

**FILED**  
**12-12-2019**  
**CIRCUIT COURT**  
**DANE COUNTY, WI**  
**2019CV003418**  
**Honorable Richard G**  
**Niess**  
**Branch 9**

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

**COUNTY OF DANE**

210 Martin Luther King, Jr.  
Madison, WI 53703

Petitioner,

Case Code: 30607

v.

[Administrative Agency Review]

**PUBLIC SERVICE COMMISSION  
OF WISCONSIN**

Hill Farms State Office Building  
North Tower, 6<sup>th</sup> Floor  
4822 Madison Yards Way  
Madison, WI 53707

Respondent.

**PETITION FOR JUDICIAL REVIEW**

Petitioner County of Dane (“County” or “Petitioner”), by undersigned counsel, petitions the Court pursuant to Wis. Stat. § 196.491(3)(j), and Wis. Stat. 227.52, *et seq.* to review the decision of the Respondent, the Wisconsin Public Service Commission (“PSC”) dated September 26, 2019, which granted the American Transmission Company, ITC Midwest, LLC and Dairyland Power Cooperative a certificate of public convenience and necessity (“CPCN”) for the construction and operation of a new 345kV electric transmission line called the Cardinal-Hickory Creek Line.

The grounds for this Petition are as follows:

**PARTIES**

1. The County of Dane is a quasi-municipal corporation organized and operating under the laws of the State of Wisconsin, and its principal office is located at 210 Martin Luther King, Jr. Blvd., Madison, WI 53703.

2. The PSC is an independent agency of the State of Wisconsin, created under Wis. Stat. § 15.79, as that term is defined under Wis. Stat. § 227.01(1). The PSC's principal office is located at North Tower, 6th Floor, Hill Farms State Office Building, 4822 Madison Yards, Madison, WI 53707.

### **VENUE**

3. Venue is proper in Dane County for the following reasons. The Petitioner's principal office is located in Dane County, and Petitioner's real property is directly affected by the PSC's decision to issue a CPCN for the Cardinal-Hickory Transmission Line; therefore, for purposes of venue in this matter, Petitioner is a resident of Dane County. Wis. Stat. § 227.53(1)(a)3.

### **STATEMENT OF FACTS**

4. In 2018, American Transmission LLC, by its corporate manager, ATC Management, Inc., ITC Midwest, and Dairyland Power Cooperative ("Transmission Companies") submitted an application to the PSC to receive a CPCN for the construction and operation of a new 345kV transmission line called the Cardinal-Hickory Transmission Line that would span a number of counties and two states.

5. The Cardinal-Hickory Creek Transmission Line will extend from the Hickory-Creek Substation in Dubuque County, Iowa to the Cardinal Substation in Dane County, Wisconsin. Of note, the Project would traverse what is commonly known as Wisconsin's Driftless Area.

6. The Driftless Area is recognized as consisting of a unique terrain and ecology that cannot be found elsewhere in Wisconsin. It contains steep forested ridges and deeply dissected

river valleys, and holds significant social and economic importance to those individuals who live and recreate in the area.

7. The Cardinal-Hickory Creek high-voltage transmission line would also create significant and undue impacts to Dane County's land, environmental, and aesthetic resources such as the Black Earth Creek Wildlife Area Sunnyside Unit ("Wildlife Area"). The Wildlife Area is a public hunting area that is owned by Dane County.

8. Following a pre-hearing conference held on February 22, 2019, Dane County was granted intervenor status and participated in the CPCN proceedings as a party.

9. On September 26, 2019, the PSC approved the CPCN application for the proposed Cardinal-Hickory Creek Transmission Line ("Decision"). The Decision is attached hereto and incorporated herein by reference as Exhibit A.

10. The Decision contained broad findings of fact which simply reiterated the statutory requirements that the Transmission Companies were expected to meet under Wis. Stat. Ch. 196, the Wisconsin Environmental Policy Act at Wis. Stat. § 1.11, and the Wisconsin Energy Priorities Act at Wis. Stat. § 1.12.

11. The Decision relied upon court decisions which had granted the PSC great weight deference in its decision making.

12. On October 16, 2019, two separate petitions for a rehearing on the PSC's decision to issue a CPCN were filed.

13. The PSC did not respond to the petitions for rehearing, and by operation of law, the petitions have been deemed denied thirty (30) days after the filing of the petitions, i.e. November 15, 2019. Wis. Stat. § 227.49 (5).

### **ADVERSE EFFECTS ON PETITIONER'S INTERESTS**

14. The PSC's decision to issue a CPCN constitutes an administrative decision and is subject to judicial review pursuant to Wis. Stat. § 227.52, *et seq* and Wis. Stat. § 196.491(3)(j).

15. The Decision adversely affects the County's substantial interests. Dane County through its various Boards, Committees and Commissions has policy oversight in the areas of land use, environmental protection, lake and watershed, and long range planning in the Dane County area. The County has an established history of utilizing its authority to protect the interests of its citizens. The County is owner of and responsible for the management of certain parklands, such as the Wildlife Unit.

16. The Decision adversely impacts the County's efforts in long range planning, environmental protection, land use and parkland management because the construction of a 345kV high-voltage transmission line within Dane County's jurisdictional borders would harm the environmental, and aesthetic qualities of the Dane County geographic area, including the Wildlife Unit.

17. The Decision identified Petitioner as a party with rights to petition for a judicial review. (Exhibit A at 101.)

### **GROUND FOR REVIEW**

18. The PSC's Decision is unlawful, arbitrary, capricious, erroneous, and an abuse of discretion, and should be reversed, vacated, and remanded for, *inter alia*, the following reasons:

A. The Decision erroneously interprets Wisconsin law by failing to adhere to the statutory requirements for issuing a CPCN under Wis. Stat. Ch. 196, the Wisconsin Environmental Policy Act at Wis. Stat. § 1.11, and the Wisconsin Energy Priorities Act at Wis. Stat. § 1.12. (*See* Exhibit A at 11.) Instead, the Decision relies on shifting public

policy determinations that are not set forth in law to find that the Cardinal-Hickory Transmission Line is needed. In fact, the PSC readily admits that its “interpretation and application of the CPCN law, including its assessment of need, inherently calls for a variety of policy determinations...” (Exhibit at 18 (internal citations and quotations omitted).) The Decision is subject to judicial review under Wis. Stat. § 227.57 (5).

B. The Decision also demonstrates that the PSC erred when dismissing its own staff’s independent and objective analysis of Transmission Companies’ proposal, as well as PSC’s staff’s alternative option to the Cardinal-Hickory Transmission Line (“Base with Asset Renewal Alternative”). The PSC’s decision to discard its staff’s analysis and alternative was based upon the PSC’s belief that staff or other intervenors should have presented a stronger case. (*See e.g.*, Exhibit A at 22- 25.) Such a position runs contrary to the procedural requirements governing CPCN proceedings in that it improperly shifts the burden of proof to staff and other intervenors, rather than the Transmission Companies. The Decision is subject to judicial review under Wis. Stat. § 227.57 (4).

C. The Decision also highlights the PSC’s abuse of discretion when it adopted vague public policy considerations that are not codified in Wisconsin law to justify the grant of a CPCN for the Cardinal-Hickory Transmission Line. The PSC’s authority is granted and circumscribed by statute. It cannot expand its authority beyond the confines of what the Wisconsin legislature prescribed. The Decision is subject to judicial review under Wis. Stat. § 227.57 (8).

### **RELIEF REQUESTED**

WHEREFORE, Petitioner requests judgment in its favor as follows:

1. Declaring that the PSC's Decision is reversed, set aside, and vacated or, in the alternative, remanded to the PSC for further action;

2. Such other relief as the Court may deem just and equitable.

Dated this 12<sup>th</sup> day of December 2019.

DANE COUNTY CORPORATION COUNSEL

ELECTRONICALLY FILED BY:

**/s/Carlos A. Pabellón**

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