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Public Service Commission of Wisconsin
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PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Wisconsin Gas LLC, as a Gas Public Utility, for Authority to Construct and Place in Service its Germantown-Mequon High Pressure Gas Main Replacement Project in the Village of Germantown, Washington County, and the City of Mequon, Ozaukee County, Wisconsin	6650-CG-243

CONCURRENCE AND DISSENT OF CHAIRPERSON ELLEN NOWAK

While I join in the Commission's determination that the project is needed, I disagree with the route selected by the Commission. I believe Route C is a more reasonable route selection over the selected Route A as it uses, to the greatest extent practicable, the existing easement, and minimizes the safety concerns presented by Route A.

My colleagues selected Route A because it was a lower-cost option, allegedly had fewer environmental impacts, garnered more support, and avoided a potential legal dispute over the interpretation of the language of the existing easement Wisconsin Gas (WG) has in the Mequon Nature Preserve (MNP). (Final Decision, at 9.) While Route C is more expensive than Route A, the cost difference is modest considering the overall project costs. In my opinion, these added costs are offset by the safety benefits that result from using the existing cross-country easement, including the easement in the MNP.[1]

[1] The Commission is not obligated to select the least cost alternative. In fact, earlier this year, the Commission selected a route that was significantly more expensive than several of the alternatives because it avoided environmental and landowner impacts and, through the effective use of existing right-of-way, impacted fewer acres of new right-of-way. *See Joint Application of American Transmission Company LLC and Northern States Power–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*, Docket No. 5-CE-142 (PSC REF#: 229699, at 5).

As to the environmental concerns,[2] I respectfully submit that the potential environmental impacts raised by MNP and other supporters of Route A are over-stated, lack technical support in the record, and are not corroborated by science or the Wisconsin Department of Natural Resources (DNR). It bears noting that the MNP had no reasonable expectation that the wetland and other projects knowingly placed in an existing utility right-of-way (ROW) would be protected. The purpose of a ROW is to maintain access.

To the extent that some minimal environmental impact could occur, those concerns would have been mitigated through the use of directional drilling. MNP and others contend that, notwithstanding the use of any directional drilling, older trees and associated root systems would be damaged and somehow the clay substrate in the restored wetland area could be impacted.

There is no support in the record that older trees would be damaged if Route C were selected. Tree root maximum depth is 5 to 6 feet, with most critical roots in 3 feet or less. Directional drilling proceeds underneath this critical root zone. Typical construction would have directional drilling at least 6 feet, possibly up to 15 feet or greater in depth. The only impact to trees would have been if they had to be cleared as part of maintaining the ROW for safety inspections, typically no more than 10 feet cleared on either side of the pipe. Based upon Commission staff's inspection of the site and as long as WG would have installed pipe to the north of the existing pipeline, as shown on the maps, this would not include the older specimen trees. (Staff Environmental Assessment, page 9, PSC REF 273731.)

[2] While there may be .62 less acres of wetland impacted by Route A, Route A has additional archeological sites not present on Route C that will require greater regulatory oversight and could result in delays and increased costs.

Similarly, there is no support for the contention that there would be damage to the clay substrate and the risk of draining the wetland if Route C were selected. Commission staff investigated regulatory documents on the use of directional drilling, and discussed this assertion with DNR staff. Neither Commission staff nor DNR staff have any knowledge of any situation where the type of drainage activity described by MNP has occurred as a result of directional drilling. Notably, MNP has provided no cases or evidence that this is a legitimate concern. There are abundant examples of where this method has been used below a range of hydrologic features from rivers, to streams, to wetlands of many types without the damage MNP claims would result.

Finally, I think it is telling that the DNR agreed that Route C was permittable, and did not raise or endorse any of the purported environmental concerns raised by those objecting to Route C. While it is true, as cited by the Commission, Route A does have slightly less impacted wetlands (.62 acres) than Route C, that size is *de minimis*. The slightly greater impacts with Route C are offset by the numerous benefits of using the existing easement to the maximum extent practicable.

On balance and based upon the paucity of record evidence to substantiate the stated environmental concerns with Route C, I am unwilling to support Route A. While WG attempted to address the safety concerns raised by Commission staff, we know that accidents happen despite safety protocols—especially in areas where development or road construction is highly likely to occur. Those same risks are not present in the MNP, which for me, makes Route C a much better choice.

With regard to differing interpretations over the language of the existing easement, let me first express my surprise and disappointment that WG, as the easement holder, argued against its own interests and in favor of a very narrow reading of the easement. That is highly unusual, and one has to wonder whether some other interest, as opposed to sound legal analysis, dictated its interpretation. What is further troubling is that, but for Commission staff, Route C would have never been on the table. I note that on route selection one thing my colleagues and I do agree on is that Route B—WG's proposed alternative—was by far and away the least desirable alternative among the three we ultimately had before us.

I am also disappointed that WG did not, over the years, monitor and protect its easement area from encroachment. Many of the stated (though unproven) environmental concerns with using the existing easement from the MNP was the potential risks to the wetland area that was restored right on top of the easement and other vegetation allowed to grow over the years in this area. If WG had enforced its rights under the existing easement, we likely would not be discussing many of the concerns now raised.

This is not the first, and likely not the last time, someone who opposes the siting of utility facilities on their property might threaten legal action. It is also not uncommon for there to be widespread opposition to a particular route. Neither of these factors should dictate Commission action or inaction. The Commission is tasked with weighing a variety of factors and making tough, and oftentimes unpopular decisions on route selection. Having weighed all of these factors, I respectfully disagree with the Commission's selection of Route A over Route C.