

FILED
05-26-2022
CIRCUIT COURT
DANE COUNTY, WI
2022CV001273
Honorable Rhonda L.
Lanford
Branch 16

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

TOWN OF CHRISTIANA
773 Koshkonong Rd,
Cambridge, WI 53523

Petitioner,

Case No.: 22-CV-_____

Case Code: 30607

v.

(Administrative Agency Review)

PUBLIC SERVICE COMMISSION
OF WISCONSIN
P.O. Box 9100
4822 Madison Yards Way
Madison, Wisconsin 53705-9100

Respondent.

PETITION FOR JUDICIAL REVIEW

Petitioner Town of Christiana (“Petitioner”) by its attorneys, Municipal Law & Litigation Group, S.C., Attorney H. Stanley Riffle, pursuant to, *inter alia*, Wis. Stat. §§ 227.52, 227.53(2) and 227.57, Petition the Court for Review of the FINAL DECISION in Public Service Commission of Wisconsin (“PSC”) Docket No. 9811-CE-100 (“FINAL DECISION”), bearing a “Service Date” stamp of May 5, 2022. (*See*: Exhibit 1).

AND AS AND FOR its Petition, Petitioner states:

1. The FINAL DECISION of the PSC in the above-referenced docket authorized the issuance of Certificate of Public Convenience and Necessity (“CPCN”) to Koshkonong Solar Energy Center LLC (“KOSHKONONG”) to construct a Solar Electric Generation Facility - a 300 MWAC photovoltaic generating facility proposed to be located on approximately 884 acres of agricultural land in the Towns of Christiana and Deerfield, Dane County, Wisconsin.
2. This PETITION is brought under Chapter 227 of the Wisconsin Statutes and particularly Wis. Stats. §§ 227.52 to 227.57.

PARTIES AND STANDING

3. The Public Service Commission (“PSC”) is an Agency of the State of Wisconsin under Wis. Stat. §§ 15.79 and 227.01(1).
4. The PSC’s address is accurately identified in the caption of this petition.
5. The PSC’s powers are enumerated in Wis. Stat. § 196.02.
6. The PSC may be sued. (Wis. Stat. § 196.02(12)).
7. In PSC Docket No. 9811-CE-100 KOSHKONONG sought, and the PSC granted, in the DECISION, a CPCN for a 300 MWAC photovoltaic generating facility under Wis. stat. §196.491.
8. The FINAL DECISION is reviewable under Wis. Stat. § 227.52.
9. The Town of Christiana is a body corporate and politic under Wis. Stat. Ch. 60_with authority to file legal actions; its address is indicated in the caption of this Petition for Review.

10. The Petitioner was a party to PSC Docket No. 9811-CE-100, which encompassed a contested case proceeding before the PSC for which the PSC issued the FINAL DECISION adverse to the Petitioner' position and interests.
11. The FINAL DECISION identified the Petitioner as a party qualified to petition for review of the FINAL DECISION.
12. The Petitioner has "jurisdiction over land affected by a certificate of public convenience and necessity" and is, by this PETITION, petitioning "for judicial review, under ch. 227 of" a "DECISION of the commission regarding the certificate." Wis. Stat § 196.491(3)(j).
13. The Petitioner's substantial interests are adversely affected by the decisions to issue the FINAL DECISION and deny rehearing because, among other things:
 - a. The Petitioner's interests will be adversely affected by infrastructure associated with the PROJECT if it is built.
 - b. The decision is adverse to the positions asserted by the Petitioner during the proceeding through which the PSC determined to grant the CPCN for the PROJECT.

TIMELINESS

14. The Petitioner brings this Petition for Review within 30 days of May 5, 2022, making it timely under Wis. Stat. § 227.52(1)(a)2), and timely according to the directive related to review provided by the PSC in the FINAL DECISION itself.

VENUE

15. The petition is properly venued in Dane County; the entire PROJECT, is proposed to be constructed in Dane County. Wis. Stat. § 227.53(1)(a)3.

GROUND FOR REVERSAL OR REMAND

16. The PSC'S FINAL DECISION , *inter alia*,
- a. Issued a CPCN to KOSHKONONG, that is not qualified for a CPCN;
 - b. Approved a PROJECT that violates Wisconsin Constitution. art. 1, §14;
 - c. Erroneously issued the CPCN based upon statutory criteria related to a Wholesale Merchant Plant – this PROJECT will not be owned and operated as a Wholesale Merchant Plant;
 - d. Includes erroneous interpretations of the law governing CPCNs;
 - e. Depends on erroneous interpretations of the law governing the PSC's own power, including but not limited to
 - f. Is unsupported by substantial evidence in the record;
 - g. Is outside the range of discretion delegated to the agency by law;
 - h. Is inconsistent with an agency rule, an officially stated agency policy and prior agency practice;
 - i. Violates constitutional rights to due process of law by relying on findings made elsewhere, without the benefit of a contested case, and Wis. Stat. § 196.491(3).
 - j. Was issued without an adequate Environmental Impact Statement ("EIS").
 - k. Is predicated on, and includes, material errors of law and fact, and
 - l. Violates the PSC's own administrative rules.

17. The fairness of the proceedings and the correctness of the action at issue were impaired by material errors in procedure, failures to follow prescribed procedures, and irregular procedures.
18. The PROJECT imposes undue adverse impact on environmental values such as, but not limited to, ecological balance, public health and welfare, aesthetic amenities such as views, historic sites, geological formations, the aesthetics of land and water and recreational use.
19. The PROJECT as approved would unreasonably interfere with orderly land use and development plans in the unique area of the state and nation within which the Petitioner is located, upon values of the aesthetic beauty of the affected environment, and on the affected environment's recreational amenities.
20. The facility design, location, and route are not in the public interest considering alternative sources of supply, alternative locations or routes, including alternatives the Commission failed to develop, in violation of its non-discretionary duties, and by the individual hardships, engineering, economic, safety, reliability, and environmental burdens imposed by the Project.

WHEREFORE, Petitioner, Town of Christiana, respectfully requests the Court award it the following relief:

- A. To reverse and vacate the FINAL DECISION granting the CPCN for the PROJECT, or in the alternative, to remand the matter to the Commission for further proceedings consistent with the applicable statutes, rules, policies and instructions of the court;

B. Such other and further relief as the Court deems appropriate under the circumstances of this action.

Dated this 25th day of May 2022.

Municipal Law & Litigation Group, S.C.
Attorneys for Town of Christiana

By: ***electronically signed***
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