (*Id.* at 249:16-18.)

Perhaps more importantly, however, CW-Modified Segment O or a route similar to it would be inferior to Segments N and P because at least a portion of the line would need to be built underground. Underground transmission lines have their own set of environmental impacts; require additional land to accommodate the transition stations at each end of each underground segment (approximately several acres per station); generally take longer and are more complicated to construct than overhead lines; and have substantial operation and



maintenance issues associated with them. (Rebuttal-Applicants-Henn-8:17-10:23; *see also* Direct-Applicants-Holtz-19:7-20:13.)

The Commission has indicated that there are limited situations where underground construction of transmission lines is justified; the Badger Coulee Project, and more particularly, CW-Modified Segment O is not one of those limited situations. In the Commission’s order on the La Crosse Project, the Commission reasoned that undergrounding was inappropriate for the proposed 345 kV transmission line “unless engineering considerations require it or *circumstances leave no other reasonable option available.*” (Final Decision, Docket No. 05-CE-136, at 36 (May 30, 2012) (emphasis added.)) Similarly, in the Western Milwaukee County Reliability Project, the Commission rejected underground alternatives for the 138 kV transmission line and concluded “that use of underground construction should in general be limited to where it is technically necessary and *no reasonable options exist.*” (Final Decision, Docket No. 05-CE-139, at 32 (Mar. 20, 2013) (emphasis added).)

Here, reasonable options exist: Segments N and P or Segment O.

**D. The Impacts to the Holland Area Should Be Considered, But They Do Not Outweigh the Benefits of Segments N and P**

1. The Applicants Did Not “Abandon” P-West

The town of Holland and the HNPA criticize Segment P-West and argue that the Applicants have abandoned this segment. (HNPA Initial Br. at 5.) The intervenors misstate the record. The Applicants believe that all segments as modified in this proceeding, including Segment P-West, comply with Wisconsin law and are permissible. However, if the Commission selects the Northern Route, the Applicants have stated a preference based on consideration of a number of factors, including planning, maintenance, constructability, environmental impacts, community input, and costs for the multi-circuit option of P-East over the alignments for P-East

and P-West that were initially proposed. The Applicants continue to believe that the Commission has record support for selecting either Segment P-West or Segment P-East with multi-circuit options that would co-locate the La Crosse 345 kV line and the Project along US Highway 53.<sup>24</sup>

2. The Applicants Cannot Triple-Circuit Segment P For More than One Mile

The town of Holland contends that the Badger Coulee and La Crosse 345 kV lines can be co-located together with the existing 161 kV line for eight miles based on its review of NERC Category D criteria. (Holland Initial Br. at 7-10.) But the town of Holland's brief reflects a misunderstanding of the NERC reliability criteria. The applicable NERC criteria that applies to the analysis of the two 345 kV lines is Category C, not D. The NERC planning criteria Category C, TPL-003-0b, requires the outage of two circuits of a triple-circuit line to be studied as a single outage if they are co-located on the same structures for more than a mile. (King-Huffman Hearing Tr. Vol. 8 at 174:9-13.)

Commission staff witness Mr. Neumeyer and NSPW witness Ms. King-Huffman were the only witnesses who provided any testimony analyzing NERC criteria in relation to the La Crosse/Winona area load serving benefits. These two electrical engineers concluded that the two lines cannot be co-located for more than one mile without violating this criteria. (Ex.-Applicants-Henn-2: Data Request Responses 4.04 and 9.01; Neumeyer Hearing Tr. Vol. 11 at 114:19-116:10.) This means that if the two 345 kV lines were co-located for more than a mile, the Badger Coulee Project would not be considered a second 345 kV source to the La Crosse/Winona area and no additional load serving capability would be provided. (*Id.*; Ex.-Applicants-Henn-2: Data Request Responses 4.04.) Therefore, system reliability precludes

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<sup>24</sup> The Applicants' analysis of the factors relating to Segment P-West and the Segment P-East options to co-locate the La Crosse Project with the Project is contained in Ex.-Applicants-Henn-2: Data Request Responses 9.01.

consideration of any route alternative that would co-locate the Badger Coulee and La Crosse 345 kV lines for more than one mile.

3. Siting the Badger-Coulee Project Near the La Crosse Project Line In This Area Complies With Wisconsin's Siting Priorities Law

Wisconsin's Siting Priorities Law establishes existing utility corridors as the highest priority corridor for new transmission lines. (Wis. Stat. § 1.12(6)(a).) The second priority corridors are highway and railroad corridors. (*Id.* at 6(b).) Contrary to the town of Holland's arguments otherwise, the routing of the Badger Coulee line parallel to the La Crosse line and US Highway 53 along Segment P-East takes advantage of existing utility and highway corridors in furtherance of the state's stated routing priorities.

**E. The Intervenors Have Not Shown That Segments B and C Are Superior to Segments A and D**

1. Ms. Kunze's Concerns Regarding the Existing Transmission Line on Her Property, EMF and Morey Field Are Overstated

Despite the Applicants' pre-filed and technical hearing testimony stating the contrary, Ms. Kunze continues to claim that there will be transmission lines on three sides of her property if Segment A is chosen and, even if the Applicants double-circuit, there will be poles on two sides. (Kunze Initial Br. at 4-5.) Both of these assertions are incorrect. If the Commission selects Segment A, there will only be *one* double-circuit transmission line on *one* side of her property. (Rebuttal-Applicants-Justus-5-6.)

Ms. Kunze also raises concerns related to EMF and/or stray voltage in her brief. (Kunze Initial Br. at 13.) Ms. Kunze is concerned that nuisance shocks to horses "could result in dangerous, damaging, even fatal consequences." (*Id.*; Henn Hearing Tr. Vol. 8 at 69:5-18.) But Mr. Beske explained that these shocks are unlikely to occur and, even if they did occur, are not harmful to health and can be remedied. (Rebuttal-Applicants-Beske-4:16-23.)

Finally, Ms. Kunze argues that Segment A would be a public safety issue given its location and proximity to Morey Field, the airport in the town of Middleton. (Kunze Initial Br. 3.) She also states that the Badger Coulee structures would need to be lowered in height. The Applicants, however, have evaluated the FAA restrictions in this area and can construct the Project as proposed in the Joint Application and comply with all FAA restrictions. (Holtz Hearing Tr. Vol. 8 at 289:5-8.) Further, the record shows that the Rockdale-West Middleton line (to which Ms. Kunze cites) is closer to Morey Field than the proposed Badger Coulee line. (Lorenz Hearing Tr. Vol. 9 at 152:9-15; 158.)

## 2. The Impacts to the Town of Middleton Would Not Be Unreasonable

Although the town of Middleton has concerns about the Badger Coulee Project, the record shows that the potential impacts on the town are not unreasonable. In its brief, the town asks the Commission to take four actions to: (1) acknowledge the cumulative impacts of previous, current and future transmission line projects and require sponsors of such projects to eliminate and mitigate such impacts, or identify alternative end-points; (2) require the Applicants to conform the Badger Coulee Project and any other future transmission line project to the town's established and anticipated development plans; (3) order the Applicants to make additional annual payments to the town for the life of the transmission lines connected to the Cardinal Substation; and (4) order the Applicants to engage in more coordination efforts with the town. (Middleton Initial Br. at 2.)

As to the town's first request (to order the Applicants to mitigate impacts), this request is unnecessary because it is redundant of the Applicants' established practices. The record is covered with examples where the Applicants have sought to accommodate requests by intervening parties and the state agencies to minimize or mitigate potential Project impacts. (*See e.g.*, Ex.-Applicants-Holtz-1r (a chart summarizing proposed route adjustments that the

Applicants support, which accommodate various party interests or concerns).) In selecting a route, the Applicants followed the siting priorities law while balancing and weighing a variety of factors. (Direct-Applicants-Henn-9:4-10:12.) While Middleton would also like the Applicants to identify alternative end points, the decision of where the end points will be located is made in light of the entire Project context, and not just one party's preferences. In this case, the Applicants have selected the Cardinal Substation as one end point because it best met the Project's needs. (Direct-Applicants-Holtz-7:7-11:5.)

The Applicants also oppose the town of Middleton's second request—to order the Applicants to “conform” their transmission line plans to the town's development plans—because it would be contrary to Commission jurisdiction and would represent a sea change in Project planning. (Middleton Initial Br. at 2; Direct-Middleton-Ludtke-8:23-9:2.) The Commission has jurisdiction over Project routing and siting, not local towns and municipalities. (Rebuttal-Applicants-Justus-7:14-23.) This CPCN proceeding is the appropriate venue to finalize the routes if this Project is approved. (*Id.*)

Third, Middleton's request for additional compensation for the life of the Project line is contrary to Commission practice and beyond any obligation imposed on the Applicants under state law. The Applicants are already required to pay municipalities and towns hefty environmental impact fees. (Henn Hearing Tr. Vol. 8 at 84:16-21.) Such fees are intended to compensate the municipalities for having a 345 kV transmission line in their community. (*Id.*) To the extent Middleton believes that the current statutory framework is insufficient, it should work directly with state legislators.

Fourth, Middleton asks the Commission to order the Applicants to engage more with the town. The town cites the proposed extension of Bronner Road as an example of where the

Applicants failed to work with them. The town of Middleton claims in its initial brief that the Applicants “did not take into account this extension of Bronner Road, which lies in the area in which the transmission towers may be placed.” (Middleton Initial Br. at 8.) Yet, ATC first approached municipalities about the Badger Coulee Project in 2010, three years before the town officially approved the realignment and extension of Bronner Road. (Justus Hearing Tr. Vol. 9 at 7:11-8:1.) Between 2010 and 2012, ATC held four rounds of open houses plus an additional single open house in the town of Middleton at its request. (*Id.* at 8:4-9.) Ms. Justus explained that at the open houses, the proposed routes were included on the maps and available for review. (*Id.* at 8:10-13.) Moreover, the record indicates that the town of Middleton was aware of the proposed routing of the Badger Coulee Project before they officially adopted the realignment and extension of Bronner Road. (*Id.* at 8:14-12:4.) In addition, when ATC learned about the town’s resolution regarding Bronner Road and reviewed copies of the town’s maps, the design engineering team found that there “was not a significant concern for conflict” between the proposed Project route and Bronner Road. (*Id.* at 13:16-22.)

As the Applicants discussed in their initial brief and emphasize here, the Applicants have and will continue to communicate and work with the town. (Applicants’ Initial Br. at 40-41.) Thus, a formal order point requiring them to do so is unnecessary.

**F. The Project Will Not Unreasonably Interfere With Land Use and Development Plans**

While some of the intervenors contend that the Badger Coulee Project unreasonably interferes with land use and development plans, the Applicants have demonstrated in their initial brief and throughout the proceeding that the potential Project impacts are reasonable. (*See infra* sections III.D (regarding the town of Holland); III.E.1. (regarding intervenor Kunze’s land use concerns); III.E.2. (regarding town of Middleton’s potential impacts); III.B.2 (regarding city of

Onalaska's Aoz).) In addition to the discussions above, the city of Onalaska raised a few additional points in its initial brief. Specifically, Onalaska contends that the Project will unreasonably interfere with certain city properties or developments. (Onalaska Initial Br. at 7.) For example, the city claims that Segment O would impact residential and commercial development, citing two commercial areas within the city—the Mayo Clinic development site (which is part of the Menards/Elmwood Master Plan) and the Elmwood Business Park area. (Onalaska Initial Br. at 7; *see also* Direct-Onalaska-Grace-8:21-11:22.)

While the Project, like other utility infrastructure projects, will have impacts on development, these impacts will not unreasonably interfere with orderly land use and development plans.<sup>25</sup> In her rebuttal testimony, Ms. Justus defended the Applicants' routing decisions in this area by highlighting that there are no physical clearance or code issues that would preclude development of the properties adjacent to the transmission line proposed on these segments. (Rebuttal-Applicants-Justus-3:17-18.) She also explained that the Project should not inhibit development as it is common for construction to occur near a transmission line; if the proposed construction or development is close to or inside of the ROW, the Applicants have procedures in place for reviewing construction plans and working with property owners and their contractors to ensure safety and reliability for all the parties. (*Id.* at 3:19-22.) As to specific concerns regarding Segment O's impacts on land that the Mayo Clinic Health System recently purchased, Ms. Justus testified that the transmission line will not materially impact the development of the Mayo Clinic property. (*Id.* at 4:15-5:2.) This is because the

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<sup>25</sup> *Application of Highland Wind Farm, LLC, for a Certificate of Public Convenience and Necessity to Construct a 102.5 MW Wind Electric Generation Facility and Associated Electric Facilities, to be Located in the Towns of Forest and Cylon, St. Croix County, Wisconsin, 2535-CE-100, FINAL DECISION ON REOPENING at 11-13 (Oct. 25, 2013) (recognizing that the project will have "some interference with land use and development" but that the location of a proposed wind project was in the public interest and did not unreasonably interfere with orderly land use and development plans).*

proposed segment is along the western edge of the Mayo Clinic property, adjacent to a highway and utilizes the highway right-of-way to minimize property impacts. (*Id.*)

#### **IV. THE APPLICANTS' COST ESTIMATES ARE ACCURATE**

##### **A. The Applicants' Approach to Real Estate Acquisition Cost Estimates Is Reasonable And Justly Compensates Landowners**

Despite Ms. Kunze's and the CCH's contentions stating otherwise (Kunze Initial Br. at 11; CCH Initial Br. at 7-18), the record shows that the Applicants reasonably accounted for real estate acquisition costs in their Project cost estimate. Although Ms. Kunze argues that the acquisition of a utility easement may not compensate landowners adequately, Ms. Justus testified that every landowner from whom the Applicants acquire a utility easement is entitled to just compensation, which the state legislature has determined to be fair and adequate. (Rebuttal-Applicants-Justus-2:15-3:4.) Just compensation is a site-specific analysis whose procedures are enumerated in law under Wis. Stats. Chapter 32. (*Id.*) The Applicants have many years of experience building transmission lines and estimating real estate acquisition costs, and they are confident that their estimates are reasonable.

##### **B. The Applicants' EIF Calculations Are in Line With Recent PSCW Decisions**

Dane County seeks to increase the "environmental impact fees" ("EIFs") that the Applicants will pay to the Department of Administration for distribution to the counties and municipalities where the Project is located. Wisconsin law imposes both a one-time EIF payment and an annual EIF payment for the construction of a high-voltage (345 kV or more) transmission line. (Wis. Stat. § 196.491(3g)(a).) The one-time EIF is 5% of the "the cost of the high-voltage transmission line" and the annual EIF is 0.3% of the "cost of the high-voltage transmission line." (Wis. Stat. § 16.969(2).) In both cases, "the cost of the high-voltage transmission line" is determined by the Commission.



The Applicants' calculation of the "cost of the high-voltage transmission line" in this case excluded the costs associated with modifications to existing lower voltage transmission lines and distribution lines, which is in accordance with the Commission's most recent EIF determination. (*See* Ex.-Applicants-Henn-1: Joint Application at 133-134.) On this basis, "the cost of the high-voltage transmission line" is estimated to be between \$382 million and \$408 million, depending on the route selected. (*Id.* at 134.)

As the Applicants' witness Mr. Henn explained, these modifications arise when the route of a new high-voltage transmission line overlaps with an existing lower voltage transmission line or distribution line. Typically, a lower voltage transmission line is moved from its existing structures and strung on the new 345 kV structures in a double-circuit or under-build configuration. (Henn Hearing Tr. Vol. 8 at 71:24-72:11.) Distribution lines are not attached to 345 kV high-voltage transmission structures, so they generally must be left in place, moved or buried. (*Id.* at 72:12-23.) In this case, including the cost of these modifications to "the cost of the high-voltage transmission line" would increase the cost basis for the EIFs by \$19 million to \$25 million. (Ex.-Applicants-Henn-2: Data Request Response 1.97.)

When it sought approval of the La Crosse Project, NSPW took issue with the Commission's broad interpretation of "the cost of the high-voltage transmission line" for the Rockdale-West Middleton Project, and urged the Commission to exclude lower-voltage line costs from the EIF calculations for the La Crosse Project. In its La Crosse decision, the Commission included the cost of the transmission substation components but excluded lower-voltage transmission and distribution line costs:

The statute defines "high voltage transmission" as "a conductor of electric energy . . . together with associated facilities," but does not specifically define "associated facilities." The question is whether the relocation of lower-voltage transmission and distribution lines and the lower-voltage components at Briggs

Road Substation should be included in the cost basis for calculating the high-voltage impact fees.

The Commission finds that for the proposed project, the cost basis for the environmental impact fees is \$179,461,000. This includes the estimated \$33,665,000 for 345, 161 and 69 kV substation components at the Briggs Road Substation. It does not include the estimated costs for relocating the lower-voltage transmission and distribution line (\$2,532,000 and \$1,820,000, respectively), or the estimated \$9,771,000 in costs for constructing the 161 kV and 69 kV lines along segments that will be built using double-circuit configurations.

(Final Decision, Docket 5-CE-136, at 39 (May 30, 2012).)

For this Project's cost estimate, the Applicants' followed the Commission's more recent La Crosse Project decision and excluded lower-voltage line costs from the EIF calculations. The Applicants included their EIF calculations and a description of those calculations in the Joint Application. (Ex.-Applicants-Henn-1: Joint Application at 133-134.) No party or PSCW staff presented testimony opposing the Applicants' EIF calculations.

The Applicants urge the Commission to exclude lower-voltage costs from the EIFs in this case, as it did for the La Crosse Project. The Commission's most recent interpretation is consistent with the plain language of the statute and its purpose. The definition of a "high-voltage transmission line" includes those facilities "associated" with the 345 kV *line*. These would include the structures holding the 345 kV line and the facilities needed to interconnect the line with the grid. It is a stretch to go further and include impacts to existing facilities occasioned by the construction of the line as those facilities are not required for its proper operation.

Furthermore, in its Rockdale-West Middleton decision, the Commission reasoned that the "purpose of the impact fees is to compensate municipalities for the burden of physical facilities," and on that basis excluded pre-certification and O&M costs during construction from the EIF calculations. (Supplemental Order, Docket 137-CE-147, at 4 (Jan. 24, 2011).) Excluding lower-

voltage facility costs from the calculation is consistent with that reasoning, as the relocation or other modification of *pre-existing* lower-voltage facilities does not increase the municipalities' burden of physical facilities.

**V. THE PROJECT WOULD NOT HAVE AN UNDUE BURDEN ON ENVIRONMENTAL VALUES AND THE INTERVENORS' RECOMMENDED ORDER POINTS ARE UNNECESSARY**

Contrary to intervenor contentions, the Project does not have an undue burden on environmental values. (Wis. Stat. 196.491(3)(d)3.) For example, Clean Wisconsin argues that the Project routing as proposed is not in the public interest considering alternative routes and environmental factors because the proposed routes have impacts on the environment and on the Amish community. (Clean Wisconsin Initial Br. at 18.) Yet, every potential route has some environmental and human impacts so merely finding that the route has impacts is insufficient to claim that the Project is unduly burdensome. (*See* Wis. Stat. 196.491(3)(d)3.) To the extent that the proposed routes have impacts, the record strongly supports the fact that the Applicants have taken them into consideration and have suggested methods to mitigate them. (*See generally* Direct-Applicants-Parrett.)

Clean Wisconsin and Ms. Kunze argue that the Commission should incorporate certain environmental and agricultural order points. The record shows, however, that these order points are unnecessary, impractical, unreasonable, and/or an inefficient use of resources. Should the Commission approve one of the proposed routes, the Applicants believe that the order should allow for sufficient flexibility in determining mitigation techniques because the record shows it is the best means to ensure maximum environmental protection. (Sur-surrebutal-Applicants-Parrett-6-7.) As Ms. Parrett explains, the Applicants need flexibility to determine specific mitigation techniques based on the time of year construction occurs and the situations encountered in the field. (*Id.* at 6:17-23.) Moreover, at this time, the Applicants have not had

access to all sites to survey the environmental and agricultural conditions, the specific pole locations and design information are preliminary and subject to change during the post-order design and real estate acquisition phases of the Project. (*Id.*) Thus, mitigation techniques identified now might not even be useful when the Project is actually constructed. (*Id.*)

**A. The Intervenors' Long-Term Vegetation Management Requests Are Not Reasonable**

As pointed out in the Applicant's initial brief and as seen in all of the intervenors' initial briefs, no party contests the Applicants' need to clear the entire ROW in order to properly construct the Project. Clean Wisconsin's recommendation is for a long-term order point to govern what newly grows in the ROW border zone. Clean Wisconsin advocates for such a requirement because their experts believe shrubs in the ROW will have an environmental benefit. (CW Initial Brief at 30.) Clean Wisconsin's position, however, wrongly assumes that what vegetation is allowed in a 345 kV high-voltage transmission line ROW is an environmental question. As detailed above in Section II.B, vegetation management of ROWs is about reliability. The practices are developed to ensure adequate clearance between vegetation and the conductors, but also for access, maintenance and restoration purposes, which are aspects of maintaining a reliable electrical system. (Holtz Hearing Tr. Vol. 8 at 236:19-8:1.) An exchange between Ms. Westerberg and Mr. Holtz illustrates this tension between reliability and the environment:

Q: Is it your understanding that leaving more vertical diversity and taller shrubs in a right-of-way area can provide more habitat for, for example, migrating birds?

A: It can do that, but it also causes problems for gaining access and maintaining the line.

(Holtz Hearing Tr. Vol. 8 at 236:2-7.)

Because there is no specific rule stating that shrubs cannot grow in a 345 kV ROW, and because “clear-cutting the ROW is ATC’s *practice*”, Clean Wisconsin believes the Commission can overrule the Applicants’ established vegetation management practices. (CW Initial Br. at 31 (italics in original).) This is based, however, on an incorrect understanding of the federal rules. The federal standard sets forth the requirement of what must be obtained, and the utility must determine how to ensure this requirement is met. (Sur-surrebuttal-Applicants-Holtz-5:12-18.)

The Applicants’ program is not overzealous in its clearing requirements. “The permanent removal of brush and shrubs is an industry best management practice to facilitate reliable electric service and ensure vegetation does not impede or restrict other maintenance, inspection or service restoration activities. This practice of cleared ROWs, especially for 345 kV lines, is the Applicants’ normal practice.” (*Id.* at 18-22.) Additionally, there are valid concerns with an order point that applies to the Applicants’ actions for an indefinite period of time beyond the Project going into service and restoration activities being completed. The federal vegetation standards change, and the Applicants need to be able to update their practices. (*Id.* at 6:1-8.)

The Applicants have been clear throughout the proceeding that the standard practice for a 345 kV line is to maintain a clear ROW. There are exceptions (places where the ROW will not be cleared of all vegetation), but Clean Wisconsin is asking the Commission to make the exception the norm. There is nothing in the record showing that reliability can be achieved with a practice that allows shrubs to grow in the ROW of a 345 kV line. As such, the Applicants should be allowed to continue using their normal practices.

**B. The PSCW Should Not Adopt All of DATCP’s Recommended Order Points**

In its direct testimony, DATCP requested that a number of its recommendations from the Agricultural Impact Statement (“AIS”) be incorporated as order points if the Badger Coulee Project is approved. (Direct-DATCP-Halpin -4-7; *see also* Kunze Initial Br. at 33-35 (stating

that if Segment A is selected by the Commission, DATCP's AIS recommendations should be implemented.) The Applicants responded in their rebuttal testimony by stating that some of DATCP's recommended order points are either unnecessary or impracticable. (*See* Rebuttal-Applicants-Henn-11:1-12:18; Rebuttal-Applicants-Justus-8-:9:13; Rebuttal-Applicants-Parrett-9:16-10:2.) DATCP did not file any testimony in response to the Applicants' rebuttal and did not file a brief questioning the reasoning given in the Applicants' rebuttal. The Applicants' testimony that some of DATCP's recommended order points are unnecessary and/or impracticable is therefore unrebutted in the record. Except for the order points that were discussed by the Applicants in testimony, the Applicants have no objection to any of the remaining DATCP-recommended order points.

**C. The AMP Should Not Require WDNR Approval**

The Applicants are committed to preparing an avian mitigation plan ("AMP") that identifies bird protection measures, and are similarly committed to working with government agencies in determining such mitigation measures. (Parrett Hearing Tr. Vol. 9 at 224:1-22.) The Applicants do not, however, support any order point that formally requires WDNR approval of the AMP. During the technical hearing, WDNR's counsel Ms. Correll asked Ms. Parrett whether the Applicants would object to an order point requiring WDNR to accept the avian mitigation plan, in particular with respect to measures related to the Leopold-Pine Island Important Bird Area ("IBA"), the New Amsterdam Grasslands area, and the Northern Empire Prairie Wetlands IBA. (*Id.* at 225:7-12.) Although Ms. Correll was not entirely clear what type of approval the agency is interested in having (*id.* at 225:17-19 ("Not necessarily a formal regulatory approval is what I'm asking but the terms—once you get down into the details...")), the Applicants responded during the hearing and reiterate here that they do not believe that WDNR approval is appropriate or necessary since the Applicants "would be working with the department throughout

the whole process to identify mitigation measures.” (*Id.* at 225:13-16; *see also* Langan Hearing Tr. Vol. 9 at 237:8-12 (affirming that the Applicants would consider mitigation measures proposed by WDNR and USFWS in preparing the AMP).) As Mr. Langan explains, the AMP is a “living document,” which will evolve with the Project and bird needs. (*Id.* at 236:23-237:2.) Giving the WDNR approval authority over the AMP could usurp the PSCW’s decision making authority and potentially cause project delays. Notably, the CPCN order for the La Crosse Project did not require this type of approval, and even without it, NSPW worked cooperatively and successfully with the WDNR and USFWS to develop the AMP for that project. (Langan Hearing Tr. Vol. 9 at 236:18-22.)

### CONCLUSION

For these reasons and the reasons articulated in the Applicants’ initial brief, the Commission should issue the Applicants and the La Crosse Owners a CPCN for the Project, select the Northern Route using Segment P-East, and not include any of the contested order points requested by Clean Wisconsin, DATCP, the town of Middleton, or Ms. Kunze.

Dated this 13<sup>th</sup> day of February, 2015.

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