

Appeal No. 2021AP1321-LV

In the Supreme Court of Wisconsin

COUNTY OF DANE, COUNTY OF IOWA, TOWN OF WYOMING, AND
CITY OF MONTFORT,
PETITIONERS-RESPONDENTS,

v.

PUBLIC SERVICE COMMISSION OF WISCONSIN,
RESPONDENT-RESPONDENT,

DRIFTLESS AREA LAND CONSERVANCY, WISCONSIN WILDLIFE
FEDERATION, CHRIS KLOPP, LEROY BELKEN, GLORIA BELKEN,
S.O.U.L OF WISCONSIN, CLEAN ENERGY ORGANIZATIONS,
DAIRYLAND POWER COOPERATION, I.T.C. MIDWEST, LLC, AMERICAN
TRANSMISSION COMPANY, MIDCONTINENT INDEPENDENT SYSTEM
OPERATIONS, INC. AND WEC ENERGY GROUP WISCONSIN,
INTERVENORS-REPOONDENTS,

MICHAEL HUEBSCH,
OTHER PARTY-PETITIONER-PETITIONER.

On Appeal from the Dane County Circuit Court,
The Honorable Jacob Frost Presiding
Case No. 2019cv3418

**PUBLIC SERVICE COMMISSION OF WISCONSIN RESPONSE TO
PETITION TO BIFURCATE AND REMAND**

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Appeal No. 2021AP1325

In the Supreme Court of Wisconsin

COUNTY OF DANE, COUNTY OF IOWA, TOWN OF WYOMING, AND
CITY OF MONTFORT,
PETITIONERS-RESPONDENTS,

v.

PUBLIC SERVICE COMMISSION OF WISCONSIN,
RESPONDENT-RESPONDENT,

DRIFTLESS AREA LAND CONSERVANCY, WISCONSIN WILDLIFE
FEDERATION, CHRIS KLOPP, LEROY BELKEN, GLORIA BELKEN,
S.O.U.L OF WISCONSIN, CLEAN ENERGY ORGANIZATIONS,
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INTRODUCTION

The Public Service Commission of Wisconsin (“Commission”) opposes the Petition to Bifurcate and Remand State Law Merits Issues from Non-Party Subpoena/Due Process Issues Under Wis. Stat. § 808.075(5) (“Petition to Bifurcate”) filed by Petitioners-Respondents Dane County, Iowa County, Town of Wyoming, City of Montfort, Driftless Area Land Conservancy (“DALC”), and the Wisconsin Wildlife Federation (“WWF”) (together, “Petitioners”).

On October 5, 2021, this Court ordered the circuit court to transmit the entire record of the action from which these appeals arise to it by October 15, 2021. Court Order dated October 5, 2021; Dkt. 1077.¹ The Dane County Clerk of Court accordingly transmitted the full record of this action on October 15, 2021. Dkt. 1094.

Given the clear statutory and precedential guidance on the circuit court’s competency, immediately upon record transmission, the Commission suggested, in an October 15, 2021 filing, that the circuit court’s jurisdiction had been limited, and that oral argument on the merits should not go forward. Dkt. 1111 (citing Wis. Stat. § 808.075(3) and relevant caselaw). After review of briefing on the issue, the circuit court agreed, and canceled the oral argument on the merits. Dkt. 1166, Decision and Order (Nov. 9, 2021). Judge Frost properly recognized:

¹ Filings from the circuit court record are cited in this brief with their docket number, using the “Dkt. __” format.

The statute and the Supreme Court's instructions are clear. Once the record left the Dane County Circuit Court and arrived in the Supreme Court's capable hands, Branch 9 lost competency to act 'except in certain unsubstantial and trivial matters.' [] The merits review of the PSC decision is not unsubstantial or trivial. Thus, I cannot act further on it.

...

Unless the Supreme Court clarifies that I can continue to act on separate issues from the one currently on appeal even without a specific statute saying I may do so, I read § 808.075 and *Madison Teachers, Inc.* as closing that door.

Dkt. 1166 at 2-3 (quoting *In re Estate of Mayer*, 29 Wis. 2d 497, 505, 139 N.W.2d (1966) and citing *Madison Teachers, Inc. v. Walker*, 2013 WI 91, ¶ 18, 351 Wis. 2d 237, 839 N.W.2d 388).

The circuit court also appropriately underscored that this case is not one in which it would be appropriate, wise, or efficient for this Court to remand the merits issues to the circuit court, because Petitioners have made clear that they intend to treat the bias issues and the merits review as inextricably intertwined:

Even if I agreed with Petitioners, though, their argument still fails because Petitioners made clear they believe and intend to argue that the mere allegation of procedural defects affects the standard of review I apply to my review of the merits of the PSC decision. Thus, the merits review is connected to the bias issue before the Supreme Court and, thus, I am directly stripped of authority to act on the merits of review.

Id. at 3.

As discussed more particularly below, the circuit court got it right. The circuit court should stand down from further proceedings on all substantial and non-trivial issues in this case, and certainly from considering the merits of Petitioners'

challenge to the Commission's Final Decision, where Petitioners have made it abundantly clear that they intend to infect such proceedings with the bias claims that are currently on review before this Court, which this Court may determine are not viable. The Petition to Bifurcate should be denied, and nothing that is not expressly permitted by statute should proceed in the case below until this Court finishes its review and sends the case, and the record, back.

ARGUMENT

I. THE GOVERNING STATUTE AND RELEVANT CASELAW DO NOT SUPPORT BIFURCATION OR REMAND

The law is clear. As of the October 15, 2021 transmission of the record to this Court, the circuit court lost competency to proceed on all but those matters that are carved out by statute. Pursuant to the unambiguous governing statute, upon that transmittal, the circuit court retained a very limited authority to “act only as provided in [Wis. Stat. § 808.075 subs.] (1) and (4).” Wis. Stat. § 808.075(3). Considering the merits of the Commission's Final Decision to issue the Certificate of Public Convenience and Necessity (“CPCN”) to build the Cardinal-Hickory Creek transmission line is not one of the statutorily-recognized exceptions. Wis. Stat. § 808.075(1). Moreover, in addition to the statute, Wisconsin courts have recognized that transmittal of the record limits the circuit court's competency: “‘An appeal from a judgment or order strips the trial court of jurisdiction with respect to the subject matter of the judgment or order, except in certain unsubstantial and trivial matters,’ unless explicit contrary authority is noted in the statutes.” *Madison*

Teachers, Inc. v. Walker, 2013 WI 91, ¶ 18, 351 Wis.2d 237, 244, 839 N.W.2d 388, 391-92 (quoting *Estate v. Mayer*, 29 Wis.2d 497, 505, 139 N.W.2d 111 (1966)). The merits of the challenge to the Commission's CPCN issuance are obviously central to the petition for judicial review, and are neither unsubstantial nor trivial.

In granting review of Huebsch's appeal and his requested stay, this Court found that Huebsch's Petition for Expedited Review would "help develop, clarify or harmonize the law." Dkt. 1038 at 3; *see also* Wis. Stat. § 809.62(lr). The Court also necessarily concluded that Huebsch is likely to succeed on the issues raised by his appeal.² It also requested that the entire record be transmitted, not just a subset of the proceedings. The applicable statute, relevant case law, and common sense make clear that this Court was correct to request the entire record and take broad jurisdiction over the case, and that the circuit court was correct in recognizing that it should stand down until this Court has had the opportunity to complete its stated intent to develop, clarify and harmonize the law, and to provide guidance to the circuit court on an interlocutory basis. This Court should not grant Petitioners' request to direct the circuit court to move forward before it has completed that process.

It makes particular sense for the circuit court to be precluded from considering substantial and non-trivial issues such as the merits of Petitioners' Final Decision challenge in this case, since this Court, as recently recognized by the 7th

² *See State v. Gudenschwager*, 191 Wis. 2d 431, 440 (1995) (requiring the Court to find that Huebsch made a "strong showing that [he] is likely to succeed on the merits of the . . . appeal.")

Circuit,³ has instructed that core issues of statewide importance will be evaluated and clarified. The Court's decision to review Huebsch's appeal signaled that it intends to weigh in, among other issues, on the following:

- Whether conduct by an adjudicator that creates a mere "appearance of bias" violates the Due Process Clause?
- Whether an adjudicator's personal connections to individuals linked to parties appearing before the adjudicator, whether those individuals are close friends or mere professional acquaintances, give rise to a "serious risk of actual bias" under the Due Process Clause, notwithstanding the presumptions of regularity, integrity, honesty, and impartiality that attach to the adjudicator's decisions?
- Whether the practice of applying for employment, after leaving public office, with an entity that had previously appeared before the adjudicator creates a "serious risk" that the adjudicator, when the entity appeared before him, had been actually biased?

Michael Huebsch's Petition for Expedited Review, dated August 27, 2021

("Huebsch Expedited Review Petition"). Both justices writing regarding the grant of Huebsch's petition for review (Grassl Bradley concurring and Karofsky dissenting) acknowledged that the Court's review will be expansive, and will not

³ See *Driftless Area Land Conservancy v. Valcq*, No. 20-3325, 2021 WL 4901865, at *5-*6 (7th Cir. Oct. 21, 2021) ("On September 21 the state high court granted Huebsch's petition for expedited review and set a briefing schedule. *County of Dane v. Pub. Serv. Comm'n of Wis.*, No. 2021AP1321-LV (Wis. Sept. 21, 2021) (order granting expedited review). The petition raises threshold procedural questions and several substantive questions about the legal standards for evaluating recusal issues under *Caperton* and state law and the proper application of those standards to the allegations involving Huebsch. The Dane County proceedings are stayed while the case is pending before the state supreme court."); *id.* at *12 ("The petition for review raises substantive questions about the application of *Caperton*—both in general and in light of the specific allegations involving Huebsch."). The 7th Circuit appeared to assume that all proceedings were stayed and to find it curious that this Court continued to act. *Id.* at *5-*6 and n. 2.

be limited to Huebsch's subpoena challenge. Appendix to the Opening Brief of Petitioner Michael Huebsch ("P-App.") at 3-5.

Petitioners are flat out wrong to assert that the merits of the Commission's Final Decision are unrelated to this appeal, or are the type of unsubstantial or trivial issues that this Court should send down to go forward in the circuit court without this Court's appellate guidance. As Petitioners themselves concede, Count 7 of DALC/WWF's petition for judicial review "raises a due process challenge to the PSC's Final Decision." Petition to Bifurcate at 9, n. 3. *See also* ¶ 119 of DALC/WWF petition, P-App. 278. And Petitioners' suggestion that the Court could except Count 7 from a remand order would not solve the problem. Until the circuit court recognized its lack of competency, the bias issues that are before this Court continued to loom over the case as a whole, and served as the lens through which the case was being considered by the circuit court. Those issues would no doubt similarly color any oral argument on the merits if it were remanded to the circuit court. For example, even though he had issued a decision staying the evidentiary hearing and bias briefing, Judge Frost's subsequent grant of Petitioners' emergency request for injunctive relief turned on the circuit court's conclusion that Petitioners are likely to succeed on their bias claims,⁴ a conclusion at odds with how this Court has viewed those claims. *See Huebsch Expedited Review Petition; P-*

⁴ Dkt. 1138.

App. 1-7.⁵ Moreover, Petitioners made clear that they intend to assert at oral argument that a higher standard of scrutiny should be applied to the merits claims because of Petitioners' allegations of bias, despite the possibility, and perhaps likelihood, that this Court will conclude that the bias claims cannot proceed. *See* P-App. 219-22.⁶ The circuit court also declined to issue an order that would have precluded any arguments relating to bias while this Court completes its review,⁷ and stated that it would permit Petitioners to "have at it" at oral argument with respect to whether the circuit court should apply a higher standard of scrutiny to the merits based on allegations of bias. *Id.* at 222. The danger that unresolved issues relating to the bias allegations would affect further proceedings is real.

Because the resolution of this appeal will be germane to how bias allegations might be considered in the circuit court's consideration of the merits, if at all, and

⁵This Court necessarily recognized, by granting his petition, that Huebsch is likely to succeed in his appeal, which would preclude Petitioners from basing their bias claims on his personal communications that do not amount to improper *ex parte* communications, and on a job application that occurred after he left state service. *See* Dkt. 1038; Dkt. 1144 at 5, n. 9; Huebsch Expedited Review Petition. The *Gudenschwager* test requires that in granting review and issuing a stay, the Court should conclude that Huebsch made "a strong showing that [he] is likely to succeed on the merits of the ... appeal." *State v. Gudenschwager*, 191 Wis. 2d 431, 440 (1995). This Court only grants review when there is a substantial likelihood that it will reverse the trial court's order. *See Cascade Mountain, Inc. v. Capitol Indem. Corp.*, 212 Wis. 2d 265, 268 n.2, 569 N.W.2d 45 (Wis. Ct. App. 1997) (citing *State v. Webb*, 160 Wis.2d 622, 467 N.W.2d 108 (1991)). *See also* P-App. 205-06, in which the circuit court recognized that Justice Grassl Bradley, in her concurring opinion granting Huebsch's petition, cited *Cascade Mountain* for the proposition that "interlocutory review should be pretty limited to those circumstances where, quote 'We conclude that the necessity of immediate review outweighs our general policy of the piecemeal disposal of litigation.'"

⁶*See* Dkt. 1144 at 5-6 (citing P-App. 219-22); Dkt. 1071; Dkt. 1091 (Petitioners submitted a proposed order that would have done nothing more than continue the evidentiary hearing, and challenged a proposed order that would have taken bias off the table).

⁷*Compare* Dkt. 1071 (PSCW Proposed Order granting PSCW motion to stay) to Dkt. 1090 (signed Order granting PSCW motion to stay).

given both the Petitioners' and the circuit court's focus on the bias allegations above all other issues, this appeal is substantially intertwined with any further circuit court proceedings not exempted by statute, and particularly with oral argument on the merits and validity of the Commission's Final Decision. If bias issues are raised in the oral argument, as Petitioners have represented will occur, that would adversely affect the rights and interests of the Commission, appellant Huebsch, and the other parties who oppose Petitioners' challenge to the Final Decision. It would subvert this Court's intent to clarify, develop and harmonize the law on important issues and to give guidance to the circuit court on an interlocutory basis, rather than after the case has been completed. Oral argument may need to be redone if this Court's consideration of the bias issues affects how, if at all, the circuit court may consider the bias allegations. Because the scope and potentially the standard under which the merits claims should be considered could be affected by this Court's decision, if the circuit court is directed to proceed with the merits claims the risk of chaos, confusion and the waste of judicial and party resources will be great.

In fact, if Huebsch's appeal is not successful, and Petitioners are correct that their bias claims remain in the case, and the matter is ultimately remanded to the Commission due to procedural irregularities, merits proceedings may not be necessary at all. Holding off on merits consideration unless and until this Court decides how further activities should proceed both complies with statute, and furthers the interests of justice and judicial economy.

Petitioners' claim that the core issues of the circuit court case should be resolved by that lower court before this appeal has been completed also ignores this Court's power to reject interlocutory appeals, the rarity of it granting them, and the unique circumstances presented by the pending appeal. To the extent this case has been paused, it is because this Court has found substantial issues of statewide importance to be presented that require it, as the state's highest Court, to weigh in now, to give the lower court guidance in how it handles the case going forward. Waiting, pursuant to the statutory limits on circuit court authority, to allow this Court to weigh in is both practical and necessary where, as here, this Court, in exercising its superintending authority over the circuit court has found the rare circumstances meriting interlocutory appeal to be presented, and has signaled an intent to provide guidance to this Court sooner rather than later. *See* Dkt. 1144 at 5, n. 10 (citing P-App. 205-06); P-App. at 4 (citing *Cascade Mountain, Inc. v. Capitol Indem. Corp.*, 212 Wis.2d 265, 268 n. 2, 569 N.W.2d 45 (Wis. Ct. App. 1997)).

In addition to the clear statutory authority establishing that the circuit court has no competency to move forward and consider the merits of this case absent a request for and grant of permission from this Court, and the case law underscoring that the circuit court should not do anything that is neither insubstantial nor trivial, the nature of the appeal at issue, and principles of fairness, efficiency, and common sense thus also counsel against remanding the matters requested by the Petitioners to the Dane County court.

II. IF ANYONE HAS CAUSED DELAY, IT IS PETITIONERS

Petitioners' filing is imbued with significant accusatory language blaming the applicants, the Commission and even this Court for their current predicament, in which the merits of their challenge to the Commission's Final Decision has not been resolved, more than two years after that Final Decision was issued. *See e.g.* Petition to Bifurcate at 14 ("this Court's decision to take an interlocutory appeal by a non-party of a subpoena to testify at trial, thereby delaying resolution of this case on the merits while the Transmission Companies continue to build . . .").

If anyone is to blame for what Petitioners claim has developed into a "trainwreck" however, it is not any other party, and certainly not this Court, but the Petitioners themselves. As Petitioners note, the Commission issued its Final Decision more than 28 months ago, and the merits issues have been briefed since July 2020. Petition to Bifurcate at 15. As discussed in more detail in the Commission's response brief in this appeal, judicial review of the Commission's Final Decision to approve the Cardinal Hickory Creek transmission line was fully briefed, and oral argument was less than two weeks away, when DALC/WWF attempted, and were ultimately permitted to expand the case far beyond the record on review at the eleventh hour, on October 19, 2020. *See* Public Service Commission of Wisconsin Response Brief at 13-16; 22-27 (explaining how "rather than beginning the court challenge by requesting that the circuit court expand the record through testimony or discovery, pursuant to Chapter 227's rules, DALC/WWF waited until oral argument was imminent, and then used information

from outside of the record, presented through an attorney declaration, to attempt to influence the court at the last minute.”) *See also* Dkt. 1111 at 3-4 and n. 3; P-App. 618-25. It is that strategy and the resulting discovery proceedings and appeals that have added years to the typical timeline for resolution of the Chapter 227 challenges to the Final Decision, and have resulted in construction activities commencing before judicial review has been completed. DALC/WWF caused the very delay that they now claim justifies the circuit court moving forward with substantial, non-trivial matters that are inextricably intertwined with the issues on which this Court will shortly provide guidance. Their delay tactics should not be rewarded with a remand of substantial and non-trivial resolution of the merits of Petitioners’ challenge to the Final Decision to the circuit court before this Court’s counsel can be provided, and the necessity for, and potential scope of, any further proceedings before the circuit court can be resolved.

Petitioners’ accusations of “gamesmanship” by other parties rings hollow in the face of their repeated strategy of waiting until the last possible minute to request action, thereby requiring the parties and the courts to respond with immediacy. This occurred when Petitioners attempted to expand the record through an attorney affidavit on the eve of oral argument, when they waited until just weeks before the long-public intended construction commencement date before requesting an injunction, and now, by filing this Petition to Bifurcate less than three weeks before this Court’s oral argument is scheduled, requiring the other parties to devote time that might otherwise be devoted to that preparation, responding to this tardy request.

The circuit court's order recognizing that it lacked competency was issued in November, three full months ago. Dkt. 1166. The applicable statute makes clear that a party may request that certain issues be remanded to the circuit court, and the potential applicability of that statute, and the opportunity for Petitioners to petition for such remand, was raised as early as October 15, 2021, and reiterated in the briefs filed on the issue. *See e.g.* Dkt. 1111. Yet, Petitioners did not request remand from this Court until the last minute, when oral argument is almost upon us. This not only prejudices the other parties in this appeal, it raises questions about whether remand would actually serve the efficiency goals Petitioners claim it would. The circuit court's calendar has been very crowded over the last year, so it is not clear that the circuit court would be able to schedule any merits argument before this Court could conduct its own oral argument, or even before this Court could issue a decision on the appeal. Put simply, Petitioners' anxiety that a decision on their claims is not coming quickly enough cannot be blamed on the other parties or this Court, and should not provide any basis for the remand they request.

III. A FEDERAL COURT'S NON-FINAL DECISION IN ANOTHER CASE HAS NO BEARING ON BIFURCATION

Presumably recognizing that there is no real basis for proceeding to the merits oral argument when considering the applicable Wisconsin statutes, case law, and procedural history and specifics of this case, Petitioners largely based their eleventh hour request for bifurcation and remand of the merits of the Final Decision on a January 14, 2022 Opinion and Order issued in a federal case to which the

Commission is not a party, which involves issues outside of the Commission's jurisdiction. See Petition to Bifurcate at 5-8, 11-18 (discussing *Nat'l Wildlife Refuge Ass'n et. al v. Rural Utilities Serv. et. al*, No. 21-CV-096-WMC (W.D. Wis., Jan. 14, 2022) (attached as Exhibit A to the Petition to Bifurcate).

A federal court's decision to enjoin construction of a small sliver of the line, based on matters outside of the Commission's jurisdiction, has no bearing on the merits of Petitioners' challenge to the Commission's Final Decision. For starters, the federal court's decision is non-final and will almost certainly be appealed, and may be overturned at any time.

The federal court's order only applied to a very small portion of the line. In addition, the Commission's Final Decision recognized that federal agencies were required to authorize the route through the Upper Mississippi National Fish and Wildlife Refuge (Refuge). P-App. 1034-35. Recognizing the primary siting authority of the United States Fish and Wildlife Service (USFWS), that no determination from USFWS was available at the time of the Commission's Final Decision, and that both crossings in Wisconsin were permissible and constructible, the Commission found it reasonable to authorize the applicants to use either the Nelson Dewey or Stoneman River crossings. *Id.* The Commission contemplated that the Stoneman-North route might be used, and if that were the case, found it reasonable to require the applicants to consult with Commission staff regarding the siting and design of existing facilities as well as new facilities, to minimize environmental and socioeconomic impacts to the greatest extent practicable. *Id.*

The non-final nature of the federal court's decision, as well as the practical realities of the project, not the least of which is the fact that "[t]he crossings are located in areas with existing utility substations, corridors, and an existing transmission line river crossing at the Stoneman Crossing" make Petitioners' hyperbolic assertions that the transmission line is proceeding towards an "orchestrated trainwreck" patently false. *Id.* The claims that the continuing construction is unduly risking ratepayer dollars because it "cannot be completed along its current route," or that the transmission line does not have a "lawful path to complete," that the CPCN is no longer valid, that the line will "reach a dead-end" or that the transmission companies need a new CPCN as a result of the federal court's non-final decision are simply not true. *See e.g.* Petition to Bifurcate at 14, 17. Both the law and the Final Decision allow applicants to request modifications to approved routes, should that become necessary. *See* Wis. Stat. § 196.39; P-App. 1045-46; 1079-80, ¶ 14.

Petitioners are also wrong to assert that the federal court's non-final decision regarding compliance of the federal environmental impact statement ("EIS") under the National Environmental Protection Act ("NEPA") compels a conclusion that the merits of Petitioners' state law claims that the state environmental impact statement is flawed under the Wisconsin Environmental Protection Act ("WEPA"). Petition to Bifurcate at 15-16. Again, the federal court's decision is not final, and will likely be appealed and may be overturned. Moreover, the NEPA claims and WEPA claims are directed at two wholly different environmental impact statements, and the claims

are not, as Petitioners' assert, "substantively identical." As Petitioners themselves describe in their Petition to Bifurcate, the federal court challenge argued that the federal EIS defined the purpose and need too narrowly, while the state claims regarding the state EIS were that it did not look at an appropriate range of reasonable alternatives. *Id.* at 16 (citing Ex. A. at 35-37, Dkt. 185 at 45-49). While there could be some persuasive value from federal case law on how NEPA and WEPA should be analyzed generally, a federal court's view of an entirely different document and review process does not determine the result of a state court's analysis of the state EIS. Moreover, as the Commission discussed in its merits brief, the Final Decision complied with WEPA.

The claim that proceeding under a valid CPCN is wrongfully imposing additional costs on ratepayers is also a nonstarter. The Wisconsin Legislature made clear that stopping a project that has been authorized by the Commission requires a challenger to overcome several significant hurdles. In the enactment of Wis. Stat. § 196.43, the Legislature determined that the need to place in service Commission-approved projects, regardless of any potential impacts that could accompany construction, requires as a general matter that there be additional measures taken to protect the public interest in the project before construction can be paused. The statutes specify that the Commission's order is not stayed by the institution of a challenge to that order in court. Wis. Stat. § 227.54. And, as discussed in briefing on Petitioners' attempt to obtain injunctive relief without posting the statutorily-required bond, where, as here, Petitioners are not likely to succeed on their claims,

their litigation strategies and attempts to stop construction are in fact the true cause of a risk of unnecessary additional costs to ratepayers. If anything, it is the Petitioners' handling of this case, and their attempts to delay construction of the line, by waiting until the last minute to inject discovery into this case, by waiting to ask for injunctive relief, and by dragging out the legal challenges to the Final Decision with a meritless fishing expedition for something untoward, that risks increasing the ultimate costs borne by ratepayers. *See* Dkt. 1111 at 3-4, n. 3; 11-14.

CONCLUSION

For the reasons discussed above, this Court should deny Petitioners' request to bifurcate issues in this case, and should not remand additional issues to the circuit court for consideration.

Respectfully submitted, this 10th day of February, 2022.

Electronically Signed By: Christianne A.R. Whiting

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