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February 10, 2022

*Via Email*

Ms. Sheila T. Reiff  
Clerk of the Supreme Court  
110 East Main St., Suite 215  
P.O. Box 1688  
Madison, WI 53701-1688

Re: *County of Dane v. PSC of Wisconsin*, Nos. 2021AP1321-LV, 2021AP1325

Dear Ms. Reiff:

For the reasons stated below and in the opposition briefs filed by the Public Service Commission of Wisconsin, American Transmission Company LLC, ATC Management Inc., Dairyland Power Cooperative, and ITC Midwest LLC, Mr. Huebsch agrees that the extraordinary—and, our research indicates, unprecedented—“Petition to Bifurcate and Remand State Law Merits Issues from Non-Party Subpoena/Due Process Issues Under Wis. Stat. § 808.075(5)” submitted by Petitioners (collectively “Driftless”) should be denied.

To begin, the key premise of the petition is patently false. According to Driftless, its claim that former Commissioner Huebsch “appeared” biased in violation of the federal Due Process Clause and its claim that the Public Service Commission of Wisconsin’s approval of the project violated various “state laws” are totally separate. Pet. 4–8, 18–19. They are not. Here is Count 7 of Driftless’s petition for review: **“PSCW’s various conflicts, *ex parte* communications, and entanglements [amounting to ‘bias’] . . . violate Petitioners’ constitutional Due Process and statutory rights to a fair hearing and impartial adjudicatory decisionmaking process.”** P-App. 860 (bold in original; second set of italics added); *compare generally id.* (raising no “statutory” claims other than under Wisconsin law). Elsewhere, Petitioners have repeatedly asserted that Mr. Huebsch’s alleged “appearance of bias” violated Wisconsin Statute § 227.57’s procedural “fairness” guarantee. *See, e.g.*, P-App. 864 ¶ 121. Presumably this is one of the “underlying state law issues” to which Petitioners vaguely refer. *See* Pet. 4.

Separately, Driftless has attempted to assign Mr. Huebsch—whom it calls “a central actor in this case”<sup>1</sup>—yet another role in its “underlying state law issues.” It has claimed, without explanation, that because Mr. Huebsch was allegedly biased, a

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<sup>1</sup> DALC/WWF’s Resp. in Opp. to Michael Huebsch’s Emergency Motion Seeking Administrative Stay, *County of Dane*, No. 19-cv-3418, Dkt. 397, 2 (July 22, 2021).

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“heightened level of scrutiny” should govern the circuit court’s review of *all* of the “underlying [state law] merits issues.”<sup>2</sup> Whatever the legal basis of this argument might be (none is apparent), Mr. Huebsch is hopeful that this Court will soon hold that Driftless’s allegations of “bias” fail to state a cognizable *Caperton* claim. Such a decision would directly affect the supposedly “separate” state-law claims, by removing any argument that a special “heightened standard” is triggered.

Driftless complains that it and others will suffer certain harms while this Court resolves Mr. Huebsch’s appeal according to the current schedule and remands in the ordinary course. There is a remedy for such harms: an injunction. Driftless asked the circuit court for one—and obtained it. *See* Pet. 10 n.4. But, under Wisconsin Statute § 196.43 and by order of the circuit court, that injunction cannot take effect until Driftless posts a \$32 million injunction bond, which it has yet to do. *See id.* Driftless now seeks to circumvent this bond requirement by asking this Court to help it do indirectly what it apparently cannot do directly. That is not this Court’s role.

For a third time, Driftless reminds this Court of one of the reasons that it wishes Mr. Huebsch’s petition for review had been denied—namely, that pre-trial appellate review will slow proceedings in the circuit court. *See* Pet. 14 (blaming this Court for “delaying resolution of this case on the merits”). That argument, which Driftless fully aired in its opposition to review, has been considered and rejected.

The petition should be denied.

Sincerely,



Ryan J. Walsh  
Counsel to Michael Huebsch

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<sup>2</sup> Sep. 27, 2021 Mtn Hr’g Tr., *County of Dane*, No. 19-cv-3418, Dkt. 1112, Ex. A, 75:9–15 (Oct. 15, 2021); *see also id.* 72:9–74:20 (arguing for a “heightened standard of scrutiny” to the “merits issues”); *see also* P-App 860, 864 ¶ 119 (claiming that Huebsch’s alleged “entanglements with the Applicants and other intervenor parties” require “strict and demanding review of the [PSC’s] Final Decision,” even if the federal due-process claim fails) (internal quotation marks omitted).