

PUBLIC SERVICE COMMISSION OF WISCONSIN

Memorandum

May 26, 2015

FOR COMMISSION AGENDA

TO: Ellen Nowak, Chairperson
Phil Montgomery, Commissioner
Mike Huebsch, Commissioner

FROM: Alex Mahfood, Assistant General Counsel
Office of General Counsel

RE: 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

Petitions for Rehearing and Request for Clarification

Suggested Minute: The Commission (granted a rehearing or amendment on one or more of the issues presented in a petition for rehearing or request for clarification/denied the petitions for rehearing and request for clarification/allowed the petitions for rehearing and request for clarification to be deemed denied by operation of law).

Introduction

On May 13, 2015, the Commission received two petitions for rehearing and one request for clarification in the above-referenced docket.¹ First, a group of landowners (the Segment A Petitioners) purportedly affected by the line authorized along Segment A petitioned the Commission for rehearing. The Segment A Petitioners allege that the Commission committed material errors of law and fact in authorizing Segment A. The Segment A Petitioners further allege that the Commission erred by: (1) accepting the applicants' analysis of the economic

¹ Segment A Landowners Amended Petition for Hearing, docket 5-CE-142 ([PSC REF#: 236360](#)); CETF/SOUL Motion for Rehearing, docket 5-CE-142 ([PSC REF#: 236384](#)); Laura Kunze Request for Clarification, docket 5-CE-142. ([PSC REF#: 236335](#).)

benefits of the Badger-Coulee project; (2) failing to assess the costs of the Badger-Coulee project to ratepayers; (3) finding that the Badger-Coulee project will not unreasonably interfere with the orderly land use and development plans; (4) failing to mitigate or compensate impacts to affected landowners; (5) limiting public and non-party participation in the Badger-Coulee proceeding; (6) being improperly influenced by intervenor Anthony J. Kampling; and (7) violating the Wisconsin Environmental Policy Act (WEPA).

Second, Intervenor Laura Kunze (Ms. Kunze) petitioned the Commission for either clarification or rehearing addressing the Final Decision's ([PSC REF#: 236151](#)) inadvertent failure to impose certain conditions regarding double-circuiting the existing 138 kilovolt (kV) transmission line currently located on the south and west sides of her property with the proposed 345 kV Badger-Coulee line to be located along the east side of her property, and to remove and bury the local distribution lines currently underbuilt on the existing 138 kV structures. Ms. Kunze asserts that, throughout the Badger-Coulee proceeding, Commission staff supported and the applicants agreed to the imposition of these conditions.

Last, Citizen's Energy Task Force, Inc. (CETF), and Save Our Unique Lands of Wisconsin, Inc. (SOUL), petitioned the Commission for rehearing on the basis that they have discovered purported new evidence recently issued by the federal government and not previously available. This evidence consists of publications and data analyzing historic electric retail sales. CETF/SOUL assert that this evidence demonstrates that a near-zero or negative load growth is the most reasonable future scenario under which to evaluate the need for the Badger-Coulee project.

Legal Standards

The disposition of the various petitions for rehearing is governed by Wis. Stat. § 227.49, which provides that rehearing may only be granted on the basis of: (1) some material error of law; (2) some material error of fact; or (3) the discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

Under Wis. Stat. § 227.49(4), the agency may order a rehearing or enter an order with reference to the petition without a hearing within 30 days after it is filed. If the agency does not order a rehearing or enter such an order within 30 days, the petition is deemed denied by operation of law upon expiration of this 30 day period. *See id.*

The request for clarification cites Wis. Stat. § 196.39(4), which states that “[w]ithin 30 days after service of an order, the commission may correct an error or omission in the order related to transcription, typing or calculation without hearing if the correction does not alter the intended effect of the order.” In addition, Wis. Stat. § 196.39(1) provides that “[t]he commission at any time, upon notice to the public utility and after opportunity to be heard, may rescind, alter or amend any order fixing rates, tolls, charges or schedules, or any other order made by the commission[.]” If the Commission does not decide a request under Wis. Stat. § 196.39 within 30 days, the request is deemed denied by operation of law upon expiration of this 30-day period. (*See Wis. Admin. Code § PSC 2.28.*)

Factual Background

I. The Segment A Petitioners' Petition for Rehearing.

A. The Segment A Petitioners assert the Commission's selection of Segment A was an error of fact and law.

The Segment A Petitioners assert that the Commission did not consider impacts associated with the selection of Segment A, and that for those impacts the Commission did consider, it did not attempt to mitigate them appropriately. ([PSC REF#: 236360](#) at 3.) For instance, the Segment A Petitioners assert that Segment A contains more homes between 51 and 100 feet from the proposed centerline than either of the Segment B alternatives. (*See id.* at 5.)

The Segment A Petitioners assert that the Commission selected the Authorized Project Route based solely on right-of-way length and shared right-of-way area. (*See id.* at 6.) The Segment A Petitioners challenge the reliance of the Final Decision on the applicants' testimony that compares many impacts associated with the primary route alternatives. (*See id.* at 6-7.) The Segment A Petitioners then urge the Commission to place less focus on the disparity in length between Segment A and Segment B because neither segment, both of which are "very short," contributes significantly to the total length of the Badger-Coulee project. (*See id.* at 8.)

The Segment A Petitioners urge the Commission to reconsider and select Segment B because it could be shared with the Cardinal–Hickory Creek transmission line, a transmission line not yet in existence. (*See id.* at 9.) The Segment A Petitioners echo the Town of Middleton's request that the Commission collectively recognize and consider these two projects. (*See id.*) Similarly, the Segment A Petitioners claim that the impacts to the Town of Middleton will not be adequately addressed through existing statutory mechanisms. (*See id.* at 11.)

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B. The Segment A Petitioners assert that the Commission erred by accepting the applicants' analysis of the economic benefits of the Badger-Coulee project.

The Segment A Petitioners assert that the Commission misapplied Wis. Stat. § 196.491(3)(d)3t. in finding that the anticipated economic benefits of the Badger-Coulee project will be passed along to transmission and retail customers. (*See id.*) The Segment A Petitioners assert that the applicants' confirmation of an aggregate benefit as shown in various transmission planning studies is speculative and insufficient. (*See id.* at 11-14.) The Segment A Petitioners allege that Commission staff erroneously failed to quantify socio-economic impacts in the final Environmental Impact Statement (EIS). (*See id.* at 14.) The Segment A Petitioners then utilize the low-end estimate of \$118 million net economic benefits to attempt to establish a potential net yearly benefit to a Wisconsin ratepayer. (*See id.*)

C. The Segment A Petitioners challenge Badger-Coulee project's cost estimate.

The Segment A Petitioners claim that the Commission lacked sufficient evidence to find that the cost estimate for the Badger-Coulee project is calculated in 2018 dollars. (*See id.* at 15.) The Segment A Petitioners then claim that based on this alleged error and the Commission's failure to acknowledge the Midwest Independent System Operator (MISO) Multi-Value Project (MVP) cost sharing arrangements, the Commission erred in finding that the Badger-Coulee project satisfies Wis. Stat. § 196.491(3)(d)3t. because no cost-benefit comparison could be conducted. (*See id.* at 16.)

D. The Segment A Petitioners assert that the Commission erred in finding that the Badger-Coulee project will not unreasonably interfere with the orderly land use and development plans for Segment A.

The Segment A Petitioners claim that the Commission erred in finding that the Badger-Coulee project will not unreasonably interfere with the orderly land use and development plans

for Segment A. (*See id.* at 17.) First, the Segment A Petitioners assert that in making its finding in this regard, the Commission improperly relied on the applicants' testimony and ignored Land Use Plans. The Segment A Petitioners assert that a summary and comparison of data related to length, shared right-of-way, agricultural land use, prairie grassland, non-forested wetland, forested wetland, other wetland, upland woodland, developed and urban acres, homes, and apartment buildings for each route alternative is irrelevant to an evaluation of land use interference. (*See id.* at 18.)

The Segment A Petitioners assert that in selecting Segment A, the Commission ignored the Town of Springfield's Land Use Plan, which the Segment A Petitioners also assert was erroneously excluded from the Agricultural Impact Statement (AIS). (*See id.* at 19.) The Segment A Petitioners further cite public comments from various residents. (*See id.* at 20.) The Segment A Petitioners then reiterate concerns the Town of Middleton raised regarding unique impacts and concerns the Cities of Onalaska and Middleton raised regarding airport zoning and Federal Aviation Administration (FAA) issues. (*See id.* at 21-23.)

E. The Segment A Petitioners assert that the Commission erroneously failed to compensate for impacts that could not be avoided or mitigated.

The Segment A Petitioners generally assert that the Commission erred by not including specific order points providing for compensation to impacted landowners and municipalities. (*See id.* at 23-25.) The Segment A Petitioners also claim that the Final Decision mischaracterized the final EIS in asserting that it discussed socio-economic impacts. The Segment A Petitioners cite various public comments for the general proposition that the Badger-Coulee project will directly impact property values. (*See id.* at 25-27.) The Segment A Petitioners further claim that where the Commission considered indirect benefits, *i.e.*, MISO MVP benefits, the Commission erred by not considering indirect costs and compensation for

indirect costs. (*See id.* at 27-28.) Among the costs the Segment A Petitioners claim the Commission ignored are societal costs incurred by Dane County and “Environmental Justice” costs related to socio-economic and environmental decisions made by public bodies and governments. (*See id.*)

F. The Segment A Petitioners claim that the Commission’s citation to certain record evidence is inaccurate and unsupportable.

The Segment A Petitioners claim that the Commission erred in citing [PSC REF#: 229699](#) at 35 and 39 in support of the proposition that approval of the project is in the public interest and is required by the public convenience and necessity, where pages 35 and 39, according to the Segment A Petitioners, assert that the Badger-Coulee project will not have adverse environmental impacts. ([PSC REF#: 236360](#) at 28-29.)

G. The Segment A Petitioners assert that the Commission improperly limited non-party and public participation in the Badger-Coulee proceeding.

The Segment A Petitioners assert that Notice of Hearing in the Badger-Coulee proceeding violated Wis. Stat. §§ 227.44(2)(b), 227.45(1), and 227.10(2)(m) by limiting public comment to one comment per person regarding non-technical personal knowledge or personal opinion. (*See id.* at 29-31.)

H. The Segment A Petitioners claim that the Commission may have been improperly influenced by intervenor Anthony J. Kampling.

The Segment A Petitioners claim that intervenor Anthony J. Kampling, who allegedly resides on Segment B, improperly influenced the Commission’s selection of Segment A because he is the husband of Patricia L. Kampling, the Chief Executive Officer of Alliant Energy and member of the Board of Directors of American Transmission Company (ATC). (*See id.* at 31.)

I. The Segment A Petitioners assert the Commission violated WEPA.

First, the Segment A Petitioners assert the final EIS is deficient in several general respects. (*See id.* at 32.) They assert that the final EIS did not study impacts related to pole height that result from FAA recommendations. (*See id.*) They assert that the AIS “is not a complete analysis, as many landowners were not provided with an opportunity to review surveys and respond to questions.” (*Id.*) And, they assert that potential impacts were not disclosed in a manner that allowed for public participation by individuals, municipalities, and businesses. (*See id.*)

Second, the Segment A Petitioners assert that the final EIS is inadequate because it does not analyze the environmental impacts of the Badger-Coulee project in conjunction with the remainder of the MVP portfolio and, in particular, the remainder of MVP 5, *i.e.*, the Cardinal-Hickory Creek transmission line. (*See id.* at 33-34.)

Third, the Segment A Petitioners assert that the final EIS is inadequate because it did not verify conductor and transformer specifications for the Badger-Coulee project. (*See id.*) They assert that the applicants misstated the peak amps for the Badger-Coulee transmission line and that Electric and Magnetic Field modeling must be corrected. (*See id.* at 35.)

Fourth, the Segment A Petitioners assert that the final EIS is inadequate because it did not consider undergrounding the Badger-Coulee project and instead erred by relying on an analysis of undergrounding in docket 5-CE-147. (*See id.*)

Last, the Segment A Petitioners assert that the AIS is inadequate and violated Wis. Stat. § 196.025(2)(b) because it allegedly excluded farmers in Segment A and Dane County from participating in the Badger-Coulee proceeding. (*See id.* at 35-37.)

II. Ms. Kunze's Request for Clarification.

Ms. Kunze's request for clarification asserts that, throughout the proceeding, the Commission and the applicants agreed that it is warranted to double-circuit the existing 138 kV transmission line currently located on the south and west sides of her property with the proposed 345 kV Badger-Coulee line to be located along the east side of her property, and to remove and bury the local distribution lines currently underbuilt on the existing 138 kV structures. ([PSC REF#: 236335](#) at 1.) Ms. Kunze cites the final EIS and the applicants' Initial Brief to support these assertions. (*See id.* at 1-2 (quoting [PSC REF#: 223845](#) at 362 and 360; [PSC REF#: 230721](#) at 23).) Ms. Kunze requests that the Commission modify the Final Decision pursuant to Wis. Stat. § 196.39(4) or, if necessary, conduct a rehearing pursuant to Wis. Stat. § 227.49 and 227.42(1).² ([PSC REF#: 236335](#) at 3.)

III. CETF/SOUL'S Petition for Rehearing.

CETF/SOUL assert that they have discovered evidence sufficiently strong to reverse or modify the Final Decision which could not have been previously discovered because it did not exist. ([PSC REF#: 236384](#) at 1.) CETF/SOUL's evidence is a new publication and data the United States Energy Information Administration recently issued. (*See id.*) CETF/SOUL assert that this new evidence confirms that "relevant electrical energy use has been, and will be, flat, or will fall." (*Id.*) CETF/SOUL assert that this new evidence supports that a near-zero or negative load growth scenario represents the most reasonable future. (*See id.* at 2.)

The data CETF/SOUL provide relates to retail electricity sales in Wisconsin and the United States. (*See id.* at 2-3.) CETF/SOUL assert that, according to the United States Department of Energy's Quadrennial Energy Review, Wisconsin's retail electricity sales

² Ms. Kunze actually cites Wis. Stat. § 229.49, not Wis. Stat. § 227.49, which is likely a simple error.

between 2008 and 2013 has decreased by two percent. (*See id.* at 3.) Accordingly, CETF/SOUL assert that the Commission erred by rejecting a near-zero or negative load growth scenario as a reasonable future for the applicants to consider. (*See id.* at 1, 4.) CETF/SOUL analogize the applicants' economic analysis for the Badger-Coulee project to that ATC performed in docket 137-CE-149. (*See id.* at 4.) CETF/SOUL assert that the strategic flexibility approach taken in both cases is erroneous. (*See id.* at 5.) CETF/SOUL lastly assert that the Commission imposed unwarranted costs on ratepayers. (*See id.* at 6.) CETF/SOUL seek a rehearing requiring the applicants to produce a new economic analysis incorporating growth rates where the Badger-Coulee project would no longer produce positive net present value for Wisconsin ratepayers. (*See id.*)

Conclusion

The two petitions for rehearing present the following question: (1) whether the Segment A Petitioners have shown that the Commission committed some material error of law or fact in the Final Decision, and, therefore, rehearing is warranted; and (2) whether CETF/SOUL have shown that new evidence and data from the federal government they have discovered is sufficiently strong to reverse or modify the Final Decision. The request for clarification presents the question whether Ms. Kunze has shown that the Final Decision inadvertently omitted conditions requiring the existing 138 kV transmission line currently located on the south and west sides of her property to be double-circuited with the proposed 345 kV Badger-Coulee line to be located along the east side of her property, and to remove and bury the local distribution lines currently underbuilt on the existing 138 kV structures and, therefore, revision to the Final Decision or, if necessary, rehearing is warranted.

Commission Alternatives

Alternative 1A: The Commission may grant rehearing on one or more of the issues presented in the petitions for rehearing.

Alternative 1B: The Commission may deny the petitions for rehearing.

Alternative 1C: The Commission may allow the petitions for rehearing to be denied by operation of law.

Alternative 2A: The Commission may grant the request for clarification.

Alternative 2B: The Commission may deny the request for clarification.

Alternative 2C: The Commission may allow the request for clarification to be denied by operation of law.

AGM:DL: 00974762

cc: Bob Seitz, Executive Assistant
Janet Wheeler, Executive Assistant
Teresa Hatchell, Executive Assistant
Cynthia Smith, Chief Legal Counsel

Key Background Documents

[PSC REF#: 236151](#) (The Commission's April 23, 2015, Final Decision)
[PSC REF#: 236360](#) (The Segment A Petitioner's May 13, 2015, Amended Petition for Rehearing)
[PSC REF#: 236335](#) (Ms. Kunze's May 13, 2015, Request for Clarification)
[PSC REF#: 236384](#) (CETF/SOUL's May 13, 2015, Petition for Rehearing)
[PSC REF#: 236387](#) (CETF/SOUL's Exhibit A to May 13, 2015, Petition for Rehearing)
[PSC REF#: 236390](#) (CETF/SOUL's Exhibit B to May 13, 2015, Petition for Rehearing)