



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

October 23, 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. Respondent Public Service Commission of Wisconsin's Supplemental Reply Brief in Support of Its Motion to Strike the Petition for Judicial Review.
2. Affidavit of Justin W. Chasco.
3. Certificate of Service.

Copies are being mailed this date to opposing counsel. Thank you for your attention to this matter.

Sincerely,

Justin W. Chasco
Assistant General Counsel
State Bar #1062709

JWC:hms:DL: 00604090

Enclosures

cc: Carol A. Overland
Lisa Agrimonti
Valerie Herring
Jeffrey Landsman
Thomas Hanrahan

NOCAPX 2020 and
CITIZENS ENERGY TASK FORCE,

Petitioners,

v.

PUBLIC SERVICE COMMISSION
OF WISCONSIN,

Respondent.

Case No. 12-CV-3328

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of October, 2012, I mailed a true and correct copy of the following:

1. Respondent Public Service Commission of Wisconsin's Supplemental Reply Brief in Support of Its Motion to Strike the Petition for Judicial Review.
2. Affidavit of Justin W. Chasco.
3. Certificate of Service.

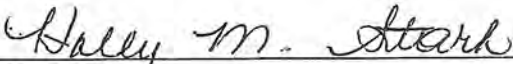
via U.S. First Class Mail to:

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*Attorney for Petitioners NoCapX 2020 and
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 Holly M. Stark

NOCAPX 2020 AND CITIZENS ENERGY
TASK FORCE,

Petitioners,

v.

Case No. 12-CV-3328

PUBLIC SERVICE COMMISSION
OF WISCONSIN,

Respondent.

**RESPONDENT PUBLIC SERVICE COMMISSION OF WISCONSIN'S
SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF ITS MOTION TO STRIKE THE
PETITION FOR JUDICIAL REVIEW**

PROCEDURAL HISTORY

The Public Service Commission (Commission) files this Supplemental Reply Brief in support of the Commission's Motion to Strike the Petition for Judicial Review (Motion). The Petition for Judicial Review (Petition) challenges a Commission Final Decision granting a Certificate of Public and Convenience and Necessity to a group of utilities (Permittees) to build a high voltage transmission line in western Wisconsin. Petitioners filed a Response Brief on September 10, 2012. The Commission's Reply Brief crossed paths in the mail with a Scheduling Order, which specifically gave the Permittees an opportunity to weigh in on the motion. The Scheduling Order also established deadlines for the Response and Reply Briefs that were filed before and simultaneously with the issuance of the Scheduling Order. Although the Permittees

declined to file a brief,¹ Petitioners filed a Second Response Brief,² mainly addressing the Commission's Reply Brief. This Supplemental Reply Brief will: (1) address new arguments raised in Petitioners' Second Response Brief, and (2) respond to Petitioners' unfounded complaints about the Commission's Reply Brief.

ARGUMENT

I. PETITIONERS' INTERPRETATION OF SUPREME COURT RULE (SCR) 10.03(4)(b) IS CONTRARY TO THE CANONS OF STATUTORY CONSTRUCTION.

A simple question remains before this Court: can a nonresident attorney practice before a circuit court without the assistance of a member of the State Bar of Wisconsin and without paying the mandatory fee to the Wisconsin Office of Lawyer Regulation (OLR), simply because the controversy arose from an administrative proceeding? The answer is no.

Petitioners allege in their Second Response Brief that the Commission's interpretation of SCR 10.03(4)(b) is inconsistent with the canons of statutory construction that statutes must be read in a manner that avoids absurd results and as part of a whole. (Pet'rs' Second Resp. Br. 4-5.) Yet, it is Petitioners' interpretation of this Rule that leads to absurd results. Supreme Court Rule 10.03(4)(b) specifically requires an applicant for *pro hac vice* admission in a circuit court to practice "in association with an active member of the state bar of Wisconsin who appears and participate in the action or proceeding." The result of Petitioners' construction is that this requirement would evaporate for any case that arises from an administrative proceeding.

¹ Petitioners imply that Permittees' waiver of briefings indicates support of Petitioners' position. (Pet'rs' Second Resp. Br. 2.) As the Court noted in footnote 2 to its Scheduling Order, however, Permittees raised an affirmative defense that the Petition is defective because it was signed by an unlicensed attorney. (Notice of Appearance and Statement of Position for Northern States Power, et al., at 2, ¶ 3.) For this reason, waiver of briefing should not be construed as acquiescence or agreement with any of Petitioners' positions.

² Petitioners refer to both briefs as Response Briefs, but for clarity, the Commission will cite to the brief, dated October 10, 2012, as Petitioners' Second Response Brief.

This result is absurd given that even simple errors in a circuit court can have severe consequences. This case demonstrates that fact; it should be dismissed because Petitioners' counsel failed to comply with Wisconsin's rules on *pro hac vice* admission and Wis. Stat. § 802.05. Proceedings before the Commission, on the other hand, are very flexible and forgiving. The Commission does not even require persons to be attorneys to represent an organization in its proceedings. Wis. Admin. Code. § PSC 2.22.

Petitioners also criticize the Commission for viewing SCR 10.03(4)(b) and(d) as distinct rules. (Pet'rs' Second Resp. Br. 4-5.) Yet Petitioners' construction of SCR 10.03(4)(b) requires every clause of that rule to be read in isolation from the others. Petitioners ask the Court to ignore the requirements of SCR 10.03(4)(b), pluck out from that paragraph the clause on carrying forth *pro hac vice* admissions, and insert the clause into SCR 10.03(4)(d). In support of this approach, Petitioners again neglect to inform the Court that their quotation of SCR 10.03(4)(b) is incomplete. (Pet'rs' Second Resp. Br. 3.) The Rule provides, in whole:

10.03(4)(b) A court or judge in this state may allow a nonresident counsel to appear and participate in a particular action or proceeding in association with an active member of the state bar of Wisconsin who appears and participates in the action or proceeding. An order granting nonresident counsel permission to appear and participate in an action or proceeding shall continue through subsequent appellate or circuit court actions or proceedings in the same matter, provided that nonresident counsel files a notice of the order granting permission with the court handling the subsequent appellate or circuit court action or proceeding.

1. Counsel who seek to provide legal services under SCR 10.03 (4)(b) shall provide the information listed in Appendix A to this rule. The applicant may also include additional information supporting the request for admission pro hac vice.

2. Counsel who seek to provide legal services under SCR 10.03 (4)(b) shall pay a nonrefundable fee of fifty dollars (\$50) to the Office of Lawyer Regulation for each application for admission pro hac vice. The fee shall be waived if the application certifies that the attorney is employed by an agency providing legal services to indigent clients and will be appearing on behalf of an indigent client, or that the applicant will otherwise be

appearing on behalf of an indigent client in the proceeding and will be charging no fee for the appearance.

SCR 10.03(4)(b) (underlined portions omitted from Petitioners' quotation).

Permission from the court or judge is required for a nonresident lawyer to participate in judicial proceedings that arise from administrative decisions. As explained in the Commission's Reply Brief, "judge" means a member of the judicial branch, not an administrative law judge (ALJ). (Commission's Reply Br. 3) Supreme Court Rule 10.03(4)(b) also requires that to be granted *pro hac vice* status a nonresident lawyer must participate "in association with an active member of the state bar of Wisconsin," must file an Affidavit with the court agreeing to be bound by the rules of the circuit court, and must pay a nonrefundable \$50 fee to OLR. SCR 10.03(4)(b)1. and 2. None of this occurred prior to Ms. Overland's filing of the Petition. Even now, nearly two months after the Commission brought these omissions to her attention by filing its Motion to Dismiss, Ms. Overland has not met these requirements. (Chasco Aff., ¶ 2.)

II. PETITIONERS' ALLEGATIONS OF MISCONDUCT ARE UNFOUNDED.

Petitioners' Second Response Brief continues their attempt to convolute a straightforward legal question with unfounded complaints about the Commission's conduct. Petitioners accuse the Commission of making frivolous arguments, "statutory interpretations, outright false statements and misrepresentations of a Circuit Court Order." (Pet'rs' Second Resp. Br. 5-7.) Petitioners even cite Wis. Stat. § 802.05(2), implying that the Commission acted with improper motive. None of these accusations are correct.

First, Petitioners contend that the Commission's citation of *Jadair Inc. v. U.S. Fire Ins. Co.*, 209 Wis. 2d 187, 562 N.W.2d 401 (1997), to establish that the purpose of the prohibition of the unauthorized practice of law is to protect the public, "is improper under Wis. Stat.

§ 802.05(2)(b).”³ Petitioners contend that because *Jadair* did not involve exactly the same facts as the instant case, it is frivolous to cite the case. (Pet’rs’ Second Resp. Br. 5.) Petitioners have missed the point of the Commission’s argument, which was to explain the purpose of Wisconsin’s rules that prohibit the unauthorized practice of law. The Wisconsin Supreme Court expressed that purpose quite directly in *Jadair*.

Petitioners also challenge the Commission’s reference to *SOAR v. DNR*, No. 11-CV-0833 (Wis. Cir. Ct. Marathon County October 10, 2011). Petitioners take specific issue with the Commission’s reliance on this case to support its statement that “one circuit court has found that permission to practice before a state agency is not sufficient to entitle a nonresident lawyer to practice before a circuit court.” (Pet’rs’ Second Resp. Br. 7.) They provide an affidavit from Ms. Margaret Sheehan, the nonresident attorney who signed the SOAR complaint. Ms. Sheehan asserts that she did not practice law before the Wisconsin Department of Natural Resources (DNR) and was not admitted *pro hac vice* before the DNR. (Sheehan, ¶¶ 3, 5.) When drafting the statement that Petitioners now contend is frivolous, the Commission relied upon SOAR’s brief in response to the motion to dismiss. (Chasco Aff., Ex. A.) That brief describes Ms. Sheehan as SOAR’s counsel. It also describes how she drafted the “Request for Hearing on Contested Case” to the DNR and subsequently sought reconsideration when that request was denied. (Chasco Aff., Ex. A., 2, 4.) The SOAR brief describes conduct that constitutes the practicing of law before and administrative agency:

Consistent with this guidance that tracks the statutory language, Attorney Sheehan prepared Petitioners’ “Request for Hearing on Contested Case,” and served it upon the Secretary of the DNR. The Request set forth the DNR’s action sought to be challenged, the issue sought to be reviewed, the interest of the petitioners, the reasons why a hearing is warranted, and the relief desired. The Request was properly served by facsimile on the Secretary of the DNR by faxing it to the

³ Wisconsin Stat. § 802.05(2)(b) requires that contentions in a pleading be warranted by existing law.

Secretary's facsimile number, a method of service specifically described and authorized in NR 2.05, Wis. Adm. Code.

(Chasco Aff., Ex. A.; *SOAR* Br. 2.) While Petitioners' argument and Ms. Sheehan's attestation that she did not practice law at all before the DNR are questionable, the Commission will accept her representation that she was not admitted *pro hac vice* by an ALJ. Even so, this Marathon County decision still supports the Commission's position.

Petitioners place undue weight on the absence of an order admitting Ms. Sheehan to practice before the DNR. In this regard, the *SOAR* case is even more like the instant dispute than the Commission originally argued: Ms. Overland was also not admitted *pro hac vice* before the Commission. She was allowed to practice before the Commission because Commission rules state that organizations can be represented by their agents. Wis. Admin. Code § PSC 2.22.

Because Wis. Admin. Code § PSC 2.22 exists, the Commission's administrative law judge never issued an order allowing Ms. Overland to appear before the Commission. Ms. Overland was aware of the rule. In her request for *pro hac vice* admission, she notes "A review of the rules clearly states that Pro Hac Vice is not necessary to appear before the Commission." (Chasco Aff., Ex. B (goes on to explain that she is applying for admission despite her review, allegedly as a result of conversations with counsel for the Commission)). Ultimately, as Ms. Overland admits in her letter to this Court, "the Administrative Law Judge determined that Pro Hac Vice admission was not required." (Chasco Aff., Ex. C.) Admission was not required because the Commission does not require organizations to be represented by counsel.

In *SOAR*, as in this case, the organization's nonresident counsel attempted to file a Petition for Review in circuit court without being admitted *pro hac vice* in the circuit court. (Chasco Aff., Ex. A.; *SOAR* Br. 2-5.) DNR challenged that Petition on the basis that it was

signed by a nonresident attorney. (Chasco Aff., Ex. A.; *SOAR* Br. 4-5.) The circuit court in *SOAR* specifically found:

At the hearing, based on all of the parties' pleadings, briefs and submissions, and having reviewed the parties' arguments and the applicable statutes and case law, the Court issued an oral ruling granting the Department's motion to dismiss, finding that petitioners failed to follow strict statutory requirements and that the petition for judicial review was untimely filed and was not signed by an attorney licensed to practice in Wisconsin, thereby depriving the Court of jurisdiction and competency to proceed.

(Chasco Aff., Ex. D; Order 2.) The *SOAR* case is persuasive authority, is closely analogous to this case, and it was not frivolous to bring the case to this Court's attention.

III. PETITIONER NOCAPX2020 HAS NOT PROPERLY ALLEGED ITS STANDING AND MUST BE DISMISSED AS A PARTY TO THIS CASE.

In its initial Motion to Strike, the Commission alleged that Petition NoCapX2020 lacks standing to appeal the Commission's Final Decision. However, the Commission requested that briefing on NoCapX2020's standing to bring this lawsuit be held in abeyance pending resolution of the Motion to Strike the Petition, primarily for judicial efficiency and convenience as the Motion to Strike is likely to resolve the entire case. The Commission brought the motions jointly because Wis. Stat. § 227.56(3) requires a party to move to dismiss based upon a lack of standing, as pled, within 20 days after the party files its Statement of Position. The Commission renews its request to separately argue that motion. However, because Petitioners' Second Response Brief contains argument on standing, the Commission will provide a summary response.

Petitioners incorrectly assert that any intervenor in an agency proceeding has standing to commence a lawsuit under Wis. Stat. § 227.53. (Pet'rs' Second Resp. Br. 7.) The requirements for standing to commence a lawsuit are substantially different than the requirements to be a party once litigation has commenced. After the initiation of a lawsuit, any intervenor is automatically a party pursuant to Wis. Stat. § 227.53(1)(c) and (2) as long as the intervenor files a Notice of

Appearance and Statement of Position. It does not follow, however, that any intervenor automatically has standing to initiate a lawsuit. A petitioner is not entitled to judicial review of an agency decision unless the Petitioner is aggrieved by that decision. Wis. Stat. § 227.53(1). In addition, Wis. Stat. § 227.53(1)(b) specifically requires that a petition “state the nature of the petitioner’s interest, the facts showing that petitioner is a person aggrieved by the decision” and the grounds for review.

The Petition 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). The Petition fails to identify whether the organization has a single member who is aggrieved by the decision of the Commission. The Petition simply 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. (Petition for Judicial Review 2-3.) Distribution of materials via a listserve does not entitle NoCapX 2020 to represent those recipients’ interests before a court of law.

CONCLUSION

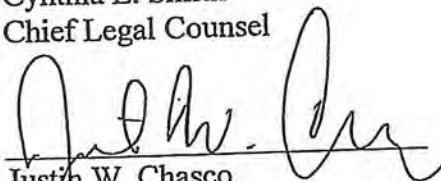
The Petition for Judicial Review cannot stand. Ms. Overland is not authorized to practice law in the state of Wisconsin, has not engaged the assistance of a licensed Wisconsin attorney, and has not paid the mandatory fee to the Office of Lawyer Regulation. As a result, the Petition for Judicial Review has not been certified as required by Wis. Stat. § 802.05 and is

fundamentally defective. The Commission respectfully requests that the Court strike the Petition and dismiss the proceedings with prejudice.

Dated this 22 day of October, 2012.

Respectfully submitted,

Cynthia E. Smith
Chief Legal Counsel



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

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NOCAPX 2020 AND CITIZENS ENERGY
TASK FORCE,

Petitioners,

v.

Case No. 12-CV-3328

PUBLIC SERVICE COMMISSION
OF WISCONSIN,

Respondent.

AFFIDAVIT OF JUSTIN W. CHASCO

STATE OF WISCONSIN)
) ss.
DANE COUNTY)

I, Justin W. Chasco, submit this Affidavit in support of the Public Service Commission's Motion to Strike the Petition for Judicial Review and state under oath on the basis of personal knowledge that:

1. I am an Assistant General Counsel employed by the Public Service Commission of Wisconsin.

2. On October 16, 2012, I contacted, via telephone, the Wisconsin Office of Lawyer Regulation and spoke with the staff member responsible for administering the collection of fees for *pro hac vice* admissions. The staff member informed me that no person named Overland has paid the \$50 fee at any time this year.

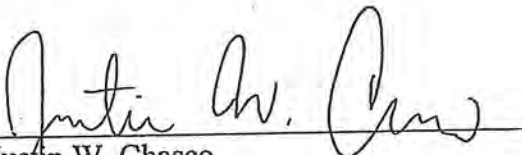
3. Attached as Exhibit A is a true and correct copy of SOAR's September 26, 2011, Brief in Opposition to Motion to Dismiss in Marathon County Circuit Court Case No.

11-CV-0833, *SOAR v. Wisconsin Department of Natural Resources*. When I drafted the Commission's Response Brief, I relied on the description of the case in this brief.

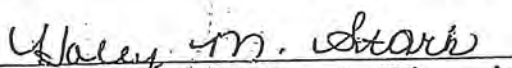
4. Attached as Exhibit B is a true and correct copy of Ms. Overland's July 22, 2011, request to be admitted *pro hac vice* before the Public Service Commission in docket 5-CE-135, PSC REF#: 151094.

5. Attached as Exhibit C is a true and correct copy of Ms. Overland's August 16, 2012, letter to the Dane County Circuit Court.

6. Attached as Exhibit D is a true and correct copy of the final Order of Dismissal in Marathon County Circuit Court Case No. 11-CV-0833, *SOAR v. Wisconsin Department of Natural Resources* (Oct. 10, 2011).


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

Subscribed and sworn to before me
this 22nd day of October, 2012.


Notary Public, Dane County, Wisconsin
My commission: expires 8/23/15

STATE OF WISCONSIN
CIRCUIT COURT FOR MARATHON COUNTY

SAVE OUR AIR RESOURCES, PAUL
SCHWANTES and ROBERT HUGHES,

Petitioners,

v.

Case No. 11-CV-0833

WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,

Respondent,

and

WISCONSIN ELECTRIC POWER
COMPANY, DOMTAR PAPER COMPANY,
and LIGNOTECH USA,

Intervenors-Respondents.

PETITIONERS' BRIEF IN OPPOSITION TO MOTION TO DISMISS

Petitioners SAVE OUR AIR RESOURCES, PAUL SCHWANTES, AND ROBERT HUGHES by their attorney, Dennis M. Grzezinski of Midwest Environmental Advocates, hereby submit this Brief in Opposition to the Motion to Dismiss filed by the Wisconsin Department of Natural Resources ("DNR"). Respondent Wisconsin Electric Power Company has joined in the Motion.

INTRODUCTION: PETITIONERS' REQUEST FOR A CONTESTED CASE HEARING

This is an action under Section 227.52, for judicial review of a decision of the Wisconsin Department of Natural Resources dated June 13, 2011 (the "Decision"), refusing to act upon the Petitioners' April 27, 2011 "Notice of Contested Case and

Request for a Hearing” (Request). The Request sought review of a March 28, 2011 Air Pollution Control Construction Permit issued by the DNR for a biomass power incinerator to be located in Rothschild, Wisconsin, and review of DNR’s failure to do an Environmental Impact Statement for the Project. Copies of the DNR’s Decision and of the Request were attached as Exhibits A and B to the Petition in this action.

Petitioner’s Massachusetts-based counsel, Margaret Sheehan, prepared the Request consistent with an April 1, 2011 email from DNR staff, setting forth the Department’s notice of appeal rights, which is included in Exhibit B to the Motion to Dismiss. In relevant part, the appeal rights language stated:

To request a contested case hearing pursuant to s. 285.81, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for a contested case hearing on the Secretary of the Department of Natural Resources. Any such petition for hearing shall set forth specifically the issue sought to be reviewed, the interest of the petitioner, the reasons why a hearing is warranted and the relief desired.

Consistent with this guidance that tracks the statutory language, Attorney Sheehan prepared Petitioners’ ‘Request for Hearing on Contested Case’, and served it upon the Secretary of the DNR. The Request set forth the DNR’s action sought to be challenged, the issue sought to be reviewed, the interest of the petitioners, the reasons why a hearing is warranted, and the relief desired. The Request was properly served by facsimile on the Secretary of the DNR, by faxing it to the Secretary’s facsimile number, a method of service specifically described and authorized in NR 2.05, Wis. Adm. Code:

NR 2.03 Service on the department. All petitions for hearings . . . shall be served on the department by personal delivery to the office of the secretary, by mailing to the secretary by certified mail, at the following address: P.O. Box 7921, Madison, Wisconsin 53707-7921, or by facsimile transmission to the secretary at (609) 266-6983. (Emphasis supplied).

Understanding (correctly) that contested case hearings regarding DNR actions are conducted by the Wisconsin Division of Hearings and Appeals, Attorney Sheehan added a caption to the Petitioners' Request naming that Division. In addition to serving the DNR Secretary, Attorney Sheehan served the Division of Hearings and Appeals. Neither the caption nor service upon the Division of Hearings and Appeals were required in order to obtain a contested case hearing on the DNR's actions.

However, Wisconsin law is clear that captions are not considered part of pleadings, and that a defect in a pleading is a technical error or defect which is "hypertechnical ... nonprejudicial and non-jurisdictional." *Cruz v. ILHR Department*, 81 Wis. 2d 442, 449, 260 NW 2d 692, 694 (1978); *Nigbor v. DILHR*, 120 Wis. 2d 375, 355 NW 2d 532 (Wis 1984); *Kozlik v. Gulf Insurance Co.*, 268 Wis.2d 491, 505, 673 NW 2d 343, 350, 2003 Wis. App. 251. Moreover, we are not aware of any authority to the effect that valid service on the Secretary of the DNR of a request for a contested case hearing regarding a DNR action is invalidated if the petition is also served on additional parties or agencies.

Nevertheless, DNR's Program Attorney Michael D. Scott responded to Ms. Sheehan's Request with a May 17, 2011 letter stating that the petition "did not ask the DNR for a hearing, as it should have done under NR 2.03 and 2.055, Wis. Adm. Code. The DNR therefore, will not act upon your request." (Attached as Exhibit 1 to Affidavit of Dennis M Grzezinski, filed with this Brief).

On June 3, 2011, Attorney Sheehan responded to Attorney Scott with a letter requesting reconsideration or rehearing. (Attached as Exhibit 2 to Affidavit of Dennis M Grzezinski). On June 13, 2011, Attorney Scott wrote Attorney Sheehan stating that "the

DNR will not reconsider its position and will not act upon your request. (Attached as Exhibit 3 to the Affidavit of Dennis M Grzezinski). It is this June 13, 2011 denial that Petitioners seek to have reviewed in this action.

ARGUMENT

I. The Timeliness of the Petition

The first ground upon which the DNR seeks dismissal of the Petition for Review is that it was not served within 30 days of Attorney Scott's initial May 17, 2011, response to the petitioners' Request. However, under Section 227.53(1)(a)2, Stats., petitioners' request for rehearing or reconsideration in Attorney Sheehan's June 3, 2011 letter, and the DNR's response on June 13, 2011 in a final denial of a contested case hearing, extended the time for filing a Petition for Review until 30 days after June 13, 2011:

227.53(1)(a)2. 2. Unless a rehearing is requested under s. 227.49, petitions for review of contested cases shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review under this subdivision shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this subdivision commences on the day after personal service or mailing of the decision by the agency.

The filing of the petition for Review on June 21, 2011 was well before the expiration of that extended deadline.

II. The Lack of a Wisconsin-licensed Attorney's signature on the Petition for Review

The second ground upon which the DNR seeks dismissal of the Petition for Review is that it was not signed by an Attorney licensed to practice in Wisconsin, as Attorney Sheehan is licensed only in Massachusetts, citing *Schaefer v. Riegelman*, 2002 WI 18, ¶17, 250 Wis. 2d 494,

639 N.W. 2d 715; Wis. Stat. §757.30. However, the undersigned, a licensed Wisconsin Bar member, has signed the Petition for Review. (An Amended Petition with the signature of Attorney Dennis M Grzezinski is filed with this Brief). The Wisconsin Court of Appeals has noted, in *Rabideau v. Stiller*, 2006 WI App 155, , 295 Wis.2d 417, 720 N.W. 2d 108, that a pleading which is defective for failing to have been signed by a licensed Wisconsin lawyer can be cured by being signed. Here, the defect has been cured, and cured prior to the hearing on the Department's motion to dismiss, prior to any scheduling hearing or discovery, and without any pending trial date on the calendar. Under the procedural circumstances of this case, it is respectfully submitted that the defect in subscribing the Petition for Review has been cured sufficiently promptly to satisfy the standard in *Rabideau*.

CONCLUSION

For the above reasons, Petitioners request that this Court deny the Department of Natural Resources' Motion to Dismiss.

Respectfully submitted,

Dated this 26th day of September, 2011.

Respectfully submitted,

By:


Dennis M. Grzezinski
Wisconsin Bar # 1016302
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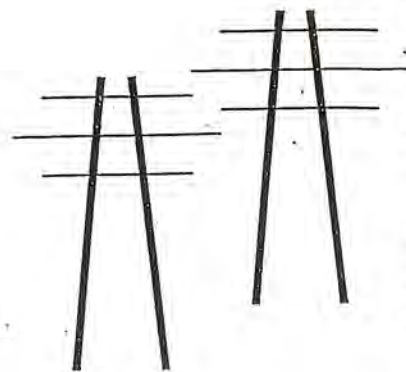
Public Service Commission of Wisconsin
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Legalelectric, Inc.

Carol Overland Attorney at Law, MN #254617
Energy Consultant—Transmission, Power Plants, Nuclear Waste
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July 22, 2011

Sandra Paske
Secretary to the Commission
Public Service Commission of Wisconsin
610 North Whitney Way
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Madison, WI 53707-7854

Michael E. Newmark
Administrative Law Judge
Public Service Commission of WI
610 North Whitney Way
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Madison, WI 53707-7854

RE: Petition for Order Allowing Appearance and Participation
In the Matter of the Application for a Route Permit for the CapX 2020 Hampton-Alma-
LaCrosse High Voltage Transmission Lines
Wisconsin PSC Docket 05-CE-136

Dear Ms. Paske and Judge Newmark:

Please note change of address to 1110 West Avenue, Red Wing, MN 55066.

Enclosed please find Petition of Daniel Hannula for Order Allowing Appearance and Participation, and in the alternative, Order for Appearance Pro Hac Vice, Declaration of Carol A. Overland, and Proposed Order .

A review of the rules clearly states that Pro Hac Vice is not necessary to appear before the Commission, but due to a phone call received last week from staff, and staff statements years ago regarding Wisconsin licensure, I am filing this formal request to assure compliance with PSC and Wisconsin Supreme Court Rules.

Thank you for your consideration.

Very truly yours,

Carol A. Overland
Attorney at Law

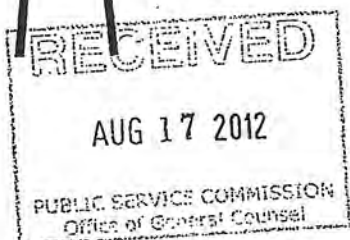
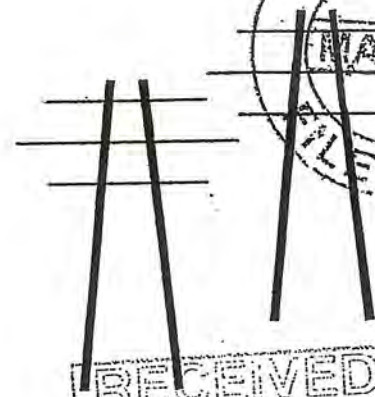
cc: Electronic Service List recipients

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August 16, 2012

Clerk of Court
Dane County Circuit Court
215 S Hamilton St.
Madison, WI 53703

RE: NoCapX 2020 & Citizens Energy Task Force – Joint Petition for Judicial Review
In the Matter of the Application for a Route Permit for the CapX 2020 Hampton-
Alma-LaCrosse High Voltage Transmission Lines
Court File: _____
Wisconsin PSC Docket 05-CE-136

Dear Clerk of Court:

Enclosed for filing please find an original and two copies of NoCapX 2020 and Citizens Energy Task Force's Joint Petition for Judicial Review of the Public Service Commission of Wisconsin's Final Decision in PSC Docket 05-CE-136.

A copy is being served today by hand delivery upon the respondent Public Service Commission of Wisconsin. Copies are also being served today by mail on all parties to the proceeding below, in accordance with Wis. Stat. §227.53.

I have also enclosed the Pro Hac Vice Petition and Affidavit filed with the Public Service Commission in this matter for the Court's consideration. The Administrative Law Judge determined that Pro Hac Vice admission was not required, but the Circuit Court is another matter. If you would prefer an updated Pro Hac Vice Petition, please let me know.

Very truly yours,

Carol A. Overland
Attorney at Law

cc: PSC Service List – Appendix A

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WISCONSIN PUBLIC SERVICE COMMISSION

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 5

MARATHON COUNTY

SAVE OUR AIR RESOURCES,
PAUL SCHWANTES and
ROBERT HUGHES,

Petitioners,

v.

Case No. 11-CV-0833

WISCONSIN DEPARTMENT
OF NATURAL RESOURCES,

Respondent,

and

WISCONSIN ELECTRIC POWER COMPANY
DOMTAR PAPER COMPANY, LLC, and
LIGNOTECH USA, INC.,

Intervenors.

THIS IS AN AUTHENTICATED
COPY OF PLEADINGS FILED
ON THIS DATE

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ORDER OF DISMISSAL

Petitioners brought this action seeking judicial review of a decision by the Department of Natural Resources not to act on petitioners' request to the Division of Hearings and Appeals for a contested case hearing on an air permit for a renewable energy cogeneration project in Rothschild. Respondent Department of Natural Resources moved to dismiss the petition because the Petition was untimely and it was not signed by an attorney licensed to practice in Wisconsin. The court heard the motion on September 29, 2011.

EXHIBIT D

At the hearing, petitioners appeared by Attorney Dennis M. Grzezinski, with Attorney Margaret E. Sheehan present by telephone; respondent Department of Natural Resources appeared by Assistant Attorney General JoAnne F. Kloppenburg; and intervenors Wisconsin Electric Power Company appeared by Attorney Daniel Conley, Domtar Paper Company, LLC, by Attorney David J. Gilles, and LignoTech USA, Inc., by Attorney Russell Wilson.

At the hearing, based on all of the parties' pleadings, briefs and submissions, and having reviewed the parties' arguments and the applicable statutes and case law, the Court issued an oral ruling granting the Department's motion to dismiss, finding that petitioners failed to follow strict statutory requirements and that the petition for judicial review was untimely filed and was not signed by an attorney licensed to practice in Wisconsin, thereby depriving the Court of jurisdiction and competency to proceed.

Accordingly, for all the reasons stated by the Court at the September 29, 2011, hearing, IT IS ORDERED that the Department's Motion to Dismiss is GRANTED and that the Petition for Judicial Review is DISMISSED.

This is a final Order under Wis. Stat. § 808.03(1).

Dated this 10th day of October, 2011.

BY THE COURT:


MICHAEL J. MORAN
Circuit Court Judge, Branch 5