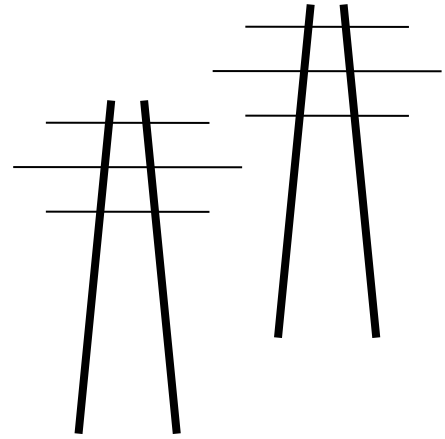


# Legalelectric, Inc.

**Carol Overland** Attorney at Law, MN #254617  
Energy Consultant—Transmission, Power Plants, Nuclear Waste  
overland@legalelectric.org

1110 West Avenue  
Red Wing, Minnesota 55066  
612.227.8638

P.O. Box 69  
Port Penn, Delaware 19731  
302.834.3466



July 5, 2016

City Plan Commission  
City of La Crosse  
400 La Crosse Street  
La Crosse, WI 54601

## In Re: **NO CAPX 2020 COMMENT ON AIRPORT OVERLAY AMENDMENT**

To the City Plan Commission:

Please accept this as a Comment on the proposed Amendments to the Airport Overlay Zoning District made on behalf of No CapX 2020. No CapX 2020 has been actively challenging the CapX 2020 transmission buildout for over a decade. Dairyland’s Q-1 line has been an integral part of the buildout, and the Q-1 route and service was considered an alternative in both the Hampton – La Crosse and Badger Coulee projects. For this reason, No CapX continues to weigh in on related matters.

There are statements in the “City Plan Commission Report” that are disturbing. For example, “The Overlay District will likely have no impact on Dairyland Power’s environmental assessment.”

- What is the basis for that statement?
- Has the City of La Crosse reviewed and filed Comments on the RUS EA?
- Has the Airport Commission reviewed and filed Comments on the RUS EA?
- Have each of you reviewed the RUS EA?

### **Amending the AOZD would eliminate need to request Variance to AOZD – yet a Variance requires the applicant demonstrate a Variance is needed based on broad factors**

In making this decision regarding the AOZD amendments, you might reasonably think that this is only about the Airport Overlay Zoning District. However, it has the effect of exempting the Dairyland transmission project from many variance requests. Why does this matter? It matters because a variance requires the applicant demonstrate a high level of need, specifically, that there are unique characteristics that make it difficult or impossible to meet the ordinance requirements, that a variance is in the public interest, and that there is an extreme and unnecessary hardship. A “public interest” determination requires examination of factors including **Public health, safety, and welfare, natural scenic beauty , minimization of property damages, and provision of efficient public facilities**, and whether **achievement of eventual compliance for nonconforming uses, structures, and lots** is possible -- factors far beyond a narrow view of “Airport” considerations.

Is it your intent to allow Dairyland, and other future project proposers, such as Xcel, to circumvent these considerations?

For your information, the RUS EA contains **NO MENTION OF PROPOSED AMENDMENTS TO AOZD**. The EA only references the 2011 AOZD, and does not reference the proposed amendments. The proposed AOZD amendments were included in Comments provided by No CapX 2020.

The three excerpts below in different font are taken from the No CapX 2020 Comment to the USDA's Rural Utilities Service regarding the City of La Crosse and the AOZD:

**1) Transmission Structures**

- The EA inexplicably states, on p.1-5, that “single pole structures would be used to meet Federal Aviation Administration (FAA) and Cities of La Crosse and Onalaska height limitations...” but the EA on the previous page states that single pole steel structures would generally be taller. The EA states that there would be 54 poles from 95 – 115 feet and 4 Y frame structures 65 feet tall – those 65 foot tall Y structures are much lower than 95-115 foot monopoles.

**2) FAA and Cities of La Crosse and Onalaska Airport Overlay Zoning**

The EA is inadequate because it does not accurately depict the machinations that Dairyland is going through to change the AOZD. EA p. 3-6. (Map excluded)

- The EA notes that “The city’s compliance with the ordinance affects their ability to get public funding.” This statement is not substantiated.
- If this above statement is correct, changing the AOZD to facilitate this transmission project, which does not comply with the ordinance as written, and which would apply to any future project, would detrimentally affect the cities’ ability to get public funding.
- The EA is inadequate because it does not clearly state how many structures, as proposed, would be prohibited by the AOZD.
- The EA is inadequate because it does not disclose the proposed amendments to the AOZD at Dairyland’s behest, which would allow the higher structures not allowed under the existing AOZD, and allow Dairyland to circumvent the AOZD variance process. As Dairyland states, “it is doubtful that the cities would approve these additional variances to the AOZD restrictions.” EA p. 3-6.

**3) City of La Crosse**

This Dairyland Q-1 line, and also Xcel’s Mayfair line, and Xcel’s 69 kV transmission line along Hwy. 35, impinge on the airport. La Crosse is in the process of amending the Airport Overlay District – if so, that establishes a precedent which would open the doors to future requests. The EA should reflect the broader implications of amending the ordinance for Dairyland, knowing that other projects are pending in the area, and mindful of the purpose of the AOZD – protection of the public safety and the community’s investment in the La Crosse Airport.

- The EA is inadequate because it does not fully address transmission line impacts to the airport. The La Crosse airport and transmission impacts were significant issues in the Badger Coulee transmission proceeding at the Public Service Commission (PSC Docket 05-CE-142) where Onalaska provided Direct and Rebuttal testimony regarding that project’s proposed route through this area on the La Crosse airport. That issue is one reason the “southern route” was not chosen.
- The EA should more thoroughly address transmission impacts to users of airport – what this transmission line and the proposed AOZD amendment mean for pilots, choice of airport, and safety of flying public.
- The EA should address that the transmission lines through the AOZD were installed with no record of petition for variance, appeal, or special exception for the existing transmission poles, in some cases because the transmission line preceded the AOZD. Now, the AOZD is in place, and compliance should be expected.
- The EA does not address NESC code and whether it is compatible or whether it conflicts with La Crosse Airport Overlay restrictions.
- The EA is inadequate because there is no plan and profile and computer generated photos showing grading, clearing, access roads and other construction activities necessary to install and maintain transmission line and corridor.
- The EA is inadequate because lines should be undergrounded along this stretch where it would interfere with the airport – this was not part of the alternatives analysis. Undergrounding has been accomplished by Xcel in scenic locations, i.e., up and down the rocky bluffs of the Wild and Scenic St. Croix River and through city of St. Croix Falls. Also used in city where impacts on residents unacceptable, i.e., Hiawatha Project along 28<sup>th</sup> St. in Phillips neighborhood of Minneapolis. Undergrounding for airport safety is reasonable.
- Undergrounding of this stretch would eliminate the conflict with La Crosse airport restrictions and would comply with Airport Overlay District restrictions
- Undergrounding of this stretch would comply with National Electric Safety Code, and NESC as adopted by Wisconsin.
- The EA is inadequate because there is no demonstration that the project meets the criteria for a variance, leading to a presumption that it could not meet the three step test:
  - **Unique Characteristics of the Area** – in this case, these unique characteristics of the built up and crowded corridor with material construction challenges s that this area is not appropriate for a transmission line corridor, and that rather than a variance to allow transmission, an alternative should be found.
  - **No Harm to Public Interest** -- Public interest considerations listed in the EA are applicable to this project:
    - **Public health, safety, and welfare** - transmission line through AOZD district and over homes and businesses

- **Natural scenic beauty** - detrimental aesthetic impacts on viewshed by transmission line and clear cutting and grading in and around people's homes and businesses.
  - **Minimization of property damages** – no mitigation of cutting of trees and vegetation that cannot be regrown in a transmission easement
  - **Provision of efficient public facilities...** Transmission line would detracts from public facilities, particularly the La Crosse Airport
  - **Achievement of eventual compliance for nonconforming uses, structures, and lots** The existing transmission line, with no record of a variance, is likely now a nonconforming uses, as are the structures. Granting a variance would make it conforming, technically, but that is a paper solution to a physical nonconformity of project to public intent of land use and land use conflict between project and the public's investment and construction of the Airport.
- **Unnecessary Hardship.** There is no specific claim of an unnecessary hardship, though without the variance, Dairyland could not build the project as proposed.

If Dairyland were to apply for the many variances it would require to build the transmission line under the existing AOZD, as stated in the EA:

**“it is doubtful that the cities would approve these additional variances to the AOZD restrictions.”**

EA p. 3-6. This is a significant issue that was addressed in the EA and should be seriously considered by RUS in making its decision whether to fund the project.

- The EA is inadequate because there is no record of an airport Communication Facility Impact Study.
- The EA is inadequate because there is no record in the EA of Comments of the WisDOT Bureau of Aeronautics.

On behalf of No CapX 2020, and in light of the Variance Requirements, and the No CapX 2020 EA Comments above, I request that the City Plan Commission reject the amendments to the Airport Overlay Zoning District.

Thank you for the opportunity to submit these comments on behalf of No CapX 2020,, and thank you for your consideration.

Very truly yours,



Carol A. Overland  
Attorney at Law  
for No CapX 2020

For the record, the USDA's RUS Environmental Assessment contains 65 instances of "Airport" regarding the La Crosse airport and the Airport Overlay Zoning District. Logically, the Overlay District will have an impact, and must be considered, in the RUS Environmental Assessment.

The EA information regarding the AOZD is based on the **presumption** that Dairyland intends to meet the zoning requirements, not circumvent the AOZD to allow Dairyland's structures:

**DPC will continue to coordinate with local governmental units with jurisdiction over airports in the vicinity of the Project to determine if permits are required.**

RUS EA, p, 5-15. The EA, released in May, 2016, states:

DPC anticipates applying for all necessary federal, state, and county permits for the Project **in late 2015** and would provide RUS with acquired permits as they are received.

RUS EA, p. 6-1 (emphasis added). Obviously, this has not occurred. Further, the EA states:

For the reasons described in Section 3.3, DPC would use Y-frame steel structures for the 0.6 mile section that crosses the La Crosse River floodplain. Single-pole steel structures would be used for the remaining 8.4 miles of the Project, to allow DPC to double circuit with the N-222 69 kV line for approximately two miles and to meet Federal Aviation Administration (FAA) and Cities of La Crosse and Onalaska height limitations established by the Airport Overlay Zoning District (AOZD) near the La Crosse Regional Airport.

RUS EA, p. 1-5. The EA also addresses iterations of La Crosse's AOZD:

The City of La Crosse issued a draft Zoning Ordinance in October 2013. The La Crosse Municipal Airport Land Use Plan (adopted January 2011) was developed to be used with Comprehensive Plan and to assist local planning and zoning administrators with the implementation and enforcement of the Airport Zoning Overlay. The Project falls within the AOZD Ordinance of the La Crosse Municipal Airport. It also crosses Commercial, Right-of-Way, Agricultural, Single Family and Multiple Dwelling zoning districts.

The City of La Crosse AOZD imposes land use controls, in addition to underlying zoning classifications, to maintain a compatible relationship between airport operations and existing and future land uses within the three mile jurisdictional boundary as define in Section (A) (6) (a). The boundaries of each district are shown on the "*La Crosse Municipal Airport Overlay Zoning District Map, La Crosse, Wisconsin*" dated December 9, 2010 or as amended, and the height restrictions are established on the "*Height Limitations Zoning Map, La Crosse Municipal Airport, La Crosse, Wisconsin.*" The elevation numbers shown on the height limitations map are the maximum permissible height above mean sea level (msl) that buildings, structures, objects, or vegetation in that cell shall not exceed. **Figure 5** identifies this area in relation to the Project.

RUS EA, p. 4-5.