
TOWN OF HOLLAND,

Petitioner,

VS.

CASE NO.: 15-CV-219

PUBLIC SERVICE COMMISSION
OF WISCONSIN,

*INCLUDING FORMER LA CROSSE
COUNTY CASE NO.: 15-CV-379*

**TOWN OF HOLLAND'S RESPONSE
TO INTERVENERS-RESPONDENTS' MOTION TO STRIKE**

Interveners-Respondents Applicants have moved to strike elements of the Town of Holland's Reply brief based on three theories: 1) that the Town should not have been allowed to point out that the PSC has repeatedly certified that the RPS is already "satisfied;" 2) reference to, and discussion of, Wis. Stat. § 196.494 should be eliminated and 3) the Town's summary of preferences within the Court's Wis. Stat. §227.options included inappropriate argument to the effect that ratepayers should be held harmless from the Applicants' decision to rush into construction. Holland responds below.

1. Renewable Portfolio Standard (RPS).

When Holland pointed out that the RPS has been "satisfied" for years it was responding to arguments asserted centrally by the PSC.

In its summary description of the "need" for the Project, the PSC argued (PSC, 14) that ". . . the development of renewable wind resources in the states west of Wisconsin . . . is especially important where Wisconsin has adopted a Renewable

Portfolio Standard (the "RPS"), which requires a certain percentage of electricity to be generated from renewable resources." The PSC went on to argue that the need for wind resources from the west is "similar" to the need for these resources to address greenhouse gas issues. The PSC further asserted (PSC, 33) that the Project "assists in satisfying the public's reasonable needs for renewable energy under the RPS" and alleged a "need" for renewable resources that it claims will be made available by the Project "considering the mandate imposing renewable energy generation under the RPS . . ." ¹ The PSC went on to assert the Project is a "critical component" in meeting the RPS, spending an entire paragraph to detail how RPS compliance is addressed. (PSC, 34) MISO similarly contended ". . . the Project responds to public policy as stated in the renewable portfolio standards of Wisconsin . . ." MISO at 8. Applicants repeated the general assertion. (Applicants, 26-27).

The RPS argument, as articulated in detail by the PSC, is predicated on the notion that the RPS requires the Project in order to be "satisfied," in the words of the PSC brief. In fact, the RPS's "satisfaction" is an already-accomplished fact, and has been repeatedly certified by the PSC itself. Logically, the Project can only "assist in satisfying" the RPS if, absent the Project, the RPS is "unsatisfied."

¹ PSC references to the RPS are summarized in Holland's Reply Brief at 2. MISO also referenced to standard on

It was reasonable to respond to the RPS arguments and the general assertions supporting it by noting it was predicated on a counterfactual condition undisclosed by the Project's proponents.

2. Wis. Stat. § 196.494.

Intervener-Respondents Applicants on page 21 of their brief, posited a hypothetical involving massive congestion:

Taken to the logical extreme, the Petitioner's position would mean that the Commission would be unable to approve a new transmission line or power plant, even if energy costs in the state were skyrocketing due to congestion on the transmission system or a lack of affordable, cost-effective generation resources.

They emphasized the issue of congestion as a way to illustrate, from their perspective, the "adequacy of supply" criterion cannot mean what Holland says it means.²

To demonstrate that the Interveners-Respondents hypothetical congestion problem is immaterial to the court's consideration of this case, Holland pointed out that, if congestion is the driving problem, then the statute prescribes a more specific, and different, pathway for developing transmission lines options to address it. In

² The argument seems like hand-waving. Interveners-Respondents Applicants do not explain why too much available electricity – enough to cause congestion on transmission facilities – in itself causes an "adequacy of supply problem." Nor do they explain how it would come about that transmission operators allow so much electricity to be scheduled into the transmission system that it threatens the ability of the system to continue operating. Nor do they explain why a desire for transmission capacity in excess of what is needed to satisfy the reasonable needs of a consuming public for an adequate supply of electricity is something that ratepayers should pay for, instead of those who "need" the extra transmission capacity to expand markets for their electricity.

this *reply* context Holland referenced and discussed Wis. Stat. 196.494(3) – to demonstrate why the hypothetical argued by the Interveners-Respondents has no relevance here.

Wis. Stat. § 196.494(3) deals specifically with the kinds of congestion issues emphasized by the Interveners-Respondents’ hypothetical circumstance. That statute’s very existence also contradicts MISO’s contention that transmission options are properly developed by privileged parties in a process *entirely separate* from Wisconsin’s regulatory framework.³ The statute calls for the Commission to independently order a solution to congestion-related problems. The Interveners-Respondents seem to prefer – as would any entities in their privileged positions – to have control of the process and to avoid the possibility of problematic (to their wealth and power) outcomes of an independent process that contemplates competitive procurement of ordered transmission infrastructure. Wis. Stat. § 196.484(3).

The Interveners-Respondents Applicants chose to assert congestion as a (notionally) potential circumstance that, in their view, negates Holland’s argument on need. It was legitimate for Holland to respond by pointing out that congestion-based arguments are misplaced, and if congestion is the issue, then a statutory framework distinct from the one at issue here governs how congestion-relieving options are developed and selected.

³ In arguing that “need” has been established MISO referenced MISO’s own “... stakeholder process, which included the design and planning of transmission projects ...” MISO, 6

3. Costs disposition.

Holland's initial brief argued that the PSC Final Decision should be set in its entirety. (Holland, Initial Brief, 30). Reversing the decision would vacate its cost-recovery provisions, leaving Applicants bereft. The summary of the Court's Wis. Stat. § 227.57 options under various contingencies at the end of Holland's reply brief did not represent a change of position or a new position. Holland did, however, explain for the first time how the Applicants were not obligated to begin work or incur costs.

If the Court rules in Holland's favor on the overarching "need" issue and finds that the PSC cannot treat the "need - adequacy of supply" requirement as a suitcase into which it packs whatever it likes about a proposal it wants to approve, then the court will have to figure out what is next. Given the enormous impacts of the transmission facility and its high costs, it seems likely that additional discussion or short briefs would be needed in short order.

In that circumstance Holland anticipates Applicants can reasonably be expected to assert they operated in good faith and should not be penalized. Holland articulated its position plain as a way of transparently disclosing its view in advance.

As a matter of course, the court will have to defer any consideration of remedies until it has decided the issues. It will certainly be appropriate to allow all Parties a fair opportunity to their position as to how the court should proceed in light of whatever substantive conclusions the court has reached.

Dated and respectfully submitted October 3, 2016

Petitioner Town of Holland, by
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Electronically signed by Frank Jablonski

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