

JUDGE Candice CM Tlustosch
Circuit Court Branch 5

STATE OF WISCONSIN

CIRCUIT COURT

LACROSSE COUNTY

Town of Holland
W7937 County Road MH
Holmen WI 54636

Petitioner,

Case No. : 15CV019

Case Code: 30607

v.

(Administrative Agency Review)

PUBLIC SERVICE COMMISSION
OF WISCONSIN
P.O. Box 7854
610 North Whitney Way
Madison, Wisconsin 53707-7854

Respondent.

LACROSSE CO.
FILED
APR 27 2015
PAMELA RADTKE
CLERK OF COURTS

PETITION FOR JUDICIAL REVIEW

SUMMARY

1. Petitioner Town of Holland ("Holland"), through Progressive Law Group LLC, and particularly Attorney Frank Jablonski, petitions the Court to review the FINAL DECISION of the Respondent Public Service Commission of Wisconsin ("PSCW") in PSCW Docket No. 05-CE-142. Through the Decision the PSCW issued American Transmission Company LLC ("ATC") and Northern States Power Company-Wisconsin ("NSPW), jointly "Applicants," a Certificate of Public Convenience and Necessity ("CPCN") allowing Applicants to construct and operate a 345 kV (kilovolt) high voltage transmission line called "Badger-Coulee," also referred to in this Petition as "the Project" or "Project."

Public Service Commission of Wisconsin
RECEIVED: 04/27/15, 4:33:49 PM

2. The petition is brought under Chapter 227 of the Wisconsin Statutes and particularly Wis. Stats. §§ 227.52 to 227.57. A copy of the challenged administrative decision is attached as Exhibit “A”.
3. The PSCW’S FINAL DECISION, *inter alia*,
 - a. Rests on deficient environmental analyses, particularly involving the analysis of potential alternatives to constructing the Project and alternative routes;
 - b. Is predicated on, and includes, material errors of law and fact, and
 - c. Violates governing statutes and administrative rules, and
 - d. Departs from standing PSCW policy governing the routing and siting of transmission lines that are asserted to be justified on economic, as opposed to reliability, grounds.

In support of its Petition, Holland further states as follows:

PARTIES AND STANDING

4. The Public Service Commission (“PSCW”) is an Agency of the State of Wisconsin under Wis. Stat. §§ 15.79 and 227.01(1). The PSCW’s address is accurately identified in the caption of this petition; its powers are enumerated in Wis. Stat. § 196.02, and it may be sued. (Wis. Stat. § 196.02(12)).
5. Subject to review, the PSCW regulates utilities, which involves, in this instance, ruling on the CPCN application the Applicants submitted in PSCW Docket No. 05-CE-142; the application sought a CPCN for a High Voltage Transmission Line. Wis. Stat. §§ 196.491(1)(e) and (f), and 196.491(3).
6. The final order of the PSCW in Docket 05-CE-142 (“Docket” or “Badger-Coulee case”) is reviewable under Wis. Stat. § 227.52.

7. The Applicants who sought a CPCN are “public utilities” within the meaning of Wis. Stat. § 196.01(5).
8. Holland is a body corporate and politic, with powers granted by law under Wis. Stat. Ch. 60; Holland has its principal offices at W7937 County Road MH, Holmen, WI 54636, in La Crosse County.
9. Under the Final Decision challenged here, land situated in Holland, and in La Crosse County, is planned to be burdened with right-of-way for the Badger-Coulee project.
10. On February 19, 2014 Holland applied to intervene in the Docket.
11. On May 22, 2014 the Administrative Law Judge in the Docket granted Holland’s request to intervene.
12. The challenged decision of the PSCW identifies Holland as a party notified of its appeal rights. Wis. Stat. §§ 227.47, 227.48(2).
13. Holland’s substantial interests are adversely affected by the PSCW decision to permit the Project to be constructed through the Town of Holland, in that, *inter alia*:
 - a. The Project as approved by the PSCW establishes an additional high voltage transmission line pathway through Holland a short distance from transmission lines currently under construction in the Town pursuant to the Commission’s decision in an earlier Docket, Docket No. 05-CE-136. That earlier PSCW decision allowed construction of a line commonly referred to as “CapX.” Construction of CapX and an associated substation will already restrict and inhibit planned or potential land uses in the Town of Holland

7. The Applicants who sought a CND are "public utilities" within the meaning of Wis. Stat. § 196.01(7).
8. Holland is a body corporate and public utility with powers granted by law under Wis. Stat. Ch. 60; Holland has its principal offices at W3937 County Road MH, Holmen, WI 54636, in La Crosse County.
9. Under the Final Order challenged here, land situated in Holland, and in La Crosse County, is planned to be burdened with right-of-way for the Badger-Corles project.
10. On February 19, 2014 Holland applied to intervene in the Proceeding.
11. On May 22, 2014 the Administrative Law Judge in the Proceeding granted Holland's request to intervene.
12. The challenged decision of the PSCW identified Holland as a party notified of its appeal rights. Wis. Stat. §§ 227.47, 227.48(2).
13. Holland's substantial interests are adversely affected by the PSCW decision to permit the Project to be constructed through the Town of Holland in that intervention:

 - a. The Project as approved by the PSCW establishes an additional high voltage transmission line pathway through Holland a short distance from transmission lines currently under construction in the Town pursuant to the Commission's decision in an earlier Proceeding No. 05-CM-136. That earlier PSCW decision allowed construction of a line commonly referred to as "GapX." Construction of GapX and an associated substation will already restrict and inhibit planned or potential land uses in the Town of Holland

that are preferred under Holland's land use plan, and the emplacement of an additional transmission line pathway, when the CapX pathway is already available, and legally prioritized for use over new transmission rights-of-way, would impose un-necessary impacts on Holland, even if the Project were justified on other grounds.

- b. Badger Coulee's high voltage transmission facility will run through or near areas of concentrated existing and planned residential development and adjacent areas that have been designated under the Town's land use plan, and impair realization and/or the value of planned uses;
- c. Construction of a the Badger-Coulee high-voltage transmission line will undermine, and sometimes negate, Holland's efforts to maintain and preserve aesthetically pleasing surroundings with a rural flavor, to direct residential development to areas with reduced agricultural potential, and to encourage commercial development along a specified road corridor.
- d. Holland and its citizens will be required to contribute, through electricity bills, to the costs of constructing and maintaining the Project and for returns to the Project owners; these costs are not necessary or warranted;
- e. Approval of the Project in preference to statutorily-prioritized alternatives such as improved efficiency and conservation, and non-combustion renewable energy, will undermine the development of those preferred resources in Holland, denying the Town and its citizens of improved opportunities to benefit from reduced energy bills through improved efficiency and conservation, and the benefits of dispersed, individually

owned energy resource options that would be made if resources were instead directed towards them.

THE DOCKET AND DECISION

14. In or about September of 2010 ATC asked the PSCW to establish a Docket in which the PSCW would consider a contemplated Application for a CPCN; the Application, as indicated in the request for a Docket, would seek permission to “Construct and Operate a New 345 kV Transmission Line from the La Crosse area, in La Crosse County, to the greater Madison area in Dane County, Wisconsin.”
15. In a related proceeding, on July 19, 2012 the Federal Energy Regulatory Commission (“FERC”) granted a Complaint from Xcel Energy and Northern States Power Company, a Wisconsin Corporation (“NSPW”), and, in granting the Complaint, required ATC to “share the La Crosse-Madison Line with Xcel.” 140 FERC ¶ 61,058.
16. On August 13, 2012 NSPW, based on the FERC Order granting the Xcel-NSPW Complaint, asked the PSCW to allow NSPW to participate in the pre-application process for the “LaCrosse-Madison Transmission Line.”
17. Dairyland Power Cooperative (DPC), SMMPA Wisconsin, LLC (SMMPA Wisconsin), and WPPI Energy (WPPI) intervened in the Docket and were permitted by the PSCW to become co-applicants as tenants-in-common for the portion 345 kV transmission line from the Briggs Road Substation to the North Madison Substation, i.e., for most, but not all of the Badger-Coulee Project.

18. On August 19, 2013 the PSCW staff requested a PSCW Docket Number be established for a Joint Application of the Applicants “to Construct and Operate a New 345 kV Transmission Line from the La Crosse area, in La Crosse County, to the greater Madison area in Dane County, Wisconsin,” referencing the proposed project as the “Badger Coulee Project.” Pursuant to this request, PSCW Docket No. 05-CE-142 was subsequently established for the Docket.
19. On October 22, 2013 ATC and NSPW jointly applied to the PSCW in Docket No. 05-CE-142 for a CPCN for the LaCrosse-Madison transmission line, a/k/a the “Badger Coulee Project.”
20. The PSCW recognized the Badger Coulee Project to be a “Type 1” “major action that significantly affect(s) the quality of the human environment, within the meaning of s. 1.11 (2) (c),” and accordingly prepared Draft and Final Environmental Impact Statements. PSC 4.10(1) Wis. Admin. Code and Table 1(bg).
21. Between November 29, 2011 and January 10, 2015 about 100 municipalities submitted resolutions that included assertions, inter alia, that the Project would have an anticipated cost of more than \$425 million, describing the inter-relationship of the proposed Badger Coulee Project with other transmission Projects that together, were indicated to be projected to have, in aggregate, costs from \$5 to \$40 billion, identifying projections of slow growth in electricity use in Wisconsin, stating concerns over potential health impacts of transmission lines and condemnation of private property for transmission line easements, and

asking the Commission to make an independent study of the costs and benefits of the Project against alternatives.

22. The Commission refused to prepare an independent study or to require Applicants to provide the Commission with sufficient information to study, develop and describe alternatives to the Applicants proposed Project.
23. A CPCN for a transmission line project such as the one granted here gives Applicants, which are private, profit-making companies, the right to exercise the extraordinary governmental power of eminent domain, including the right to condemn and take private property to construct the Project.
24. ATC's CPCN application was considered through a Class One contested case proceeding under Wis. Stat. §227.44. See also: Wis. Stat. §§ 196.491(3)(b) and 227.01(3)(a).
25. Draft and final Environmental Impact Statements were prepared.
26. The PSCW issued a Final Decision ("Decision") on ATC's application on April 23, 2015, authorizing a CPCN for Badger Coulee. (Exhibit 1)
27. The Decision recognizes that the project can only be approved if it complies with the applicable standards under Wis. Stat. §§ 1.11, 1.12, 196.025, 196.49, and 196.491, and Wis. Admin. Code chs. PSC 4, and PSC 111. (Exhibit 1, p. 3)

VENUE

28. This petition is properly venued in LaCrosse County; the Badger-Coulee Project interconnects with the related "CapX" Project at the Briggs Road substation in LaCrosse County; substantial portions of the Project are located in LaCrosse

County; Holland is located in LaCrosse County. Wis. Stat. § 227.53(1)(a)3.

TIMELINESS

29. This appeal is timely filed. Wis. Stat. § 227.53(2)
30. This petition is timely in that it is being served on the PSCW and filed with the court within 30 days of the PSCW signing an order denying rehearing, which occurred on April 24, 2015. Wis. Stat. §227.53(1)(a)2.

SUMMARY OF SUBSTANTIVE CHALLENGES

31. The fairness of the proceedings and the correctness of the action at issue were impaired by material errors in procedure, failures to follow prescribed procedures, and irregular procedures.
32. The PSCW erred by deeming the Application “complete” on April 30, 2014 because the Application did not include information sufficient to enable the PSCW to “study develop and describe” alternatives to the point of comparability, as required by Wis. Stat. § 1.11 (the Wisconsin Environmental Policy Act, or “WEPA”) and the PSCW’s obligation to develop information about, and give preference to, an alternative that substitutes prioritized energy options identified in Wis. Stat. § 1.12. Wis. Stat. § 196.025.
33. The Environmental Impact Statement (“EIS”) failed to “study, develop and describe” alternatives as required and improperly constrained the range of alternatives considered.
34. The EIS and the PSCW failed to study the potential for extremely low, zero or negative load growth.
35. The Project will, in light of observed and known trends in the availability and

utility of alternative resources, including resources of higher priority under Wis. Stat. § 1.12, provide facilities unreasonably in excess of probable future requirements, and when placed in operation, will add to the cost of service without proportionately increasing the value or available quantity thereof.

36. Because of a design that is not merited under governing standards, the Project will unreasonably interfere with the orderly land use and development plans for Holland.
37. The Project, in light of known and observed trends in energy use growth, and the lack thereof, is not necessary to satisfy the reasonable needs of the public for an adequate supply of electrical energy.
38. Because alternative application of the financial resources required to establish and maintain the Project is possible, because the dedication of resources to the Project is irreversible, and because the Project's benefits are not established by substantial evidence, the usage, service or increased regional benefits to wholesale and retail customers or members in this state, and the benefits of the Project are not reasonable in relation to their cost.
39. The facility design, location, and route are not in the public interest considering alternative sources of supply, alternative locations or routes, including an alternative not explored by the Commission, and by the individual hardships, engineering, economic, safety, reliability, and environmental burdens imposed by the Project.
40. Because it is not needed, because it will displace preferred alternatives that do not impose such impacts, because it establishes an additional high voltage

transmission line right-of-way where none is needed, and because it was approved without properly studying alternative routing and alternatives to the Project, the Project will impose unwarranted adverse impacts on environmental values including ecological balance, public health and welfare, historic sites, geological formations, aesthetics of land and water, and recreational use.

Based on the foregoing facts, which will be further developed and presented to the court, the court is asked to make the following findings:


- i. A finding that the correctness of the action was impaired by material errors in procedure and by failures to follow prescribed procedure.
- ii. A finding that the PSCW erroneously interpreted provisions of law, and a correct interpretation compels particular actions different from the actions taken by the PSCW.
- iii. A finding that the PSCW's FINAL ORDER reflects an exercise power outside the bounds of discretion delegated to the PSCW.
- iv. A finding that certain findings of fact made by the PSCW are not supported by substantial evidence in the record.
- v. A finding that the PSCW acted in ways inconsistent with statutes, its own rules, officially stated agency policy, and prior agency decisions, and failed to explain, and could not provide a legally justifiable explanation for, such actions.

Petitioner further respectfully requests the Court to grant relief pursuant to Section 227.57, Wisconsin Statutes, as follows:

- (a) To reverse and vacate the PSCW's FINAL DECISION granting the CPCN the Project, or in the alternative, to remand the matter to the Commission for further proceedings consistent with the applicable statutes, rules, policies and instructions of the court;
- (b) To enjoin the PSCW from approving a design that is impermissible under laws governing the emplacement of high voltage transmission lines that are deemed warranted because of economic benefits.
- (c) To provide other and further relief as the Court may deem just and equitable.

Dated this 27th day of April, 2015.

Progressive Law Group LLC, by


Frank Jablonski, State Bar No.: 1000174
Attorneys for Petitioner Town of Holland

Progressive Law Group LLC
354 West Main Street
Madison, WI 53703-3115
www.progessivelaw.com

Phone: (608) 258-8511
Fax: (608) 442-9494
frankj@progressivelaw.com