

Comments on Rural Utility Service Draft Supplemental Environmental Assessment for The Cardinal-Hickory Creek 345 kV Transmission Line Project, September 2023

INTRODUCTION

The Rural Utility Service (RUS), in conjunction with the U.S. Army Corps of Engineers (USACE), the U.S. Fish and Wildlife Service (USFWS), and the U.S. Environmental Protection Agency (USEPA) prepared an Environmental Impact Statement (EIS), for the Cardinal-Hickory Creek Transmission Line Project (CHC or the “Project”), finalized in October 2019. This Final EIS (FEIS) only considered routes that would cross the Upper Mississippi River National Wildlife and Fish Refuge (“Refuge”),¹ illustrating the Agency’s lack of serious consideration for environmental impacts and concerns.

Environmental groups challenged the FEIS in the Federal Western District Court. The RUS collaborated with the Utilities to game the proceeding by proposing a land transfer, less than a week before summary judgment motions were due in this case. The move to a land transfer proposal did nothing to affect the Projects’ compatibility with the National Wildlife Refuge System Improvement Act of 1997 (“Refuge Act”).² The RUS’ attempt to revisit the issue of environmental impacts and compliance with the National Environmental Protection Act (NEPA), in this Draft Supplemental Environmental Assessment (SEA) is simply a ruse, because the SEA only presents analyses for routes which cross the Refuge. Thus, the resulting SEA does not address impacts to the Refuge and ignores options that do not have these liabilities, simply moves them around (for example, establishment of a new route).

The following comments identify some of the major flaws with the SEA, with the assumption that it does not represent a serious attempt to resolve issues that have been litigated and may find their way back into the court system without an honest attempt to comply with relevant legislation.

¹ “All action alternatives would cross the Refuge.” Section 2.3.2.7. pdf page 131

² 16 U.S.C. §§ 668dd– 668ee

I. Notice for the RUS SEA was Insufficient and the Comment Period Too Short.

Public notice for the SEA was woefully inadequate. Parties to all relevant proceedings concerning CHC, should have been directly notified. All commenters on the original DEIS should have been directly notified. Newspaper notices should occur more than once and the RUS should issue a press release regarding the opportunity to comment, encouraging newspapers to write a short article publicizing the comment period.

Notice was inexcusably short. It is unreasonable for citizens to be expected to be able to read, contemplate and comment on a 164 (pdf) page document when the combined notification and comment period amounted to at most 3 weeks for most people. Initially, commenters were not able to access the SEA document online because the weblink provided in the newspaper notice did not work, and the public was not allowed to remove the hard copy of the SEA from the Dodgeville public library for 24 hours after it was posted. Further, it is unrealistic to expect people to transcribe a lengthy written link (where a single character error yields failure to reach the site). A short simple link should be listed in written materials, for example “CHCSEA,” where commenters could then be redirected to the actual SEA link.

II. Environment Review of CHC Compels the Preparation of an EIS by the RUS.

The importance of our wild spaces and natural ecosystems demand the full protection by our Federal Agencies and compliance with all relevant legislation. Given the controversy over this Project, the Public concern on multiple issues, and the value, beauty and uniqueness of Wisconsin’s Driftless Area, the highest standards should be applied. If the RUS is changing the nature of how the route is defined, an EIS is clearly needed. The original FEIS fell short of reasonably addressing public concerns and environmental impacts. This is an opportunity to right those shortfalls. Ms. Klopp respectfully requests that the RUS prepare an EIS that fairly and thoroughly address environmental (and other), impacts, alternatives to the Project, and concerns of the public.

III. CHC Violates the Refuge System Act.

The Refuge Act prohibits permitting a new use of a refuge, or expanding, renewing, or extending an existing use, unless it has been determined that it is a compatible use,³ including new or expanded transmission lines.⁴ The Refuge Act defines a compatible use as “a wildlife-dependent recreational use or any other use of a refuge that, in the sound professional judgment of the Director, will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge.”⁵

The USFWS attempted to “creatively” analyze compatibility by inappropriately considering the Project under sections of the law that do not apply. For example, rather than considering CHC as a new or expanded use, the USFWS used the “reauthorization of historic rights-of-way,” whose rules only require compliance with existing easements, assuming that no net loss of habitat would occur.⁶ In doing this, the USFWS determined that the giant CHC towers could be allowed as “maintenance” of the relatively diminutive preexisting 161 kV low voltage transmission system lines, and went on to make several assumptions that, on closer observation, would stretch the sensibilities of reasonable minds.⁷ The Compatibility Determination that resulted from this analysis acknowledged that after 30-50 years, reforestation of the existing transmission line would reduce fragmentation. While these USFWS actions occurred prior to the Current SEA during the course of litigation, they demonstrate the extent to which Agencies, endowed with the duty to protect the environment and serve the Public Interest, will go to enable the economic welfare of the utilities. In presenting an SEA for public comment that continues to ignore the incompatibility of CHC with Refuge Act requirements, the one can only conclude that there has been no change of course in compliance with the legal requirements governing the Refuge.

³ 16 U.S.C. § 668dd(d)(3)(A)(i)

⁴ 16 U.S.C. § 668dd(d)(1)(B)

⁵ 16 U.S.C. § 668ee(1)

⁶ 50 C.F.R. § 26.41(c); 603 FW § 2.11(H)(3), Response/Opening Brief of Plaintiffs-Appellees, Cross-Appellants National Wildlife Refuge Association, Driftless Area Land Conservancy, Wisconsin Wildlife Federation, and Defenders of Wildlife (“Environmental Group’s Response”) at 17, (U.S. Court of Appeals for the Seventh Circuit, Case Nos. 21-cv-00096-wmc & 21-cv-00306, consolidated)

⁷ Environmental Group’s Response at 18

In addition to the Refuge Act, consideration must be given to the Refuge's Comprehensive Conservation Plan ("CCP").⁸ There are two purposes in the CCP for which the agency's preferred CHC route through the Refuge is clearly contrary:

- "The purpose of land acquisition is to protect fish and wildlife "by promoting habitat connectivity." PA 220. "On a narrow, linear refuge [like the Upper Mississippi], land acquisition is a critical component of restoring habitat connectivity needed for the health of many species." Id. (emphasis added)." The USFWQ acknowledged that "the CHC transmission line would result in "habitat gaps and forest fragmentation," IA 1162, and "loss, degradation, and/or fragmentation of breeding, rearing, foraging, and dispersal habitats." IA 1163. A land transfer that exacerbates habitat fragmentation is contrary to the CCP." (Environmental Group's Response at 41-42)
- "To "maintain and improve the scenic qualities and wild character of the Upper Mississippi River Refuge." PA 215. The USFWS admits that "that the CHC transmission line will be "significantly more visible to Refuge visitors," and will have "[n]egative impacts to the visual qualities of the Refuge." IA 1161. For that reason as well, whether by easement, or grant of fee simple title, allowing the CHC transmission line's planned route violates the CCP's express provisions, and therefore violates the Refuge Act." (Environmental Group's Response at 42)

While these concerns were presented during recent litigation, they remain as valid now as when they were initially raised. The Public needs the Agencies involved in the review and permitting of CHC to stand for the environment and wildlife, rather than acquiescing to Utility interests, especially where need for the Project was not definitively established and alternatives inadequately considered.

⁸ "The Refuge Act requires each Refuge to complete a CCP, 16 U.S.C. § 668dd(e)(1)(A), and then requires FWS to manage each Refuge "in a manner consistent with the plan." Id. § 668dd(e)(1)(E). Violating the CCP violates the Act. Cf. *Native Ecosystems Council v. U.S. Forest Service*, 418 F.3d 953, 962 (9th Cir. 2005)" Environmental Group's Response at 41

IV. The SEA Does Not Reasonably Investigate Alternatives to the Project.

Both the SEA and its predecessor, the FEIS failed to seriously consider alternatives. Since the Refuge Act precludes CHC, both the previous and current environmental review processes should have focused on alternatives that did not involve crossing the refuge. A short list of possibilities includes:

- **BWARA:** The most notable alternative that should have been considered was the Base with Asset Renewal Alternative,⁹ developed by the Public Service Commission of Wisconsin (PSCW), staff engineers. This alternative evolved out of the reliability analysis of the Project, when PSCW engineers observed that three low-voltage transmission lines projected to require asset renewal by the years 2024, 2029 and 2030, could be rebuilt, and with the higher MVA rating would more than double the capacity of the existing river crossing and alleviate the projected overloads and NERC planning violations across these lines.¹⁰ The cost of this alternative would be \$897,474,¹¹ less than one sixth the cost of CHC and it requires no river or Refuge crossing whatsoever.
- **Power's Optimized NTA:** S.O.U.L. of Wisconsin expert, Powers, designed an optimized Non-Transmission Alternative (NTA),¹² at two different budget levels, \$67 million and \$177 million. This alternative, also required no river crossing or Refuge crossing, outperformed the CHC route that was approved by the PSCW.
- **Quanta NTA:** Applicants expert, Dr. Chao, designed a battery storage NTA to be sited at the Stoneman site. Dr. Chao concluded, based on a preliminary analysis, that a non-transmission alternative solution can provide near-identical functionality as the Cardinal Hickory Creek 345 kV transmission line at a significantly lower cost than the Applicant's proposed solution. This alternative, also required no river crossing or Refuge crossing.
- **Alternatives Routes Eliminated in RUS FEIS:** The original (2019) RUS FEIS identified 5 Mississippi River crossing *Alternative Transmission Line Corridors* that were

⁹ Direct-PSC-Vedvik-14-19 PSC REF#: 365153, PSCW FEIS at 90-91, 94-95 PSC REF#:366195

¹⁰ Direct-PSC-Vedvik-14-15 PSC REF#: 365153

¹¹ Direct-PSC-Vedvik-19 PSC REF#: 365153

¹² Direct-SOUL-Powers-r2- 25-31 PSC REF#: 370370

not carried forward for detailed analysis. These are compared in Table 2.2-2, RUS FEIS at 55.

Of the six alternative routes identified in the original RUS FEIS, routes 1-5 all use the existing 161 kV transmission line route, avoiding a new transmission corridor and meeting all of the criteria listed as reasons for choosing alternative 6, addressing resource impacts and mitigating habitat fragmentation within the Refuge, except that they do not align with the route ordered by the PSCW on September 26, 2019. The RUS provides no explanation how citing PSCW preference with maximized environmental impacts outside of PSCW jurisdiction qualifies as RUS environmental criteria. While alternatives that cross the Refuge are not compatible with the Refuge Act, alternatives 1-5 would be preferable to alternative 6 because they do not introduce a new corridor to the Refuge.

V. The RUS has failed to represent the Public Interest

The RUS and the assisting agencies, USFW, USEPS and USACE have the responsibility to represent the Public's Interests, which necessitates abiding by required law, protecting the environment, addressing public concerns and using objective scientific methods to analyze and compare alternatives as part of the NEPA process. Finding ways to avoid or redefine Project characteristics so that they can be remolded to achieve a result that suits for profit utilities does not serve the Public Interest or provide due process for citizens. The solution to this is to go back and complete the environmental review with integrity based on science, objectively and fairly.

Dated this 22nd day of September, 2023.

Respectfully submitted,

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