

STATE OF WISCONSIN
SUPREME COURT

CHRISTUS LUTHERAN CHURCH
OF APPLETON

Plaintiff-Appellant-Respondent,

v.

WISCONSIN DEPARTMENT OF
TRANSPORTATION,

Defendant-Respondent-Petitioner

Appeal No.
2018AP1114

Circuit Court
Case No. 17CV452

**NOTICE OF MOTION AND MOTION OF
AMERICAN TRANSMISSION COMPANY LLC AND ITS
CORPORATE MANAGER ATC MANAGEMENT INC.; WISCONSIN
PUBLIC SERVICE CORPORATION; WISCONSIN ELECTRIC
POWER COMPANY; AND WISCONSIN GAS LLC
TO APPEAR AS AMICI CURIAE**

On Petition for Review From
The Wisconsin Court of Appeals, District III
Outagamie County Case No. 17-CV-452
The Honorable Carrie A. Schneider Presiding

Pursuant to Wis. Stat. § 809.19(7), American Transmission Company LLC and its corporate manager, ATC Management Inc., Wisconsin Public Service Corporation, Wisconsin Electric Power Company d/b/a We Energies, and Wisconsin Gas, LLC d/b/a We Energies (collectively, the “Utilities”)

respectfully move the Wisconsin Supreme Court, for leave to file a non-party *amicus curiae* brief in this matter. The grounds for this motion are as follows:

1. The Utilities all have public purposes that require the regular use of eminent domain in Wisconsin. *See* Wis. Stat. § 32.02(6).

2. ATC provides electric transmission service throughout Wisconsin, including maintaining over 9,890 miles of transmission lines and 568 substations. WPSC delivers electricity and natural gas to more than 776,000 customers in Wisconsin. We Energies provides electricity and natural gas to approximately 2.2 million customers in Wisconsin.

3. As regular users of eminent domain, all of the Utilities have an interest in clarity, certainty, and fairness in Wisconsin's eminent domain law. The Court's analysis will benefit from a wider perspective on the issues in this case and a better understanding of how the Court's decisions will affect condemnation practice statewide.

4. In the last three years, ATC acquired an estimated 400 to 650 easements per year for transmission line projects in Wisconsin. Over the same time period, WPSC and We Energies acquired an average of 7,300 easements per year, of which roughly 375 per year were subject to Wisconsin's eminent domain law.

5. The Utilities, or their counsel, have litigated legal issues similar to those in this case in several matters. *See, e.g., Otterstatter v. City of*

Watertown, 2017 WI App 76, 378 Wis. 2d 697, 904 N.W.2d 396; *VE Prop., LLC v. Am. Transmission Co.*, No. 16-CV-151 (Wis. Cir. Ct. Columbia Cty.); *Mitton v. Am. Transmission Co.*, No. 09-CV-326 (Wis. Cir. Ct. Shawano Cty.); *Wisconsin Gas LLC v. Weninger*, No. 08-CV-214 (Wis. Cir. Ct. Dodge Cty.).

6. The Utilities are directly affected by the disposition of this case. This case raises important questions about the application of Wis. Stat. § 32.05, which governs transportation and sewer condemnations. The Utilities use Wis. Stat. § 32.06, which governs all other types of condemnations. However, the portions of section 32.05 at issue in this case are mirrored in section 32.06. *See* Wis. Stat. § 32.06(2)-(3). Courts interpreting one of those statutes consider the other statute to be persuasive, if not dispositive, authority. Therefore, the holdings here also affect acquisitions by the Utilities.

7. In addition, the Utilities have an interest in completing projects at a reasonable and prudent cost. Project costs impact Wisconsin ratepayers. The Court of Appeals' decision, which punishes condemnors whether condemnors offer too little compensation *or* too much compensation, will increase uncertainty, the rate of litigation, and costs to the public.

8. The Utilities regularly hire professional appraisers to appraise properties for acquisitions for public projects, and the Utilities are familiar with the Uniform Standards of Appraisal Practice ("USPAP") followed by all

certified and licensed appraisers in the State of Wisconsin. The Court of Appeals' decision creates an ethical dilemma for condemnors and appraisers by appearing to compel condemnors to obtain an appraisal that "substantiates" the condemnor's view of compensation.

9. Counsel for the Utilities is one of the authors of the State Bar practice guide to eminent domain law in Wisconsin. *See* Sara K. Beachy et. al., *Condemnation Law and Practice in Wisconsin* (2d ed. 2018).

10. Further grounds supporting this Motion, as well as the Utilities' grounds for granting review, are set forth in the Brief accompanying this Motion.

WHEREFORE, the Utilities respectfully request that the Court consider their perspectives in deciding the pending Petition for Review. The Utilities further request that the Court grant the Petition and grant Utilities leave to appear as *amici curiae* during the substantive briefing phase.

Dated this 12th day of February, 2020.

AXLEY BRYNELSON, LLP



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