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**2019CV000144**

STATE OF WISCONSIN

CIRCUIT COURT

IOWA COUNTY

**DRIFTLESS AREA LAND  
CONSERVANCY**

206 S Iowa Street  
Dodgeville, WI 53533

Petitioner,

Case Code: 30607

v.

[Administrative Agency Review]

**PUBLIC SERVICE COMMISSION  
OF WISCONSIN**

Hill Farms State Office Building  
North Tower, 6<sup>th</sup> Floor  
4822 Madison Yards Way  
Madison, WI 53705

Respondent.

**PETITION FOR JUDICIAL REVIEW**

Petitioner Driftless Area Land Conservancy (DALC or “Petitioner”), by its undersigned counsel, respectfully petitions this Court, pursuant to Wis. Stat. § 196.491(3)(j) and Wis. Stat. § 227.52 *et seq.*, to review the decision of the Public Service Commission of Wisconsin (PSCW), dated September 26, 2019, which granted the application of the American Transmission Company LLC (ATC), ITC Midwest LLC (ITC), and Dairyland Power Cooperative (DPC) (collectively, the “Transmission Companies” or “Applicants”) in PSCW Docket 05-CE-146 for a certificate of public convenience and necessity (CPCN) for the construction and operation of the new high-voltage Cardinal-Hickory Creek transmission line and very high towers.

In support, the Petitioner states as follows:

## **STATEMENT OF FACTS**

### ***The CPCN Application***

1. On November 11, 2011, an internal PSCW document requested a docket number to address “. . . Authority to Construct and Operate a New 345 kV Transmission Line from the greater Dubuque area in Dubuque County, Iowa, to the greater Madison area in Dane County, Wisconsin.” This is the first item in the PSCW record of this matter.

2. On April 30, 2018, the Transmission Companies filed a formal application to the PSCW for a CPCN for the proposed Cardinal-Hickory Creek transmission line pursuant to the requirements of Wis. Stat. §§ 1.11, 1.12, 196.025, 196.49 and 196.491, and Wis. Admin. Code chs. PSC 4, 111 and 112.

3. The PSCW deemed the application to be complete as of October 4, 2018. That action commenced a contested case proceeding for the PSCW to determine whether the Applicants meet their burden of proof on each of the statutory requirements for the PSCW to issue a CPCN for the proposed Cardinal-Hickory Creek transmission line. The PSCW assigned docket number 05-CE-146 for this contested case.

### ***The Cardinal-Hickory Creek Transmission Line***

4. The proposed new high-voltage 345 kV Cardinal-Hickory Creek transmission line, substations and very high towers would begin at the Hickory Creek substation in Dubuque County, Iowa, cross the Mississippi River through the protected Upper Mississippi National Wildlife and Fish refuge and then cut a swath for approximately 100 miles through the Southwest Wisconsin Driftless Area to the Cardinal substation in Middleton, Wisconsin in Dane County. The project involves more than 400 very large steel transmission towers ranging from 120-175 feet in height, and up to 198 feet at the Mississippi River crossing, and a new

intermediate substation near the Village of Montfort, Wisconsin. The PSCW's approval allows the private Transmission Companies to exercise eminent domain power and condemn private property to accommodate a 150-foot right-of-way along most of the 100-mile route.

5. The Wisconsin portion of the proposed transmission line would cut through the protected Upper Mississippi River National Wildlife and Fish Refuge while crossing the Mississippi River north of Cassville and then run for more than 87 miles through Wisconsin's scenic Driftless Area natural resources, farmlands, conservation areas and communities. The Cardinal-Hickory Creek transmission line and 17-story tall towers would cut through Lancaster in Grant County and Montfort in Grant and Iowa Counties. It would then turn east and pass through Dodgeville, running along and through natural resources conservation and historic preservation areas in the Military Ridge Prairie Heritage Area and along the Military Ridge State Trail and Highway 18 in Iowa County. At Blue Mounds, this high-voltage transmission line would cross into Dane County, skirting the edge of Mount Horeb, before turning north and running through the Black Earth Creek Watershed Conservation Area before ending at a transmission substation in Middleton, Wisconsin.

6. The Military Ridge Prairie Heritage Area (MRPHA) is a 95,000+ acre grassland landscape in Dane and Iowa Counties in Southwest Wisconsin. This Area provides habitat for 14 rare and declining grassland bird species and contains more than 60 prairie remnants, representing one of the highest concentrations of native grasslands in the Midwest.

7. The MRPHA has been identified as the highest priority for landscape-scale grassland protection and management in Wisconsin by the Wisconsin Department of Natural

Resources and represents one of the best opportunities in the Midwest to protect prairie remnants and area sensitive species, such as grassland birds.<sup>1</sup>

8. The proposed Cardinal-Hickory Creek transmission line would also run through the protected Upper Mississippi River National Wildlife and Fish Refuge, which is part of a “migration route of continental significance for over 300 species of migrant birds.”

9. “The [R]efuge is designated as a Wetland of International Importance (Ramsar) and a Globally Important Bird Area.” “[The Refuge] encompasses one of the largest blocks of floodplain habitat in the lower 48 states. Bordered by steep wooded bluffs that rise 100 to 600 feet above the river valley, the Mississippi River corridor and refuge offer scenic beauty and productive fish and wildlife habitat unmatched in the heart of America.”<sup>2</sup>

10. The proposed Cardinal-Hickory Creek high-voltage transmission line would be costly and disruptive. It would take more than three years to complete, would require the construction of more than 400 very high and wide steel transmission towers, and would be visible for miles as it crosses the scenic ridges and bluffs and conservation landscapes in Wisconsin’s Driftless Area.

11. The CPCN approved by the PSCW allows the Transmission Companies to condemn and take private property, and to charge Midwestern ratepayers more than \$2.2 billion over 40 years on their electricity bills.

12. The proposed Cardinal-Hickory Creek high-voltage transmission line will create significant and undue impacts to Wisconsin’s land, water, ecological, historical, and aesthetic resources.

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<sup>1</sup> <https://www.nature.org/en-us/get-involved/how-to-help/places-we-protect/priority-area-military-ridge-prairie-heritage-area/> (Dec. 13, 2019).

<sup>2</sup> [https://www.fws.gov/refuge/Upper\\_Mississippi\\_River/about.html](https://www.fws.gov/refuge/Upper_Mississippi_River/about.html) (Dec. 13, 2019).

13. The adverse impacts of the transmission line and 17-story high towers will reduce property and recreational values throughout Southwest Wisconsin and will unreasonably interfere with the orderly land use and development plans in the towns, villages, family farms, and small businesses along its route. Wisconsin's Driftless Area is a particularly distinctive region whose communities and economies depend on the health and vitality of the landscape, and in which the rural and scenic character of the area is prized by residents and tourists alike.

14. For these reasons, the proposed Cardinal-Hickory Creek transmission line project is strongly opposed by many of the people that live in, work in, and represent the citizens of Southwest Wisconsin. The line is opposed by Dane County, Iowa County, the Village of Montfort, the Town of Vermont, the Town of Wyoming and many other cities, towns and villages, the Driftless Area Land Conservancy, Wisconsin Wildlife Federation and many other conservation and outdoor recreation organizations, the Citizens Utility Board, Wisconsin Farmers Union, Madison Audubon Society, Black Earth Watershed Conservation Association, Friends of Governor Dodge State Park, and many others.

15. All of the Wisconsin State Senators and State Representatives representing the areas crossed by the proposed Cardinal-Hickory Creek high-voltage transmission line submitted letters to the PSCW expressing concerns and requesting that the PSCW fully and fairly consider better alternatives to this high-voltage transmission line and very high towers.

16. In contrast to the significant and undue adverse impacts of the line, the purported benefits of the Cardinal-Hickory Creek transmission line project are highly speculative. The PSCW Staff testified that the proposed CHC transmission line results in a net economic loss to Wisconsin ratepayers in most likely future scenarios.

17. Wisconsin's ratepayer advocate, the Citizens Utility Board (CUB), testified that "the benefits conferred to Wisconsin customers by the Project are largely dependent on speculative modeling input assumptions and are therefore not robust."

18. The Cardinal-Hickory Creek transmission line is not needed to meet anticipated electricity demand or ensure the reliable supply of electricity in Wisconsin as required by the applicable CPCN statute, Wis. Stat. § 196.491(3).

19. Instead, the Transmission Companies primarily sought to meet their burden of proof by arguing the "need" for this transmission line on economic and policy grounds, claiming that the transmission line will help Wisconsin access low-cost electricity from wind farms under development from other states west of Wisconsin.

20. Highly credible transmission and energy experts, including the former Chair of the Federal Energy Regulatory Commission Jon Wellinghoff, testified that there are better, less costly, more flexible, and more environmentally sound alternatives to achieve the claimed public policy benefits of the proposed Cardinal-Hickory Creek high-voltage transmission line.

21. These "alternative transmission solutions" include advanced battery storage technologies and other "advanced transmission technologies" that can be used by transmission planners to cost-effectively augment, defer, or entirely replace traditional transmission projects.

22. The Transmission Companies did not attempt to design an alternative transmission solution that could provide the same transmission services as the proposed Cardinal-Hickory Creek transmission line. Instead, the Transmission Companies assigned two engineers that had no experience with battery storage or solar energy technologies with the task of developing a "non-transmission alternative" (NTA). The Applicants' NTA, by design, could not replace the Cardinal-Hickory Creek transmission line. Indeed, the Transmission Companies

never attempted to design an alternative solution that could provide transmission services that would be similar to the proposed Cardinal-Hickory Creek transmission line.

***The PSCW's Final Decision***

23. On September 26, 2019, the PSCW approved the CPCN for the Cardinal-Hickory Creek transmission line project (“Final Decision”) (attached as Exhibit A).

24. On October 16, 2019, two separate petitions for a rehearing on the PSCW’s decision to issue a CPCN were filed. The PSCW did not respond to the petitions for rehearing, and, by operation of law, the petitions thus have been deemed denied as of November 15, 2019, which is thirty (30) days after the petitions were filed. Wis. Stat. §227.49(5).

25. The Final Decision contains several material errors of law with regard to its failure to comply with applicable statutory standards, and several material errors in procedure, including:

a. The Final Decision applies a variety of non-statutory “factual, value, and public policy determinations” in support of its decision to issue a CPCN instead of basing its decision on the plain language of the statutory CPCN factors.

b. The Final Decision fails to independently analyze and explain each of its required statutory findings, instead conflating them into a generalized “public interest” review.

c. The Final Decision unlawfully shifts the burden of proof from the applicant Transmission Companies, which must submit compelling evidence demonstrating that they meet the required statutory determinations, instead onto intervenors who have no such statutory burden of proof.

d. The Final Decision violated the PSCW’s statutory responsibilities under the Wisconsin Environmental Policy Act, Wis. Stat. § 1.11, and the Wisconsin Energy Priorities

Law, Wis. Stat. § 1.12, to independently and objectively evaluate reasonable alternatives to approving this proposed new high-voltage transmission line.

e. The PSCW failed to comply with the Wisconsin Environmental Policy Act and violated the intervenors' Due Process rights when it refused to accept DALC's public comments on the PSCW's Final Environmental Impact Statement.

f. The PSCW failed to provide a fair hearing without apparent conflicts of interest and at least an appearance of bias and lack of impartiality when it allowed two Commissioners to adjudicate and vote on the CPCN for the Cardinal-Hickory Creek transmission line despite their extensive entanglements with parties in interest to this contested case proceeding.

26. The PSCW's unlawful Final Decision approving a CPCN for the proposed Cardinal-Hickory Creek transmission line project adversely affects the substantial interests of Petitioner Driftless Area Land Conservancy and its members and is subject to judicial review under Wis. Stat. § 227.52 *et seq.*

27. If built, the damage to Wisconsin's landscape, environment, and Petitioner Driftless Area Land Conservancy's and its members' legally protected interests will be permanent and irreparable.

28. For the following reasons, Petitioner respectfully requests that this Court reverse and vacate the PSCW's final decision granting the CPCN for the proposed Cardinal-Hickory Creek transmission line and grant such further legal and equitable relief as may be just, appropriate and necessary, and in the public interest.

### **PARTIES**

29. Respondent PSCW is an agency of the State of Wisconsin whose principal office is located at 4822 Madison Yards Way in Madison, Wisconsin. The PSCW is established by Wis. Stat. § 15.79.

30. Petitioner Driftless Area Land Conservancy (DALC) is a not-for-profit conservation organization in southwest Wisconsin with many members who work to protect ecologically sensitive lands, historic properties and natural resources in southwest Wisconsin's Driftless Area. DALC and its members work to maintain and enhance the health, diversity, and beauty of southwest Wisconsin's natural and agricultural landscape through permanent land protection and restoration and other preservation actions, and to improve people's lives by connecting them to the land and to each other. DALC is a nationally certified land trust that was recognized as the Wisconsin Land Conservancy of the Year in 2017.

31. DALC and its members are electric utility consumers. DALC has members who live, work, and play in areas that will be negatively affected by the proposed Cardinal-Hickory Creek high voltage transmission line and its 17-story high towers.

32. DALC has individual members who own property on or near the proposed Cardinal-Hickory Creek high-voltage transmission line route, whose property would be taken by eminent domain, and whose property values would be diminished if the proposed high-voltage transmission line and high towers are built.

33. DALC owns conservation easements on, along and near the route of the proposed Cardinal-Hickory Creek transmission line including, for example, a conservation easement on the historic Thomas Family Farm and Stone Barn property near Barneveld in Iowa County. This proposed transmission line will substantially reduce the value of those conservation easements.

34. On April 27, 2018, DALC filed a timely Request to Intervene in the contested case before the Respondent PSCW.

35. On January 3, 2019, DALC's request to intervene as a party was granted.

### **VENUE**

36. This Court has jurisdiction to hear this action pursuant to Wis. Stat. §§ 196.41 and 227.53(1).

37. Venue is proper in Iowa County Circuit Court pursuant to Wis. Stat. § 227.53(1)(a)(3) because DALC's headquarters and principal place of business is in Iowa County, and DALC therefore is a resident of Iowa County.

38. DALC is represented by the same counsel as Wisconsin Wildlife Federation (WWF), which is filing a petition for review in Columbia County. Separate petitions were filed to comply with the venue rules of Wis. Stat. § 227.53(1)(a)(3) because the two petitioners do not reside in the same county. WWF and DALC anticipate that all petitions for review will be consolidated in a single County Circuit Court and believe that Dane County is the appropriate venue for the consolidated cases.

### **STANDARDS OF LAW**

#### ***Wisconsin CPCN Statute, Section 196.491***

39. Wisconsin law sets out several specific requirements all of which must be met before the PSCW may grant a CPCN. The PSCW "shall approve an application ... for a certificate of public convenience and necessity *only if* the commission determines *all of* the following":

(1) the proposed facility "satisfies the reasonable needs of the public for an adequate supply of electric energy." Wis. Stat. § 196.491(3)(d)(2);

- (2) the “design and location or route is in the public interest considering alternative sources of supply, alternative locations or routes, individual hardships, engineering, economic, safety, reliability and environmental factors ....” Wis. Stat. § 196.491(3)(d)(3);
- (3) for projects located in the lower Wisconsin state riverway, the proposed facility “will not impair, to the extent practicable, the scenic beauty or the natural value of the riverway.” Wis. Stat. § 196.491(3)(d)(3m);
- (4) the “routing and design of the high-voltage transmission line minimizes environmental impacts in a manner that is consistent with achieving reasonable electric rates.” Wis. Stat. § 196.491(3)(d)(3r);
- (5) “the benefits of the high-voltage transmission line are reasonable in relation to the cost...” Wis. Stat. § 196.491(3)(d)(3t);
- (6) the proposed facility “will not have undue adverse impact on other environmental values such as, but not limited to, ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water and recreational use.” Wis. Stat. § 196.491(3)(d)(4);
- (7) the proposed facility does not “[s]ubstantially impair the efficiency of service of the public utility.” Wis. Stat. § 196.491(3)(d)(5); Wis. Stat. § 196.49(3)(b);
- (8) the proposed facility does not “[p]rovide facilities unreasonably in excess of the probable future requirements,” Wis. Stat. § 196.491(3)(d)(5); Wis. Stat. § 196.49(3)(b);
- (9) the proposed facility will not “add to the cost of service without proportionately increasing the value or available quantity of service....” Wis. Stat. § 196.491(3)(d)(5); Wis. Stat. § 196.49(3)(b);

- (10) the proposed facility “will not unreasonably interfere with the orderly land use and development plans for the area involved.” Wis. Stat. § 196.491(3)(d)(6); and
- (11) the proposed facility “will not have a material adverse impact on competition in the relevant wholesale electric service market.” Wis. Stat. § 196.491(3)(d)(7).

***The Wisconsin Environmental Policy Act (WEPA), Section 1.11***

40. The Application for a CPCN is a Type 1 action under Wis. Admin. Code § PSC 4.10(1) and requires the preparation of an Environmental Impact Statement (EIS) under the Wisconsin Environmental Policy Act (WEPA), Wis. Stat. § 1.11.

41. WEPA requires agencies to “[s]tudy, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” Wis. Stat. § 1.11(2)(e). The EIS must thoroughly analyze all direct, indirect, and cumulative environmental impacts of the project in combination with other past, present, and reasonably foreseeable actions that could have a significant impact on the environment. Wis. Stat. § 1.11; Wis. Admin. Code §§ PSC 4.30, NR 150.30.

42. WEPA incorporates Council on Environmental Quality’s (CEQ) environmental review guidance. Wis. Stat. § 1.11(1)(c). Wisconsin courts have held that CEQ guidance and National Environmental Policy Act (NEPA) case law are relevant to proper interpretation of WEPA. *Wisconsin's Env'tl. Decade, Inc. v. Pub. Serv. Comm'n*, 79 Wis. 2d 161, 174 (1977).

43. WEPA and its implementing regulations require that the public must be given an opportunity to comment on any proposal for which an EIS is required. Wis. Stat. § 1.11(2)(d); Wis. Admin. Code §§ PSC 4.30(4); 4.50(1)(a)(1); NR 150.04(2)(g).

***The Wisconsin Energy Priorities Law, Section 1.12***

44. The PSCW must comply with the requirements of Wisconsin's Energy Priorities Law, Wis. Stat. § 1.12. Section 196.025(1)(ar) which provides that “to the extent cost-effective, technically feasible and environmentally sound, the commission shall implement the priorities under s. 1.12(4) in making all energy-related decisions and orders, including strategic energy assessment, rate setting, and rule-making orders.”

45. Section 1.12(4) establishes that “[i]n meeting energy demands, the policy of the state is that, to the extent cost-effective and technically feasible, options be considered based on the following priorities” which are, in order from highest priority to the lowest, “[e]nergy conservation and efficiency,” “[n]oncombustible renewable energy resources,” “[c]ombustible renewable energy resources,” “[a]dvanced nuclear energy,” and then several types of “[n]onrenewable combustible energy resources.”

#### ***Burden of Proof***

46. The applicant Transmission Companies bear the burdens of proof and persuasion regarding each of the statutory findings required for granting a CPCN. *Sterlingworth Condo. Ass'n, Inc. v. State, Dep't of Nat. Res.*, 205 Wis. 2d 710, 726 (Ct. App. 1996). The Commission must take a “hard look at the need for the project” before granting a CPCN. *Application of N. States Power Co.*, 63 Wi. PSC 482 (Mar. 6, 1979).

#### ***Wisconsin Administrative Review Law, Section 227.52 et seq.***

47. Wisconsin's Administrative Review Law states that “[a]dministrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter ....” Wis. Stat. § 227.52.

48. Among other relevant provisions, Wis. Stat. § 227.57(4) states that “[t]he court shall remand the case to the agency for further action if it finds that either the fairness of the proceedings or the correctness of the action has been impaired by a material error in procedure or a failure to follow prescribed procedure.”

49. Under Wis. Stat. § 227.57(5), “[t]he court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law.”

50. Wis. Stat. § 227.57(7) states that “[i]f the agency’s action depends on facts determined without a hearing, the court shall set aside, modify or order agency action if facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency’s responsibility.”

51. Wis. Stat. § 227.57(8) states that “[t]he court shall reverse or remand the case to the agency if it finds that the agency’s exercise of discretion is outside the range of discretion delegated to the agency by law; is inconsistent with an agency rule, an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained to the satisfaction of the court by the agency; or is otherwise in violation of a constitutional or statutory provision....”

#### ***No Deference to Agency Interpretations of Law***

52. In 2018, the Wisconsin Supreme Court ended its practice of deferring to administrative agencies’ conclusions of law. *Tetra Tech EC, Inc. v. Wisconsin Dep’t of Revenue*, 2018 WI 75, 382 Wis. 2d 496 (characterizing *Tetra Tech* as a “significant break from the way we have reviewed agency decisions” in the past). “Upon review of an agency action or decision, the court shall accord no deference to the agency’s interpretation of law.” Wis. Stat. § 227.57(11);

The application of the law to a specific factual scenario is reviewed as a conclusion of law. *Brown v. Labor & Indus. Review Comm'n*, 2003 WI 142, ¶ 11, 267 Wis. 2d 31, 41–42. The PSCW's determination that an EIS is adequate is also a conclusion of law. *Citizens' Util. Bd. v. Pub. Serv. Comm'n of Wisconsin*, 211 Wis. 2d 537, 552 (Ct. App. 1997).

### CLAIMS

The PSCW's final decision approving the application for a CPCN for the proposed Cardinal-Hickory Creek transmission line failed to comply with applicable law in at least the following ways:

(a) **COUNT 1 – The PSCW Erroneously Interpreted and Applied Wisconsin's CPCN Law (Wis. Stat. § 196.491) by Failing to Conform its Review to the Text of the Statute.**

53. “[A]dministrative agencies are creatures of the legislature” and have “only those powers expressly conferred or necessarily implied by the statutory provisions under which [they] operate[.]” *Myers v. Wisconsin Dep't of Nat. Res.*, 2019 WI 5, ¶ 21, 385 Wis. 2d 176, 187 (2019). Thus, “[e]very administrative agency must conform precisely to the statutes from which it derives power.” *Mid-Plains Tel., Inc. v. Pub. Serv. Comm'n*, 56 Wis. 2d 780, 786 (1973).

54. In this case, the PSCW erred because it did not conform its review to the text of the CPCN statute but instead based its decision on a wide range of non-statutory “legal, factual, value, and public policy determinations.” Final Decision at 11; *cf. Wis. Bell Inc. v. Labor and Ind. Rev. Comm'n*, 382 Wis. 2d 624, 648 (2018) (reversing LIRC's test for “discriminatory intent” under Wisconsin's Fair Employment Act because the agency's method strayed from the statutory language).

55. In order to grant a CPCN, the PSCW must determine that the proposed new Cardinal-Hickory Creek transmission line “satisfies the reasonable needs of the public for an

adequate supply of electric energy.” Wis. Stat. 196.491(3)(d)(2). The American Heritage Dictionary defines “reasonable” as “not excessive or extreme.” *Reasonable*, The American Heritage Dictionary (5th ed. 2020). “Need” is defined as “[s]omething required or wanted; a requisite.” *Need*, The American Heritage Dictionary (5th ed. 2020). The definitions of “reasonable” and “needs” and the context of § 196.491(3)(d)(2) in light of the statute as a whole and the other statutes implicated in the grant of a CPCN make clear that the “reasonable needs” standard refers to an amount that is not in excess of the “adequate supply of electric energy.” Wis. Stat. 196.491(3)(d)(2).

56. The Final Decision never determined that the proposed Cardinal-Hickory Creek transmission line is “needed” to ensure an “adequate supply of electric energy.” Instead, the Final Decision expressed the PSCW’s belief that the agency is “not limited to determining whether there is an adequate supply of electric power in the area,” and can include a broad range of “additional relevant factors ‘such as increased reliability, economic benefits, and public policy considerations.’” Final Decision at 17 (quoting *Town of Holland v. Pub. Serv. Comm’n of Wis.*, 2018 WI App 38, ¶¶ 31–32).

57. The PSCW justified its authority to consider non-statutory factors by declaring that “issuing a CPCN is a *legislative determination* involving public policy and statecraft.” Final Decision at 78 (emphasis added) (quoting *Clean Wisconsin, Inc. v. Pub. Serv. Comm’n of Wisconsin*, 2005 WI 93, ¶ 35).

58. The PSCW is an executive branch agency, not a mini-legislature. The PSCW’s erroneous legal interpretation that it is “not limited” to the plain meaning of the statute led the agency to inappropriately reject alternatives offered by its own Staff’s expert testimony and Petitioner’s and other intervenor’s expert testimony based on non-statutory “economic,

reliability, and public policy” factors such as the “delivery of new wind generation resources west of Wisconsin.” Final Decision at 33, 35.

59. By straying beyond the explicit boundaries set by the legislature in statute, the PSCW violated the “separation of powers” doctrine the Wisconsin Supreme Court underscored in cases like *Tetra Tech*, *Wisconsin Bell*, and *Myers*. See *Tetra Tech*, 382 Wis. 2d at 536-37 (“We must be assiduous in patrolling the borders between the branches. This is not just a practical matter of efficient and effective government. We maintain this separation because it provides structural protection against deprivations on our liberties.”).

60. To the extent that decisions like *Town of Holland* and *Clean Wisconsin* once allowed this kind of intrusion into the core powers of a separate branch of government, the Wisconsin Supreme Court has put an end to it. *Tetra Tech*, 382 Wis. 2d at 562-63 (describing *Tetra Tech* as a “significant break with the way we have reviewed agency decisions”).

61. *Tetra Tech* abrogates the deference doctrine underpinning the *Town of Holland* and *Clean Wisconsin* cases cited in the Final Decision. *Id.* at 562. The PSCW relies on *Town of Holland* and *Clean Wisconsin*, but those cases are no longer good law. The PSCW’s “long-standing practice” in CPCN cases must now change to conform to the statute from which the agency derives its power. *Mid-Plains Tel.*, 56 Wis. 2d at 786; *Wis. Bell*, 382 Wis. 2d at 649-50, *Myers*, 385 Wis. 2d at 187.

62. The Final Decision is subject to judicial review under Wis. Stat. §§ 227.57(5) and 227.57(8).

**(b) COUNT 2 – The PSCW Erroneously Interpreted and Applied Wisconsin’s CPCN Law (Wis. Stat. § 196.491) by Failing to Independently Analyze and Explain Each of its Required Statutory Findings.**

63. Administrative agencies cannot ignore relevant statutory requirements and must state the reasons for their decisions. *Transp. Oil Inc. v. Cummings*, 54 Wis. 2d 256, 264–65 (1972). “It is only when the agency adequately states its reasons for taking an action that meaningful judicial review is possible.” *Id.* Without “strict and demanding” requirements for administrative action, agency expertise “can become a monster which rules with no practical limits on its discretion.” *Id.* (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 167 (1962)).

64. In this case, the CPCN statute requires the PSCW to separately determine and adequately explain *each and all of* the factors set forth in § 196.491(3)(d), and otherwise, the issuance of a CPCN does not comply with the law and is not fully justified. Wis. Stat. § 196.491(3)(d) (“[t]he [PSCW] shall approve an application...*only if* the [PSCW] determines *all of* the following...”) (emphasis added).

65. The PSCW erred by failing to independently analyze and explain many of the determinations required by the Wisconsin statutes.

66. For example, Wis. Stat. § 196.491(3)(d)(6) requires the PSCW to find that the proposed transmission line “will not unreasonably interfere with the orderly land use and development plans for the area involved.” The Final Decision does not provide any explanation for the PSCW’s finding on this factor, stating its conclusion in one pro forma three-line sentence. Final Decision at 77–78.

67. The Final Decision contains no explanation for its findings that completion of the project at the estimated cost will not “[s]ubstantially impair the efficiency” of the applicants’ service, will not “[p]rovide facilities unreasonably in excess of probable future requirements,” and when placed in operation, will not “add to the cost of service without proportionately increasing the value or available quantity” thereof. Wis. Stat. §§ 196.491(3)(d)5 and 196.49(3)(b).

68. As Intervenors, Petitioners Driftless Area Land Conservancy and Wisconsin Wildlife Federation filed a detailed memo raising issues and explaining that the PSCW's "decision matrix" omitted and conflated several of the required statutory factors for the Commission's deliberations, determinations, and decision. Petitioners' memo stated:

[T]he Matrix collapses almost all of the energy-related requirements in the statute into a vague cost benefit analysis, which effectively erases most of what the statute says. The legislature listed several independent determinations that the Commission needs to make in order to approve a project, and presumably intended those words to be effective.

For example, Wis. Stat. § 196.49(3)(b) states that "[t]he commission may refuse to certify a project if it appears that the completion of the project will do any of the following." The statute then lists several factors, including that the proposed project will "[p]rovide facilities unreasonably in excess of the probable future requirements," § 196.49(3)(b)(2) or "add to the cost of service without proportionately increasing the value or available quantity of service," § 196.49(3)(b)(3). These are each independent grounds for denying a CPCN, and these factors were discussed at length in briefs and testimony in this docket.

....

Unfortunately, by either burying or even completely avoiding the specific requirements of several statutes, by neglecting the allocation of the burden of proof, and by assuming that environmental risks will in all cases be fully addressed by permit conditions the Applicants agree to, the Draft Decision Matrix makes it less likely that the PSC's ultimate decision will be defensible. We urge Staff to address these problems before a final decision matrix is provided to the Commission members.

Driftless Area Land Conservancy and Wisconsin Wildlife Federation Memo re Draft Decision Matrix for PSCW Case No. 5-CE-146 (July 26, 2019) at pp. 5–6 (PSC REF # 372945).

69. The PSCW did not address the problems raised in Petitioner's July 26, 2019 memo, and the Commission used the matrix to guide its deliberation and final decision in this case. To the extent they were considered at all, the PSCW "intertwined" the CPCN criteria with other "factual,

value, and public policy determinations” instead of making an independent determination with respect to each as required by Section 196.491(3)(d). Final Decision at 11.

70. The CPCN statute is not a “multiple choice” law where the PSCW can pick and choose which statutory factors to apply. The Final Decision errs as a matter of law by focusing significant attention on non-statutory factors and ignoring many of the statutory findings explicitly required by the law.

71. The Final Decision is subject to judicial review under Wis. Stat. §§ 227.57(5) and 227.57(8).

**(c) COUNT 3 – The PSCW Unlawfully Shifted the Statutory Burden of Proof in CPCN Cases by Requiring Its Own Staff and Intervenors (now Petitioners) to Conclusively Prove the Viability of Alternatives.**

72. Wisconsin state courts have recognized that “[t]he customary common-law rule that the moving party has the burden of proof, including not only the burden of going forward but also the burden of persuasion, is generally observed in administrative hearings.” *Sterlingworth Condo. Ass’n, Inc. v. State, Dep’t of Nat. Res.*, 205 Wis. 2d 710, 726 (Ct. App. 1996).

73. The Transmission Companies did not satisfy their burden of proving that the proposed Cardinal-Hickory Creek transmission line meets each statutory factor by a preponderance of evidence in the record. Instead, the PSCW effectively shifted the burden onto its Staff and Intervenor opponents to prove that the criteria were not met. *Cf. Wisconsin Bell, Inc.*, 382 Wis. 2d at 628 (finding “LIRC’s version of the ‘inference method’ is inconsistent with Wis. Stat. § 111.322(1) because it excuses the employee from his burden of proving discriminatory intent”).

74. The Transmission Companies never studied whether energy storage or other advanced technologies could be used in combination with planned transmission system asset renewal to more cost-effectively meet the transmission needs of Wisconsin customers. Instead, the PSCW shifted the burden onto Intervenors opposing the proposed transmission line to “demonstrate that such alternatives would be as effective” as the proposed Cardinal-Hickory Creek transmission line. Final Decision at 35.

75. The PSCW also rejected its own Staff’s expert testimony on the “base with asset renewal” alternative because the Staff did not develop or study that alternative “in any detail other than as a modeling comparison to the project.” Final Decision at 33.

76. When the PSCW Staff criticized the metric that the Transmission Companies used to measure the economic benefits of the project, the PSCW did not require the Transmission Companies as Applicants to prove the superiority of their metric, but rather shifted the burden of proof to its Staff and Intervenors to prove that the Applicants’ metrics “are so unreliable as to be dismissed by the Commission.” Final Decision at 26.

77. The PSCW also dismissed Intervenors’ expert witnesses’ testimony raising concerns about the “assumptions and data used by applicants” because “none of these witnesses actually performed independent modeling to bear out these concerns.” Final Decision at 26.

78. Under Wisconsin statutes and constitutional Due Process requirements, the Intervenors, including Petitioners Driftless Area Land Conservancy and Wisconsin Wildlife Federation here, do not have the burden of disproving the Applicants’ case or conclusively establishing the viability of transmission alternatives. Instead, as Applicants for a CPCN, the Transmission Companies bear the statutory burden of proof with regard to each, all and every statutory factor.

79. The Transmission Companies must objectively and rigorously evaluate alternatives to determine whether the project is truly needed. *See, e.g., Wisconsin's Env'tl. Decade, Inc. v. Pub. Serv. Comm'n*, 79 Wis. 2d 161, 175 (1977), holding modified by *State ex rel. Town of Delavan v. Circuit Court for Walworth Cty.*, 167 Wis. 2d 719 (1992).

80. The PSCW Staff's and intervenors Driftless Area Land Conservancy's and Wisconsin Wildlife Federation's, and the Citizens Utility Board's highly credible expert testimony cast doubt on the Applicants' alternatives analysis, and the PSCW should have required the Applicants to provide a better analysis that would have complied with the statutory standards. Instead, the PSCW excused the shortcomings in the Transmission Companies' analysis and required *the intervenors* to "demonstrate that such alternatives would be as effective" as the proposed Cardinal-Hickory Creek transmission line. Final Decision at 35.

81. The PSCW essentially required the intervenors to provide independent, expensive modeling and other such analysis for the PSCW to consider their testimony. This is inconsistent with the statutory requirements that Applicants bear the burden of proof and must prove their case on all of the applicable statutory standards.

82. The participation of intervenors, such as Petitioners Driftless Area Land Conservancy and Wisconsin Wildlife Federation, in any case before the PSCW is "voluntary and purely fortuitous." If there were no intervenors in this case, the Transmission Companies would carry the same unshifting burden of proof. As noted by the Illinois Supreme Court in a similar case, "[r]equiring intervenors to establish unreasonableness is therefore no substitute for requiring proof of reasonableness." *People ex rel. Hartigan v. Illinois Commerce Comm'n*, 117 Ill. 2d 120, 135–36, 510 N.E.2d 865, 871 (Ill. 1987).

83. The PSCW's approach in this case excused the Transmission Companies from proving the need for the line and the Final Decision must be overturned. *Wisconsin Bell, Inc.*, 382 Wis. 2d at 628.

84. The Final Decision is subject to judicial review under Wis. Stat. § 227.57(4).

**(d) COUNT 4 – The PSCW Erroneously Interpreted and Applied the Wisconsin Environmental Policy Act (WEPA), Wis. Stat. § 1.11, and its Required Procedures.**

85. The Wisconsin Environmental Policy Act (WEPA) requires agencies to produce a detailed Environmental Impact Statement (EIS) regarding “major actions significantly affecting the quality of the human environment.” Wis. Stat. § 1.11(2)(c). The EIS must “[s]tudy, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” Wis. Stat. § 1.11(2)(e). The need of the proposal cannot be so narrowly defined that it predetermines the outcome and forecloses the consideration of reasonable alternatives. *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 666 (7th Cir. 1997).

86. The PSCW violated WEPA because the final EIS for the proposed Cardinal-Hickory Creek transmission line docket does not study, develop, and describe reasonable alternatives to building this new high-voltage transmission line and very high towers across the protected Upper Mississippi River National Wildlife and Fish Refuge and across the natural resource conservation areas and scenic landscapes in the Driftless Area of Southwest Wisconsin.

87. The EIS does not contain any independent analysis of alternative transmission solutions, and instead relies on the Applicant Transmission Companies' flawed conclusion that its proposed Cardinal-Hickory Creek transmission line is needed despite the fact that Applicants never reasonably, fully, and fairly evaluated energy storage and other advanced transmission

technologies and other clean energy resources in combination as a potential better alternative to their proposed transmission line.

88. The EIS also does not contain any independent analysis of alternative river crossings that do not pass through the protected Upper Mississippi River National Fish and Wildlife Refuge. The route approved by the PSCW within Wisconsin provides for this proposed transmission line to be built through the National Wildlife Refuge. Private companies, such as the Applicants here, cannot dictate a route that requires that its proposed huge transmission line crosses and cuts a wide path through a federally protected National Wildlife Refuge. The PSCW erred by failing to evaluate a reasonable range of alternatives containing routes that do not run through the protected National Wildlife Refuge. Final Decision at 45.

89. The EIS also failed to take a hard look at the direct, indirect, and cumulative impacts of the proposed Cardinal-Hickory Creek transmission line, including: (1) cumulative impacts of the multiple transmission line projects recently approved and constructed in Wisconsin; (2) cumulative impacts of the transmission line projects proposed, planned and reasonably foreseeable in Wisconsin; (3) socioeconomic impacts to tourism; and (4) greenhouse gas and climate impacts.

90. The Final Decision is subject to judicial review under Wis. Stat. §§ 227.57(5) and 227.57(8).

(e) **COUNT 5 – The PSCW Failed to Follow the Procedures Required by the Wisconsin Environmental Policy Act, Wis. Stat. § 1.11, and Refused to Accept Public Comments on the Final EIS from Intervenor Parties in the CPCN Proceeding.**

91. WEPA and its implementing regulations require that the public must be given an opportunity to comment on any proposal for which an EIS is required. Wis. Stat. § 1.11(2)(d); Wis. Admin. Code §§ PSC 4.30(4); 4.50(1)(a)(1); NR 150.04(2)(g).

92. Wis. Stat. § 196.025(2) requires the PSCW to promulgate rules that provide “[a]dequate opportunities” and “adequate time” for the public to be heard on environmental impact statements as well as deadlines that allow “thorough review” of environmental issues without imposing unnecessary delay.

93. The Administrative Law Judge’s July 17, 2019 “Order on Objection to Receive Comments” rejected the public comments filed by Intervenors Driftless Area Land Conservancy and Wisconsin Wildlife Federation on the Final EIS based on the erroneous legal conclusion that parties to CPCN proceedings are not permitted to file public comments on an EIS produced by the PSCW. There is no legal basis for this exclusion, and the PSCW’s denial of an opportunity to comment adversely affected the substantial interests of Petitioners and their members.

94. The Final Decision is subject to judicial review under Wis. Stat. § 227.57(4).

**(f) COUNT 6 - Erroneous Interpretation of Wis. Stat. §§ 1.12 and 196.025(1) (Energy Priorities Law)**

95. Wisconsin’s Energy Priorities Law, Wis. Stat. § 1.12, provides that it is the “policy of the state” to consider various non-emitting energy alternatives to meet the state’s energy demands, to the extent those alternatives are cost-effective and technically feasible.

96. Section 196.025 requires the PSCW to implement the Energy Priorities Law “in making all energy-related decisions and orders.” Wis. Stat. § 196.025(1)(ar).

97. The PSCW erroneously interpreted Wis. Stat. §§ 1.12 and 196.025 when it concluded that the proposed Cardinal-Hickory Creek transmission line complies with the Energy Priorities Law. The PSCW misinterpreted and unreasonably narrowed the scope of the Energy Priorities Law when applying it to this case. Instead of looking broadly at a range of alternatives that could help avoid or defer the need for new transmission, the PSCW limited the scope of

analysis to only one resource—energy conservation and efficiency—standing alone and in isolation. Final Decision at 36.

98. The PSCW erred when it limited its consideration of the Energy Priorities Law to energy conservation and efficiency. Final Decision at 36. As explained above, Intervenors Driftless Area Land Conservancy and Wisconsin Wildlife Federation submitted extensive testimony by highly qualified expert witnesses who explained that solar generation, battery storage, and other advanced transmission technologies can augment, defer, or entirely replace traditional transmission projects at a lower cost with less environmental impacts than a traditional transmission line alone.

99. The PSCW had no legal basis to categorically eliminate the higher-priority solar and energy storage-based alternatives suggested by Petitioners' expert witnesses' testimony, as well as the expert testimony of its own Staff and other Intervenors including the Citizens Utility Board.

100. The PSCW also erred when it required intervenors to conclusively prove that battery storage and other advanced transmission technologies are cost-effective and technically feasible alternatives to the project. Final Decision at 37. The Applicant Transmission Companies bear the legal burden of proving their case. This burden applies under Wisconsin's Energy Priorities Law. The applicant Transmission Companies did not study, analyze, or design an energy storage-based alternative that could mimic the transmission services provided by the Project. Thus, the PSCW erred by shifting the burden of proof to Petitioners Driftless Area Land Conservancy and Wisconsin Wildlife Federation and other intervenors in this case for the purposes of applying the Energy Priorities Law.

101. The Final Action is subject to judicial review under Wis. Stat. §§ 227.57(5) and 227.57(8).

**(g) COUNT 7 – The PSCW’s various conflicts, *ex parte* communications, and entanglements with Applicants and the Intervenor Midcontinent Independent System Operator in this case created a risk of unfairness, bias and lack of impartiality that is impermissibly significant and violate Petitioners’ constitutional Due Process and statutory rights to a fair hearing and impartial adjudicatory decisionmaking process.**

102. It is axiomatic that “a ‘fair trial in a fair tribunal is a basic requirement of due process.’” *Guthrie v. Wisconsin Employment Relations Comm’n*, 111 Wis. 2d 447, 454 (1983) (quoting *Withrow v. Larkin*, 421 U.S. 35, 46 (1975)). A “minimal rudiment of due process is a fair and impartial decisionmaker.” *Tetra Tech*, 382 Wis. 2d at 556 (quoting *Guthrie*, 111 Wis. 2d at 454). The Wisconsin Supreme Court’s “commitment to this principle is such that we do not accept even the appearance of bias.” *Tetra Tech*, 382 Wis. 2d at 553. The purpose of this “risk of bias” standard is to protect the integrity of the agency and the public’s trust in its decisions. *Guthrie v. Wisconsin Employment Relations Comm’n*, 107 Wis. 2d 306, 314 (Wis. App. 1982).

103. In *Tetra Tech*, the Court held that a litigant’s right to a fair hearing may be threatened when an administrative agency “appears in our courts as a party” because “systematic favor” towards the agency’s position may “deprive[] the non-governmental party of an independent and impartial tribunal.” *Tetra Tech*, 382 Wis. 2d at 552–54.

104. The Court’s review should be even more searching if there are danger signals that the agency has not really taken a “hard look” at the salient problems. *See, e.g., Greater Boston Television Corp. v. F.C.C.*, 444 F.2d 841, 851 (D.C. Cir. 1970).

105. In this case, there are facts and circumstances that create an objective risk of bias and partiality in favor of the Applicants’ requested CPCN for the proposed Cardinal-Hickory

Creek transmission line and, therefore, the Court's review of the PSCW's Final Decision approving the CPCN should be particularly searching.

106. On September 20, 2019, Petitioners Driftless Area Land Conservancy and Wisconsin Wildlife Federation filed a Motion with the PSCW to recuse and disqualify PSCW Commissioner Michael Huebsch and Chair Rebecca Valcq. The Motion described the extensive entanglements with parties in interest to the case that "present conflicts of interest and at least an appearance of bias and lack of impartiality when the totality of the circumstances are considered." Motion For Recusal and Disqualification at 1.

107. As described in Petitioners' recusal motion to the PSCW, Commissioner Huebsch served and continues to serve in various roles for the Midcontinent Independent System Operator (MISO), including serving on MISO's Advisory Committee and as Secretary to the Organization of MISO States (OMS).

108. MISO is a regional transmission organization consisting of public utilities, power producers, and transmission companies that operate in the MISO region, including Applicants American Transmission Company, Dairyland Power, and ITC Midwest.

109. MISO developed a portfolio of 17 transmission line projects called the Multi-Value Portfolio (MVP). Exploratory studies began in 2003, and a Regional Generation Outlet Study was carried out in 2008. The final MVP was approved in 2011. The proposed Cardinal-Hickory Creek transmission line was conceived as part of the MVP. MISO is a longstanding, vocal proponent of the Cardinal-Hickory Creek transmission line.

110. MISO intervened as a party in this contested case at the PSCW to advocate for approval of the Applicants' requested CPCN for the proposed Cardinal-Hickory Creek transmission line.

111. Before moving to intervene in this case, MISO entered into a “common interest” litigation agreement with the American Transmission Company, one of the Applicant Transmission Companies in this case, to share and discuss strategy on a protected privileged basis.

112. MISO vigorously litigated its position at the PSCW, including serving discovery, filing expert testimony, cross-examining adverse witnesses, and filing legal briefs in support of the Applicants’ requested CPCN for the proposed Cardinal-Hickory Creek transmission line project.

113. Commissioner Huebsch did not step away from his role as an advisor to MISO during the time that MISO was also appearing before the PSCW as a party in the Cardinal-Hickory Creek transmission line CPCN case. His continued participation and extensive meetings and discussions with MISO Board members, MISO staff, and other parties to the Cardinal-Hickory Creek case outside of the hearing room were *ex parte* communications and created at least a “risk of bias” and lack of impartiality that should concern this Court on judicial review. *Tetra Tech*, 382 Wis. 2d at 553; *Guthrie*, 111 Wis. 2d at 454.

114. As further described in the Petitioners’ Motion for Recusal and Disqualification, Chair Valcq has spent almost her entire career serving as counsel for We Energies, whose parent company WEC Energy Group, owns more than 60% of American Transmission Company, which is one of the co-applicant Transmission Companies requesting the CPCN in this contested case before the PSCW.

115. The applicant Transmission Companies have been actively working to develop the proposed Cardinal-Hickory Creek transmission line for many years. Chair Valcq ended her

representation as outside counsel for We Energies on Friday, January 4, 2019, and then joined the PSCW as Chair on the following Monday, January 7, 2019.

116. On September 26, 2019, the PSCW denied DALC's Motion for Recusal and Disqualification. The PSCW's Final Decision acknowledged that "[a]n administrative decision can violate due process either by bias in fact on the part of the decisionmaker or when the risk of bias is impermissibly high." Final Decision at 85 (citing *Guthrie*, 111 Wis. 2d at 454). However, the PSCW concluded that the circumstances of Commissioner Huebsch and Chairperson Valcq's participation "complied with all applicable ethical and legal standards." Final Decision at 86.

117. The PSCW's Final Decision does not correctly apply the "risk of bias" legal standard announced by the Wisconsin Supreme Court in the *Guthrie* case and the standards set forth in other applicable case law and statutes. Compliance with "all applicable ethical and legal standards" is not necessarily the same as a finding that the *risk* or *appearance* of bias in an administrative proceeding is "impermissibly high." In *Guthrie* and *Tetra Tech*, the Court is concerned with situations that present an "appearance of bias" that is intolerably high, even when there is no reason "to question the agency's good faith." *Tetra Tech*, 382 Wis. 2d at 556.

118. The totality of the facts and circumstances of Commissioner Huebsch and Chairperson Valcq's entanglements and then participation in the decision-making in this case create risks of bias and unfairness that are impermissible and should concern this Court. *See Tetra Tech*, 382 Wis. 2d at 553; *Guthrie*, 111 Wis. 2d at 454. This Court must vacate the Final Decision if it finds that the "risk of unfairness is intolerably great." *Guthrie*, 111 Wis. 2d at 457, 461 ("Decisions which are violative of due process may be vacated under the general judicial authority.").

119. Even if the Court chooses not to vacate the Final Decision on Due Process grounds, the unusual circumstances of this case, involving Commissioners' entanglements with the Applicants and other intervenor parties to the proceeding, provide yet another reason for the Court to undertake a "strict and demanding" review of the Final Decision. *See Transp. Oil Inc.*, 54 Wis. 2d at 265–66; *Tetra Tech*, 382 Wis. 2d at 552.

120. In sum, if there is any weight "due" the PSCW's Final Order under the "due weight" provisions of Section 227.57(10), it is certainly very low in light of the totality of these facts and circumstances. *Tetra Tech*, 382 Wis. 2d at 561 ("due weight" is not a talisman" but depends on "the persuasiveness of the agency's perspective").

121. The Final Decision is subject to judicial review under Wis. Stat. §§ 227.57(4) and 227.57(7).

### **RELIEF REQUESTED**

Petitioner Driftless Area Land Conservancy respectfully requests that the Court:

1. Declare that the correctness of the action was impaired by material errors in procedure and by failures to follow prescribed procedure. Wis. Stat. § 227.57(4).
2. Declare that the PSCW erroneously interpreted provisions of law and that correct interpretations could reasonably compel particular actions different from the approval of the Applicants' requested CPCN and other actions taken by the PSCW. Wis. Stat. § 227.57(5).
3. Declare that the PSCW impermissibly shifted the burden of proof in meeting multiple statutory standards from the Applicants to intervenors.
4. Declare that the PSCW's Final Decision and decisionmaking process failed to comply with the Wisconsin's Certificate of Public Convenience and Necessity Law, Wis. Stat. § 196.491.

5. Declare that the PSCW's Final Decision and decisionmaking process failed to comply with the Wisconsin Energy Priorities Law, Wis. Stat. §§ 1.12 and 196.025(1).
6. Declare that the PSCW's Final Decision and decisionmaking process failed to comply with the Wisconsin Environmental Policies Act, Wis. Stat. § 1.11.
7. Declare that the PSCW's actions depend on facts determined without a hearing. Wis. Stat. § 227.57(7).
8. Declare that the PSCW's exercise of discretion in this case is outside the range of discretion delegated to the PSCW by law and is otherwise in violation of relevant constitutional or statutory provisions. Wis. Stat. § 227.57(8).
9. Reverse and vacate the PSCW's Final Decision granting the CPCN for the Cardinal-Hickory Creek transmission line until such time as:
  - a. the PSCW conforms its analysis precisely to the statutes from which it derives power (*Mid-Plains Tel.*, 56 Wis. 2d at 786);
  - b. the PSCW makes a separate and independent finding for each of the required statutory criteria (Wis. Stat. § 196.491(3)(d));
  - c. the PCSW adequately explains its reasons for each required statutory finding (*Transp. Oil Inc.*, 54 Wis. 2d at 265–66);
  - d. the PSCW holds applicant Transmission Companies to their legal burden of proving that their application meets each statutory factor for a CPCN rather than shifting the burden to other parties to conclusively prove the viability of alternatives (*Sterlingworth Condo. Ass'n, Inc.*, 205 Wis. 2d at 726);
  - e. the PSCW complies with WEPA by producing an EIS that independently develops and describes a reasonable range of appropriate alternatives, including alternative river

crossings that protect the Upper Mississippi River National Wildlife and Fish Refuge, and alternative transmission solutions based on higher-priority energy technologies (Wis. Stat. § 1.11(2));

- f. the PSCW provides all members of the public with an opportunity to file comments on the PSCW's EIS as required by WEPA (Wis. Stat. § 1.11(2)(d));
- g. the PSCW does not unlawfully limit the scope of its analysis under the Energy Priorities Law to one resource (energy conservation and efficiency) and requires applicant Transmission Companies to evaluate higher priority energy options that are cost-effective and technically feasible (Wis. Stat. §§ 1.12 and 196.025);
- h. the PSCW eliminates the circumstances creating an unreasonable risk of bias, lack of impartiality and conflicts of interest (*Guthrie*, 111 Wis. 2d at 457, 461); and
- i. the PSCW complies with all other applicable statutes, rules, and the instructions of this Court.

10. Award DALC's fees and costs pursuant to Wis. Stat. § 814.245.

11. Grant such further legal and equitable relief the Court determines to be just, appropriate and necessary, and in the public interest.

Date: December 13, 2019

Respectfully submitted,

/s/ Electronically signed by Bradley Klein

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