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October 16, 2025

VIA ELECTRONIC MAIL:

Mr. Zac Tretow
American Transmission Company
ztretow@atcllc.com

***RE: ATC's Proposed Ozaukee County Distribution Interconnection
Project - Vantage Data Center***

Dear Mr. Tretow:

We represent Tom and Mary Uttech, who reside at 4305 County Road O in the Town of Saukville, Wisconsin (the "Property"). ATC's "candidate route" for the proposed Ozaukee County Distribution Interconnection Project ("the Project") will cut directly through the Uttechs' property. The purpose of the Project is to benefit one private business, Vantage Data Centers, which is constructing a multi-phase, 3.5 gigawatt hyperscale data center (the "Data Center") in Port Washington, just north of Milwaukee. The Data Center is just one of several such centers planned for Wisconsin, and hundreds more nationally.

We write today to identify several legal concerns with the Project that our organization will be fully engaged in on behalf of our clients.

The Uttechs' Property

Tom and Mary Uttech have lived on the Property for decades. It is a gem: a 52-acre landscape of gentle hills, scenic vistas, hardwood groves, and seasonal marshes that support a diversity of native flora and fauna. The Property sits just west of the Milwaukee River, the Blue Heron Wildlife Sanctuary, and the Tendick Nature Park.

This land not only serves as the Uttech family's residence, but also as the studio of Mr. Uttech, a nationally renowned Wisconsin landscape painter. Mr. Uttech's paintings, often inspired by the unspoiled wilderness of Wisconsin, are highly sought-after and held by art museums and collectors. As a respected figure in contemporary American art, Mr. Uttech's work features in permanent collections at institutions such as the Crystal Bridges Museum of American Art, the Leigh Yawkey Woodson Art Museum, the New Orleans Museum of Art, the Honolulu Museum of Art, the Milwaukee Art Museum and the Museum of Wisconsin Art. Throughout his long, award-winning career, Mr. Uttech's work has been featured in

innumerable solo exhibitions, and he continues to hold solo shows at prestigious venues like New York's Alexandre Gallery.

Mr. Uttech's career and livelihood are inextricably tied to the natural beauty and tranquility of his property. The property's pristine natural state and wildlife provide a unique ecosystem that not only inspires his paintings but also serves as a beautiful backdrop for students, art enthusiasts, and customers who come to view and purchase his work.

Maintaining the natural beauty and integrity of the Property is vital to Mr. Uttech's work and passion. The Project proposes to upend all of this by slicing off part of the Uttechs' private property to build a new power line. The Project would irreversibly damage the natural beauty and tranquility of the Uttechs' property, eliminate vistas, disturb the wildlife, and interfere with Mr. Uttech's art and ability to earn a living in an incalculable way.

The Project, if approved on its current route, would cause irreparable harm to the Uttechs. It is wrong as a matter of public policy, law, and basic human decency. Through the project, ATC will deny the world the continued work of a highly successful and sought-after artist. We strongly urge you to reconsider the current proposal.

ATC's Proposed Project

Vantage Data Centers will build an \$8 billion hyperscale data center in Port Washington beginning later in 2025. The proposed completion date is 2029. The Data Center will require 1.3 gigawatts for its initial phase, with an expansion to 3.5 gigawatts at full buildout. For perspective, the entire power grid in Wisconsin currently generates 17 gigawatts.

The Project's purpose is to supply power to the Data Center. Although ATC claims that the Project will benefit the surrounding community, that is disputed. The Project is only necessary because of the new data center, but for the Vantage Data Center, the Project would not have been proposed.

The Project route calls for power lines that cross over the Property, including the specific landscapes and vistas integral to Mr. Uttech's art.

Legal Issues

The Fifth Amendment prohibits the taking of private property "for public use without just compensation" (U.S. Const. amdt. V) and the Wisconsin Constitution similarly prohibits the taking of anyone's property "for public use without just compensation therefor." (Wis. Const. art. I, § 13.) As explained, the Project exists solely to benefit the Data Center, taking the Uttechs' (or anyone else's) private

property for such a use would not satisfy the “public use” requirements of the state and federal constitutions.

There is a breadth of case law regarding the extent of both the state and federal constitutional provisions. There is simply “no doubt” that ATC is “forbidden from taking petitioners’ land for the purpose of conferring a private benefit to a particular party.” *Kelo v. City of New London*, 545 U.S. 469, 477 (2005). Moreover, ATC may not “take property under the mere pretext of a public purpose, which its actual purpose was to bestow a private benefit.” *Id.* at 478.

To be sure, *Kelo* broadly expanded the definition of “public purpose.” But for over 20 years, the *Kelo* decision has been roundly criticized and challenged. Forty states, including Wisconsin, have enacted anti-*Kelo* statutes. Landowners, supported by public-interest law firms like WILL, have repeatedly filed petitions for certiorari seeking to overturn *Kelo* completely, some of which have garnered votes from dissenting Justices.¹

It is just a matter of time before *Kelo* is overturned. The Data Center, the Project, and the unique nature of the Property provide WILL with the perfect set of facts to do just that. ATC wants to exercise the state’s sovereign power, delegated to it by statute, to take the private property of Wisconsin citizens for the benefit of a different private property owner, not for a public use. Such a taking is not lawful.²

Moreover, the Project is an example of an emerging national debate on energy production, transmission, and hyperscale data centers. While America must build

¹ For example, in *Eychaner v. City of Chicago, Illinois*, 141 S.Ct. 2422, 2423 (2021) (Thomas, J., dissenting from denial of certiorari), justice Thomas explained “[Kelo] was wrong the day it was decided. And it remains wrong today. ‘Public use’ means something more than any conceivable ‘public purpose.’” Justice Gorsuch joined in that Dissent, and Justice Kavanaugh also noted he would have granted certiorari in that case.

In *Goldstein v. Pataki*, 554 U.S. 930 (2008), a petition for certiorari was filed in another post-*Kelo* takings case. The petition was denied, but Justice Alito noted he would have granted it. *Id.*

² Wisconsin courts have interpreted our own state constitution to protect more rights than under the federal constitution. Since the earliest cases in Wisconsin, our courts have steadfastly guarded property from taking for the benefit of another private owner. See e.g. *Osborn v. Hart*, 24 Wis. 89, 91 (1869) (explaining that government cannot take property for a private use even if compensation is provided). We would welcome the opportunity to confirm the rights of private property owners in both state and federal courts.

and power these facilities, which are integral to our national security and prosperity, they are not a license to violate the Fifth Amendment (or the Wisconsin Constitution). Public policy solutions exist to address these important issues, such as behind-the-meter reform. This innovative approach would permit and encourage new data centers to produce their own power on-site, whether through natural gas, small modular nuclear units, or renewable generation paired with storage. By producing power directly on-site, data centers would dramatically reduce the need for costly new transmission projects, lessen the burden on existing ratepayers, and minimize the disruption to private landowners. This is no fantasy: xAI recently filed a permit application to construct 41 permanent natural-gas turbines to power its Colossus 2 data center on adjacent property, eliminating the need for miles of sprawling power lines.³

States like New Hampshire have already advanced legislation along these lines, recognizing that hyperscale data centers should not externalize their enormous power demands onto surrounding communities and that traditional utility regulation often adds years of costly delay.⁴ A reform of this kind would balance the economic benefits of new data center investment with the equally important need to respect fundamental property rights, control costs, and protect the landscape. While we understand ATC opposes efforts to reduce or eliminate the need for all future transmission projects, the rampant building of unnecessary and expensive power lines across our state is an untenable position.⁵

Conclusion

This letter is by no means intended to be comprehensive. At this point in the process, ATC can still choose to go a different route and avoid the Uttechs' property altogether. We urge you to do so.

By doing so, you can preserve Mr. Uttech's art (which we assume you were unaware of when you chose this route) and avoid the unique legal issues presented by this route. We recognize that if you intend to go forward with the Project, other landowners will potentially be harmed in the same way as the Uttechs are by the

³ *Elon Musk Gambles Billions in Memphis to Catch Up on AI*, Wall St. J., (Oct. 5, 2025), <https://www.wsj.com/tech/elon-musk-xai-memphis-tennessee-power-dec4c70d>.

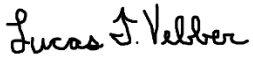
⁴ *New Hampshire Sparks a Revolution in Electricity Supply*, Wall St. J., (Sept. 16, 2025), <https://www.wsj.com/opinion/new-hampshire-sparks-a-revolution-in-electricity-supply-dab10a8d>.

⁵ Even if a taking is permitted in this case, WILL is similarly interested in refining the doctrine of "just compensation," to consider the unique damage to Mr. Uttech's right to earn a living, which is also protected by the Constitution.

current route and, as a result, we urge you to find a route that minimizes the problem.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.

A handwritten signature in black ink that reads "Lucas T. Vebber". The signature is written in a cursive style with a large initial 'L'.

Lucas T. Vebber

Attorney for the Uttechs

Lucas@will-law.org