

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

NATIONAL WILDLIFE REFUGE ASSOCIATION,
DRIFTLESS AREA LAND CONSERVANCY,
WISCONSIN WILDLIFE FEDERATION, and
DEFENDERS OF WILDLIFE

Plaintiffs,

v.

RURAL UTILITIES SERVICE,
CHRISTOPHER MCLEAN, Acting Administrator, Rural
Utilities Service,
UNITED STATES FISH AND WILDLIFE SERVICE,
CHARLES WOOLEY, Midwest Regional Director, and
SABRINA CHANDLER, Manager, Upper Mississippi River
National Wildlife and Fish Refuge,

Defendants.

NO. _____

COMPLAINT

Plaintiffs NATIONAL WILDLIFE REFUGE ASSOCIATION, DRIFTLESS AREA
LAND CONSERVANCY, WISCONSIN WILDLIFE FEDERATION, and DEFENDERS OF
WILDLIFE for their Complaint allege and state as follows:

INTRODUCTION

1. This is a civil action for declaratory and injunctive relief under the judicial review provisions of the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706, for the Defendants’ violations of the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et

seq., and the National Wildlife Refuge System Improvement Act of 1997 (“National Refuge Act”), 16 U.S.C. §§ 668dd–668ee.

2. This lawsuit involves the proposed controversial 101-mile Cardinal-Hickory Creek (“CHC”) high-voltage transmission line with towers up to 20 stories high. The huge CHC transmission line is proposed to run on a wide path from Dubuque County, Iowa, directly through the protected Upper Mississippi River National Wildlife and Fish Refuge (“the Upper Mississippi Refuge”), and then through southwest Wisconsin’s scenic Driftless Area, the Military Ridge Prairie Heritage Area, the Black Earth Creek Conservation Area, and other vital natural resources, family farms, wetlands, parklands, and communities before ending at a substation in Middleton, Wisconsin.

3. If allowed to proceed, the CHC transmission line will have significant negative impacts on the environment, on wildlife, on property values, on family farms and agriculture, on the outdoor recreation and tourism industry, on protected public lands, and on private conservation lands both near the Mississippi River and along its entire proposed length.

4. This lawsuit challenges two categories of federal agency actions related to the CHC transmission line that were unlawful and should be set aside under the APA as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; and unsupported by substantial evidence. 5 U.S.C. § 706(2).

5. First, Defendant Rural Utilities Service (“RUS”), which is part of the U.S. Department of Agriculture (“USDA”), approved an environmental impact statement (“EIS”) for the CHC transmission line that did not comply with the requirements of NEPA, 42 U.S.C. § 4321 et seq. The EIS improperly defined the purpose and need too narrowly for the project and did not

fully and fairly evaluate a proper range of alternatives. The EIS did not “rigorously explore and objectively evaluate” all reasonable alternatives. The EIS did not fully and fairly analyze “all direct, indirect, and cumulative impacts” of the project, in light of “all past, present, and reasonably foreseeable future” transmission and other development projects in the area. Furthermore, the EIS did not adequately consider greenhouse gas emissions and potential climate impacts from the project and the fossil fuel-generated electricity that it would carry.

6. Second, Defendant U.S. Fish and Wildlife Service (“USFWS”) granted a right-of-way authorization for the CHC transmission line to cross the protected Upper Mississippi Refuge even though the project is not a “compatible use” of the Refuge under the National Refuge Act, 16 U.S.C. §§ 668dd–668ee.

JURISDICTION AND VENUE

7. This court has federal question jurisdiction under 28 U.S.C. § 1331 because this action presents a controversy under federal laws including NEPA, the National Refuge Act, and the APA, and has jurisdiction under 28 U.S.C. § 1346, because this is an action against the federal government. This court has authority to grant the requested relief under 28 U.S.C. §§ 2201 (declaratory relief) and 2202 (injunctive relief).

8. Almost all of the CHC transmission line is proposed to be built in the Western District of Wisconsin, and therefore this is “a judicial district in which ... a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated” within the meaning of 28 U.S.C. § 1391(e)(1). There is also another related lawsuit involving the proposed CHC transmission line that is pending in the Western District of Wisconsin. Plaintiffs Driftless Area Land Conservancy and Wisconsin

Wildlife Federation also reside in this judicial district. Venue is therefore appropriate in this district under 28 U.S.C. § 1391.

9. This action is timely under Title 41 of the FAST Act, 42 U.S.C. § 4370m-6(a)(1)(A) and under 28 U.S.C. § 2401.

PARTIES

10. Plaintiff National Wildlife Refuge Association (“NWRA”) is a not-for-profit organization focused exclusively on protecting and promoting the 850 million-acre National Wildlife Refuge System, the world’s largest network of lands and waters set aside for wildlife conservation. Founded in 1975, NWRA’s mission is to conserve America’s wildlife heritage for future generations through strategic programs that enhance the National Wildlife Refuge System and the landscapes beyond its boundaries. Friends of Pool 9 and Friends of the Refuge - Mississippi River Pools 7 & 8, two of the volunteer organizations which support the Upper Mississippi Refuge, are affiliates and supporters of the National Wildlife Refuge Association.

11. NWRA has members who use and enjoy the Upper Mississippi Refuge and the extensive natural resources in Wisconsin’s Driftless Area and who will be injured in fact if the CHC transmission line is constructed.

12. Plaintiff Driftless Area Land Conservancy (“DALC”) is a not-for-profit land trust and conservation organization, headquartered in Dodgeville, Wisconsin, which is dedicated to protecting sensitive lands, vital conservation areas, scenic landscapes, historic properties, and natural resources in Wisconsin’s Driftless Area. DALC and its members maintain and enhance the health, diversity, and beauty of Wisconsin’s natural and agricultural landscape through permanent land protection and restoration, and other conservation, natural resources protection, and

preservation actions. DALC is a nationally certified land trust that was recognized as the Wisconsin Land Conservancy of the Year in 2017 by Gathering Waters, Wisconsin's Alliance for Land Trusts.

13. Plaintiff DALC has many local members who live, work, play, and own real property near and in the proposed right-of-way for the proposed CHC transmission line, and who will be injured in fact if the CHC transmission line is constructed.

14. Plaintiff DALC's members use and enjoy the Upper Mississippi Refuge and the extensive natural resources in Wisconsin's Driftless Area.

15. Plaintiff DALC also owns conservation easements throughout the Driftless Area, including an easement on the historic Thomas Stone Barn property west of Barneveld, Wisconsin. The proposed CHC right-of-way would cross DALC's easement, which covers property on both the north and south sides of the road, interfere with that easement, and impair its ecological, aesthetic, and cultural value.

16. Construction of the CHC transmission line would frustrate DALC's mission of conserving natural and historical lands in the Driftless Area and, in particular, its mission to conserve the lands on which it holds conservation easements.

17. Plaintiff Wisconsin Wildlife Federation ("WWF") is a not-for-profit conservation organization dedicated to protecting wildlife habitat, conservation lands and waters, and natural resources throughout the State of Wisconsin on behalf of the hunters, anglers, trappers, and other individuals who are WWF members. WWF's members use and enjoy the Upper Mississippi Refuge and the extensive natural resources in Wisconsin's Driftless Area. The CHC transmission line will compromise the long-term sustainability of fish and wildlife populations, clean air, clean

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