

**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
a 345kV Transmission Line from the La Cross area,
in La Crosse County, to the greater Madison area,
in Dane County, Wisconsin

Docket No. 5-CE-142

**INTERVENOR CITIZENS ENERGY TASK FORCE, INC.'S
REPLY BRIEF IN OPPOSITION TO THE APPLICATION**

INTRODUCTION

Through their initial briefs, the Applicants and intervenors supporting the approval and construction of the Badger-Coulee Project (the “Project”) attempt to simplify the case before the Public Service Commission of Wisconsin (the “Commission”) by portraying several important elements of the case as either uncontested or uncontroversial.¹ For example, the Applicants write that “[n]o intervenors dispute the Applicants’ methods of studying the Project or question any of the Applicants’ results,” and that “[w]hile SOUL/CETF offered their opinions regarding load growth assumptions, they did not challenge any of the Applicants’ economic or engineering planning study results.”²

These statements inaccurately represent the record and the position of intervenors such as Citizens Energy Task Force, Inc. (“CETF”) and Save Our Unique Lands of Wisconsin, Inc. (“SOUL”). The fact that no intervenors have challenged the Applicants’ PROMOD modelling

¹ See, e.g., Applicants’ Initial Brief [hereafter “Applicants’ Brief”] (PSC Ref. # 230721), pp. 6, 10.

² See *id.*

does not mean that no intervenors challenge the approach the Applicants have adopted to planning the Project or the Applicants' characterization of the Project's costs and benefits.

Specifically, CETF opposes the Project on grounds far broader than the Applicants' misuse of load growth assumptions. These include a legally insufficient and practically detrimental reliance on MISO planning, a remarkably incomplete accounting of the Project's costs, an exaggerated accounting of the Project's benefits, a thorough dismissal of alternatives, and a callous disregard for public concerns and environmental issues. These shortcomings are not just fodder for complaints: they amount to a showing that the Applicants and the joint DNR/PSC Environmental Impact Statement have failed to meet statutory criteria for the issuance of a Certificate of Public Convenience and Necessity ("CPCN"). Accordingly, the Commission should reject the application.

ARGUMENT

Public benefit is a prerequisite for the issuance of a CPCN permit for a high voltage transmission line of 345 kilovolts such as the proposed Badger-Coulee.³ The Wisconsin Statutes require the Commission to determine that the line "provides usage, service or increased regional reliability benefits to the wholesale and retail customers or members in this state and the benefits of the high-voltage transmission line are reasonable in relation to the cost of the high-voltage transmission line."⁴

This provision codifies a common-sense rule: permits should not be granted for projects unless those projects benefit the Commission's constituency – Wisconsin ratepayers. Specifically, projects must provide usage, service, or increased reliability benefits. As

³ Wis. Stat. § 196.491(3)(d)3t.

⁴ *Id.*

demonstrated in CETF’s Initial Brief, the proposed project as part of the Applicants’ large, highly connected grid exposes Wisconsin ratepayers to reliability risks due to voltage instability and cascading failure brought on by error, sabotage or nature. The analysis for the Commission, accordingly, must then turn to usage or service benefits.

Wisconsin Statutes Chapter 196 uses the term “service in its broadest, most inclusive sense, but does not define “usage.”⁵ Logically, service and usage benefits must take one of two forms: a beneficial change in the way the service is provided by a utility, or a decrease in the price of the service. Applicants do not argue that the Project will change the energy purchasing experience of Wisconsin ratepayers – they will continue to buy energy exactly the way they would otherwise. The only change facing Wisconsin ratepayers is a change in the price of the energy.

The public has asked Applicants for a guarantee that the Project will benefit ratepayers by reducing the cost of energy, and for an estimate of that reduction.⁶ This request has been repeated persistently throughout the history of this Project.⁷ To date, Applicants have not provided either item, but have admitted they cannot guarantee if and how energy costs savings will be passed down to ratepayers, making it impossible for the Commission to conclude that this project will actually benefit anyone other than the utilities building it.

⁵ Wis. Stat. § 196.01(7).

⁶ Tr. vol. 8 (PSC Ref. # 230598), p. 326.

⁷ *Id.*

I. The Project does not Provide Economic Benefits that are Reasonable in Light of the Project's Costs.

A. The Applicants underestimate the Project's costs.

The Applicants argue that the benefits will ultimately “far exceed” the Project’s costs as applied to Wisconsin ratepayers.⁸ But a cursory review of the record shows that the Applicants grossly underestimate the Project’s costs by focusing only on costs that will come out of their pockets while neglecting several important elements in their calculations.

The following is a representative, non-exhaustive list of actual and potential quantitative costs that the Applicants’ analysis does not consider:

- The loss of property value in the case of properties located near or adjacent to transmission lines, and the impacts of increased time and marketing costs associated with selling the properties;
- The loss of business revenue due to decline in tourism or other decline in business activity, including loss of productive farm land and development opportunity, due to the existence of the line;
- The loss of property value or business activity due to condemnation of property on account of transmission line routing;
- The cost of relocation due to condemnation or location of the lines near Amish communities
- Route adjustments, of which the Applicants have already identified approximately \$7.2 as acceptable to them.⁹
- The prevention and mitigation of health problems associated with transmission lines.

While it is difficult to place a dollar value on qualitative costs such as negative impacts on the environment, quality of life and ability to enjoy nature must also be weighed and

⁸ *Id.* at 10.

⁹ See Ex.-Applicants-Holtz-1 (PSC Ref. # 229967).

accounted for. As demonstrated in CETF's initial brief, the net present value of energy related savings using MTEP13 PROMOD analysis at .22% and .75% demand growth rates is 1.4 cents and 2.8 cents respectively per average Wisconsin ratepayer, when dividing the total by the Energy Information Administration.¹⁰ This projected benefit ignores key costs and is based on questionable growth. And, while the paltry potential benefits are not guaranteed to be passed on to ratepayers, negative impacts are both guaranteed and, according to Commission staff, unavoidable.¹¹

Without considering these costs, the application cannot be said to estimate costs adequately.

B. The Applicants have refused to account for their own profit from the Project.

The Applicants note that the several prospective owners of the Project support its approval on account of the benefits it provides. The Applicants write:

With these Wisconsin benefits as well as the regional reliability and economic benefits, it is not surprising that the list of the Project's supporters is long. American Transmission Company LLC, by its corporate manager, ATC Management Inc. ("ATC"), Northern States Power Company, a Wisconsin corporation ("NSPW") (together the "Applicants"), and Dairyland Power Cooperative ("DPC"), WPPI Energy ("WPPI"), and SMMPA Wisconsin, LLC ("SMMPA Wisconsin") (collectively the "Co-Applicants" or "La Crosse Owners") all advocate for the approval of this beneficial Project.¹²

While the Applicants may ascribe selfless motives to the Project's prospective owners, the Commission has no way of ascertaining what the Applicants and those owners stand to gain from the Project – and how it compares to the benefits that ratepayers will allegedly receive. Indeed, during cross-examination, Applicant witness Terrence Henn admitted that the Applicants

¹⁰ Direct-CETF/SOUL-Lanzalotta (redacted) (revised) (PSC Ref. # 229027), p. 8 n.6.

¹¹ Tr. vol. 8 (PSC Ref. # 230598), p. 160.

¹² Applicants' Brief (PSC Ref. # 230721), p. 1.

had not calculated what additional revenue or profit the Project would bring to the Applicants – separately from any revenue or profit currently accounted as an economic benefit to Wisconsin utilities – should the Commission approve the Project.¹³

The question of the Applicants’ and the owners’ profit from the Project is not merely a question of equity: it is question that is indispensable to the CPCN statutory standard. Pursuant to the CPCN statute, the Commission must determine whether the Project’s benefits are reasonable when considering the Project’s costs to ratepayers.¹⁴ There can be little question that, under this statutory standard, it is imperative for the Commission to be able to ascertain the benefits to the Applicants and the owners themselves: if the Applicants estimate their profit to far exceed any potential benefits to Wisconsin ratepayers, the Commission should have that information to determine whether to allow Wisconsin ratepayers to finance that profit.

II. The Project does not Provide Reliability Benefits that are Reasonable in Light of the Project’s Costs.

Both the Applicants and MISO insist that the Project addresses reliability needs in the currently-existing transmission system.¹⁵ MISO writes:

[A]ccording to MISO Witness Rauch ... MISO’s analyses identified numerous reliability issues that will occur for the projected future system if the Badger Coulee project is not completed. The Badger Coulee project addresses these issues by creating a tie between the 345 kV network in western Wisconsin to the 345 kV network in south-central Wisconsin. This provides an additional transmission path across the state, strengthening the overall transmission system and increasing its ability to serve load under contingent conditions.¹⁶

¹³ Tr. vol. 8 (PSC Ref. # 230598), p. 40.

¹⁴ Wis. Stat. § 196.491(3)(d)3t.

¹⁵ *E.g.*, MISO’s Br., pp. 21–22; Applicants’ Brief, p. 21.

¹⁶ Brief-MISO [hereafter “MISO’s Brief”] (PSC Ref. # 230707), p. 22.

The record shows the opposite. The evidence overwhelmingly shows that the currently-existing transmission system will not develop reliability problems due to lack of peak load growth within a reasonable planning time, if ever.¹⁷ Even if it did, those reliability needs are too speculative and remote to justify the Project’s costs. More importantly, any reliability issues are self-created and the exclusive result of the fact that this project would be used to import power from west of the state.¹⁸ To the extent that generator-driven events such as generation additions, increased use of existing generation and retirements may cause reliability problems, generators themselves should pay for reliability upgrades – not the Wisconsin ratepayer.

A. There are no reliability needs in the La Crosse/Winona area.

The Applicants list one of the Project’s reliability benefits as the “support [of] growing peak electric loads in the La Crosse/Winona area.”¹⁹ The Applicants argue that “[t]here is ... no dispute that load in the La Crosse/Winona area is expected to grow.”²⁰ The Applicants support this assertion by arguing that Mr. Lanzalotta conceded as much in his cross-examination.²¹ The Applicants then argue that the Project is needed to meet reliability needs that will arise when the peak load in the La Crosse/Winona area reaches 750 megawatts.²²

¹⁷ SOUL’s Initial Brief in Opposition to the Application [hereafter “SOUL’s Brief”] (PSC Ref. # 230710), pp. 12–16.

¹⁸ See Tr. vol. 10 (PSC Ref. # 230601), pp. 41–42.

¹⁹ Applicants’ Brief (PSC Ref. # 230721), p. 5.

²⁰ *Id.* at 15.

²¹ *Id.*

²² *Id.*

As exhaustively discussed in the initial brief of SOUL, there has been and there will be no load growth in the La Crosse/Winona area.²³ For brevity purposes, CETF will not repeat that discussion here.

Regardless, even if the Commission were to adopt the Applicants' load growth projections for the La Crosse/Winona area, those projections are nowhere near enough to justify the Project. As the Applicants conceded through testimony, even by their own projections, the La Crosse/Winona area is not likely to develop reliability needs for another several decades.²⁴

The Applicants base their argument that the La Crosse/Winona area will develop reliability needs entirely on the prospect of the load in the currently-existing 161 kV lines in the LaCrosse/Winona area reaching the threshold of 750 MW.²⁵ Specifically, according to the NSPW need Study, an area load of 750 MW would overload the 161 kV lines should *both* the North Rochester – Briggs Road 345 kV line *and* either the John P. Madgett Station or the Genoa Generating Station Unit 3 fall out of service.²⁶

Even if these service outages were likely, the evidence shows that the load in the La Crosse/Winona area will not reach 750 MW for decades to come.²⁷ To predict when the peak load in the area would reach the 750 MW threshold, the Applicants used “a range of growth assumption using the non-coincident peak of 481 MW in 2012 as the base year,”²⁸ Using growth

²³ SOUL's Brief (PSC Ref. # 230710), pp. 12–16.

²⁴ Direct-Applicants-King-Huffman (PSC Ref. # 218099), p. 11; Tr. vol. 8 (PSC Ref. # 230598), p. 191.

²⁵ Direct-Applicants-King-Huffman (PSC Ref. # 218099), pp. 9–10.

²⁶ *Id.*

²⁷ *Id.* at 11; Tr. vol. 8 (PSC Ref. # 230598), p. 191.

²⁸ *Id.*

rates ranging from 1 percent to 3.44 percent annually.²⁹ The results were telling. Using the 3.44 percent per year growth rate, the Applicants predicted that the La Cross/Winona area would not reach a peak load of 750 MW until *2026 at the earliest*.³⁰ When the Applicants used the 1 percent per year growth rate, that timeframe changed to *as late as 2050*.³¹ Later, during cross-examination, the Applicant witness who made these projections admitted that the 750 MW peak load condition could take until *as late as 2055* to become a reality.³²

By the Applicants' own estimates, reliability needs for the La Crosse/Winona area are too speculative and too distant to justify a need for the Project. The Applicants base the reliability needs in the La Crosse/Winona area on a combination of three distinct events: the growth of peak load to 750 MW or higher; *plus* the outage of a 345 kV line; *plus* the outage of one of two generators.³³ Arguably, transmission planning should plan for the worse – and the Applicants may have reason for concern over the latter two outage events. But the first and key event, the growth of peak load to 750 MW or over, is far too distant.

By the Applicants' own projections, it will take *eleven to forty years* for peak load in the La Crosse/Winona area to reach the critical threshold of 750 MW.³⁴ In other words, it will take eleven to forty years for the La Crosse/Winona area to develop reliability needs. Preventing reliability problems from arising in the near future is prudent; preventing them from arising half a century from now is overkill and does not justify the cost of this project.

²⁹ *Id.* at p. 11.

³⁰ *Id.*

³¹ *Id.*

³² Tr. vol. 8 (PSC Ref. # 230598), p. 191.

³³ Direct-Applicants-King-Huffman (PSC Ref. # 218099), pp. 9–10.

³⁴ *Id.* at 11; Tr. vol. 8 (PSC Ref. # 230598), p. 191.

To make matters worse, the record shows that even the Applicants' most conservative load growth projection for the La Crosse/Winona area may be overly optimistic.³⁵ According to the witness that prepared these projections, the peak load of the La Crosse/Winona area has seen almost no growth over the last several years.³⁶ Figure 1 to Ms. Amanda King-Huffman's rebuttal testimony provides an excellent visual of the flat-line trend – showing no aggregate increase in load growth between 2006 and 2013.³⁷ Given this historical trend, it is highly improbable that the peak load in the La Crosse/Winona area will grow even at the Applicants' most conservative margin of 1 percent per year – much less at the greatly exaggerated rate of 3.44 percent per year.

B. Alleviating reliability concerns due to transfer capacity is not a benefit.

The Applicants modeled substantive increases in transfer capacity from west to east to enable incorporation of centralized and out-of-state wind and other generating resources.³⁸ William Powers testified how solar distributed generation could alleviate the transmission problems created by the focus on imported power from west to east, which is the source of modeled off-peak NERC violations in Wisconsin.³⁹ Conversely, William Powers testified how renewable power being generated in Wisconsin can be absorbed by the system.⁴⁰ While native

³⁵ Rebuttal-Applicants-King-Huffman (PSC Ref. # 226110), p. 3.

³⁶ *See id.*

³⁷ *Id.*

³⁸ *See, e.g.*, Tr. vol. 8 (PSC Ref. # 230598), p. 155.

³⁹ Tr. vol. 10 (PSC Ref. # 230601), p. 29.

⁴⁰ *Id.*

load growth could also contribute to NERC violations, ATC witness Dale Burmester explicitly states this is not the case.⁴¹

Characterizing shoulder reliability benefits as a benefit is erroneous since the reliability issue does not need exist. The policy of dramatic increases in transfer capacity from west to east is not the only policy alternative, nor can it automatically be presumed a public policy benefit. Instead, the reliability issues it creates must be considered risks and costs.

Safer, more reliable policy alternatives exist that allow for local production of energy and decreases in consumption, that remove, the need for massive investment in regional transmission whose goal is transfer capacity. The Applicants admit these were dismissed because they did not enable the desired transfer capacity, creating a circular argument.⁴² That this removes constraints on centralized utilities' ability to transfer or trade electrons on the wholesale energy market, at the ratepayers and our States expensive, while guaranteeing large returns to the transmission operators is neither a public policy benefit nor consistent with CPCN requirements.⁴³

C. Generators should pay for transmission additions they require.

The cost for transmission expansion to address congestion to enable addition of a generator or increased trading of generation capacity should be borne by the generators who will profit.

⁴¹ *See id.*

⁴² *See, e.g.*, Tr. vol. 8 (PSC Ref. # 230598), pp. 155–56.

⁴³ *See* Wis. Stat. § 196.491(3)(d).

Mr. Goggins, representing the Clean Energy Interveners including wind interests, agreed that cost causers should be cost payers.⁴⁴ He also agreed with the conclusion pointed out in the NoCapX2020 Non-Party Brief that MISO previously required generators to pay for transmission:

The rate recovery scheme for MISO MVP transmission has changed from an historical requirement that generators pay for necessary upgrades to a cost-apportionment scheme of return set across all MISO balancing authorities, sanctioned by MISO and then approved by FERC.⁴⁵

As CETF/SOUL witness William Powers testified – notably without any rebuttal – it is commonplace for generators to pay for transmission upgrades of their own causing. During cross-examination, Mr. Powers testified:

Q. And generator additions on the system, they can cause reliability issues even if peak load is not growing, correct?

A. Well, let me make sure I understand this. You're saying generator additions could potentially cause peak load or shoulder peak load violations?

Q. No. I'm saying that generator additions to a system can -- could potentially cause NERC violations, even if peak load on that system is not growing?

A. Yes but, and the but is typically in my experience with independent system operators, it is that generator's responsibility to pay for the transmission system upgrades that are necessary to avoid NERC violations caused by a generator, and therefore this would not be a cost borne by Wisconsin ratepayers, this would be a cost borne by that new generator.⁴⁶

Michael Goggin also agreed that other ISOs require generators to pay for transmission.⁴⁷

⁴⁴ Tr. vol. 9 (PSC Ref. # 230600), p. 283.

⁴⁵ No CapX2020 Br., p. 14; Tr. vol. 9 (PSC Ref. # 230600), p. 283.

⁴⁶ Tr. vol. 10 (PSC Ref. # 230601), p. 49.

⁴⁷ Tr. vol. 9 (PSC Ref. # 230600), p. 283.

III. The Project does not Provide Public Policy Benefits that are Reasonable in Light of the Project’s Costs.

A. The Project’s exclusive reliance on importing power through a centralized system at the expense of alternatives stifles competition.

The Applicants argue that the economic benefits of the Project would “far exceed” the economic benefits provided by alternatives.⁴⁸ This is a puzzling statement, given the Applicants have consistently declined to evaluate the costs and benefits of no-wire alternatives such as accelerated energy efficiency, distributed solar generation, and increased use of load management.

1. *The Applicants’ proposal focuses exclusively on importing wind resources to attain renewable energy public policy benefits.*

The record leaves little doubt that the Applicants did not give any serious consideration to alternatives to the Project’s fundamental model of importing wind power through centralized transmission. To the contrary, the Applicants made clear that they relied exclusively on wind – all simply because their member-utilities indicated that wind would probably be their go-to purchase. Addressing the question of modeling the costs and benefits of wind imports without modeling no-wire alternatives, Applicant witness Dale Burmester testified as follows:

Q. The planning analysis or the application itself as a whole when addressing renewable energy resources focuses on wind resources, correct?

A. The planning analysis that we did had to develop a number of future models.... And those future models did incorporate a lot of wind to meet the renewable portfolio standards. That's because that's what the utilities are telling us are going to build in this area of the country to meet the renewable portfolio standards.⁴⁹

⁴⁸ Applicants’ Brief, p. 21.

⁴⁹ Tr. vol. 8 (PSC Ref. # 230598), p. 155.

Q. And you -- the Applicants have not conducted an analysis of the benefits and costs of using solar distributed generation resources as opposed to wind in the same extent, correct?

A. Yeah. We are a transmission utility, and we don't perform resources planning ... to the effect that we don't compare alternatives per se. We take a look at what transmission is needed to meet the future mix of generation that is going to exist in the system.⁵⁰

MISO's position was the same. Addressing planning for the Project as it pertained to no-wire alternatives, MISO witness Laura Rauch testified as follows:

Q. My question was, if you had, for instance, instead of a high voltage transmission line carrying a load to a particular group of users, you had those users use distributed generation resources such as solar panels connected directly to the end user source, those costs would be avoided, correct?

A. There would be -- there would be some avoided transmission costs, however you would have to look at the generation costs, and we did evaluate this in our Multi Value Project study. We were looking at *wind* resources to fill the renewable energy mandates, and one of the first things we evaluated as referenced in my testimony was how to pick the locations of those wind resources, whether they were distributed across the footprint or localized close to load.

Q. Have you done a similar analysis for solar?

A. When we began our study, we concentrated on wind based on stakeholder discussions that they would use wind to resolve their renewable energy mandate needs. ...

Q. So your stakeholders passed to you the notion that wind should be used, and that's why you adopted wind over solar?

A. The -- the discussions we had said wind would be used. This was also borne by the facts we were seeing in our generation interconnection queue, which was and continues to be predominantly wind resources.

Q. Is that because of existing resources, or is that because of projections of what wind growth is supposed to be as opposed to solar growth?

⁵⁰ *Id.* at 154–55.

A. The generation interconnection queue is done by -- those projects are proposed by individual generators, so they are not tied to any particular method. It's simply what the developers are willing to install.⁵¹

2. *The Applicants' focus on wind power neglects the cost-competitiveness of renewable energy alternatives.*

The Applicants' exclusive focus on wind based on what "developers are willing to install" completely overlooks the market price-competitiveness of no-wire alternatives using distributed solar or the benefits of other types of renewables. CETF and SOUL have introduced un rebutted evidence that solar distributed generation, for example, can provide a cheaper, more competitive alternative to achieve the same renewable-energy goals as wind power. During the technical hearings, CETF/SOUL witness William Powers testified as follows:

Q. Mr. Burmester mentioned ATC customers say their planned use of wind power meets -- to meet [renewable portfolio standards] requirements so you modeled only wind power. Do you recall that testimony?

A. Yes.

Q. Now is that a sufficient reason to model only wind power, Mr. Powers?

A. No. In the -- wind power has been an assumed -- a presumed best cost [renewable portfolio standards] compliant renewable energy source for years in this process, and over the last few years the solar power as I pointed out in my direct has become cost -- very cost competitive with wind. And none of that direct testimony in mine was contested by the applicants, and the reality is that the cost of solar power and wind power on a just -- without incentive, straight-up comparison is comparable now in the project area.⁵²

3. *The Applicants' proposal to import wind power from the west is likely to stifle competition -- not foster it.*

⁵¹ Tr. vol. 9 (PSC Ref. # 230600), pp. 15–16, 42–43.

⁵² Tr. vol. 10 (PSC Ref. # 230601), p. 13.

The Applicants argue that one of the Project’s public policy benefits is to “promote competition by allowing Wisconsin ratepayers and utilities to access and import low-cost energy from areas to the west of the state.”⁵³ The Applicants offer no analysis to support the proposition that such low-cost energy would actually displace competing “high-cost” energy Wisconsin ratepayers currently purchase.

In any event, the Applicants’ argument that importing energy from the west would increase competition does not hold up. According to the Application, the “low-cost energy” from the west to which the Applicants refer is wind power. And a focus on increasing access to the import of wind and other centrally generate power will not increase competition but protect a monopolistic business structure.

First, importing wind power would stifle competition insofar as wind power would displace and discourage the use of no-wire alternatives such as local distributed solar generation. Focusing on purchasing large quantities of out-of-state wind power to satisfy renewable energy goals would decrease the incentive for the development of local alternatives. As a matter of logic, the more alternatives the Wisconsin ratepayer has to meet energy demands, the more competitive the market will become. By definition, limiting consumers’ options is to stifle competition – not foster it.

Second, the nature of the wind power market makes it unlikely that importing wind power would add competitiveness to the energy market. As CEI witness Michael Goggin explained during cross-examination, in the wind power market, sales are made by long-term contracts that span the life of a wind farm project.⁵⁴ In other words, utilities purchase wind power by agreeing to a pre-determined price for a pre-determined term – one that often spans

⁵³ Applicants’ Br. (PSC Ref. # 230721), p. 22.

⁵⁴ Tr. vol. 9 (PSC Ref. # 230600), p. 278.

several years. Once a wind development sells wind power to a utility, the price is locked in for several years to come – leaving little opportunity for market competitors to offer that utility any alternatives.

B. The Project’s alleged increase in transfer capacity is neither sufficient nor necessary to qualify as a public policy benefit.

The Applicants argue that the Project’s offering of an increase in transfer capacity is a public policy benefit. They premise this argument on the notion that “[s]ince the inception of the MISO energy markets in 2005, the transmission system leading in and out of Wisconsin has been highly congested....”⁵⁵

There are two problems with this argument. The first is factual: the record shows that congestion has been dropping over the last several years. Neither the Applicants nor MISO have offered the Commission any evidence that suggests congestion will remain a problem in the future.

The second is what William Powers called a “chicken-and-egg” cycle: the only thing that would warrant an increase in transfer capacity in the currently-existing system is importing of power from the west – which the Applicants present as a separate public policy benefit. As evident from the record, the current system has approximately 4,000 megawatts of unused capacity during shoulder peak times.⁵⁶ As William Powers detailed in his testimony, the only thing that would warrant additional transfer capacity is the very transfer of wind power from the west that the Applicants propose. If the Applicants’ own proposal creates a problem, the Applicants cannot call a solution to that problem a public policy benefit.

⁵⁵ Applicants’ Br. (PSC Ref. # 230721), p. 20.

⁵⁶ Tr. vol. 10 (PSC Ref. # 230601), pp. 41–42.

IV. Federal Law Requires the Commission to Evaluate the Project’s Benefits in Light of the Costs of Several Other Interdependent Projects.

A. Federal law requires aggregate review of separate projects that amount to segments of a single, larger project.

Federal law requires a broad, logically inclusive review of actions that may have negative environmental impacts.⁵⁷ When reviewing such an action, agencies must also review connected actions.⁵⁸ Actions are connected if they:

- Automatically trigger other actions which may require environmental impact statements.⁵⁹
- Cannot or will not proceed unless other actions are taken previously or simultaneously.⁶⁰
- Are interdependent parts of a larger action and depend on the larger action for their justification.⁶¹

Federal law also requires administrative review of cumulative actions and similar actions.⁶² Case law provides a clear interpretation of this statute: agencies must evaluate the cumulative impact of related actions, instead of focusing exclusively on the action before them.⁶³ Case law also demonstrates the purpose of this requirement: “to prevent agencies from dividing

⁵⁷ See 40 C.F.R. § 1508.25.

⁵⁸ *Id.* at § 1508.25(a)(1).

⁶⁰ *Id.* at § 1508.25(a)(1)(i).

⁶¹ *Id.* at § 1508.25(a)(1)(ii).

⁶² *Id.* at §§ 1508.25(a)(2)–(3).

⁶³ *Methow Forest Watch v. U.S. Forest Serv.*, 383 F. Supp. 2d 1263, 1270 (D. Or. 2005); *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1378 (9th Cir.1998); *Hammond v. Norton*, 370 F. Supp. 2d 226, 244 (D.D.C. 2005);

one project into multiple individual actions, each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.”⁶⁴

Naturally, the law does not require an agency to review the costs and benefits associated with every project remotely connected to the project at hand. But the law does require an agency to take a common sense approach to the projects it evaluates: if those projects are part of a larger project, their sum must be evaluated.⁶⁵

B. The Commission must evaluate the Project as a segment of a single, larger high-voltage transmission project.

Given this standard, the Commission must evaluate the Project in conjunction with other projects to the extent that the Project is interdependent with them. Specifically, the evidence in the record shows that the Project is and has always been considered to be but one segment of a larger project to build several high-voltage transmission lines.

Multiple witnesses on behalf of the Applicant admitted that the Project’s planning assumed the approval and existence of the CapX2020 high-voltage transmission line from the outset – even though the Project’s planning predated the approval of CapX2020. During cross-examination, Applicant witness Dale Burmester testified as follows:

Q. Is it your understanding that Badger Coulee could be built had CapX2020 not been approved?

A. We never analyzed that condition or that situation.

Q. You never analyzed the situation without CapX's existence?

A. All of the analysis that we did assumed that CapX would be constructed, and as of now it's approved and I believe it's under construction.

⁶⁴ Natural Resources Defense Council v. Hodel, 865 F.2d at 297–98 (quoting Thomas v. Peterson, 753 F.2d 754, 758 (9th Cir.1985)); see also Taxpayers Watchdog v. Stanley, 819 F.2d at 298.

⁶⁵ See 40 C.F.R. § 1508.25.

Q. When you said assumed that CapX would be constructed, you mean the analysis began prior to CapX's approval?

A. The analysis we performed on Badger Coulee dates way back to 2005 when we were -- yeah, 2005 when we started the Access Initiative, and at that time the planning was still ongoing for the CapX project.⁶⁶

Similarly, during cross-examination, Applicant witness Amanda King-Huffman testified that the assumption that CapX2020 would be built has always been the basis for the Project's planning.⁶⁷

More importantly, testimony from at least one Applicant witness revealed that the planning of CapX2020 assumed that the Project would need to be built in order to provide benefits associated with CapX2020. During cross-examination, Applicant witness Amanda King-Huffman testified as follows:

Q. So at the time that CapX was being proposed and approved, there was already discussion that there would need to be an additional line to serve the La Crosse area or an additional remedy, if you will, once the load reached 750 megawatts?

A. That's correct. An addition source would be needed at that load level.⁶⁸

In sum, there is little question that the Project and CapX2020 are interconnected and interdependent.

The same relationship exists between the Project and other high-voltage transmission lines that are part of MISO's Multi Value Portfolio ("MVP"). MISO makes no attempt to separate the Project from other MVP projects. In fact, MISO describes the Project as an integral part of its MVP.⁶⁹ MISO also makes clear that each MVP project is a necessary component of

⁶⁶ Tr. vol. 8 (PSC Ref. # 230598), pp. 164–165.

⁶⁷ *Id.* at 183.

⁶⁸ *Id.* at 187.

⁶⁹ MISOS' Br. (PSC Ref. # 230707), p. 2.

the portfolio.⁷⁰ Indeed, MISO describes the Project as a “backbone” element – one that must be constructed for the rest of the portfolio to be viable.⁷¹ Not coincidentally, in this docket, the Applicants have on multiple occasions presented the Project’s benefits in conjunction with those derived from the Cardinal-Hickory Creek high-voltage transmission line.⁷² In sum, there is little question that the Project and other MVP projects are interconnected and interdependent.

The record leaves little doubt that the Project is but one segment of a massive high-voltage transmission expansion project. The Project is and has always been an extension of CapX2020, and a part of a larger set of MVP projects. Accordingly, the benefits the Applicants allege the Project will bring come not only at the financial and environmental cost of the Project, but at the financial and environmental cost of all high-voltage transmission lines associated with the Project. Therefore, pursuant to federal law, the Commission must consider the financial and environmental costs of other associated projects in disposing of the application.⁷³

Applicants state in their brief:

Once constructed, the Badger Coulee Project will also provide immediate reliability benefits – the ability to carry load, maintain voltage.⁷⁴

But they fail to identify if these reliability benefits exist due to segmenting the Wisconsin section of CapX from the MVP portfolio and Badger Coulee specifically. In other words, if there is a need to stabilize voltage or carry load, these potential reliability issues should have been addressed in the CapX docket and not here.

⁷⁰ *Id.* at 3.

⁷¹ *Id.*

⁷² *See, e.g.,* Ex.-PSC-Urban-5 (PSC Ref. # 224592).

⁷³ *See* 40 C.F.R. § 1508.25.

⁷⁴ Applicants’ Br. (PSC Ref. # 230721), p. 15.

V. The Project is not in the Public Interest.

The Applicants argue that the Project is in the public interest because the Applicants have presented both a thorough review of environmental impact and a proposal that does not unduly impact environmental values.⁷⁵ The Applicants write:

The Project satisfies the requirements of Wis. Stat. § 196.491(3)(d)3. and 4., which require that the design and location or route be in the public interest considering environmental factors and that the Project not have undue adverse impact on environmental values such as ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water, and recreational use. *The record shows that the Applicants considered the potential impact on these factors throughout the design and siting process and took steps to avoid and minimize potential impacts wherever possible.*⁷⁶

But the record shows precisely the opposite. The Applicants have neglected and often refused to address several key concerns regarding the Project's undue environmental, cultural and socio-economic impact.⁷⁷ The result is an incomplete record through which the Commission cannot adequately ascertain whether the Project has an undue adverse impact and therefore cannot deem the Project to be in the public interest.

A. The record lacks adequate information on significant human health and safety risks posed by the Project.

As discussed in CETF's original brief, both the Application and the EIS are stunningly silent on significant environmental, health and safety concerns.⁷⁸ The EIS does not address the hazards posed by corona ionization or ultraviolet radiation nor does it take into account more

⁷⁵ *Id.* at 39.

⁷⁶ *Id.* at 39.

⁷⁷ CETF's Initial Brief in Opposition to the Application [hereafter "CETF Brief"] (PSC Ref. # 230709), pp. 2–18.

⁷⁸ *Id.*

recent research on EMF and cumulative variables.⁷⁹ In its initial brief, CETF exhaustively identified the many environmental, health and safety concerns raised by the public, and how both the Applicants and the EIS failed to adequately address them. For brevity purposes, CETF will not repeat that discussion here. It suffices to say that the Applicants cannot claim the Project is in the public interest when the interest of the public in having health and safety concerns answered and mitigated has been thoroughly neglected.

That said, the initial round of briefing raised an important point regarding health and safety risks, particularly as it pertains to electromagnetic fields (“EMF”). In its initial brief, NoCapX2020 wrote:

Testimony revealed the normal rating for this project as 2,400 amps and 2,500 amps emergency. These admitted amperage levels are over ten times the 185-198 amps claimed in the application and used for magnetic field calculations. This low amp level for a high capacity line should alert regulators, yet these numbers were used by PSC staff for the EIS. 2,400 – 3,000 amps represents significant capacity which should be measured against other claims regarding this project.⁸⁰

This discrepancy is alarming. The Commission should not issue a decision on an application that presents a measure of a known health and safety risk that is *ten times* lower than what it should be. In any event, this excerpt only reinforces CETF’s point regarding the public interest in this case: that the Project subjects citizens and the environment to known risks and costs for the sake of unknown, speculative benefits to the Applicants and utilities. Applicants should be aware of these issues based due-diligence in developing an expertise regarding the potential impact of their product and in considering public input throughout the process.

⁷⁹ *Id.*

⁸⁰ No CapX2020 Br. (PSC Ref. # 230804), p. 6.

B. Any modifications the Commission could impose to the Project as proposed would require a separate EIS.

The Applicants argue that all currently-proposed route segments comply with Wisconsin law.⁸¹ However, as evident from the record, there are several environmental concerns that may lead the Commission to impose changes to routing. A prime example is the route modification intervenor Clean Wisconsin, Inc. has proposed.⁸² Pursuant to Wisconsin law, any such route modifications would require a supplemental EIS, or a modification to the existing EIS, in order to:

- Consider issues relevant to and confer with agencies where permitting is required such agencies such as USFW, DOT, DNR and DOD
- Identify and assess cultural and endangered resource impacts, wetland impacts, and impacts to residences
- Assess potentially substantive increases in costs, such as for undergrounding
- Allow for the WI Dpt of Ag, Tourism & Consumer Protection to expand its Ag Impact statement as required when eminent domain would be exercised
- Provide opportunity for the public to provide input on scoping, the DEIS and final EIS during public hearings, and the ability to become an intervenor in the process

The Commission's EIS must be capable of supporting whatever decision it ultimately reaches in this proceeding.⁸³ An EIS is required for “*every* recommendation...for legislation or other major actions significantly affecting the quality of the human environment.”⁸⁴ The current

⁸¹ Applicants' Brief (PSC Ref. # 230721), p. 7.

⁸² See generally Clean Wisconsin's Initial Post-Hearing Brief (PSC Ref. # 230738).

⁸³ Wis. Stat. § 1.11(2)(c)

⁸⁴ *Id.*

EIS can only support actions whose impacts it has evaluated. If the Commission recommends a different course of action, it must prepare an EIS that can support that recommendation.⁸⁵

Clean Wisconsin has proposed an alternative route for the Project – one that the current EIS does not evaluate. Certainly the Commission is free to find that this alternative route is deserving of a CPCN permit, but only if it meets its statutory obligation to study the environmental impacts of that route.⁸⁶ The only way to satisfy that obligation is to conduct a completely separate EIS process – one that actually examines the impacts of the alternative route.

Alarming, Applicants would like the Commission to dispense with this essential step.

Applicant witness Nayo Parrett testified as follows:

Applicants would like to use sub-segment N3b-South without having to go through the additional process to obtain Commission approval, which could delay the Project and unnecessarily consume Commission resources. All necessary details on the N3b-South route alternative have been provided and all of the impacted landowners have been notified of the route alternative.⁸⁷

Applicants argue for an exception to the EIS requirement, despite admitting that this proposal presents exactly the kind of risks that the Commission is required to review. Mr. Parrett stated that the alternative route would have environmental impacts, as it would likely require a 2,100 foot underground segment.⁸⁸

Ms. Parrett's testimony reveals Applicants' failure to understand what the legislature requires the Commission to do and a disregard for rights granted to the public and other

⁸⁵ *Id.*

⁸⁶ See Wis. Stat. § 1.11

⁸⁷ Sur-Surrebuttal-Applicants-Parrett (PSC Ref. # 229266), p. 2.

⁸⁸ *Id.* at 6.

agencies. Carefully evaluating the environmental impacts of proposals does not “unnecessarily consume Commission resources”⁸⁹ – it spends Commission resources on its primary purpose: safeguarding Wisconsin’s future by ensuring that the benefits of each and every proposal outweigh their risks.

VI. The Applicants Attempt to Substitute Unrepresentative and Outdated Planning for the Commission’s Adequate and Independent Consideration of the Application.

The Applicants’ rely heavily on MISO planning to support their project. But MISO planning cannot and should not replace the Commission’s full and independent review of the Project’s costs and benefits as they pertain to Wisconsin ratepayers.

MISO’s planning is outdated. MISO began evaluating the Project’s alleged benefits in 1999. Needless to say, things have changed since 1999.⁹⁰ As William Powers testified, and as the Applicants’ witnesses conceded, technology has changed to make the energy market far more efficient – and is likely to continue to do the same in the future.

MISO’s planning is also out of tune with state statutes and priorities. Nothing in the record suggests that MISO’s planning process involved an analysis of, for instance, Wisconsin state statutes on energy or the environment. To the contrary, the evidence suggests the precise opposite. For example, while Wisconsin’s energy priorities law places utmost priority on no-wire alternatives such as energy conservation, MISO’s planning for the Project deferred to utilities’ preferences for large-scale, off-state wind development and the transfer of “other” low-cost energy, which is well recognized to be based on fossil fuels. Likewise, while Wisconsin’s environmental protection laws require Wisconsin permit applicants and agencies to notify and

⁸⁹ *Id.* at 2.

⁹⁰ Applicants’ Brief (PSC Ref. # 230721), p. 8.

coordinate with the Wisconsin Department of Natural Resources, nothing suggests that MISO planning embeds any kind of action to that effect.

MISO's argument to the contrary has no support in the record. Specifically, MISO argues that it "performs collaborative planning functions for the regional transmission system with its member transmission owners and other stakeholders, including state agencies, while independently assessing regional transmission needs."⁹¹ But MISO's own planning approach makes clear that its planning is neither designed for nor effective in addressing any individual state's needs. MISO divides areas into "local resource zones," which it uses to determine transmission costs and benefits.⁹² Those zones do not correspond with state boundaries; in fact, Wisconsin is part of both Zone 1 and Zone 2 – along with other states. If MISO determines need, costs and benefits by artificial zones, it has no reason to prioritize the needs of an individual state.

MISO's planning is also devoid of community outreach and lacking in ratepayer input. By MISO's own admission regarding its focus on wind power, the stakeholder process that drives MISO planning is dominated by utilities. As the Applicants note, it was utilities who conducted the initial phase of the Project's planning – all of which currently support the Project.⁹³ MISO does not survey routes, communicate with municipalities, take public comments, host open houses, or hold public hearings. It would be a dramatic distortion of reality to suggest that the public at large has any idea what MISO does, how it does it, and when it does it. And even if it did it does not usurp rights granted to Wisconsin citizens and agencies that are

⁹¹ MISO's Brief (PSC Ref. # 230707), p. 2.

⁹² See No CapX2020 Brief (PSC Ref. # 230804).

⁹³ Applicants' Brief (PSC Ref. # 230721), p. 8.

triggered not when MISO approves a project but when a project application comes before the Commission.

In sum, MISO's planning is not an adequate substitute for fully independent planning by the Applicants – and fully independent review by the Commission. The fact that MISO has determined a particular set of costs and a particular set of benefits for a given project is not indicative of that project's costs and benefits for a particular state. Each state has its own laws, its own needs, and its own communities – all of which deserve individual attention. What works for Minnesota may not work for Wisconsin; a type of planning that does not distinguish between the two should not form the basis for a decision in Wisconsin.

VII. The Applicants Public Outreach Lacks Due-Diligence.

Both state and federal law place great emphasis on public outreach and public input in these types of proceedings. For example, section 227.18(1)(1), Wisconsin Statutes, provides

An agency shall hold a public hearing at the date, time and place designated in the notice of hearing. The person conducting the hearing shall:

Afford each interested person or a representative the opportunity to present facts, opinions or arguments in writing, whether or not there is an opportunity to present them orally.⁹⁴

Similarly, section 1503.4, Title 40, Code of Federal Regulations, provides:

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

- (1) Modify alternatives including the proposed action.
- (2) Develop and evaluate alternatives not previously given serious consideration by the agency.
- (3) Supplement, improve, or modify its analyses.
- (4) Make factual corrections.
- (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if

⁹⁴ Wis. Stat. § 227.18(1)(1)(c).

appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs(a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated. The entire document with a new cover sheet shall be filed as the final statement.

Section IV of Applicants' brief claims extensive outreach strategies undertake to "advise the public and other stakeholders about the Project and to solicit their input, suggestions, and concerns." The record indicates otherwise.

The Applicants go to great lengths to convey how their efforts to hear the concerns of the public began well before the application was submitted. The Applicants claim to be unaware of several issues the public has raised regarding health, safety and environmental concerns – despite evidence of significant public commentary on the matter.⁹⁵ This demonstrates the Applicants were not paying diligent attention to public comments and concerns or even the final EIS. Indeed, the Applicants write:

CETF also suggests that various economic, legal, policy, and health issues have been omitted or inadequately addressed in the draft EIS; specifically, ... CETF found that the impacts to public health from issues such as EMF, corona affects, UV, and ionizing radiation were inadequately addressed in the EIS.

Furthermore, the Applicants responded in a casual and dismissive manner when health issues were raised in resolutions.⁹⁶ A theoretical obligation to be aware of potential risks to

⁹⁵ Tr. vol. 9 (PSC Ref. # 230600), p. 117.

⁹⁶ See Ex.-Applicants-Justus-3 (PSC Ref. # 229690), p. 71.

health and the environment that a product offering carries should not require public comment to call the issues to the Applicants' attention. And the public should not have to be worn down in giving input to the effect that the public is driven away. As one member of the public stated:

I must tell you, dear Commissioners, that there are many omissions, shortcomings and deficiencies in the Final EIS. It could be assumed that this was due to lack of time, resources and PSC staff devoted to producing the Final EIS.

For much the same reasons, it is not possible for me, a private citizen and individual, to critique the Final EIS fully. Frankly, I am exhausted and others have tired and fallen off. As important as this matter is the rest of life has its demands and pleasures too. But I will touch on one failure in the EIS out of many I am aware of.

The EIS summarized my comments on the Draft EIS as, "Extensive comments covering aesthetics and health-related concerns. DEIS fails to comply with state statutes and administrative code regarding alternatives. Requests for more socio-economic and alternatives analysis should be met. Insufficient economic analysis. Discuss energy-related environmental impacts."⁹⁷

Both the Applicants' utilities and Commission hold public trust, and they should act accordingly. Unfortunately, protecting citizens and the environment begs for a level of diligence in assessing risks associated with transmission lines that is missing from Applicant outreach and consideration of public concerns.

CONCLUSION

For the foregoing reasons, the Commission should deny the Applicants' request that a CPCN be issued for the Badger-Coulee project. There is substantive cause to pause and no valid ratepayer reason to rush forward.

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⁹⁷ Public Hearing Comment by John Dunn (PSC Ref. # 226483).

Respectfully submitted,

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