October 7, 2019

VIA E-MAIL & ELECTRONIC RECORDS FILING SYSTEM

Mr. Adam Ingwell, Environmental Affairs Coordinator-Supervisor
Division of Digital Access, Consumer and Environmental Affairs
Public Service Commission of Wisconsin
P.O. Box 7854
Madison, WI 53707

RE: PSC Docket 4220-CE-182

Application of Northern States Power Company-Wisconsin
For a Certificate of Authority to Construct the Bayfield
Second Circuit Transmission Project, to be located in
Bayfield County, Wisconsin

Clean Wisconsin’s Objections to Draft Environmental Assessment and Preliminary Determination

Dear Mr. Ingwell:

Clean Wisconsin\(^1\) submits these comments in response to your September 20, 2019 letter notifying the public that a draft Environmental Assessment (EA) has been prepared in the above-referenced docket and that October 7, 2017 is the deadline for comments. PSC REF#: 376077. The draft EA evaluates Northern States Power Company-Wisconsin’s proposal to construct a transmission project on the Bayfield Peninsula -- which has been has been classified as a Type II action under Wis. Admin. Code § PSC 4.10(2), thereby requiring preparation of an EA to determine whether an environmental impact statement (EIS) is necessary under Wis. Stat § 1.11.

\(^1\) Clean Wisconsin is a nonprofit organization that has intervened in this docket to protect the interests of over 20,000 Clean Wisconsin members and supporters statewide – including many members who live, work and recreate in the area where Northern States Power Company-Wisconsin proposes to construct the Bayfield Second Circuit transmission project.
Commission Staff’s Preliminary Determination

Commission staff has made a preliminary determination that the draft EA prepared for NSPW’s proposed Bayfield Peninsula transmission project supports a Finding of No Significant Impact (FONSI) and, consequently, that an EIS is not required:

Based on the EA prepared by Commission staff, a preliminary determination indicates that the project would have some temporary and long-term effects on natural resources and social/community impacts. Strategies to avoid or mitigate some of the temporary and long-term impacts are available and would be implemented if the project is approved. Thus, the proposed project is not expected to significantly affect the quality of the human environment and preparation of an EIS is not required.

PSC-DEA: page 1.

Clean Wisconsin’s Objections to the Preliminary Determination

Clean Wisconsin objects to Commission staff’s preliminary FONSI determination, because it is based on a draft EA that is incomplete and fails to comply with requirements which govern EA preparation in at least three respects:

1. the draft EA fails to state whether NSPW has committed to implement all of the best practices and mitigation options needed to avoid adverse impacts from the proposed project on “geographically important or scarce resources, such as . . . threatened or endangered species and ecologically important areas” identified in accordance with Wis. Admin. Code § PSC 4.20(2)(d)1;

2. the draft EA fails to acknowledge that one of the proposed project alternatives conflicts with local policies, as required by Wis. Admin. Code § PSC 4.20(2)(d)2; and

3. the draft EA fails to acknowledge that only one project alternative is consistent with the statute which prioritizes siting transmission facilities in “[e]xisting utility corridors” (Wis. Stat. § 1.12(6)(a)) and fails to adequately assess “[t]he cumulative effect” of the other project alternative, as required by Wis. Admin. Code § PSC 4.20(2)(d)2 and 8.

The draft EA fails to state whether NSPW has committed to implement all of the best practices and mitigation options needed to avoid adverse impacts from the proposed project on “geographically important or scarce resources, such as . . . threatened or endangered species and ecologically important areas” identified in accordance with Wis. Admin. Code § PSC 4.20(2)(d)1.

The draft EA notes that “use of best management practices and impact mitigation strategies by NSPW could limit some of the long-term adverse effects on natural resources.” PSC-DEA: page 5 (emphasis added). For instance, the draft EA notes that tree clearing and slash management
procedures *could* be used to limit adverse effects due to permanent clearing of 2.7 acres of forest on the East Route or 68.8 acres of forest on the West Route:

Timing restrictions for tree clearing and slash management procedures *can be implemented* by NSPW to prevent the spread of oak wilt, emerald ash borer, and gypsy moth in forested areas that would be permanently cleared of tall growing trees.

PSC-DEA: page 3 (emphasis added). Similarly, the draft EA notes that impacts on rare species *could* be minimized or avoided entirely:

This project has the potential to impact rare resources found along the project routes . . . the majority of the possible impacts to these species *could* be minimized or avoided entirely *if NSPW follows DNR-recommended and required measures*.

PSC-DEA: pages 3-4 (emphasis added). The draft EA also recommends that NSPW consider measures that *could* minimize impacts on birds, because the proposed project would be:

. . . located within the Lower Chequamegon Important Bird Area (IBA). This site hosts the oldest and arguably most important of Wisconsin’s four active common tern colonies. The bay area also is an important migratory staging and stopover area for shorebirds, waterfowl, and water birds. Thousands of raptors migrate through this area in the spring. *It is highly recommended by the DNR that Bird Flight Diverters and other minimization measures be considered within this IBA.*

PSC-DEA: page 4 (emphasis added). And, the draft EA *highly recommends* that NSPW conduct additional field surveys along the proposed West Route to identify appropriate locations for Bird Flight Diverters:

Because the West Route proceeds cross country through forests over a greater portion of its ROW than the East Route, greater impacts could occur to those species that depend on large tracts of woodlands to survive. As a result of these impacts, *it would be highly recommended* to conduct additional bird surveys along the West Route to determine where impact minimization measures (i.e. bird diverters) should be installed.

PSC-DEA: page 4 (emphasis added.)

Based on this information, the draft EA properly concludes that “use of best management practices and impact mitigation strategies by NSPW *could* limit some of the long-term adverse effects of the proposed project on natural resources.” PSC-DEA: page 5 (emphasis added). However, in the absence of commitments by NSPW to implement these measures, there is not an adequate basis to characterize the significance of the impact of the proposed project. The mere possibility that these measures would be implemented does not support a conclusion that that the project “is not expected to cause any significant environmental effects.” PSC-DEA: page 5. Indeed, PSC staff appears to recognize this in the final sentence of the preliminary determination letter, which reads
as follows: “The direct and indirect environmental effects of the proposed project should not have a significant environmental effect on the human environment.” PSC-DEA: pages 5-6 (emphasis added).

A FONSI determination cannot be based on an assessment of actions and environmental impacts that “should not” occur. Any such determination must rely on a record that identifies the environmental effects that will occur if either of the proposed alternatives is built. At the very least, the draft EA must include firm evidence that NSPW has committed to implement all environmental mitigation measures identified in the draft EA and in the testimony submitted by PSC and Department of Natural Resources staff in this docket. Absent a commitment by NSPW to take all steps needed to avoid adverse impacts from the proposed project on “geographically important or scarce resources, such as . . . threatened or endangered species and ecologically important areas” identified in accordance with Wis. Admin. Code § PSC 4.20(2)(d)1, there is not an adequate basis for a FONSI determination under Wis. Stat. § 1.11.

The draft EA does not mention the policies adopted by every local jurisdiction impacted by the proposed project – policies which unanimously favor the proposed East Route over the West Route. The policy statements adopted by Bayfield County, the Cities of Bayfield and Washburn, and the Towns of Barksdale, Bayfield, Bayview, Eileen, and Washburn all express a clear preference for the existing transmission corridor, which is consistent with state statutes that prioritize siting transmission facilities in “[e]xisting utility corridors.” Wis. Stat. § 1.12(6)(a).

The draft EA must acknowledge these local policies favoring the East Route over the West Route -- and note the reasons that local government officials have identified as the basis for these policies. Local officials are concerned about impacts on “highly erodible soils, sensitive wetland and floodplain soils, woodland vegetation, and the increased risk of fire from a second line . . .” along the West Route, which would require 26 miles of new transmission right-of-way. PSC REF#: 367253. Local officials adopted these policies because they are also concerned about impacts on:

...the scenic area that would be affected by the West Option, including miles of rustic rural road travelled by auto, bicycle and hiking for purposes of recreational enjoyment by tourists and residents . . . seeking the natural beauty and the rural agricultural look and feel of the area.

Id. The draft EA does note that “[t]he visual impact resulting from building the new transmission line on the West Route . . . would create miles of new transmission line corridor, much of it adjacent

---

2 The policy statements adopted by the Bayfield County Board, the Bayfield and Washburn City Councils and the Barksdale, Bayfield, Bayview, Eileen and Washburn Town Boards have been submitted in this docket. PSC REF#: 367251-36758.
to roads running through forested areas that would be permanently cleared. PSC-DEA: page 5. However, the draft EA omits important details about the significant impact that the West Route would have on scenic and recreational resources, such as Bayfield County rustic roads – which pass through orchards and berry farms, forestlands, and provide panoramic vistas of Lake Superior and the Apostle Islands National Lakeshore.

Commission rules require environmental assessments to consider whether proposed project alternatives conflict with local policies. Wis. Admin. Code § PSC 4.20(2)(d)2. The draft EA does not comply with this Commission rule, because it fails to acknowledge the policies adopted by local jurisdictions where NSPW’s proposed second circuit transmission project would be located – all of which support the East Route over the West Route. The draft EA should be revised to accord due weight to these local policies and to append copies of the policy statements adopted by the Bayfield County Board, the Bayfield and Washburn City Councils and the Barksdale, Bayfield, Bayview, Eileen and Washburn Town Boards – which have been submitted in this docket as PSC REF#: 367251-36758.

The draft EA fails to acknowledge that only one of the project alternatives is consistent with the statute which prioritizes siting transmission facilities in “[e]xisting utility corridors” (Wis. Stat. § 1.12(6)(a)) and fails to adequately assess “[t]he cumulative effect” of the other project alternative, as required by Wis. Admin. Code § PSC 4.20(2)(d)2 and 8.

The draft EA recognizes that “the [West Route] new transmission line would be 26 miles . . . along a new transmission right-of-way” whereas the East Route would be “double-circuited with NSPW’s existing 34.5 kV transmission line, almost entirely within existing easements.” PSC-DEA: page 2. The discussion of the East Route in the draft EA also notes that “. . . the incremental change in the appearance of the existing ROW would [be] less than would result from building a new line on an entirely new corridor.” PSC-DEA: page 5. It is clear from this analysis that only one of the project alternatives is consistent with the statute which prioritizes siting transmission facilities in “[e]xisting utility corridors.” Wis. Stat. § 1.12(6)(a). The draft EA must acknowledge that fact, in accordance with the Commission’s requirement to consider “conflicts with federal state or local plans or policies.” Wis. Admin. Code § PSC 4.20(2)(d)2.

The draft EA also states that:

The visual impact resulting from building the new transmission line on the West Route . . . would create miles of new transmission line corridor, much of it adjacent to roads running through forested areas that would be permanently cleared. The existing transmission line in the East Route corridor would also remain, continuing to present visual impacts in the project area.”

PSC-DEA: page 5. While those statements are accurate, the draft EA does not expressly acknowledge the full “cumulative effect” of the proposed West Route, as required by Wis. Admin. Code § PSC 4.20(2)(d)8. The cumulative effects of the proposed West Route would not be limited
to visual effects of the West and East lines – but must also include additional environmental impacts associated with all necessary actions to maintain and operate the transmission line in the eastern corridor (which is 71-miles long and 50-60 years-old). PSC Ref#: 361046, page E-2. To determine the cumulative impacts of the West Route, the environmental assessment must include a more detailed analysis of all anticipated work required to keep the aging eastern transmission line in service over the 20-year planning horizon which NSPW identifies in the Application. PSC Ref#: 361046, page 20. A single reference to the existing line in the discussion of visual impacts associated with the West Route does not begin to capture the cumulative environmental impact of creating a new West Route and continuing to maintain and operate the existing line in the East Route corridor. Failure to include a full assessment of the cumulative impacts of the West Route not only violates Commission rules, it also defies logic -- because it is obvious that there would not be a reliable second-circuit over the next twenty years without continued operation and maintenance of the existing transmission line.

Conclusion

Clean Wisconsin objects to Commission staff’s preliminary FONSI determination, because it is based on a draft EA that is incomplete and fails to comply with requirements which govern EA preparation in at least three respects:

(1) the draft EA fails to state whether NSPW has committed to implement all of the best practices and mitigation options needed to avoid adverse impacts from the proposed project on “geographically important or scarce resources, such as . . . threatened or endangered species and ecologically important areas” identified in accordance with Wis. Admin. Code § PSC 4.20(2)(d)1;

(2) the draft EA fails to acknowledge that one of the proposed project alternatives conflicts with local policies, as required by Wis. Admin. Code § PSC 4.20(2)(d)2; and

(3) the draft EA fails to acknowledge that only one project alternative is consistent with the statute which prioritizes siting transmission facilities in “[e]xisting utility corridors” (Wis. Stat. § 1.12(6)(a)) and fails to adequately assess “[t]he cumulative effect” of the other project alternative, as required by Wis. Admin. Code § PSC 4.20(2)(d)2 and 8.

Because the draft EA fails to meet the minimum requirements of the applicable statute and administrative rules, the draft Environmental Assessment does not support a preliminary determination that the proposed project has no significant environmental impact and, therefore, that no environmental impact statement need be prepared.

Respectfully submitted this 7th day of October, 2019

/s/ Susan Hedman

Of Counsel, Clean Wisconsin