



# Public Service Commission of Wisconsin

Phil Montgomery, Chairperson  
Eric Callisto, Commissioner  
Ellen Nowak, Commissioner

610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

August 29, 2012

Mr. Carlo Esqueda  
Clerk of Circuit Court  
Dane County Courthouse, Room 1000  
215 South Hamilton Street  
Madison, WI 53703

Re: *NoCapX 2020 and Citizens Energy Task Force v. Public Service  
Commission of Wisconsin*  
Case No. 12-CV-3328

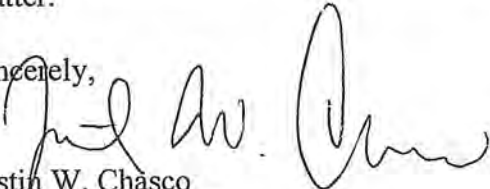
Dear Mr. Esqueda:

Enclosed for filing please find the following:

1. Notice of Appearance and Statement of Position and Request to Stay Transmittal of the Agency Return of Record to the Circuit Court.
2. Notice of Motion and Motion to Strike and Dismiss and Objection to Petitioners' Request for *Pro Hac Vice* Admission
3. Brief in Support of Motion to Strike and Objection to Petitioner's Request for *Pro Hac Vice* Admission
4. Proposed Order Extending Time to Transmit Agency Return of Record to the Circuit Court.

Copies are being mailed this date to opposing counsel. I have also enclosed an additional copy of the proposed order and self-addressed stamped envelope. Thank you for your attention to this matter.

Sincerely,

  
Justin W. Chasco  
Assistant General Counsel  
State Bar #1062709

JWC:hms:DL:00587405

Enclosures

cc: Carol A. Overland, Attorney at Law

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NOCAPX 2020 and  
CITIZENS ENERGY TASK FORCE,

Petitioners,

v.  
PUBLIC SERVICE COMMISSION  
OF WISCONSIN,

Case No. 12-CV-3328

Respondent.

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**CERTIFICATE OF SERVICE**

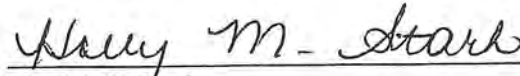
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I hereby certify that on the 29th day of August, 2012, I mailed a true and correct copy of the following:

1. Notice of Appearance and Statement of Position and Request to Stay Transmittal of the Agency Return of Record to the Circuit Court.
2. Notice of Motion and Motion to Strike and Dismiss and Objection to Petitioners' Request for *Pro Hac Vice* Admission
3. Brief in Support of Motion to Strike and Objection to Petitioner's Request for *Pro Hac Vice* Admission.
4. Proposed Order Extending Time to Transmit Agency Return of Record to the Circuit Court.

via U.S. First Class Mail to:

Carol A. Overland  
Attorney at Law  
Legalelectric.org  
1110 West Avenue  
Red Wing, Minnesota 55066

  
\_\_\_\_\_  
Holly M. Stark

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NOCAPX 2020 and CITIZENS ENERGY  
TASK FORCE,

Petitioners,

v.

Case No. 12-CV-3328

PUBLIC SERVICE COMMISSION  
OF WISCONSIN,

Respondent.

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**NOTICE OF APPEARANCE AND STATEMENT OF POSITION AND  
REQUEST TO STAY TRANSMITTAL OF THE AGENCY RETURN OF RECORD  
TO THE CIRCUIT COURT**

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PLEASE TAKE NOTICE that Attorneys Justin W. Chasco and Diane M. Ramthun appear on behalf of the Public Service Commission of Wisconsin (Commission).

Petitioners seek judicial review of a Final Decision<sup>1</sup> of the Public Service Commission of Wisconsin granting a Certificate of Public Convenience and Necessity (CPCN) to Northern States Power Company-Wisconsin, Dairyland Power Cooperative, and Wisconsin Public Power Inc. (collectively "Applicants") to construct a high voltage transmission line in western Wisconsin. This project of the three electric utilities is colloquially known as CapX2020. Petitioners requested rehearing on June 19, 2012. The Commission considered the Request for Rehearing at an open meeting on July, 12, 2012, and denied the request on July 17, 2012.

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<sup>1</sup> *Joint Application of Dairyland Power Cooperative, Northern States Power Company-Wisconsin, and Wisconsin Public Power, Inc., for Authority to Construct and Place in Service 345 kV Electric Transmission Lines and Electric Substation Facilities for the CapX Twin Cities-Rochester-La Crosse Project, Located in Buffalo, Trempealeau, and La Crosse Counties, Wisconsin, No. 5-CE-136 (Wis. PSC May 30, 2012).*

The Final Decision complies with law and is supported by the facts. The Commission properly exercised its discretion when it granted the CPCN to the Applicants. A rational basis exists for the Final Decision, which should therefore be affirmed.

The Commission also raises the following affirmative defenses:

1. Petitioner NoCapX 2020 lacks standing to petition for review of the Commission's Final Decision.
2. Petitioners have failed to exhaust their administrative remedies.
3. The Petition for Judicial Review is fundamentally defective because it was not signed by a person authorized to practice law in the state of Wisconsin and filing a corrected version is barred by the statute of limitations.
4. The Petition for Judicial Review fails to state a claim upon which relief can be granted.

For these reasons, the Commission respectfully requests that its Final Decision be affirmed in its entirety.

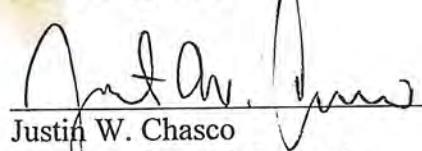
The Commission also requests that the deadline to provide the Record on review be

stayed until final adjudication of the Commission's Motion to Strike the Petition, which is filed concurrently with this Notice of Appearance. Wis. Stat. § 227.55.

Dated this 29th day of August, 2012.

Respectfully submitted,

Cynthia E. Smith  
General Counsel



Justin W. Chasco  
Assistant General Counsel  
State Bar No. 1062709

Diane M. Ramthun  
Assistant General Counsel  
State Bar No. 1019077

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NOCAPX 2020 and CITIZENS ENERGY  
TASK FORCE,

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PUBLIC SERVICE COMMISSION OF  
WISCONSIN,

Respondent.

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**NOTICE OF MOTION AND MOTION TO STRIKE AND DISMISS  
AND OBJECTION TO PETITIONERS' REQUEST FOR  
*PRO HAC VICE* ADMISSION**

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PLEASE TAKE NOTICE that at a time and place to be set by the Court, as the Court deems necessary, the Public Service Commission of Wisconsin, by its attorneys, respectfully moves the Court to deny Petitioners' request for *pro hac vice* admission and to strike the Petition for Judicial Review or, in the alternative, to dismiss Petitioner NoCapX 2020 on the grounds stated herein and further supported in the attached Brief in Support of Motion:

1. Counsel for Petitioners' request to be admitted *pro hac vice* should be denied because it does not meet the requirements of SCR 10.03 (4)(b). Among other defects with the request, Counsel's Proposed Order requests *pro hac vice* admission for this action "without being in association with an active member of the state bar of Wisconsin" in direct contravention to the requirements of SCR 10.03(4)(b) and the prohibition against the unauthorized practice of law in Wis. Stat. § 757.30.

2. The Petition for Judicial Review is defective and should be stricken because it was subscribed by an unlicensed attorney in violation of Wis. Stat. § 802.05(1), depriving this Court of jurisdiction.

3. The Petition for Judicial Review should be dismissed because, on its face, it does not state facts sufficient to show that Petitioner NoCapX 2020 is “a person aggrieved by the decision sought to be reviewed.” Wis. Stat. § 227.56(3).

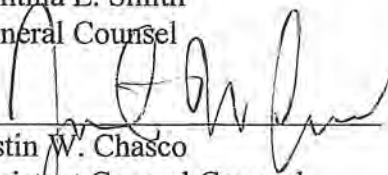
4. As to NoCapX 2020, the Petition fails to identify whether the organization has a single member who is aggrieved by the decision of the Commission. The Petition alleges that NoCapX 2020 is an organization that runs a “listserve” and alleges that some “participants” on that listserve are Wisconsin ratepayers of the companies who will build the CapX2020 transmission line. Distribution of materials via a listserve does not entitle NoCapX 2020 to represent those recipients’ interests before a court of law.

5. Respondent respectfully requests that briefing on the issue of standing be delayed until adjudication of the Motion to Strike, as the Motion to Strike is likely to resolve all issues before this Court.

Dated this 29th day of August, 2012.

Respectfully submitted,

Cynthia E. Smith  
General Counsel



Justin W. Chasco  
Assistant General Counsel  
State Bar No. 1062709

Diane M. Ramthun  
Assistant General Counsel  
State Bar No. 1019077

Attorneys for Respondent Public Service  
Commission of Wisconsin

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**BRIEF IN SUPPORT OF MOTION TO STRIKE AND OBJECTION TO  
PETITIONERS' REQUEST FOR PRO HAC VICE ADMISSION**

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**INTRODUCTION**

Petitioners seek judicial review of a decision of the Public Service Commission of Wisconsin (Commission) granting a Certificate of Public Convenience and Necessity to Northern States Power Company, Dairyland Power Cooperative, and Wisconsin Public Power Inc., to construct a high voltage transmission line in western Wisconsin known as the CapX2020 line. Petitioners requested rehearing on June 19, 2012. The Commission considered the Request for Rehearing at an open meeting on July, 12, 2012, and denied the request on July 17, 2012. The deadline to seek judicial review of the Commission's Final Decision was August 17, 2012. Wis. Stat. §§ 227.53(1)(a)2.

The Petition was filed on August 17, 2012, but was signed by Ms. Carol Overland. Ms. Overland is an attorney from Minnesota and is not licensed to practice law in Wisconsin. Accompanying the Petition for Judicial Review was a letter requesting that the Clerk of Courts

determine whether Ms. Overland could stand on her application for *pro hac vice* admission to the Commission.

This Brief supports the Commission's Motion to Strike the Petition and the Commission's objection to Ms. Overland's request to be admitted *pro hac vice*. The request for *pro hac vice* admission should be denied because it does not meet the requirements of SCR 10.03(4)(b). Most notably, it seeks admission without the association of a licensed Wisconsin attorney.

As a result, the Petition for Judicial Review itself is defective. It was subscribed by an unlicensed attorney in violation of Wis. Stat. § 802.05(1), depriving this Court of jurisdiction.

**I. MS. OVERLAND'S REQUEST FOR ADMISSION *PRO HAC VICE* MUST BE DENIED.**

Ms. Overland's request for admission *pro hac vice* is defective in several respects, any of which is independently sufficient to deny her request. First, Ms. Overland seeks an order from this Court without filing a motion, which is prohibited by Wis. Stat. § 802.01. The letter failed to comply with any of the general pleading requirements found in Wis. Stat. ch. 802, including the fundamental requirement that pleadings be signed by an attorney licensed to practice in the state. Even if her letter was correctly formatted and presented as a motion, Ms. Overland cannot move for herself to be admitted *pro hac vice*. SCR 10.03(4)(b). Any action she takes prior to an effective order granting her admission *pro hac vice* is invalid and amounts to the unlicensed practice of law. *See* Wis. Stat. § 757.30.

The substance of the request itself is also insufficient. Supreme Court Rule 10.03(4)(b) clearly states that association with a member of the state bar is required to be admitted *pro hac vice* to practice in circuit court. In addition, the Wisconsin attorney must appear and participate in the proceeding. No Wisconsin attorney has appeared or participated in this proceeding.

Petitioners imply that there is an association with a Wisconsin attorney by filing an affidavit from the proceeding before the Commission (in which a Wisconsin attorney states only that he will assist Ms. Overland *before the Commission and if it is required*). Petitioners also filed signature pages to the Petition that contain unsigned signature blocks from the same Wisconsin attorney. Other than these insinuations, there is nothing before this Court establishing that the required association in fact exists. The mere implication of an association with in-state counsel is not sufficient, especially where: (1) the Petition was not signed by Wisconsin counsel, (2) no motion to admit Ms. Overland was made by Wisconsin counsel, and (3) the draft Order presented for the Court's execution requests admission "without being in association with an active member of the State Bar of Wisconsin."<sup>1</sup>

Portions of the request for admission are seemingly (and mistakenly) based upon the premise that permission to practice before a state agency is sufficient to allow participation in circuit court. Supreme Court Rule 10.03(4)(b) allows attorneys admitted in circuit court to rely upon that admission in subsequent appeals. However, that provision does not apply to persons admitted *pro hac vice* before state agencies. Supreme Court Rule 10.03(4)(b) is specifically limited to cases in which a "court or judge" grants *pro hac vice* admission. The admission of nonresident lawyers before state agencies, on the other hand, is governed by SCR 10.03(4)(d). That rule does not permit admission to practice before an Administrative Law Judge to carry forth to a circuit court.

Finally, Ms. Overland has not complied with the preconditions to admission *pro hac vice* found in SCR 10.03(4)(b)1. and 2. The affidavit filed before the Commission does not satisfy the requirement of SCR 10.03(4)(b)1. because some of the information required would

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<sup>1</sup> A nonresident attorney may be admitted *pro hac vice* before a Wisconsin state agency without association with a member of the state bar under SCR 10.03(4)(d), but cannot so practice before a circuit court.

necessarily be different before this court and for this case. In addition, there is no indication Ms. Overland has paid the Office of Lawyer Regulation the \$50 fee required by SCR 10.03(4)(b)2. For all of these reasons, Ms. Overland's request to be admitted *pro hac vice* must be denied.

**II. THE PETITION FOR JUDICIAL REVIEW CANNOT STAND BECAUSE IT WAS SIGNED BY AN UNLICENSED ATTORNEY.**

The Petition for Judicial Review must be dismissed because it was signed by a person who is not authorized to practice law in Wisconsin in contravention to Wis. Stat. § 802.05(1), which requires that all pleadings be signed by an attorney.<sup>2</sup> Pleadings that do not comply with Wis. Stat. § 802.05(1) may be stricken, although in some cases may be corrected. This is not one of those cases. As the Petition is fundamentally defective and the deadline for appealing the Commission's decision has passed, the Petition may not be corrected.

In *Schaefer v. Riegelman*, 2002 WI 18, ¶ 38, 250 Wis. 2d 494, 639 N.W.2d 715, the Wisconsin Supreme Court held that a Complaint signed by an unlicensed attorney was fundamentally defective and therefore, the circuit court lacked jurisdiction to hear the case. Following *Schaefer*, the Wisconsin Court of Appeals found that when the pleading at issue initiates an appeal, the signature of an unlicensed attorney cannot be corrected:

When a notice of appeal is not signed by an attorney when an attorney is required, the notice of appeal is fundamentally defective and cannot confer jurisdiction on this court. A person not admitted to practice law has no authority to sign a pleading on behalf of another to invoke this court's jurisdiction. A fundamentally defective notice of appeal cannot be cured by the filing of an amended notice of appeal which is not otherwise timely vis-a-vis the order or judgment appealed from.

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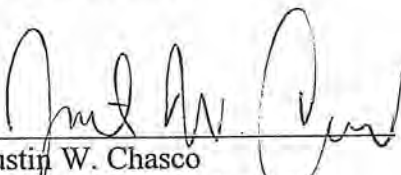
<sup>2</sup> Wisconsin Stat. § 802.05(1) also permits signature by *pro se* litigants, but organizations and corporations cannot appear *pro se*. *Jadair Inc. v. U.S. Fire Ins. Co.*, 209 Wis. 2d 187, 202, 562 N.W.2d 401 (1997).

*Brown v. MR Group, LLC*, 2004 WI App 122, ¶ 6, 274 Wis. 2d 804, 683 N.W.2d 481 (internal citations omitted). Because Ms. Overland was not authorized to practice law in the state of Wisconsin when she signed the Petition for Judicial Review, and because the deadline for seeking judicial review has passed, the Petition is fundamentally defective, cannot be corrected, and must be stricken.

Dated this 29th day of August, 2012.

Respectfully submitted,

Cynthia E. Smith  
General Counsel

  
Justin W. Chasco  
Assistant General Counsel  
State Bar No. 1062709

Diane M. Ramthun  
Assistant General Counsel  
State Bar No. 1019077

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PUBLIC SERVICE COMMISSION  
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**ORDER EXTENDING TIME TO TRANSMIT AGENCY  
RETURN OF RECORD TO THE CIRCUIT COURT**

The Public Service Commission of Wisconsin (Commission) requests extension of the deadline to provide its record of proceeding, as permitted by Wis. Stat. § 227.55. The Court finds that there is good cause for granting this request.

Therefore, IT IS HEREBY ORDERED that the Commission's deadline to provide the Return of Record is stayed until 30 days following issuance of an Order adjudicating the Commission's Motion to Strike the Petition for Judicial Review.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

BY THE COURT:

\_\_\_\_\_  
The Honorable Amy K. Smith  
Circuit Court Judge