WISCONSIN COURT OF APPEALS
DISTRICT IV

Appeal No. 2023AP002230

TOWN OF CHRISTIANA,
Petitioner-Appellant,

ROXANN ENGELSTAD and **CHRIS KLOPP**,
Intervenors-Co-Appellants,

EDWARD LOVELL and **TARA VASBY**,
Intervenors,
v.

PUBLIC SERVICE COMMISSION OF WISCONSIN,
Respondent-Respondent,

KOSHKONONG SOLAR ENERGY CENTER LLC,
Intervenor-Respondent.

Consolidated Appeal from Dane County Circuit Court,
the Honorable Diane Schlipper Presiding, Circuit Court Case No. 2022CV1273

RESPONSE BRIEF OF PETITIONER-APPELLANT, TOWN OF CHRISTIANA

H. STANLEY RIFFLE
State Bar No. 1012704
Municipal Law & Litigation Group, S.C.
730 N Grand Avenue
Waukesha, WI 53186
Phone. (262) 548-1340
sriffle@ammr.net

Attorneys for Petitioner-Appellant

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STATEMENT OF THE ISSUES

1. Did the trial court err in finding the PSC had authority to award, using the Wis. Stat. §196.491(1)(w) "wholesale merchant" electric generation facility exemptions, a Certificate of Public Convenience and Necessity (CPCN) to Koshkonong Solar Energy Center LLC (Koshkonong) when Koshkonong, in applying for the CPCN, was operating as a proxy for regulated public utilities and Koshkonong's application showed the facility would not operate as a "wholesale merchant plant" but instead as a utility-owned facility after transfer of the "wholesale merchant plant" CPCN to public utilities that would have been required to meet additional public interest requirements had they sought a CPCN directly and under provisions applicable to public utilities?

   Answered by the circuit court: No

2. Did the trial court err in refusing to take judicial notice of docket entries in PSC Docket 5-BS-258, the Joint Application of Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and Madison Gas and Electric for Approval to Acquire Ownership Interests in the Koshkonong Solar Generating and Battery Energy Storage System?

   Answered by the circuit court: No

3. Did the trial court err in refusing to reverse the Commission's grant of the Koshkonong's Motion for a Protective Order blocking the Town's discovery requests to obtain documents related to Koshkonong's dealings with the public utilities related to proxy arrangement through which public utilities would secure a CPCN for the Project through Koshkonong while evading CPCN requirements applicable to public?

   Answered by the circuit court: No

STATEMENT AS TO ORAL ARGUMENT AND PUBLICATION

Oral Argument. Pursuant to Wis. Stat. § 809.22(2)(b), the Respondent does not believe oral argument is necessary in this case. The issues presented can be adequately addressed through the briefing process. Therefore, oral argument would be of marginal value and would not justify the additional expenditure of Court time or costs to the litigants.

Publication. Pursuant to Wis. Stat. § 809.23(1)(b), the Respondent does believe that publication is warranted in this case because the issues involve are likely to be involved in recurring fact situations and the issues fit the parameters of Wis. Stat. § 809.23(1)(a).

The Town of Christiana ("Christiana"), by their attorneys Municipal Law & Litigation Group. S.C. respectfully submits this Brief in support of its request to reverse the trial court decision affirming the Final Decision of the Public Service Commission of Wisconsin ('PSC" or "Commission") in Docket No. 9811-CE-100 related to the issuance of a Certificate of Public Convenience and Necessity ("CPCN") to Koshkonong Solar Energy Center LLC ("Koshkonong") to Construct a Solar Electric Generation Facility in the Town of Christiana.

STATEMENT OF THE CASE

In the verdant expanse of Dane County, Wisconsin, amidst the bucolic splendor of the Towns of Christiana and Deerfield, a contentious proposal emerged, seeking the blessing of bureaucratic sanction. Koshkonong, with ambition in its eyes, set forth to secure a CPCN for the ambitious endeavor—a 300 MWAC photovoltaic generating facility (the "Project") poised to sprawl across a vast swath of 6,000 acres within the bounds of Christiana, a once tranquil agricultural landscape that would be irreversibly altered. Christiana, situated in approximately 35.5 square miles, is already home to a 503-megawatt natural gas generator (approved by PSC in Docket 137-CE-102 in 2001) located on 78 acres recently purchased by Dairyland Power Cooperative as well as hundreds of acres of electric transmission and gas line corridors, is now facing a Koshkonong proposal to occupy an additional one-fourth of the entire Township.

Koshkonong filed its Project Application seeking a CPCN for a wholesale merchant plant on April 15, 2021 (Docket #409309). Shortly thereafter, on April 30, 2021, the Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and Madison Gas and Electric ("the Utilities") applied for a Certificate of Authority ("CA") related to the same Koshkonong Solar Electric Generation Facility (the "Solar Facility"), through their Application in PSC Docket No.

5-BS-258 (Docket #410708). Under the proposal, We Energies and WPS would own 90% of the Project, and MGE would own the other 10% and the Utilities, not Koshkonong, would own and operate the plant. PSC granted the Certificate of Authority (CA) to the Utilities, under the aegis of Wis. Stat. §196.49, to acquire all right title and interest in the CPCN previously issued to Koshkonong and to allow the Utilities to construct own, manage and operate the Solar Facility at a total cost of $649,000,000.

From the onset, Christiana raised objection to this semi-transparent plot to circumvent the legislative will that no utility may own or operate a wholesale merchant plant (recognizing that a utility could obtain its own CPCN to operate a Solar Facility). The Town (and other parties') pleas for a fair opportunity for developing the record on this very relevant issue, and ultimately for fair consideration of a decision considering arguments based thereon were given zero consideration by the PSC. Through misapplication of law, the circuit court failed to correct the PSC's errors.

STANDARD OF REVIEW

The standard of review applicable to the issues in this review involve the interpretation of statutory provisions of Wis. Stat. §196.491. The court reviews issues of statutory construction de novo ([w]e therefore are presented with issues of statutory construction, which are questions of law, subject to our de novo review. *Kimberly–Clark Corp. v. Pub. Serv. Comm'n,* 110 Wis.2d 455, 466, 329 N.W.2d 143 (1983). In particular, a question of statutory construction is front and center here. The construction of a statute is a question of law which this court reviews independently... The aim of all statutory construction is to discern the intent of the legislature. *State v. Duychak,* 133 Wis. 2d 307, 395 N.W. 2d 795 (Ct. App. 1986), (citations omitted).

This review also involves the Commission's interpretation of its own authority under ch. 196 Wis. Stats. In such cases, the court owes no deference to the PSC's understanding of its

authority ([w]e owe no deference to the Commission's construction of its own authority under ch. 196, Stats. *Wisconsin State Telephone Association v. Public Service Commission of Wisconsin*, 201 Wis.2d 761, 549 N.W.2d 278 (Ct. App. 1996) *citing Madison Metro. School Dist. v. DPI,* 199 Wis.2d 1, 8, 543 N.W.2d 843, 846 (Ct.App.1995).

ARGUMENT

I. The trial court erred as a matter of law in refusing to find that the PSC erroneously interpreted a provision of law and a correct interpretation compels a particular action, under Wis. Stat. § 227.57(5). in issuing a CPCN authorizing Koshkonong to own and operate a "wholesale merchant" electric generation facility when Koshkonong's very application showed the facility would not operate as a "wholesale merchant" but instead as a utility-owned facility after transfer of the "wholesale merchant" CPCN to public utilities that would otherwise have been required to meet additional public interest requirements had they sought a CPCN directly and under provisions applicable to public utilities.

A. Koshkonong and Utility Approvals

In Koshkonong's Application for Certificate of Public Convenience and Necessity filed on March 15, 2021, Koshkonong on page 6, flagged its ultimate intent to never own and operate a wholesale merchant plant:

> Koshkonong Solar, provided it receives a CPCN from the Commission, would directly or indirectly through its affiliates, construct and operate the Project by selling the power using long term power purchase agreements. **Alternatively, Koshkonong Solar would sell or assign the Project, or a portion thereof, to a public utility** or other qualified entity at any time before, during or after the Project is constructed. PSCW Record Exhibits Part 1 PSC_003118-3252.

Two weeks later and purportedly without knowing whether or when the PSC would grant a CPCN for the Project, the Utilities filed their CA application for the right to acquire, own and operate the Koshkonong Solar Electric Generation Facility. The Utilities' Joint Application stated:

> Wisconsin Electric Power Company ("WEPCO"), Wisconsin Public Service Corporation ("WPSC"), and Madison Gas and Electric Company ("MGE") (collectively, the "Joint Applicants") apply for approval under Wis. Stat. § 196.49 to acquire the Koshkonong Solar Energy Center (referred to as "Koshkonong" or "the Project"), another high quality, utility-scale solar-powered electric generating facility with Battery Energy Storage Systems ("BESS") proposed to be built in Dane County by Invenergy, LLC ("Invenergy"), an experienced, U.S.-based renewable energy developer. **In total, Joint Applicants propose to acquire and construct** 465 MW of solar and battery facilities in Wisconsin as a key part of each Applicant's transition to a cleaner energy future (300 MW/ac of solar generating nameplate capacity and 165 MW of BESS nameplate capacity)– **the ownership of which will be shared amongst Joint Applicant**s… [Emphasis supplied]. Record 324 1-23 Appendix 1 - Utility CA Application.[1]

This coordinated approach was countenanced in the PSC decision in their docket, 5-BS-258, which stated:

> This is the Final Decision in the joint application filed by Wisconsin Electric Power Company (WEPCO), Wisconsin Public Service Corporation (WPSC) (together, WEC), and Madison Gas and Electric Company (MGE) (all together, applicants) seeking approval from the Public Service Commission of Wisconsin (Commission) under Wis. Stat. § 196.49 **to acquire and construct the Koshkonong Solar Electric Generation Facility**, a utility-scale solar-powered electric generating facility consisting of 300 megawatts (MW) of solar generating nameplate capacity and 165 MW of battery energy storage system (BESS) nameplate capacity (the solar facilities and BESS will be referred to collectively as the Koshkonong Project), located in the Towns of Christiana and Deerfield, Dane County, Wisconsin, at a total cost of $649,000,000 excluding allowance for funds used during construction (AFUDC).
>
> **The application is GRANTED, subject to the conditions in this Final Decision.** [Emphasis supplied][2]

[1] Christiana requested the trial court to take official notice of this record as an official record of the PSC – the court took official notice that the companion Utility docket existed. To the extent the court did not accept the existence of this record, the Town respectfully requests this Court to do so.

[2] The Town also requested that the court take notice of the final decision, PSC Ref #463886 filed in Docket #5-BS-258. A copy of the final decision is found in Record 325 - Appendix 2 PSC Decision in Utility Docket.

B. Wholesale Merchant Plant v. Utility Plant

The obvious purpose behind this coordinated scheme was for the utilities to avoid statutory restrictions limiting a utility's ability to obtain administrative approval for operating a large electric generation facility. Unlike utilities, a privately owned and operated "wholesale merchant plant", under 1997 Wis. Act 204, was subject to lighter regulations. The rationale for not holding private companies to stricter regulations applicable to utilities was that the risk of such plants' success or failure would not fall on the ratepayers, but on the private investors. Accordingly, the ratepayers were not at risk, and regulatory requirements to protect the ratepayers were not needed based upon this risk shifting. Thus, wholesale merchant plants were exempted from several requirements for a showing of public interest or need under Wis. Stat. § 196.491, including:

- The proposed facility satisfies the reasonable needs of the public for an adequate supply of electric energy. §196.491 (3) (d) 2.
- The proposed facility is in the public interest alternative sources of supply or engineering or economic factors. §196.491 (3) (d) 3.
- All economic data demonstrating and justifying the need for the proposed project under PSC Ch 111 Wis. Admin Code, including:

> Average energy production cost (Wis. Admin. Code § PSC 111.31(1) and their system dispatch cost. (which means that a wholesale merchant plant can deprive the PSC of information the PSC needs to determine "… if competition is contributing to the provision of sufficient capacity and energy at a reasonable price." (See: comment to Wis. Admin. Code § PSC 111.31).
>
> The need for the proposed facility in terms of demand and energy.
>
> The economic aspects of the proposed facility, including (a) the estimated capital cost of the generating facility and all related facilities, broken down by major plant accounts. All cost escalation factors used in the estimate shall be identified; (b) the estimated annual production cost, calculated as operating, maintenance and fuel costs for the first year of operation and levelized in nominal terms over the life of the facility; (c) all cost escalation factors used and other significant supporting data shall be included; (d) the estimated annual total cost, calculated as capital and production costs for the first year of operation, in mills per net kWh generated, and levelized in nominal terms over the life of the facility; (e) all cost escalation factors used

> and other significant supporting data shall be included; (f) the estimated useful life of facility, based on depreciation rates established by the commission and (g) alternative sources of supply considered, including information about alternatives for energy conservation and efficiency and purchased power.

The plain language of our statutes and the interpretation of our courts have recognized that a wholesale merchant plant and a utility plant are distinct. The former cannot provide service to any retail customer, but must serve only a utility. Wholesale merchant plants cannot be owned by public utilities. And the relaxed regulatory requirements are applicable to a wholesale merchant plant – it need not justify that the Project proposed will pass economic muster as related to impact on ratepayers, since they can never be negatively impacted by failure of a private wholesale merchant plant.

Here, as demonstrated above, it is patently evident that this application is for anything other than a wholesale merchant plant. Koshkonong and the Utilities agreed in a transaction for Koshkonong to seek and obtain the CPCN from PSC and, in effect, sell the permit to the Utilities.

C. The Trial Court Erroneously Concluded that Koshkonong is a Wholesale Merchant Plant.

This case hinges upon statutory interpretation of a single statute – the statutory definition of a "wholesale merchant plant" found in Wisconsin statute §196.491(1)(w). The statute provides:

> Wholesale merchant plant" means, … electric generating equipment and associated facilities located in this state that do not provide service to any retail customer and that are **owned** and **operated** by any of the following:
>
> b. A person that is not a utility.

The law does not contemplate "public utility" acquisition of a wholesale merchant plant CPCN through the proxy arrangement used here. The law requires the "person" seeking to build a "facility" to be the "person" that both applied-for and received the CPCN. Any "person" wanting to build a "facility" – including any "public utility – must first secure *their own* CPCN:

> "…no *person* may commence the construction of a facility unless *the person* has applied for and received a certificate of public convenience and necessity under this subsection." Wis. Stat. § 196.491(3)(a). [Emphasis supplied].[3]

The trial court did properly recognize the elements requisite for finding that a proposed wholesale merchant plant to meet the legal definition:

> More plainly put, a thing is a wholesale merchant plant if it:
>
> 1. is electric generating equipment,
> 2. located in this state,
> 3. that does not provide service to any retail customer, and
> 4. subject to a limited exception for "affiliated interests," is owned and operated by a person that is not a public utility. *Decision p. 6*

With the statutory definition in mind, the court recited the correct rule of statutory interpretation:

> To unpack this argument (the Town's assertion that PSC erred when it applied the ordinary statutory definition of "wholesale merchant plant.") , the Court begins with the statutory definition of a "wholesale merchant plant." The statutory text is the starting point because "statutory interpretation beings with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.,* 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. *Ibid*

The court, having recited the rule, and rejecting the Town's application of Wis. Stat. § 196.491(3)(a) to this record, the court did not articulate why the plain definition fit the circumstances here; rather, made to following conclusory statements:

- [i]t is not enough for a court to find that upon application of a plain meaning of a statute, a given outcome is foolish. *Decision p. 7*
- To add unwritten requirements into the legislature's plain definition of a wholesale merchant plant, the Town had to show "that the result is so absurd that the legislature... could not have intended such a result. *Decision p. 8*
- In other words, courts defy the plain text of a statute only when "it must be 'unthinkable' for the legislature to have intended the result commanded by the words of the statute.

[3] Of note, the trial court observed: "Here, nobody disputes that the Solar Project would not have satisfied the stricter requirements for a public utility." *Decision p. 6.*

Each of these conclusory statements pre-supposes that the subject statute's plain definition supports the pre-ordained conclusion – that is, if a private company files an application for a CPCN to construct, own and operate a large electric generation facility to provide service to anyone other than the general public, the inquiry stops there. That is not what is occurring here.

The application of the plain meaning of this statute does not render the outcome foolish. There is need to add unwritten requirements into the legislature's plain definition of a wholesale merchant plant - the meaning is crystal clear. Rather than applying the plain meaning of this statute, the court defied the plain text of a statute, and it is the court's conclusion that is 'unthinkable' and antithetical to the legislature's intent commanded by the words of the statute.

All of this is so based upon the court's failure to recognize the conjunctive rule applying to statutory interpretation. The operative provision of the statutory definition mandate that a wholesale merchant plant is one that is owned **and** operated by a person that is not a utility. The court also ignored the doctrine of *expressio unius est exclusio alterius*.

> Under the doctrine of expressio unius est exclusio alterius, the "express mention of one matter excludes other similar matters [that are] not mentioned."… ("The expression of one thing implies the exclusion of others (expressio unius est exclusio alterius).")… Pursuant to this doctrine, if "the legislature did not specifically confer a power," the exercise of that power is not authorized. *State ex rel. Harris v. Larson*, 64 Wis. 2d 521, 527, 219 N.W.2d 335 (1974). *James v. Heinrich* 397 Wis.2d 517, N.W.2d 350 (2021).

The legislature's intent in §196.491(1)(w) could not be more plain – no utility can own and operate a wholesale merchant plant. Correlatively, no utility could avoid the public scrutiny associated with meeting utility requirements for a utility CPCN through subterfuge. The court, while perhaps empathizing with this premise, actually read language into the statute that is non-existent:

> The Court can share these concerns over what is apparently a commonly-used loophole in Wisconsin's process for the approval of new power plants and, at the same time, the Court can also conclude PSC properly applied the plain statutory

> definition of a wholesale merchant plant. The Court can neither add words to a statute nor overturn PSC's correct interpretation of that statute. *Decision p. 2*
>
> Under the plain statutory text of Wis. Stat. § 196.491(1)(w), the Court understands that Wisconsin's legislature has chosen an application process for new power plants that favors merchants over utilities. As a result, that process also favors merchants who sell newly-approved plants to a third-party utility. Maybe this is what happened here, and maybe this is a bad way to structure the approval of power plants, although the Court repeats that it does not here review PSC's later decision approving the sale of the Solar Project. *Decision p. 7*

Nowhere in Wis. Stat. § 196.491(1)(w) nor elsewhere in Chapter 196 is there support for the notion that the legislative process favors merchants "who sell newly-approved plants to a third-party utility." The clear unambiguous language of the statute is the complete opposite. The reality is that without intervention of the Court, the Utilities will own and operate the Koshkonong Solar Electric Generation Facility providing service directly to retail customers in direct contravention of Wis. Stat. § 196.491(1)(w). The trial court erred and should be reversed.

II. The trial court erred in refusing to take judicial notice of docket entries in PSC Docket 5-BS-258, the Joint Application of Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and Madison Gas and Electric for Approval to Acquire Ownership Interests in the Koshkonong Solar Generating and Battery Energy Storage System.

Wisconsin statute Section 902.01 sets forth the rule governing judicial notice of adjudicative facts. The relevant portion of this statute provides:

> **(2)** KINDS OF FACTS. A judicially noticed fact must be one not subject to reasonable dispute in that it is any of the following:
>
> (a) A fact generally known within the territorial jurisdiction of the trial court.
>
> (b) A fact capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Under 902.01(4) "[a] judge or court shall take judicial notice if requested by a party and supplied with the necessary information."

The Town filed a motion asking the trial court to take judicial notice of the above-referenced documents in PSC Docket 5-BS-258. Those documents set forth facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned (i.e. records in a state agency's possession). The "necessary information", as has been detailed, is patently clear on the face of these documents.

The trial court refused to grant the Town's motion, despite the dictate of Wisconsin statute Section 902.04. The Town was therefore denied the right to full advance of its arguments, a denial of fundamental fairness. The Koshkonong docket cannot in fairness be a solar system unto itself – influences outside of the docket are directly impacting the administrative proceedings. The trial court should be reversed.

Further, judicial notice may be taken at any stage of the proceeding. This means that an appellate court may take judicial notice when it is appropriate. The matters detailed in the identified documents are indisputably proved and, therefore, are subject to the taking of judicial notice. *Sisson v. Hansen Storage Co*., 313 Wis. 2d 411, 756 N.W.2d 667, (Ct App 2008).

III. The trial court erred in refusing to reverse the Commission's grant of the Koshkonong's Motion for a Protective Order blocking the Town's discovery requests to obtain documents related to Koshkonong's dealings with the public utilities related to proxy arrangement through which public utilities would secure a CPCN for the Project through Koshkonong while evading CPCN requirements applicable to public.

Given the apparent relationship between Koshkonong and the Utilities, and the obvious deduction that there was move afoot to side-step the law pertaining to a utility operation as a surrogate wholesale merchant plant, the Town understandably sought discovery of any documents among or between these parties detailing their relationship. Discovery is fully permitted in PSC proceedings per PSC 2.24: "**(1)** Methods of discovery. In an investigation or proceeding,

depositions of witnesses may be taken by the commission or any party as provided in s. 196.33, Stats. In a proceeding, depositions and requests for the production of documents, data, or other information may be taken or made by the commission or any party as provided under ch. 804, Stats. Having sought the production of relevant documents, Koshkonong sought a protective order, in effect, based upon the documents being outside the docket. The Town reiterated its contention that the documents would support its theory of inappropriate issuance and transfer of the CPCN. Administrative Law Judge Newmark, presiding over the procedural aspects of the proceedings, blocked this discovery in his oral ruling of November 8, 2021:

> I'm proceeding on this case as a stand-alone wholesale merchant plant application, and I do believe that the communications between the applicant and those utilities, potential purchasers, are not relevant in this case; and if the Commission wants to delve into that, it can consolidate the cases or take both cases up at the same time or tell me I'm wrong. But at this point, I'm proceeding with the understanding that the communications are not relevant to the issues here. So that would mean a denying of the Motion to Compel and, I guess, granting the Motion for Protective Order. (PSC Ref #425004 p. 51)

On application, the Commission refused to reverse this ruling. This refusal to allow discovery deprived the Town of due process. Due process applies to proceedings before administrative entities. 46 (1975). A basic element of due process is the right to a fair hearing conducted before a fair tribunal. *County of Dane, et al v Public Service Commission,* 403 Wis.2d 306, 126 N.W.2d 85 (2022). Where, as here, a party has been denied due process the aggrieved party is entitled to an appropriate proceeding, and if he has been prejudiced, to have the order set aside. *Mid-Plains Tel., Inc. v. Public Service Commission* 56 Wis.2d 780 , 202 N.W.2d 907, (1973).

The decision of the trial court affirms that prejudice has attached. The court chided the Town: … "the Town says PSC committed an unspecific sort of error when it "thwarted all efforts of the interested parties and the public to uncover the facts ...." "However, the Town points to no evidence of such an arrangement. *Id.* at 7. The Town was deprived of a legitimate right to obtain

evidence of exactly what arrangement had been made between Koshkonong and the Utilities that led to these parallel approval proceedings before the PSC.[4] These entreaties were summarily denied. The trial court ruling should be overturned and the matter reversed remanded to PSC with directions to allow discovery on this primary issue.

CONCLUSION

Wis. Stat. § 227.57 (5) provides: "The 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." The Commission has misinterpreted Wis. Stat. § 196.491 as it applies to issuance of a CPCN to merchant plants. It erred as a matter of law by refusing to demand verification of Koshkonong's claim to be a merchant plant and the refusal to allow discovery on the issue by Intervenors Accordingly, upon a finding that the Commission did employ an erroneous interpretation of law, the Court must remand the case to the agency for further action under a correct interpretation of the provision of law. The Town suggests that this can be accomplished by requiring the Commission to verify that Koshkonong is a true merchant plant (i. e. it is not contractually bound to sell or transfer its rights under the CPCN on request of the utilities) and to allow discovery on this issue. In the event it is determined that Koshkonong has merchant plant status, the Commission should be required to supplement the CPCN to include a condition that the CPCN was issued solely to Koshkonong and is transferrable only to another merchant plant entity.

[4] The Town asserts that, notwithstanding the lack of the "smoking gun", the CPCN approval and subsequent CA acquisition approval conclusively prove that the Koshkonong CPCN did not authorize a wholesale merchant plant.

Electronically Signed by H. Stanley Riffle
H. STANLEY RIFFLE
State Bar No. 1012704
Municipal Law & Litigation Group, S.C.
730 N Grand Avenue
Waukesha, WI 53186
Phone. (262) 548-1340
Fax. (262) 548-9211

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in § 809.19 (8) (b), (bm) and (c) for a brief produced with proportional serif font. The length of this brief is 4,796 words.

Dated this 12th day of February 2024.

Electronically Signed by H. Stanley Riffle