STATE OF WISCONSIN CIRCUIT COURT BRANCH 5 MILWAUKEE COUNTY

CITY OF MILWAUKEE,
Petitioner,
-vs-
PUBLIC SERVICE COMMISSION OF WISCONSIN,
Respondent.

Case No. 14-CV-9797
Admin Agency Review

RESPONSE BRIEF OF THE HEALY PARTIES

The Healy Parties, as listed on Exhibit 4 to the City of Milwaukee's Petition for judicial review, are those individuals who were parties to the proceedings before the Wisconsin Public Service Commission and were referred to in that proceeding as the Individual Petitioners. They submit this brief in response to the City's Initial Brief.

ARGUMENT

Having lost its case at the Public Service Commission, the City now seeks to do what every loser wants to do – play another game under a new and different set of rules. That is understandable, of course, but it is not the job of this Court to deal the City a new hand of cards.

This matter is before the Court pursuant to Chapter 227, Wis. Stats. Section 227.57 provides that the court may modify, remand or set aside agency action only if it has reason to do so under one or more of the grounds specified in that section. None of them apply here. The City does not even say that they do. Instead, it challenges the Commission's jurisdiction and asserts a constitutional challenge to Wisconsin Act 20, that statute applied by the Commission to invalidate the municipal regulations at issue in the case before it. These are new cards and a new game, but another losing hand.

First, the Commission plainly had jurisdiction over the matter before it, as the City conceded from the outset. Brett Healy originally filed a Chapter 227 petition for a declaration with the Commission in 2011, asking the Commission to determine whether the City of Milwaukee resolution authorizing the construction of the Milwaukee Streetcar Project and the City Ordinance that would have required public utilities to pay the cost of relocating their facilities in connection with that project were "reasonable" as required by Wis. Stat. §196.58.

Healy, a utility ratepayer, claimed to be an interested party entitled to file such a petition under Wis. Stat. §227.41.

In its Initial Brief Concerning Jurisdictional Issues, the City argued that Healy did not have the right to seek a declaration, but that only a "qualified complainant" –i.e. a group of 25 or more individual ratepayers - could do so. R.6. This jurisdictional issue was resolved by the filing of an amended petition by Healy and 35 other utility ratepayers, making them "qualified complainants" for purposes of Chapter 227. The City conceded that the individual petitioners were qualified complainants and that the Commission had jurisdiction to entertain their petition. R. 29. The jurisdictional issue would have been resolved in any event by the intervention of WEPCO and the ATU Petitioners, each of whom plainly had the right to seek a declaration that the ordinances in question were unreasonable under §196.58 or §182.017.

In the intervening years, the parties engaged in extensive briefing on the merits of the claims and the validity of the ordinances in question. The City argued they unquestionably required the utilities to pay their own relocation costs and that such a requirement was reasonable in light of the City's power to construct public works. The passage of Act 20 put an end to the City's arguments on the merits. It does not raise them here because it cannot, seeking instead to raise a jurisdictional argument that it had long ago conceded.

Second, the City's claim that the Commission has both intervened in and second guessed Milwaukee's decision to build the Streetcar Project is nonsense. It has done no such thing. The city is free to build the Project and in fact it is doing so. The City's taxpayers will pay the costs, including the costs of relocating utility facilities. The only question before the Commission was whether it was reasonable for the City to force utilities and the ratepayers to absorb those costs. The Commission ruled that it was not, as the Wisconsin Legislature has clearly said so in enacting Act 20. The City is free to proceed with the Streetcar as and when it sees fit, but it will not get a free ride from the utilities and their ratepayers.

And third, the City's argument that Act 20 is unconstitutional is not before this Court. The Commission did not rule on that issue in the case before it, properly stating that it does not have jurisdiction to rule on the constitutionality of state statutes. Nor does the City, as a municipal corporation created by the State, have standing to raise the question.

The Healy Parties join in the response briefs submitted by the Utility Intervenors and the ATU Petitioners.

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