

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

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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

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Docket No. 5-CE-142

**REPLY BRIEF OF THE TOWN OF MIDDLETON**

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The Town of Middleton ("Town"), pursuant to the Prehearing Conference Memorandum dated August 7, 2014 (PSC REF#: 213409), submits this Reply Brief.

**INTRODUCTION**

The Town demonstrated in its pre-filed testimony and in its Initial Brief that it is unique among Wisconsin municipalities with regard to the number of transmission line projects that have and will geographically divide the Town. The Town showed that the Badger-Coulee Project, alone and cumulatively with other existing and planned transmission lines, "unreasonably interfere with the orderly land use and development plans" of the Town in violation of Wis. Stat. § 196.491(3)(d)6.<sup>1</sup> The Town established that, consistent with applicable law and past practice, the Commission should recognize the Town's unique vulnerability to the adverse cumulative effects of multiple transmission line projects, and protect the Town from those adverse effects.

In their Initial Brief, the Applicants do not address the most significant issue identified by the Town at the hearing: the cumulative adverse impacts on the Town caused by the Badger-

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<sup>1</sup> As the Town also has shown, the Badger-Coulee Project is not in the public interest, Wis. Stat. § 196.491(3)(d)3., and will have an undue adverse impact on other environmental values within the Town. Wis. Stat. § 196.491(3)(d)4. (Initial Brief, pp. 6-10.)

Coulee Project and other existing and planned transmission lines. Instead, the Applicants merely restate certain of their witnesses' testimony - testimony that was refuted at the hearing - regarding their efforts to collaborate with the Town and the effect of the Badger-Coulee Project on the Town. Apparently, the Applicants hope that its testimony describing its empty gestures toward the Town will be sufficient to cause the Commission to look past the Town's interests and position.

The Commission should reject the Applicants' attempt to avoid the issues raised by the Town. Instead, the Commission should issue a final decision in this proceeding that (i) recognizes the cumulative impacts of multiple transmission lines on the Town, (ii) requires the Applicants to conform their projects to the Town's development plans, (iii) provides compensation to the Town commensurate with the impacts it will suffer, and (iv) requires the Applicants to collaborate with the Town to ensure that the Applicants avoid interfering with the Town's development plans.

### **REPLY**

#### **I. THE APPLICANTS FAIL TO REFUTE THE CUMULATIVE IMPACTS OF MULTIPLE TRANSMISSION LINES ON THE TOWN.**

In its Initial Brief, the Town identified the authority of the Commission to consider the specific project for which a CPCN is sought by evaluating that project in the context of other existing and proposed transmission projects. (*See* Initial Brief (PSC REF#: 230724), pp. 3-5 (and authorities cited therein).) The Town showed, therefore, that applicable law requires an assessment of the present CPCN application to include consideration of the cumulative adverse effects on the Town of the proposed project, alone and in conjunction with other planned or approved projects. At the hearing in this matter, the Town described in detail those cumulative adverse effects, including the geographic divisions resulting from multiple transmission lines

which limit or eliminate the accessibility of certain parts of the Town and the availability of land for further development projects. (*Id.* at 6-10.)

In their Initial Brief, the Applicants do not rebut any of the testimony proffered by the Town concerning the cumulative impacts of multiple transmission lines. Their silence in the face of such testimony and information is not surprising, given that the existence of such cumulative impacts is beyond any reasonable dispute. Rather than attempt to refute the existence of cumulative impacts, it appears that the Applicants may contend that the law technically does not recognize nor afford a remedy for such cumulative impacts. This also is untrue, as shown by the multiple authorities identified by the Town in its Initial Brief and as demonstrated by the Commission practice of considering cumulative impacts. The Applicants' strategy of ignoring the significant issues relating to cumulative impacts, in the hope that the Commission will do likewise, should not prevail.

The Commission can and should examine those cumulative impacts and:

- Require the Applicants to analyze and address - in this proceeding and in relation to any future transmission line projects- the cumulative impacts on the Town of the Badger-Coulee Project and all other existing or planned transmission line projects.
- Require the Applicants to conform the Badger-Coulee Project to the Town's current and planned developments.
- Require the Applicants to make an additional annual payment to the Town in an amount equal to \$1,000 per household in the Town, updated annually, for the useful life of the transmission lines connected to the Cardinal Substation.

In particular, as it relates to the Town's planned extension and realignment of Bronner Road, the Commission should order the Applicants to conform the Badger-Coulee Project to the Town's development plans for Bronner Road. The Applicants concede in their Initial Brief that the Badger-Coulee Project is compatible with the Town's plans concerning Bronner Road.

Therefore, an order point requiring the Applicants to conform the Badger-Coulee Project to the Town's plans for Bronner Road should not impose any burden on the Applicants.

**II. THE APPLICANTS' STATEMENTS CONCERNING THEIR INTERACTIONS WITH THE TOWN ARE MISLEADING.**

In its Initial Brief, the Town described how the Applicants' failure to engage with the Town in respectful, timely, and productive discussions has exacerbated the cumulative adverse impacts that result from multiple transmission line projects. (Initial Brief, pp. 13-16.) The Town also explained how American Transmission Company LLC ("ATC") in particular appears to be communicating less and less with the Town as more and more transmission line projects are proposed to terminate in the Town. (*Id.*) In their Initial Brief, the Applicants claim to have collaborated with the Town, and refer to a few instances of interactions with the Town. Its claim of collaboration, and the examples it provides, are misleading. In context, the instances of "collaboration" identified by the Applicants reveal the Applicants' blatant disregard of the Town's concerns.

First, the Applicants claim to have engaged in outreach efforts with the Town in "numerous ways" and at "numerous times." (App. Initial Brief, p. 40.) In fact, ATC initially held the only open house in the Dane County region in Waunakee, even though the Badger-Coulee project terminated in the Town. (Tr. Vol. 10, p. 190.) The Town asked ATC to have an open house in the Town - ATC declined. The Town held an informational meeting for its residents on June 11, 2012 - ATC did not attend. (Tr. Vol. 10, p. 191.) The Applicants eventually convened an open house in the Town, but not until a month before the Applicants filed their application for the Badger-Coulee Project. (Tr. Vol. 10, p. 191.)

Second, the Applicants claim to have taken into account the comments received from the Town and incorporated them into their routing decisions. (App. Initial Brief, p. 41.) However,

at the hearing ATC could not identify a single instance in which it incorporated the Town's concerns into the planning of the Badger-Coulee Project. (Tr. Vol. 8, p. 307.)

Third, the Applicants contend that they notified the Town of its planning for the Badger-Coulee Project before the Town formally adopted plans for Bronner Road. (App. Initial Brief, p. 41.) In stating this, the Applicants insinuate that planning for the Badger-Coulee project preceded, and should take precedent over, the Town's plans for Bronner Road. The Applicants, however, fail to point out a critical point of which they are aware: the Town's plans concerning amending its official map with regard to Bronner Road began in 2007, before the Badger-Coulee Project was in ATC's ten year plan. (Tr. Vol. 10, pp. 196; Tr. Vol. 10, p. 206; Tr. Vol. 8, p. 305.) As the Applicants also know, the Town's planning processes look several years into the future and the Town cannot postpone its planning activities until the Applicants determine where its proposed and future projects will be located within the Town. (Tr. Vol. 10, pp. 198-199.) By essentially demanding that the Town react to the limited route alternatives proposed by the Applicants and adjust its planning accordingly, the Applicants are "unreasonably interfer[ing]" with "orderly land use and development plans" contrary to Wis. Stat. § 196.491(3)(d)6.

The Applicants' failure to effectively communicate and coordinate with the Town has resulted in developmental uncertainty and has exacerbated the unreasonable interference transmission lines have on the Town's development plans. (Direct-Town of Middleton-Ludtke, PSC REF#: 224670, pp. 7-8.) The Commission should require the Applicants and ATC to coordinate with the Town to ensure that the Badger-Coulee Project and other transmission line projects accommodate the Town's current and proposed development plans.

## CONCLUSION

The Commission must act to address the cumulative adverse effects imposed on the Town by existing and proposed transmission line projects. Specifically, the Commission should take the following actions:

1. The Commission should recognize the cumulative nature of the impacts to the Town caused by previous, current, and future transmission line projects, and require the sponsors of such projects to eliminate or minimize those cumulative impacts, or identify end-points for such projects other than the Cardinal Substation.
2. The Commission should require the Applicants to conform the Badger-Coulee Project and other planned transmission line projects to the Town's established and anticipated development plans.
3. The Commission should conclude that the existing mechanisms under state law for compensating local governments for transmission line impacts will not adequately compensate the Town for the cumulative impacts the Town will experience, and require further compensation by the Applicants. Specifically, the Commission should order the Applicants to make an additional annual payment to the Town in an amount equal to \$1,000 per household in the Town, updated annually, for the useful life of the transmission lines connected to the Cardinal Substation.
4. The Commission should order the Applicants to engage in more robust, direct, and timely coordination efforts with Town representatives to ensure that the Badger-Coulee Project and future transmission line projects do not interfere with the Town's development plans.

Dated this 13th day of February, 2015.

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