

**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
Badger-Coulee 345 kV Transmission Line from the La Crosse
Area, in La Crosse County, to the Greater Madison Area in
Dane County, Wisconsin

5-CE-142

CLEAN WISCONSIN'S REPLY BRIEF

Routing, siting, and mitigation will be key factors affecting the Badger-Coulee transmission line's environmental impact, if it is constructed. Yet the Applicants have shifted their position on routing, claiming for the first time in their brief that they prefer the Northern route (Segments N/P) between Holmen and Lyndon Station over the Southern Route (Segment O). (Appl. Br. at 20-22, 25-27.) This implicit recognition that Segment O is unpermissible supports Clean Wisconsin's argument that the Applicants have never presented two viable routing choices, particularly in the west. (*See* CW Initial Br. at 17-29.) The public interest in alternative routing supports delaying the CPCN while further study of routing between Sparta and Tomah is conducted, and the Commission should not approve the project as proposed. Furthermore, the Applicants' request for a blank check—an order that includes no specific environmental mitigation requirements—is unsupported and unwarranted for a project of this size and impact. Other specific measures the Applicants have agreed to should additionally be included in any final order granting a CPCN.

I. ARGUMENT

A. *Routing for the Badger Coulee Transmission Line As Proposed is Not in the Public Interest.*

The Applicants emphasize the “extensive” process the Badger-Coulee transmission project has received. (Appl. Br. at 18.) Assuming this characterization is correct, it is all the more puzzling why the Applicants only developed one even potentially viable route on the line’s western half that still poses significant planning and siting hurdles. While the Applicants’ recent recognition that Segment O does not well fit the criteria in Wis. Stat. §§ 1.12 and 196.491(3)(d) is welcome, it demonstrates that there has never been well-developed choices for routing in the west. Given the paucity of viable routing options, no CPCN should be approved until routing receives further study and the Commission can decide, on a more informed basis, whether Applicants’ or alternative routing satisfies the public interest, uses existing ROW to the maximum extent practicable, and avoids undue adverse impact on environmental factors. Wis. Stat. §§ 1.12(6) and 196.491(3)(d)3., 3r., 4.

1. The Applicants Have Not Proposed Multiple Viable Routes.

The Applicants professed no routing preference west of Lyndon Station in their application (Ex.-Applicants-Henn-1, Application at 47, Ref.#204860) and prefiled testimony (Direct-Applicants-Henn-11:7-21). Applicants’ brief walks a fine line of presenting Segments N/P as the now-obvious choice while claiming Segment O was always a viable route in the west. Yet Segment O was never a good routing option, and the remaining routing option of Segments N/P still present difficult choices.

As Applicants note, Segment O takes a “cross-country path” through the hilly Coulee region, impacting residences and farms. (Appl. Br. at 3, 20-21, 25-26.) The terrain is “challenging” from a constructability and access standpoint. (*Id.* at 21.) Perhaps most

fatally, Segment O does not use existing corridors well—only 59% by length and 35% by area—and when it does, the corridors are not high-priority. (*Id.* at 20.) These figures cannot be considered compliant with the directive that new electric transmission facilities follow existing utility corridors “to the greatest extent feasible” Wis. Stat. § 1.12(6)(a), or that existing rights-of-way are used to the extent practicable and the routing and design minimizes environmental impacts, Wis. Stat. § 196.491(3)(d)3r.

Notwithstanding these drawbacks, Applicants state in their brief that Segment O was permissible all along. (Appl. Br. at 30.) The only evidence Applicants cite for this proposition is their own unsupported and conclusory statement. (*Id.*, citing Direct-Applicants-Holtz-27:7-12.)¹ This is not substantial evidence. *Cornwell Pers. Assocs. Ltd. v. LIRC*, 175 Wis. 2d 537, 544, 499 N.W.2d 705, 707 (Ct. App. 1993). To the extent Applicants have attempted to claim Segment O is permissible in their testimony, these claims are unsupported and unbelievable. For example, Peter Holtz’s statement that the Amish community on Segment O is located on a “major existing infrastructure corridor” (Sur-surrebuttal-Applicants-Holtz-3) was completely false. (CW Br. at 23-24.)² Indeed, the Applicants’ recent statements in briefing and recognition that Segment O is more “cross-country” belies this testimony. Meanwhile, Clean Wisconsin and other parties to this docket have shown at length, and with citations to substantial record evidence, why Segment O was never permissible under Wis. Stat. § 196.491(3)(d) for environmental,

¹¹ The only other issue specific to Segment O the Applicants have tried to address is the City of Onalaska’s concern regarding their airport and city infrastructure. (Appl. Br. at 30-31.) This response only partially addresses City’s concerns, which also relate to parks, greenspace, archeological sites, and land use plan. (*See* City of Onalaska Br. at 7-8.)

² The Amish are congregated in Segments O13-O15, which contain no existing corridor, and the closest existing infrastructure is only a 69 kV line. Surrebuttal-PSC-Zuelsdorff-8:7-19; Transcript Vol. 8 at 245:14-25 (testimony of Peter Holtz).

cultural, and other reasons. (*E.g.*, CW Br. at 23-28; Concerned Citizens of Highway 33 Brief, Ref. #231341³; City of Onalaska Br. at 3-5; *see also* Surrebuttal-PSC-Zuelsdorff-7:6-8:19.) Segment O is not, and never was, permissible under Wis. Stat. §§ 196.491(3)(d) or 1.12(6).

While Segment O is plainly unpermissible, Segments P/N are still not an easy alternative. The two combined segments are long (112 miles) and costly (over \$315 million). (Appl. Br. at 26; Ex.-PSC-Weiss-1 at 35, 388-89.) They impact hundreds of acres of forest and wetlands and, it follows, habitat. (*Id.*; Direct-DNR-Rowe-5:19-6:6-7.) Segment N would erect towers along Interstate 94 and require the Department of Transportation to abandon several scenic easements that thousands of travelers enjoy every day. (Direct-CW-Howe-15:8-10; Ex.-PSC-Weiss-1, Vol. 1 at 151-52.) The Holland Neighborhood Preservation Association and Town of Holland have well explained the significant burden the Badger-Coulee Transmission Line would place on residents in Segment P and local land use planning, not to mention the New Amsterdam Grasslands and Holland Sand Prairie. (HNPA Initial Brief; Town of Holland Initial Brief; *see also* Initial Brief of Steve and Jane Powers, Mauston, Ref. #230694.) The Town of Middleton has identified similar concerns on the east end of the line. (Initial Post-Hr'g Br. of the Town of Middleton at 2-17.) Segments P/N do use more existing corridor than Segment O, but this is not the same as having no impact.

³ This brief was refiled with Concerned Citizens of Highway 33's Response to Applicants' Motion to Strike, which was a corrected version of the original brief filed at Ref. #230752. The corrected version was accepted by Order dated Feb. 12, 2015 (Ref.#231488).

While combined Segment P/N is the lesser of two evils, that does not mean this routing option satisfies all the criteria in Wis. Stat. §§ 196.491(3)(d) or 1.12(6), or that another route would not fit the criteria better.

2. The Applicants' Objections to Alternative Routing are Unsubstantiated.

Because the routing choices the Applicants have presented to the Commission and the public are inadequate and not in the public interest considering potential alternative routing and environmental factors, Clean Wisconsin has urged the Commission to order further study of other options, particularly between the cities of Sparta and Tomah. (CW Br. at 12-13, 18-24.) The Applicants protest that alternative routing is not feasible and would cause unacceptable delay, but these protests are unsupported and should be rejected.

As Clean Wisconsin previously observed, the Applicants prematurely rejected routing options between Sparta and Tomah that could avoid most of Segment O's and Segment N/P's worst impacts. (*Id.*) Interestingly, the Applicants' brief minimizes the primary objection they have raised about routing in this area to date—tower height restrictions associated with Fort McCoy—and claim their real concerns here are about impacts to the environment, residential development, lack of existing infrastructure routes, limits on right-of-way rights, constructability, and cost. (Appl. Br. at 33.) They also disparage an alternative route proposed by Clean Wisconsin based on these factors. (*Id.*)

Applicants' objections are unsupported in the record, and pale in comparison to the problems on Segment O, the supposedly "viable" alternative to routing between Sparta and Tomah. Applicants summarily state that the newfound factors like environmental impact eliminated the Sparta-to-Tomah routing without explaining why or how. (Appl. Br. at 33 (citing Rebuttal-Applicants-Holtz-3:18-21; Trans. Vol. 9 at 161-62, 165-66).). They could

likely not support these statements if they tried, since Applicants' witnesses admitted in the technical hearing that they had not actually studied many of the factors they claim precluded this routing:

- "I have not evaluated it from an environmental perspective," Trans. Vol. 9 at 197 (testimony of Nayo Parrett); "we did not evaluate [environmental impacts] in detail," Trans. Vol. 9 at 169 (testimony of Peter Holtz)
- "We haven't necessarily looked into detailed design in an area where we have height restriction, if you will" Trans. Vol. 9 at 112 (testimony of Mark Lorenz)

Indeed, Applicants' witnesses could not say whether any of these factors were worse closer to Fort McCoy than on Segment O. Trans. Vol. 9 at 169 (testimony of Mark Lorenz).

Applicants' attempts to disparage Clean Wisconsin's alternative route are also unfounded. While they claim Clean Wisconsin did not follow the Siting Priorities law or attempt to use existing right-of-way (Appl. Br. at 34), the raw numbers show this is untrue: CW-Modified Segment O uses 71-75% existing right-of-way as opposed to Segment O's mere 57%. (Direct-CW-Mosca-10; Surrebuttal-CW-Mosca-4:22-5:7.) The alternative route honors the Siting Priorities law better than the Applicants' own route, which clear-cuts brand new right-of-way for 20 miles at a time east of Cashton. Ex.-PSC-Weiss-1, Vol. 1 at 143-44, 388-89. Indeed, the Applicants' witnesses agreed they had no basis to dispute Mr. Mosca's testimony that his alternative route used less new right-of-way than Segment O. Trans. Vol. 9 at 197 (testimony of Nayo Parrett); Trans. Vol. 9 at 169 (testimony of Peter Holtz).

The Applicants also misrepresent Clean Wisconsin’s alternative route, claiming that it “assumes” undergrounding would be necessary for 2,100 feet. (Appl. Br. at 33.)⁴ In truth, Clean Wisconsin’s testimony was that 2,100 feet would occur in areas designated by the Applicants as height restricted, which can be dealt with in a variety of ways and not just by undergrounding. (Surrebuttal-CW-Mosca-3:24-21; CW Br. at 20-21.) The Applicants claim the number of sharp angles on CW-Modified Segment O is cost-prohibitive, but they also admit “we have not evaluated the angles on the Clean Wisconsin route.” Trans. Vol. 8 at 232 (testimony of Peter Holtz). Lastly, the Applicants claim Clean Wisconsin’s experts lack the expertise to site a transmission like (Appl. Br. at 34), but Applicants miss the point. Clean Wisconsin’s witnesses demonstrated it is possible to develop a route that avoids what Applicants claimed was height-restricted area—an exercise Applicants never attempted, Trans. Vol. 8 at 230 (Holtz testimony)⁵—on a route that is shorter, flatter, less environmentally destructive, and that uses more existing ROW than Applicants’ routes. The obstacles that Applicants claim precluded this routing are not insurmountable, Trans. Vol. 10 at 261 (Mosca testimony), yet Applicants rejected direct routing between Sparta and Tomah based on factors they did not actually analyze, in favor of the unpermissible route that became Segment O.

⁴ Applicants also mis-quote Clean Wisconsin’s testimony, claiming Mr. Mosca took “short cuts” in developing his alternative route, when the point of using this term in Mr. Mosca testimony was to show the modified route is a “short cut” between La Crosse to Lyndon Station, especially when compared to Segments P/N. Appl. Br. at 34; Direct-CW-Mosca-10.

⁵ As the Applicants’ witness, Peter Holtz, testified:

- Q. Did the applicant, once having an understanding of the Department of Defense concerns, try to find a route through this area that would traverse less of the red?
A. No, we did not.

Trans. Vol. 8 at 230.

Applicants' final objection to exploring routing between Sparta and Tomah is that it is too late, and that Clean Wisconsin cannot "shift the burden" to Applicants to study this route now. (Appl. Br. at 34.) The Applicants forget it is their burden to show why the Badger-Coulee line's costs to ratepayers, environmental impact, and overall hardship are worthwhile and meet the criteria of statute—including whether the line is in the public interest considering alternative routing. Wis. Stat. § 196.491(3)(d). Clean Wisconsin has shown why alternative routing is in the public interest, and the Applicants' inadequate consideration of routing earlier in the process, on shorter and less environmentally-destructive routes, should not excuse proper consideration of viable routes now.

The Applicants' complaints that further study would jeopardize the project's in-service date are also not supported—beyond, again, their own conclusory and self-serving testimony. Sur-surrebuttal-Applicants-Henn-4:13-16. Similarly, Intervenor MISO and Wisconsin Business and Labor Intervenor Group speculate that further study "could" delay the project or cause additional expense, but they cite nothing to show this is true. (MISO Br. at 13-14; WBLIG Br. at 6.) Such speculation is not substantial evidence. *Bretl v. LIRC*, 204 Wis. 2d 93, 100, 553 N.W.2d 550 (Ct. App. 1996). Meanwhile, record evidence shows that Applicants do not intend to commence substantial construction west of Tomah until 2017, Ex.-Applicants-Henn-5 (Resp. to Interrogatory 7-CW/Inter-31), and that project engineering will take a year and a half after route selection in any case, Trans. Vol.8 at 108 (testimony of Terrance Henn). Construction is not imminent. Plus, as Applicants admit, some of the work has already been done (Appl. Br. at 33)—Applicants just need to finish it.

For these reasons, the Applicants have not met their burden to show the Badger-Coulee transmission line location is in the public interest, considering alternative locations

or routes and environmental factors. Wis. Stat. §§ 196.491(3)(d)3., 3r., 4., 6. Even Applicants now recognize the fatal flaws with Segment O, and Segments N/P are still costly, unnecessarily long, and environmentally damaging. The Commission should order study of alternative routing between Sparta and Tomah that could avoid these impacts and reject the Applicants' claims that doing so is impossible. Should the Commission determine it is appropriate to approve routing as proposed, however, it should select Segments P/N for the reasons stated in Clean Wisconsin's initial brief.

B. *Any Final Order Approving the CPCN Should Include Order Points to Protect the Environment and Reduce Impacts.*

Should the Commission decide it is appropriate to issue the CPCN at this time, the Commission's order should include points to avoid and reduce adverse impacts on environmental values that would otherwise be caused by the Badger Coulee Transmission Line. Wis. Stat. § 196.491(3)(d)4, (e).

1. Order Points Addressing Environmental Matters are Authorized by Statute and Consistent with the Commission's Prior Practice.

As an initial matter, Applicants state that to allow for "flexibility" and "assessment of site needs on a case-by-case basis," the Commission should not order specific environmentally-related order points. This argument is inconsistent Wis. Stat. § 196.491(3)(e) and the Commission's prior practice, and is ill-advised for a project of this magnitude and impact. (Surrebuttal-CW-Howe-6:3-13.)

The Commission has broad authority to do "all things necessary and convenient to its jurisdiction." Wis. Stat. § 196.02(1); *see also Wisconsin's Env'tl. Decade v. PSC*, 81 Wis. 2d 344, 351, 260 N.W.2d 712 (1978) ("The primary purpose of the public utility laws in this state is the protection of the consuming public."). In multiple prior cases, the Commission

has included specific order points to minimize a project's environmental impact and protect the public interest. These order points have required, among other things:

- Implementation of specific environmental mitigation techniques approved in a final decision, including 51 “environmental commitments” agreed to by ATC on a range of issues, installation of bird flight diverters, and observance of avoidance periods for rare birds and restoration of disturbed habitat, *In re Application to Construct a New 345 kV Transmission Line from the Rockdale Substation to the West Middleton Substation*, Docket 137-CE-147, Final Decision at 59 (6/26/09)
- Surveys for invasive nuisance species prior to construction, consultation with landowners to retain as much existing vegetation as possible in the border zone of the easement area, and updates to staff on post-construction vegetation management. *In re Upgrade of Electronic Transmission Facilities Between the Existing Stone Lake and Couderay Substations*, Docket 4220-CE-176 at 27 (9/27/12).
- Use of specified seed mixes on different route locations, including upland areas, to help minimize the spread of invasive species. *In re Natural Gas Transmission Lateral from the Viking Gas Transmission Company Interstate Pipeline to the City of Tomah*, Docket 6650-CG-233, at 22 (7/18/14).
- Consultation with conservation organizations whose land is affected by transmission line routing, to determine appropriate measures to avoid or minimize impacts on the affected land, *In re Joint Application for the CapX Twin Cities-Rochester-La Crosse Project*, Docket 5-CE-136, Final Decision at 51 (5/30/12).

Order points addressing environmental issues are common and necessary to address site-specific issues presented by different projects, see *Wis. Indus. Energy Group v. PSC*, 2012 WI 89, ¶ 48, 342 Wis. 2d 576, 819 N.W.2d 240, and such modifications are explicitly authorized by Wis. Stat. § 196.491(3)(e).

The Applicants urge that order points are essentially too limiting, and are unnecessary since Applicants will “develop environmental plans prior to construction in consultation with the WDNR and Commission-designated IEM.” (Appl. Br. at 36.) Clean Wisconsin agrees with developing environmental plans prior to construction in specific areas, but disagrees with deferring important mitigation decisions until after the order. (Surrebuttal-CW-Mosca-8.) What happens post-order on matters like long-term vegetation

management will have a profound influence on the project's ultimate environmental impact. (Direct-CW-Mosca-15.) Furthermore, deferring decisions until after a final order is issued cuts out the public, since there is no open process associated with developing environmental plans that Clean Wisconsin is aware of. Order points are needed to guide the content of these plans and ensure meaningful mitigation occurs, as well as to reassure the public that such mitigation is happening. (Surrebuttal-CW-Howe-6; Surrebuttal-CW-Mosca-8.)

Plus, Clean Wisconsin and ATC disagree on some aspects of environmental mitigation, like revegetation in the border zone, and Commission involvement will be necessary to decide this issue. Once settled, the Commission's order can set the goals or standards that should be applied post-construction, even if the precise methods of executing these standards are decided later through environmental plans and consultation with DNR and IEMs. Contrary to Wisconsin Business and Labor Intervenor Group's and Applicants' unsupported assertions (WBLIG Br. at 5; Appl. Br. at 42), there is no evidence that there will be any project delay associated with imposing order points that protect the environment and public interest. Even if there were, concerns regarding delay should not trump the requirement to satisfy statutory criteria under Wis. Stat. § 196.491(3)(e).

The Commission should rely on the expertise that has been presented in these proceedings to develop order points in four specific areas Clean Wisconsin outlined in its initial brief: 1) Revegetation, 2) the Leopold-Pine Island area, 3) avian mitigation, and 4) endangered resources. (CW Br. at 29-43). Reasonable order points are explained in the initial brief and are further discussed below.

2. Enhanced Vegetation Management, Including Regrowth of Shrubs in the Right-of-Way and Specified Reseeding, is Appropriate.

The Applicants oppose allowing low-growing shrubs to re-grow in the ROW border

zone and developing more robust native seed mixes, as urged by Clean Wisconsin. (Appl. Br. at 36-37.)⁶ In contrast to the many benefits of these revegetation techniques, including preservation of ecological balance (Clean Wisconsin Br. at 29-35), the Applicants have not shown any good reasons why they should not be ordered.

Allowing shrubs to re-grow in the border zone will provide habitat for migratory birds and other species, soften impact to adjacent habitat, help stabilize slopes and prevent erosion, and ease maintenance burdens and costs. (*Id.*) Indeed, the U.S. Fish & Wildlife Service strongly urged that the Applicants mitigate the substantial loss of migratory bird habitat that would be caused by the Badger Coulee line's construction, and smart replanting and revegetation of the ROW, including with shrubs, can accomplish just that. Ex.-PSC-Weiss-1, Vol. 1, Appx. E (letter dated 10/9/14); Direct-CW-Howe-10. Applicants do not dispute these benefits, but suggest that allowing shrubs to re-grow violates Applicants' "established" management practices, are "not the norm," and "could" impact reliability and compliance with federal standards. (Appl. Br. at 37.) These claims are unsupported.⁷

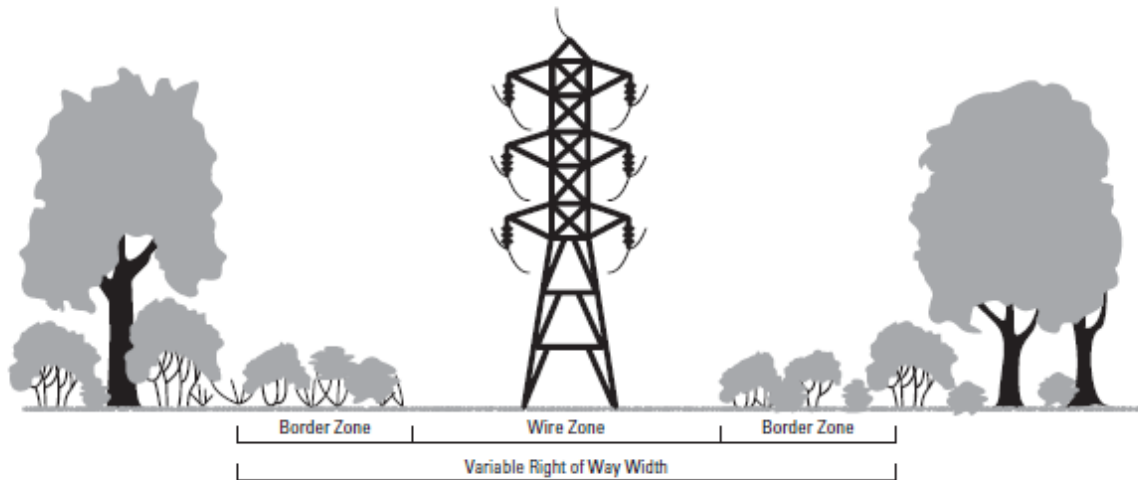
First, it has not been an "established" practice to clear cut ROWs for the life of a 345 kV line, either among or within the Applicants' organizations. ATC witnesses agreed that it has been the practice of utilities in the past to allow some shrub growth in the border zone, Trans. Vol. 8 at 236 (testimony of Peter Holtz), and NSPW's vegetation management plan

⁶ The Applicants claim no one disputes that the entire ROW should initially be clear-cut (Appl. Br. at 36), but Clean Wisconsin agrees with PSC staff that the Applicants should leave as much vegetation as possible in valleys where there is sufficient clearance between the tops of trees and the conductors. Direct-PSC-Weiss-7.

⁷ Clean Wisconsin disagrees with CETF's argument that NERC standards require clear-cutting in the ROW over the life of the line. (CETF Br. at 13-14.) Indeed, the Final EIS, which CETF cites, recognizes that low-growing woody vegetation may be maintained in the border zone. Ex.-PSC-Weiss-1, Vol. 1 at 93.

shows a “bramble and byrnes” approach that “allow[s] for different types of vegetation in the ROW,” including low-growing shrubs:

BRAMBLE AND BYRNES



Ex.-CW-Mosca-12 at 15. The Applicants’ portrayal of Clean Wisconsin’s requests as somehow abnormal is a misrepresentation.

Second, the Applicants have not presented any witness who can credibly substantiate their claims of what the applicable federal standards are, or their claim that reliability “could” be affected if Clean Wisconsin’s recommendations are adopted. (Appl. Br. at 37.) At best, they supplied the testimony of Peter Holtz, an ATC routing and siting manager with a business administration degree who himself agreed “I’m not a vegetation expert in terms of plantings,” and that his limited knowledge about federal standards was derived from others. Direct-Applicants-Holtz-1; Trans. Vol. 8 at 240, 242; *see also* Trans. Vol. 192, testimony of Nayo Parrett (“I can’t tell you the specific FERC standards. That’s not my area.”). NSPW did not present any testifying expert on this matter at all.⁸ To the extent

⁸ Xcel’s vegetation management plan states that the company maintains 15 feet of clearance between vegetation and the conductors for a 345 kV line. Ex.-CW-Mosca-12 at 18. This clearance well exceeds the approximately three-foot clearance that the rules actually require (Ex.-CW-Howe-

there is confusion among utilities about how far the federal standards really go, the Commission could examine the issue of ROW management state-wide and devise general guidelines that would improve habitat and reduce environmental impacts of transmission lines everywhere, consistent with reliability needs. (*See* Direct-CW-Mosca-16.) But for now, Clean Wisconsin has shown that the Applicants' over-zealous interpretation is not actually supported by the rules, and that maintaining a shrub-free corridor for the life of the line will significantly increase its environmental impacts. (CW Br. at 31-33.)

Third, Applicants inaccurately claim that Clean Wisconsin seeks a "blanket requirement" that low growing woody vegetation be allowed to regrow everywhere in the border zone. (Appl. Br. at 36.) Notably, they cannot cite to any testimony from Clean Wisconsin for this proposition. What Applicants seem to really fear is anything that limits their discretion, claiming that "final decisions" about how to revegetate in specific locations "are typically made after a post-construction evaluation." (Appl. Br. at 36.) Clean Wisconsin understands that allowing shrubs to regrow is subject to landowner approval and other considerations, such as existing uses of the ROW for roads or other features, and that some flexibility will be needed based on these site-specific conditions. Yet due to the many demonstrated benefits of allowing diverse low-growing vegetation in the border zone (and the Applicants' failure to propose any alternate strategies for offsetting the loss of migratory bird and other habitat), any final Commission should order that low woody vegetation be allowed to regrow in the border zone where site conditions allow.

As with regrowth of woody vegetation, Applicants also oppose any order point that "alters" their "seeding practices." (Appl. Br. at 37.) The Applicants want to defer reseeding

20; Ex.-CW-Howe-21) but nonetheless is achievable for shrubs with a maximum height of 10' and where conductors are at least 25.1 feet above ground. (CW Br. at 31-32.)

decision until after construction, but as Clean Wisconsin has explained at length, reseeding choices should be made before ground is broken based on pre-construction assessments. (CW Br. at 30, 33.) If reseeding is solely a field call, Applicants may lack important information for appropriate seeding choices, depending on the time of year and other factors. Surrebuttal-CW-Mosca-6.

The Applicants’ “typical” seed mixes—which Clean Wisconsin has seen—also lack sufficient native species and forbs for certain areas and should be supplemented. Surrebuttal-CW-Mosca-7. These “typical” mixes also ignore measures Applicants’ witnesses have agreed to in their testimony: planting milkweed and other plants for pollinator species as recommended by the U.S. Fish & Wildlife Service, and using New Amsterdam Grassland seed for revegetation in that area. (CW Br. at 33.) But, recognizing the need for some flexibility, Mr. Mosca developed reasonable suggestions for how reseeding could be addressed in the final order:

The Commission could Order the Applicants to develop and use native seed mixes, including forbs, for all segments and conditions along the route (especially in forested areas in Segments, N, P, and O) . . . Alternatively, the PSC could order the Applicants to provide a native vegetation seeding and maintenance plan and protocols that would be ecologically sustainable and least disruptive to local wildlife. The plan could be developed with and monitored by the Independent Environmental Monitor

Surrebuttal-CW-Mosca-7-8.

Reasonable options are available for addressing revegetation and reseeding in any final order, and these options should be employed as Clean Wisconsin has recommended.

3. Mitigation Measures in the Leopold-Pine Island IBA.

Clean Wisconsin appreciates that the Applicants support the use of H-frame

structures on Segments H or I to mitigate bird impacts. (Appl. Br. at 38.) This measure, while necessary, is not sufficient to avoid bird collisions and mitigate impacts in this important area. Clean Wisconsin reiterates its recommendations that the Commission order that towers be constructed as low as possible, that the Applicants employ line-marking devices, and that a study of methods to further reduce impacts on this and future lines be funded. (CW Br. at 35-38.) While these measures will increase project costs, they are in the public interest given the unique environmental setting of the Leopold-Pine Island IBA, the collaboration of public and private groups to improve the area for birds, the heavy bird traffic that has resulted, and the need to understand effective measures to reduce fatal bird collisions. *Id.* The Commission has ordered similar measures for other unique and valuable locales, such as the UW Arboretum, because they serve the public interest. *In re Application to Construct a New 345 kV Transmission Line from the Rockdale Substation to the West Middleton Substation*, Docket 137-CE-147, Final Decision at 45 (6/26/09). The same is true here.

4. Avian Mitigation Plan (AMP).

Clean Wisconsin also appreciates that the Applicants have proposed an avian mitigation plan (Appl. Br. at 38), and Clean Wisconsin recommended some specific content for the plan in its initial brief (CW Br. at 38-39). Yet Clean Wisconsin is concerned with statements in the Applicants' brief that the "AMP will include information about mitigation strategies and measures determined in the CPCN proceeding," such as H-frame structures. (Appl. Br. at 38 (emphasis added).) As Clean Wisconsin has emphasized, based on the testimony of Dr. Howe and the DNR's expert, Yoyi Steele, the AMP should not be limited to measures the Commission may order in this particular proceeding. (CW Br. at 38-39.) In order for the AMP to realize its potential as a "living document" that adapts mitigation to

changing conditions and information, the plan will need to change over time. (*Id.*) This “adaptive management approach” has been endorsed by members of Leopold-Pine Island Important Bird Area, and is in the Applicants’ interests to help avoid violations of laws like the Migratory Bird Treaty Act going forward. 16 U.S.C. § 703 *et seq* (imposing strict liability for taking or killing migratory birds).

Any final order by the Commission should recognize the Applicants will prepare an AMP, but order that it should address mitigation measures specified by the Commission and those that become appropriate over the life of the line.

II. CONCLUSION

For the reasons stated above and in its initial brief, Clean Wisconsin respectfully requests that the Commission deny the Applicants’ request for CPCN until further study of viable routes is conducted between Sparta and Tomah. Should the Commission determine that it is appropriate to issued the CPCN at this time, however, Clean Wisconsin recommends the Commission select the proposed Northern route, and include order points necessary to protect environmental values.

Dated: February 13, 2015

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