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FEB 14 2022

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February 14, 2022

Clerk of Court
Wisconsin Supreme Court
110 East Main Street, Suite 215
PO Box 1688
Madison, WI 53701-1688

Via hand delivery

Re: *County of Dane v. Public Service Commission of Wisconsin*
Appeals No. 21AP1321-LV and 21AP1325

Dear Clerk:

On behalf of Petitioners-Respondents Driftless Area Land Conservancy, Wisconsin Wildlife Federation, County of Dane, County of Iowa, Village of Montfort, and Town of Wyoming, I enclose a total of 10 copies of Petitioners-Respondents' Motion for Leave to File Reply in Support of Petition to Bifurcate and Remand. Copies of the Motion are being served on all parties simultaneously. Per my phone call with your office this afternoon, counsel for Dane County will sign the original brief at your office later this week. I thank you for your consideration.

Sincerely,

HURLEY BURISH, S.C.



Catherine E. White

STATE OF WISCONSIN
IN SUPREME COURT

FILED

FEB 14 2022

CLERK OF SUPREME COURT
OF WISCONSIN

Appeal Nos. 2021 AP 1321-LV, 2021 AP 1325

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 COOPERATIVE, I.T.C.
MIDWEST, LLC, AMERICAN TRANSMISSION COMPANY, MIDCONTINENT
INDEPENDENT SYSTEM OPERATOR, INC., AND WEC ENERGY GROUP
WISCONSIN,

Intervenors-Respondents,

MICHAEL HUEBSCH,

Other Party-Petitioner-Petitioner.

**MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF PETITION
TO BIFURCATE AND REMAND**

COUNTY OF DANE, IOWA COUNTY, TOWN OF WYOMING, AND CITY OF
MONTFORT,

Petitioners-Respondents,

v.

PUBLIC SERVICE COMMISSION OF WISCONSIN,

Respondent-Respondent-Respondent,

DRIFTLESS AREA LAND CONSERVANCY,

Intervenor-Petitioner-Respondent,

WISCONSIN WILDLIFE FEDERATION, CHRIS KLOPP, LEROY BELKEN,
GLORIA BELKEN, S.O.U.L. OF WISCONSIN, CLEAN ENERGY
ORGANIZATIONS, DAIRYLAND POWER COOPERATIVE, I.T.C. MIDWEST
LLC, AMERICAN TRANSMISSION COMPANY, LLC, MIDCONTINENT
INDEPENDENT SYSTEM OPERATOR INC., ATC, LLC AND WEC ENERGY
GROUP, INC.,

Intervenors-Respondents,

MICHAEL HUEBSCH,

Other Party-Appellant-Petitioner,

ROBERT M. GARVIN,

Other Party.

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DRIFTLESS AREA LAND CONSERVANCY
WISCONSIN WILDLIFE FEDERATION
Intervenors-Respondents

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IOWA COUNTY
TOWN OF WYOMING
VILLAGE OF MONTFORD
Petitioners-Respondents

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354 W. Main Street
Madison, WI 53703

Petitioners Dane County, Iowa County, Town of Wyoming, Village of Montfort, Driftless Area Land Conservancy, and Wisconsin Wildlife Federation respectfully request leave to file this reply in support of their Petition for bifurcation and remand and, specifically, to the Transmission Companies' claim that "Petitioners fail to specify which of their claims they would like the Court to bifurcate." (Trans. Co. Resp. at 19).

The Petitioners restate that the Court should bifurcate and remand *all* of the Counts in their respective Petitions for Judicial Review *except* Count 7 of the Conservation Groups' petition. This is stated at footnote 3 on page 9 of the Petition to Bifurcate and Remand filed on February 8, 2022. None of the remaining counts in any of the petitions for review involve due process or bias issues currently on appeal in this Court.

Specifically, Dane County's petition for review, No. 2019CV003418, Dkt. 2, includes three "Grounds for Review" that assert statutory and procedural violations under Wis. Stat. Ch. 196 (the CPCN statute), Wis. Stat. § 1.11 (WEPA), Wis. Stat. § 1.12 (Energy Priorities Law) and Wis. Stat. § 227.57 (the Administrative Review Law). Dane County's petition for review does not assert claims that are affected in any way by Mr. Huebsch's non-party interlocutory appeal of his trial subpoena.

Iowa County's petition for review, No. 2019CV000142 (Circuit Court for Iowa County), likewise includes ten "Grounds for Reversal" that are similarly based on statutory and procedural violations under Wis. Stat. Ch. 196, Wis. Stat. § 1.11, Wis. Stat. § 1.12, and Wis. Stat. § 227.57. Iowa County's petition for review does not assert claims that are affected in any way by Mr. Huebsch's non-party interlocutory appeal of his trial subpoena.

The Conservation Groups' petitions for review, No. 2019CV000144, Dkt. 2 (Circuit Court for Iowa County); No. 2019CV000334, Dkt. 2 (Circuit Court for Columbia County), assert seven counts as grounds for reversal. The first six counts likewise assert statutory and procedural violations under Wis. Stat. Ch. 196, Wis. Stat. § 1.11, Wis. Stat. § 1.12, and Wis. Stat. § 227.57.

Only Count 7 of the Conservation Groups' petitions asserts a constitutional due process violation based on allegations of bias and unfairness in the PSC's decisionmaking process. The Conservation Groups do not consider Count 7 to be within the scope of the present Motion to Bifurcate and Remand, and the Court can so clarify in its Order on this Motion.

This Petition to bifurcate and remand is timely, as Petitioners filed soon after the U.S. District Court for the Western District of Wisconsin's

January 14, 2022 Opinion and Order in *National Wildlife Refuge Association et. al v. Rural Utilities Service et. al*, No. 21-CV-096-WMC (W.D. Wis., Jan 14, 2022), which is very strong persuasive authority for Petitioners' WEPA claims here. See *State ex rel. Boehm v. Wisconsin Dep't of Nat. Res.*, 174 Wis. 2d 657, 676 n.4, 497 N.W.2d 445, 453 n.4 (1993) ("Federal law construing NEPA is persuasive authority with respect to the interpretation of WEPA.") (citing *Wisconsin's Environmental Decade, Inc. v. Public Service Commission*, 79 Wis.2d 161, 174, 255 N.W.2d 917 (1977)).

The PSC is not correct that Petitioners' WEPA claims and NEPA claims are "entirely different." (PSC Resp. at 15) Both cases involve the relevant state and federal permitting agencies' core failure to develop a "purpose and need" statement that is sufficiently broad to allow a meaningful comparison of reasonable alternatives. Compare *Nat'l Wildlife Refuge Ass'n* at 35 (concluding that the EIS "defined the purpose and need of the CHC project so narrowly as to define away reasonable alternatives") (citing *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664 (7th Cir. 1997) with Conservation Groups' petition for judicial review at para. 85 (arguing that the purpose of a proposed project "cannot be so narrowly defined that it predetermines the outcome and forecloses the consideration of reasonable alternatives") (also citing *Simmons*, 120 F.3d at 666).

The facts are essentially the same, the controlling law (*Simmons*) is the same, and the outcome should therefore be the same for Petitioners' NEPA claims in federal court and their WEPA claims in state court.

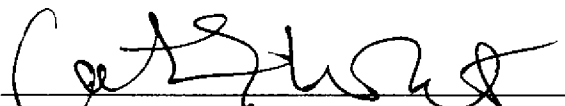
CONCLUSION

Petitioners respectfully request that the Court GRANT their February 8, 2022 petition to bifurcate and remand under Wis. Stat. § 808.075(5).

Dated at Madison, Wisconsin, this 14th day of February, 2022.

Respectfully submitted,

DRIFTLESS AREA LAND CONSERVANCY
WISCONSIN WILDLIFE FEDERATION
Petitioners-Respondents



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DANE COUNTY

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