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May 30, 2019

To:

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You are hereby notified that the Court has entered the following order:

No. 2018AP59

Clean Wisconsin, Inc. v. DNR L.C.#s 2016CV2817, 2016CV2818,
2016CV2819, 2016CV2820, 2016CV2821, 2016CV2822,
2016CV2823 & 2016CV2824

On April 9, 2019, the court accepted certification of this appeal.¹ Several procedural motions are now pending before us. On April 25, 2019, the Wisconsin Legislature, on behalf of the Joint Committee on Legislative Organization (Wisconsin Legislature or Proposed Intervenor), moved to intervene in this matter. On May 2, 2019, the Respondent-Appellant, Wisconsin Department of Natural Resources (DNR), filed a "Motion to Modify Briefing Schedule." On May 6, 2019, the DNR opposed the Wisconsin Legislature's motion to intervene. On May 9, 2019, the Petitioners-Respondents, Clean Wisconsin and Pleasant Lake Management District (Clean Wisconsin), opposed the Wisconsin Legislature's motion to intervene. On May 9,

¹ On the same day, the court also accepted certification of the consolidated appeals in Clean Wisconsin, Inc. v. DNR, Nos. 2016AP1688 and 2016AP2502.

2019, Clean Wisconsin filed a response stating that it does not oppose the DNR's motion to modify the briefing schedule, although it may seek leave to file a reply to the DNR's brief. On May 13, 2019, the Intervenor-Co-Appellants, Wisconsin Manufacturers & Commerce and seven other business associations, filed a response opposing the DNR's motion to modify the briefing schedule. On May 13, 2019, the Wisconsin Legislature filed a memorandum stating it opposes the DNR's motion to modify the briefing schedule. On May 20, 2019, Clean Wisconsin moved to strike the Wisconsin Legislature's May 13, 2019 filing, noting that the Wisconsin Legislature has not been granted Intervenor status as of this date.

By order dated May 6, 2019, we stayed the merits briefing in this case until further order of the court; that briefing schedule remains stayed.

The parties and Proposed Intervenor disagree as to the legal standard that governs our consideration of the Wisconsin Legislature's motion to intervene. The Wisconsin Legislature cites Wis. Stat. § 803.09(2m), as well as Wis. Stat. §§ 803.09(1) and (2). The DNR responds that in the context of a review of an agency determination, intervention is guided by the provisions in Chapter 227, namely, Wis. Stat. § 227.53(1)(d). As these arguments arose in the context of a motion, the parties and the Proposed Intervenor have not had an opportunity to fully develop their arguments or to respond to competing arguments.

To assist the court in its deliberations, the court now asks the parties and the Proposed Intervenor to file memoranda that address the interplay of the aforementioned statutes on the correct legal standard for an intervention motion on these facts, and whether the Proposed Intervenor meets that legal standard. The memoranda need not and should not address the Constitutionality of Wis. Stat. § 803.09(2m). We are well aware of the pending challenges to 2017 Wis. Act 369. As of the date of this order, Wis. Stat. § 803.09(2m) is not enjoined. Therefore,

IT IS ORDERED that on or before June 19, 2019, the parties and the Wisconsin Legislature shall file simultaneous legal memoranda, each not exceeding 6,000 words, that address the correct legal standard for the Wisconsin Legislature's motion to intervene and whether the Wisconsin Legislature meets that standard;

IT IS FURTHER ORDERED that, on or before July 9, 2019, the parties and the Wisconsin Legislature may file legal memoranda, each not exceeding 3,500 words, in response to the memoranda filed on June 19, 2019, by the opposing parties;

IT IS FURTHER ORDERED that the Respondent-Appellant's motion to modify the briefing schedule is granted. When the stay imposed by this court is lifted, the Respondent-Appellant may file its opening brief on the same schedule as that of the Petitioners-Respondents, Clean Wisconsin and Pleasant Lake Management District; and

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IT IS FURTHER ORDERED that the Petitioners-Respondents' motion to strike the Wisconsin Legislator's memorandum in opposition to the Respondent-Appellant's motion to modify the briefing schedule is dismissed, as moot.

Sheila T. Reiff
Clerk of Supreme Court

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