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Public Service Commission of Wisconsin
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Chairperson Valcq and Commissioners,

On behalf of the citizens of Superior, Wisconsin, I respectfully request that you reopen and reevaluate the Certificate of Public Convenience and Necessity (CPCN) issued on behalf of the Nemadji Trail Energy Center Project (NTEC).

The PSC released their final decision to issue a CPCN for NTEC in January of 2020. The CPCN authorized the project applicants to construct a 625 MW natural gas “merchant” plant on the shoreline of the Nemadji River in Superior, Wisconsin. At the time of the application and up to the point of decision by the PSC most local leaders, including myself supported the project either because of the assumed economic benefits of such a large-scale construction project, the environmental benefits of enabling renewable energy, or both. We largely ignored or dismissed the very real environmental dangers created by the project and consequently lost the opportunity to evaluate for ourselves the true impact of NTEC on the City of Superior and our citizens. In the years since the PSC issued the CPCN many of us have come to oppose the project partly out of a recognition that the project was never in the public interest but also because many of the underlying facts that supported the construction of NTEC have changed.

NTEC was controversial from its inception. The facts were contested throughout the project and the final vote was split. The PSC, acknowledging the very real concerns raised during the application process, imposed several conditions and required communication from the applicants if the project underwent changes of design or ownership. The language of the decision implies that the PSC would undertake monitor the project closely. The decision does not state what action the PSC would take in the event of major changes, but the cautious nature of the decision implies that the PSC was prepared to intervene if the plans or surrounding circumstances merited further review.

The project, the site, the community, and the world have changed in meaningful ways since January of 2020. The final decision of the PSC is no longer a true representation of the facts surrounding the construction of NTEC. The citizens of Superior and Wisconsin deserve further review of this controversial and potentially harmful project. I request that the PSC revisit this decision so that you may fully consider the following changes.

1. The basic design of the project has changed from a water-cooled plant to an air-cooled plant. The PSC order reads, “Should the scope, design or location of the project change significantly, the applicants shall notify the Commission within 30 days of becoming aware of possible changes.” While the applicants consider this change an improvement, no intervenor has been afforded an opportunity to speak to the merits or potential impacts of the new design.
2. The ownership of the project has changed. Since the final decision in 2020, Minnesota Power has sold a substantial portion of their ownership stake to Basin Electric. The PSC order reads, “If the applicants enter into any arrangement with another party regarding ownership of the project, applicants shall provide prior notice to the Commission.” The PSC’s requirements for

notification about design and ownership changes reflect the PSC's concern that the project is built as specified. While the decision does not specify what action the PSC must take once they become aware of these changes, these are significant events in the development of NTEC that merit close examination and deserve further public comment and the opportunity for intervention.

3. The feasibility and reliability of renewable resources have improved dramatically in the years since the issuance of the CPCN. In its Finding of Fact, the decision states "Energy conservation, renewable resources, or other energy priorities listed in Wis. Stat. §§ 1.12 and 196.025, or their combination, are not cost-effective, technically feasible, or environmentally sound alternatives to the proposed project." This is no longer a fact. It was, however, a critical assumption in the development of the final decision. In addition to technical advances in the generation and storage of renewable energy, the passage of the Bipartisan Infrastructure Act supplied historic amounts of funding to the development of renewable energy, making this form of generation the predominant form of new energy resources and likely rendering new fossil fuel resources redundant and obsolete. Furthermore, the growing availability of renewable resources and energy storage negates two of the applicants three stated purposes for the project, namely that the project will "provide energy when intermittent renewables are not" and that the project will "provide reliability benefits". If neither of these is no longer true, then only the third purpose remains to justify the plant, that it will "provide market opportunities". The PSC must consider that the nature of the energy market has rapidly and permanently changed in the years since the issuance of the CPCN and reevaluate whether this project still meets the requirements of the Energy Priorities Law. If the plant offers no environmental benefits at all, and it likely does not, then the citizens of Superior deserve a new review to determine if this project remains in the public interest.

4. The project no longer enjoys public support. At the time of the decision, the applicants boasted unanimous support from the Superior City Council. The decision itself references the support of the councilor representing the area. This councilor, Jenny Van Sickle, still represents the area but now opposes the project. In the last public comment period, opened by the Rural Utility Service in the summer and fall of 2023, four city councilors (including Councilor Van Sickle) and I issued public comments opposing the construction of the plant. Only one councilor issued a letter supporting the construction. The city of Superior Comprehensive Plan, adopted in January of 2022, includes the public comments that show significant opposition to new industrial activity along Superior's waterfront.

5. Tribal lands are now impacted by the project. The project site is approximately 500 ft from the site of a mass grave containing the remains of dozens of Lake Superior Ojibwe people. In the summer of 2022, the City of Superior formally transferred this land to the Fond du Lac Band of Ojibwe, who have since expressed their strong opposition to the project. The PSC must consider their objections not only as a community with a strong cultural and historic interest in the preservation of the site, but now also as an adjacent landowner.

6. The final decision and order are not clear about the right of the city of Superior to enforce its ordinances. While Wisconsin statute 196.491(3)(i) preempts the ability of the city to enforce our ordinances relating to a project for which a CPCN has been issued, the PSC's decision on the NTEC project seems to require, and the applicants seem to concede, that the city plays a regulatory role in the process and that all of our required approvals, possibly beyond mere permits, must be received by the applicants before construction can begin. Because the decision presumes that the city would grant the necessary changes to the zoning code and vacate the necessary streets to allow the project, and because the city is now very unlikely to do so, the PSC should consider more carefully whether to exercise its authority to override our ordinances or whether to allow us to enforce them. The final decision only allows the project to proceed if all

relevant authorities consent. We do not. The PSC must therefore undertake a more careful analysis of the need for the project.

The final decision issued by the PSC sought to answer a single question: Is NTEC in the public interest? The commission correctly proceeded with great care in answering that question. The PSC repeatedly acknowledged the many risks and concerns associated with the project and issued a highly conditional Certificate of Public Convenience and Necessity. In doing so, the PSC clearly demonstrated that they had an obligation to continue to monitor and review this project. Facts change with time. Values, priorities, and the needs of a changing world evolve. The long delay in constructing this project has largely been caused by the many expressions of concern by individuals and agencies throughout Wisconsin and the United States. This delay has given time for our community and our world to change in ways that may make the project not only unnecessary, but harmful to our shared goals. If the Commissioners feel that it is likely or even possible that a current review of the facts underlying their decision have changed enough that the project is no longer in the public interest, they have a duty to the people of Wisconsin to review those facts lest they allow a project to proceed that could harm the people of our state.

I again respectfully request that the Public Service Commission of Wisconsin conduct a new review of the application for the Nemadji Trail Energy Center and issue a new and current decision.

Sincerely,



Mayor

Jim Paine
Mayor
City of Superior