

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH III

LA CROSSE COUNTY  
FILED

TOWN OF HOLLAND,

Petitioner,

VS.

PUBLIC SERVICE COMMISSION  
OF WISCONSIN,

Respondent.

FEB 23 2016  
PAMELA MADTKE  
CLERK OF COURTS

CASE NO.: 15-CV-219  
LA CROSSE

TOWN OF HOLLAND,

Petitioner,

VS.

PUBLIC SERVICE COMMISSION  
OF WISCONSIN,

Respondent.

CASE NO.: 15-CV-379  
LA CROSSE

MICHAEL J. KAUPER,

Petitioner,

VS.

PUBLIC SERVICE COMMISSION  
OF WISCONSIN,

Respondent.

CASE NO.: 15-CV-1713  
DANE

## DECISION AND ORDER

## DECISION

The Court has reviewed the initial petitions of the parties to 15-CV-219 and 15-CV-379, filed in La Crosse County Circuit Court, and 15-CV-1713, filed in Dane County Circuit Court,

the later of which was not provided to the Court until January 25, 2016, as well as the various submissions of the parties. There has not been any oral argument, to date, in these matters, at least there has not been any before this Court. Given the various issues raised by the parties, the Court will first conduct an analysis of whether any or all of the referenced cases should be consolidated before this Court. Then, the Court will decide the remaining Motions for the matters this Court has jurisdiction to hear.

For the reasons set forth herein, the Court will:

1. Grant the Motion to Consolidate 15-CV-219 and 15-CV-379, both of which were filed in La Crosse County.
2. Deny the Motion to Consolidate 15-CV-1713, which was filed in Dane County, to La Crosse County.
3. Grant the Motion to Amend the Petition for Judicial Review in 15-CV-219.
4. Deny the Motion to Dismiss 15-CV-379.

## SUMMARY OF THE CASES

**15-CV-219:** The Petitioner, Town of Holland, hereinafter "Holland," on April 27, 2015, in La Crosse County Circuit Court file 15-CV-219, filed a Petition for Judicial Review of the Final Decision of the Public Service Commission of Wisconsin, hereinafter "PSCW," dated April 23, 2015 in PSCW Docket No. 05-CE-142. Through this decision, the PSCW issued



American Transmission Company LLC, hereinafter "ATC," and Northern States Power Company-Wisconsin, hereinafter "NSPW," and collectively referred to herein as "Applicants," a Certificate of Public Convenience and Necessity allowing Applicants to construct and operate a 345 kilovolt high voltage transmission line called "Badger-Coulee." Said Petition was brought under Sections 227.52 to 227.57, Wisconsin Statutes. Holland alleges the following with regard to the PSCW Final Decision:

- a. That it rests on deficient environmental analyses, particularly involving the analysis of potential alternatives to constructing the Badger-Coulee line and alternative routes;
- b. That it is predicated on, and includes, material errors of law and fact;
- c. That it violates governing statutes and administrative rules; and
- d. That it departs from standing PSCW policy governing the routing and siting of transmission lines that are asserted to be justified on economic, as opposed to reliability, grounds.

**15-CV-1713:** The Petitioner, Michael J. Kauper, hereinafter "Kauper," on July 2, 2015, in Dane County Circuit Court file 15-CV-1713, filed a Petition for Judicial Review of the Final Decision issued by the PSCW dated April 23, 2015 in PSCW Docket No. 05-CE-142. Through this Final Decision, the PSCW issued ATC, and NSPW (Applicants,) a Certificate of Public Convenience and Necessity. Said Petition was brought under Sections 227.52 to 227.57, Wisconsin Statutes. Kauper alleges the following with regard to the PSCW Final Decision:

a. That the PSCW's decision to choose route A over other viable and more logical routes should be reversed or modified based upon the Scope of Review found in Wis. Stat. Sec. 227.75; and

b. That the PSCW has made material errors of law and judgment based upon erroneous information and material error of fact in its final order.

The Court, through its own efforts, obtained a copy of this Petition for Review, without any of the referenced exhibits, on January 25, 2016.

**15-CV-219:** Holland, on July 10, 2015, in La Crosse County Circuit Court file 15-CV-219, filed a Motion to Amend Petition for Review and an Amended Petition for Review. The Amended Petition seeks Court review of the PSCW's Order on Petitions for Rehearing and Request for Clarification dated June 15, 2015. The matter Holland wishes to add to the current Petition for Review are also set forth independently in the Petition for Review filed in 15-CV-379 on July 14, 2015.

**15-CV-379:** Holland, on July 14, 2015, in La Crosse County Circuit Court file 15-CV-379, filed a Petition for Judicial Review of decisions of the PSCW, to include a Final Decision dated April 23, 2015 and the Orders on Petitions for Rehearing and Request for Clarification dated June 15, 2015, both in PSCW Docket No. 05-CE-142. Through these decisions, the PSCW issued ATC, and NSPW (Applicants,) a Certificate of Public Convenience and Necessity allowing Applicants to construct and operate a 345 kilovolt high voltage transmission line called



“Badger-Coulee.” Said Petition was brought under Sections 227.52 to 227.57, Wisconsin Statutes. Holland alleges the following with regard to the PSCW Final Decision:

- a. That it rests on deficient environmental analyses, particularly involving the analysis of potential alternatives to constructing the Badger-Coulee line and alternative routes;
- b. That it is predicated on, and includes, material errors of law and fact;
- c. That it violates governing statutes and administrative rules; and
- d. That it departs from standing PSCW policy governing the routing and siting of transmission lines that are asserted to be justified on economic, as opposed to reliability, grounds.

**15-CV-219:** The PSCW, on July 21, 2015, in La Crosse County Circuit Court file 15-CV-219, filed its Record List of Respondent Public Service Commission of Wisconsin. Said Record List enumerated 375 documents, consisting of Briefs, Petitions/Motions, Decision Matrix, Memorandum/Minutes, Orders/Notices/Affidavits, Requests to Intervene/Notice of Appearances, Exhibits, and Transcripts.

**15-CV-379:** The PSCW, on July 31, 2015, in La Crosse County Circuit Court file 15-CV-379, filed its Notice of Motion, Motion to Dismiss, and Supporting Brief. Said Motion to Dismiss sets forth the following grounds they believe warrant dismissal of Holland’s Petition for Review:

1. The PSCW issued its Final Decision in Docket 5-CE-142 on April 23, 2015 granting a

Certificate of Public Convenience and Necessity to construct a transmission line known as the Badger Coulee Project.

2. On May 13, 2015, the PSCW received two timely Petitions for Rehearing and one Request for Clarification of the Final Decision. Pursuant to Wis. Stat. Sec. 227.49(5) the PSCW had 30 days after the Petitions for Rehearing were filed to enter an order disposing of them, which the PSCW identifies as June 12, 2015. The PSCW claims that if it failed to enter such an order the Petitions for Rehearing would be denied by operation of law on that date. *Id.*

3. On June 12, 2015, the PSCW signed an order addressing the Petitions for Rehearing, but did not serve the order until June 15, 2015. The PSCW claims that the June 12, 2015 order, therefore, did not fully dispose of the Petitions for Rehearing. *See id.*, Wis. Stat. Sec. 227.48(5)(requiring administrative agency to serve decision). The PSCW claims the Petitions for Rehearing were denied by operation of law on June 12, 2015. *See id.*, Wis. Stat. Sec. 227.49(5).

4. The PSCW contends that the parties to the contested case had 30 days after the Petitions for Rehearing were denied by operation of law to file a Petition for Judicial Review, which the PSCW identified as July 13, 2015. *See id.*, Wis. Stat. Sec. 227.53(1)(a)2. The PSCW claims that service of its decision on the parties did not, and cannot, extend this time limitation. The PSCW argues that the Court lacks competency to proceed on the untimely Petition for Judicial Review Holland filed on July 14, 2015, and that the Court should therefore dismiss this



Petition for Review in its entirety.

5. Further, the PSCW addresses Holland's Petition for Judicial Review filed on April 27, 2015, in La Crosse County 15-CV-219 challenging the PSCW's Final Decision. Holland moved to amend this Petition for Judicial Review on July 14, 2015, which is the same day Holland filed the separate Petition for Judicial Review in 15-CV-379. The PSCW avers that Holland's Amended Petition for Judicial Review in 15-CV-219 is nearly identical to Holland's Petition for Judicial Review in 15-CV-379. The PSCW requests, pursuant to Wis. Stat. Sec. 802.06(2)(a)10, for purposes of judicial efficiency, that the Court dismiss in its entirety the duplicative and unnecessary Petition for Judicial Review in 15-CV-379.

**15-CV-219:** The PSCW, on August 3, 2015, in La Crosse County Circuit Court file 15-CV-219, filed its Notice of Motion and Motion for Consolidation pursuant to Wis. Stat. Sec. 227.53(1)(a)3. Said Motion for Consolidation seeks an order as follows:

1. Consolidating the proceeding in 15-CV-219 with Kauper v. Public Service Commission of Wisconsin, Dane County Court file 15-CV-1713, which is a proceeding for judicial review to also challenge the PSCW's Final Decision being challenged in 15-CV-219;

2. Consolidating the proceeding in 15-CV-219 with Town of Holland v. Public Service Commission of Wisconsin, La Crosse County Court file 15-CV-379, which is a proceeding for judicial review to also challenge the PSCW's Final Decision being challenged in 15-CV-219; and

3. Establishing La Crosse County Circuit Court Branch 3 as the venue for the consolidated proceeding for judicial review.

**15-CV-1713:** Kauper, on or about August 20, 2015, submitted a Brief in Response to the Motion for Consolidation of Case 15-CV-1713 and 15-CV-379 in Circuit Court Branch-3 from Public Service Commission and Request to Stay Motion for Consolidation. Kauper argues:

1. The Petition for Judicial Review in 15-CV-1713 was filed in Dane County on July 2, 2015, which predates the filing of 15-CV-379 in La Crosse County, and therefore Dane County is the proper venue.

2. The two Petitions for Judicial Review (15-CV-379 and 15-CV-1713) are seeking review on two very different decisions from the PSCW, identified as follows:

a. Holland's case (15-CV-379) is based around the merits of the entire decision of the PSCW to grant a Certificate of Public Convenience to ATC for the construction of the Badger Coulee Project.

b. Kauper's case (15-CV-1713) only questions the decision for the specific routing of high power lines through a very specific portion of the proposed route, namely section A, which is a 4.6 mile segment in Dane County, and the failure in judgment and errors in law that led the PSCW to chose route A through a residential neighborhood versus other more desirable routes through more rural, unpopulated locations.

Kauper seeks a stay of the Motion for Consolidation to allow both cases to run on their



own merits.

**15-CV-379:** Holland, on August 21, 2015, submitted a letter to the Court to address consolidation issues and suggest a briefing schedule on the PSCW Motion to Dismiss the Petition for Judicial Review in 15-CV-379. Holland examines several issues regarding consolidation of 15-CV-379 and 15-CV-1713, and the fact that the PSCW did not seek to consolidate 15-CV-219. Holland points out the following issues:

1. That there are distinct venue issues between the La Crosse County and Dane County matters, to include the fact that two parties making appearances in the La Crosse County matters did not make an appearance in the Dane County matter.
2. That Kauper (15-CV-1713) presented issues entirely different from the challenges brought by Holland.
3. That since the dismissal issues in 15-CV-379 and 15-CV-1713 need to be addressed independently and are unique to each case there is nothing to consider together.
4. That given these various issues, consolidation should be delayed until the threshold issues are resolved.

Holland further proposed filing its memorandum opposing the PSCW Motion to Dismiss 15-CV-379 by September 4, 2015 and that the PSCW be allowed until September 21, 2015 to file their reply.

**15-CV-1713:** Kauper, on or about August 25, 2015, filed a Brief in Response to Motion

for Dismissal of Case 15-CV-1713 from Public Service Commission. Kauper reiterates the following:

1. On April 23, 2015 the PSCW issued its Final Decision in Docket No. 5-CE-142.
2. On May 13, 2015, a Petition for Rehearing filed on behalf of Segment A landowners was received by the PSCW pursuant to Wis. Stat. Sec. 227.49.
3. On June 3, 2015, the PSCW denied the request for rehearing.
4. On July 2, 2015, Kauper, who was included among the Segment A landowners in the Petition for Rehearing, filed a timely Petition for Judicial Review pursuant to Wis. Stat. Sec. 227.53.
5. Kauper is an aggrieved party and meets the requirements for a Judicial Review pursuant to Wis. Stat. Sec. 227.52 in that he and his family live next to the proposed route and their interests are affected by the PSCW decision.

Kauper then addresses material errors in law and fact that affected the PSCW Final Decision, as well as offering new evidence of bias on the part of the PSCW in making their choice of routing. Kauper seeks a stay of the Motion for Dismissal to allow the case to run on its own merits.

**15-CV-219, 15-CV-379 and 15-CV-1713:** The PSCW, on August 27, 2015, submitted a letter to the Court to address consolidation issues raised by Holland. The PSCW contends that they did not move the Court to consolidate 15-CV-379 and instead only sought to consolidate



15-CV-219 and 15-CV-1713 under Wis. Stat. Sec. 227.53(1)(a)3. Thereafter, Dane County Circuit Court Judge Frank Remington determined that he would defer any ruling on the PSCW Motion to Dismiss in 15-CV-1713 (Kauper) until after the La Crosse County Circuit Court rules on the PSCW's Motion for Consolidation in 15-CV-219.

The PSCW asserts that the La Crosse County Circuit Court would not have authority to rule on the pending Motions to Dismiss in 15-CV-379 and 15-CV-1713 until it consolidated these three cases.

The PSCW further responded to Kauper's brief in response to the PSCW Motion for Consolidation by addressing what they perceived as four fundamental problems:

1. Kauper ignores the fact that the Petition for Judicial Review in 15-CV-219 was filed on April 27, 2015, which is prior to Kauper filing his petition on July 2, 2015.
2. Even if Kauper's petition was the first filed, Dane County has not been established as the appropriate venue as a matter of law.
3. The three cases, 15-CV-219, 15-CV-379 and 15-CV-1713, each challenge the same Final Decision in Docket No. 5-CE-142.
4. Multiple proceedings for judicial review challenging the same Final Decision is not permitted pursuant to Wis. Stat. Sec. 227.53(1)(a)3.

The PSCW requests that the Court consolidate the three cases together into La Crosse County Circuit Court Branch 3. Once consolidated, PSCW then requests that the Court dismiss

the Petitions for Judicial Review that commenced in 15-CV-1713 and 15-CV-379

The PSCW did not object to the proposed briefing schedule submitted by Holland.

**15-CV-219, 15-CV-379 and 15-CV-1713:** Kauper, on or about September 2, 2015, submitted a letter to the Court to address consolidation issues. This letter was received by the PSCW on September 8, 2015. Kauper argues that the position of the PSCW is misguided when the PSCW contends that Holland and Kauper are challenging the same Final Decision of the PSCW in Docket No. 5-CE-142. Kauper points out Wis. Stat. Sec. 227.53(1)(a)3 has been misread by the PSCW. That provision, according to Kauper, states:

If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

Kauper argues that Wis. Stat. Sec. 227.53(1)(a)3 does not specifically define what a decision is or if the decision should be an umbrella for a subset of decisions that were made individually as part of the process. Kauper alleges that the PSCW Final Decision is actually made up of 27 separate decisions as laid out in the PSCW decision matrix. Kauper argues that he and Holland are challenging separate decisions of the PSCW contained within Docket 5-CE-142 and therefore consolidation should not be required.

**15-CV-1713:** The PSCW, on or about September 3, 2015, submitted a letter to the Dane County Court to address Kauper's letter dated September 2, 2015. The PSCW contends that



Kauper's letter fails to address the sole issue raised in the PSCW Motion to Dismiss. The PSCW argues that Kauper restates incorrect procedural and substantive factual assertions contained in his Petition for Judicial Review and, further, introduces new, yet equally unsupported, factual assertions and grounds for relief. The PSCW also contends that Kauper's response appears to declare an intent to impermissibly seek discovery of new evidence. The PSCW requests that, based upon these deficiencies, the PSCW Motion to Dismiss be granted.

The PSCW alleges the following:

1. Kauper was not a party to the original contested action resulting in the April 23, 2015 Final Decision. The PSCW points out that Kauper joined a group of non-party landowners, known as the Segment A Petitioners, who unsuccessfully petitioned the PSCW for rehearing on May 13, 2015. Since Kauper was not an aggrieved party, filing a Petition for Rehearing does not toll the time period within which to file a Petition for Judicial Review pursuant to Wis. Stat. Sec. 227.53(1)(a)2. Since the Petition for Judicial Review was untimely, the Court lacks competency to proceed.

2. Kauper's response brief addresses the underlying matters he contests, and does not respond to the PSCW's Motion to Dismiss based upon Kauper's timeliness of filing the Petition for Judicial Review and the Court's competency to proceed to the underlying matters. Furthermore, the PSCW contends that Kauper raised issues in his response brief that were not included in his Petition for Judicial Review, and they argue that the Court, not having granted

Kauper leave to amend his pleadings, should completely disregard said assertions.

3. Finally, the PSCW contends that Kauper's response brief appears to declare an intent to impermissibly seek discovery of new evidence relating to an allegation that the PSCW's selection of Segment A was improperly influenced. Judicial review, according to the PSCW, is confined to the record developed before the administrative agency, and additional discovery may be taken only with leave of the court.

The PSCW therefore, again, asks the Court to grant its Motion to Dismiss because Kauper's Petition for Judicial Review is untimely and the Court lack's competency to proceed.

**15-CV-379:** Holland, on September 4, 2015, submitted its Brief Opposing PSC Motion to Dismiss. Holland identifies the following grounds upon which it believes the PSCW's Motion to Dismiss 15-CV-379 is based:

1. 15-CV-379 was filed too late.
2. 15-CV-379 merely reproduces Holland's first petition in 15-CV-219.

Holland arguments are as follows:

1. The PSCW's first assertion (timeliness) is based upon the PSCW conflating "entry" of an Order with "service" of an Order. Holland points out that conflating these separate acts is incompatible with the PSCW's own published rule, as well as precedent and logic.

2. The PSCW ignores both the explicit statutory right of review in Wis. Stat. Sec. 227.53(1)(a)2, and the difference in scope of issues in the filed petitions.



3. The PSCW's position is substantially mooted, as neither the PSCW, nor the other parties, have opposed Holland's Motion to Amend its Petition for Judicial Review in 15-CV-219, and the PSCW has, itself, moved to consolidate cases. Holland agrees that 15-CV-219 and 15-CV-379, both of which are pending in La Crosse County, should be consolidated.

**15-CV-379:** The PSCW, on September 14, 2015, submitted a letter brief to the Court in reply to Holland's September 4, 2015 brief opposing the PSCW's Motion to Dismiss 15-CV-379. The PSCW argues that Holland essentially asserted two erroneous claims opposing the PSCW's Motion to Dismiss, identified as:

1. The PSCW first states that Holland claims that the PSCW "entered" the order denying the two May 13, 2015 Petitions for Rehearing on June 12, 2015, when the PSCW signed the order, and their Petition for Judicial Review, filed on July 14, 2015, was within 30 days of their receipt of the order (service), which occurred on June 15, 2015.

2. The PSCW next states that Holland's claim that the Court should not dismiss 15-CV-379 based upon the existence of 15-CV-219 because they (a) had a right to file the second Petition for Judicial Review; (b) civil procedure statutes conflict with Wis. Stat. Ch. 227; and (c) certain issues raised in 15-CV-379 had not been raised in 15-CV-219.

The PSCW asserts that neither of Holland's claims have merit, and the Court should therefore dismiss 15-CV-379.

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## CONCLUSIONS OF LAW

### *1. Consolidation of Cases*

The first issue for the Court to resolve is whether the Motion of the PSCW to consolidate these three cases should be granted. The PSCW relies on Wis. Stat. Sec. 227.53(1)(a)3 in support of its Motion for Consolidation. That statute reads:

If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 73.0301(2)(b)2., 77.59(6)(b), 108.227(6), 182.70(6), and 182.71(5)(g). If the petitioner is a nonresident, the proceedings shall be held in the county where the property affected by the decision is located or, if no property is affected, the county where the dispute arose. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

The statute is not unlike Wis. Stat. Sec. 803.04(1), which “allows persons to join in one action as plaintiffs if they assert any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action.” Furthermore, Wis. Stat. Sec. 805.05(1)(a) states:

[w]hen actions which might have been brought as a single action under s. 803.04 are pending before the court, it may order a joint hearing or trial of any or all of the claims in



the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

***a. Consolidation of La Crosse County Cases 15-CV-219 and 15-CV-379***

The matters filed in 15-CV-219 and 15-CV-379 arise out of the same occurrence and request judicial review of the same order from the Commission, except that 15-CV-379 also seeks judicial review of the PSCW's Order on Holland's Petition for Rehearing and Request for Clarification dated June 15, 2015. As a result, these cases differ in the totality of the issues presented and are therefore not duplicative. As such, these cases meet the statutory requirements for consolidation pursuant to all of the referenced consolidation statutes. The Court finds that the parties, facts, jurisdiction, and issues set forth in the two Holland cases are so intertwined that these cases are appropriate for consolidation. The PSCW's request to consolidate the two Holland cases, 15-CV-219 and 15-CV-379, is hereby GRANTED, Holland's case in 15-CV-379, therefore, will be consolidated into 15-CV-219.

***b. Consolidation of La Crosse County Cases 15-CV-219 and 15-CV-319 with Dane County Case #15-CV-1713***

While the cases in 15-CV-219 and 15-CV-379 (La Crosse County) and the case in 15-CV-1713 (Dane County) each challenge the Final Decision of the PSCW in Docket number 5-CE-142, the similarities end there. Holland's cases (15-CS-219 and 15-CV-379) question the merits of the PSCW's decision relating to a claimed deficient environmental analysis concerning

potential alternatives to constructing the Badger-Coulee line and alternative routes that the decision is predicated on; that it includes material errors of law and fact; that it violates governing statutes and administrative rules; and that it departs from standing PSCW policy governing the routing and siting of transmission lines that are asserted to be justified on economic, as opposed to reliability, grounds. All of these claims relate to the portion of the Badger-Coulee line traversing the area of the Town of Holland in La Crosse County.

On the other hand, Kauper's case (15-CV-1713) seeks judicial review of the PSCW's decision to choose route A over other viable and more logical routes based upon the Scope of Review found in Wis. Stat. Sec. 227.75 and that the PSCW has made material errors of law and judgment based upon erroneous information and material error of fact in its final order. Kauper's claims all relate to a specific 4.6 mile portion of the Badger-Coulee line located entirely within Dane County. The cases filed by Holland in La Crosse County and Kauper in Dane County involve different parties, different facts, different jurisdictions, and different issues. For these reasons these cases do not meet the criteria set fourth in the consolidation statutes. This Court cannot accept the fact that the one Final Decision of the PSCW covered each unique aspect of the Badger-Coulee line throughout the State of Wisconsin. It is more reasonable that portions of the 27 individual decisions that make up the whole of the Final Decision related to the unique issues that face Holland, in its cases, and Kauper, in its case. The PSCW's request to



consolidate the Holland Cases with the Kauper case is inappropriate.

The PSCW's Motion to Consolidate 15-CV-1713 with the Holland cases is hereby DENIED. The Kauper case will be referred back to Dane County Circuit Court Judge Frank Remington for further action on the issues pending in that case.

## ***2. Holland Motion to Amend Petition for Judicial Review in 15-CV-219***

Holland's Amended Petition in 15-CV-219 seeks Judicial Review of the PSCW's Order on Petitions for Rehearing and Request for Clarification dated June 15, 2015. Holland moved to amend this Petition for Judicial Review on July 10, 2015, which is four days prior to the date Holland filed the separate Petition for Judicial Review in 15-CV-379.

Wis. Stat. Sec. 227.53(1)(b) provides, in relevant part:

The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired.

Wis. Stat. Sec. 227.53(1)(b) allows a party to amend its petition as long as it is done with leave of the court. Here, Holland's petition was filed within thirty days of the Order issued by the PSCW on June 15, 2015, which also happens to be the statutory time limit under Wis. Stat. Sec. 227.53(1)(a)(2). There was no objection to Holland's amendment of its petition by the PSCW.

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The Court is aware of no grounds to deny its leave to Holland to file the amendment to the petition.

For the foregoing reasons, Holland's Motion to Amend the Petition for Judicial Review in 15-CV-219 is GRANTED.

### ***3. Timeliness of Holland Petition for Judicial Review***

On May 13, 2015, the PSCW received two timely Petitions for Rehearing and one Request for Clarification of the Final Decision. Pursuant to Wis. Stat. Sec. 227.49(5) the PSCW had 30 days after the Petitions for Rehearing were filed to enter an order disposing of them, which the PSCW identifies as June 12, 2015. The PSCW does not dispute the fact that the PSCW Order was signed on June 12, 2015. This Order, however, was not served until June 15, 2015. Holland then filed its Petition for Judicial Review on July 14, 2015. The PSCW's timeliness contention is based on the date the Order was signed, as opposed to the date the Order was served.

The PSCW relies on Wis. Stat. Sec. 227.49(5) as its basis for defining a Final Decision, arguing that a Final Decision is not "entered" until it is served. The PSCW contends that the parties to the contested case had 30 days after the Petitions for Rehearing were denied by what it defines as "by operation of law." Under this claim, Holland would have to file a Petition for Judicial Review by July 13, 2015.



Wis. Stat. Sec. 227.49(5) reads:

The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

The PSCW signed its Order on June 12, 2015. Since action was taken, there is no support for the contention of the PSCW that without serving that Order, it must be deemed denied on the same date the Order was signed. This nonsensical position is even more clearly such when the statute setting the service requirements is reviewed.

Wis. Stat. Sec. 227.53(1)(a)(2) requires petitions for review of contested cases be served and filed within 30 days after the service of the decision of the agency upon all parties. Wis. Stat. Sec. 227.53(1)(a)(2) states:

(1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review of the decision as provided in this chapter and subject to all of the following procedural requirements:

(a) . . .

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.

TOWN OF HOLLAND  
vs.  
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vs.  
PUBLIC SERVICE COMMISSION OF WISCONSIN

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DECISION  
AND ORDER

Wis. Stat. Sec. 227.49 (5) requires an administrative agency to serve its decision within 30 days. If service of the decision or order is necessary to finalize the decision, then all decisions and orders, unless also served within 30 days of the request for rehearing, would be deemed to fall under the “by operation of law” denial clause. That cannot possibly be the intent of the legislation, and is certainly not apparent from a plain reading of the relevant statutes.

The PSCW claims the Petitions for Rehearing were denied by operation of law on June 12, 2015 is not supported by fact or law. Holland’s Petition for Judicial Review, filed on July 14, 2015, was filed within thirty days of June 15, 2015, the date the PSCW served the Final Order. Holland would not be able to know what was in the PSCW’s Final Order until it was served upon them. Without knowing what the PSCW’s Final Order was, Holland could not Petition for Judicial Review until it was served upon them. The statute required Holland to file its Petition for Judicial Review within thirty days after being served the PSCW’s Final Order and Holland met that requirement.

The PSCW’s Motion to Dismiss 15-CV-219 is ~~there~~ DENIED.

## ORDER

NOW, THEREFORE, IT IS ORDERED:

For the reasons set forth above, the Motion to Consolidate 15-CV-219 and 15-CV-379 is



TOWN OF HOLLAND

vs.

PUBLIC SERVICE COMMISSION OF WISCONSIN  
TOWN OF HOLLAND

vs.

PUBLIC SERVICE COMMISSION OF WISCONSIN  
MICHAEL J. KAUPER

vs.

PUBLIC SERVICE COMMISSION OF WISCONSIN

DECISION  
AND ORDER

GRANTED.

For the reasons set forth above, the Motion to Consolidate 15-CV-1713 to La Crosse County is DENIED. The Clerk of Court is directed to advise Dane County of this decision so that a scheduling conference may be set with respect to that case before Judge Frank Remington.

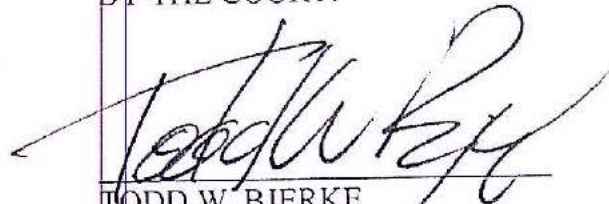
For the reasons set forth above, the Motion to Amend the Petition for Judicial Review in 15-CV-219 is GRANTED.

For the reasons set forth above, the Motion to Dismiss 15-CV-379 is DENIED.

This Order is final for the purposes of appeal.

Dated at La Crosse, Wisconsin this 23<sup>rd</sup> day of February, 2016.

BY THE COURT:



TODD W. BJERKE  
Circuit Court Judge, Branch III  
La Crosse County, Wisconsin

Cc: Attorney Frank Jablonski (15-CV-219 and 15-CV-379)  
Attorney Cynthia E. Smith and Attorney Alex G. Mahfood (15-CV-219, 15-CV-379 and 15-CV-1713)  
Michael J Kauper (15-CV-1713-Dane County)  
Counsel for Intervenors (15-CV-219 and 15-CV-379)  
Dane County Circuit Court Judge Frank Remington, Branch 8 (15-CV-1713-Dane County)