

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 24, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-1257-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**FRIEDRICH BOHN, JOHN DOETSCH, OCTAVE J. DU
TEMPLE, FRANCIS J. HELD, DONALD J. KURYLO,
WILLIAM C. MEYER, JOHN NOVAK, CHRISTOPHER L.
PICONE, AND PEGGY R. VERNOOY,**

PETITIONERS-RESPONDENTS,

v.

PUBLIC SERVICE COMMISSION OF WISCONSIN,

RESPONDENT-APPELLANT,

WISCONSIN ELECTRIC POWER COMPANY,

RESPONDENT-CO-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
RICHARD J. CALLAWAY, Judge. *Reversed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. The Public Service Commission and Wisconsin Electric Power Company appeal from an order remanding this case to the Commission for a hearing.¹ The issue is whether the Commission must hold a hearing before denying a motion to reopen a case. We conclude that a hearing is unnecessary and reverse.

The facts, as necessary for this appeal, are brief. The Commission has entered certain orders in this case related to construction of an electric transmission line. Friedrich Bohn and others (we will refer to them collectively as “Bohn”) moved to reopen the case and set aside one of those orders. The Commission denied the request by a written order in December 1997. Bohn petitioned for judicial review. The circuit court concluded that the Commission was required by § 196.39, STATS., to provide Bohn with an opportunity to be heard on the petition, and it remanded to the Commission for such a hearing.²

Section 196.39, STATS., provides in part:

The commission at any time, on its own motion or upon motion of an interested party, and upon notice to the public utility and after opportunity to be heard, may rescind, alter or amend any order fixing rates, tolls, charges or schedules, or any other order made by the commission, and may reopen any case following the issuance of an order in the case, for any reason.

The appellants argue that the Commission is not required to hold a hearing before denying a motion to reopen. The parties discuss the various standards of review that may be applied to administrative agency interpretations of

¹ This is an expedited appeal under RULE 809.17, STATS.

² The Commission advises us that this statute has subsequently been amended.

statutes, but we reach the same result regardless of what standard is applied: a hearing is not required under this statute.

Section 196.39, STATS., allows the Commission to take two actions at any time, on its own motion or upon motion of an interested party, and upon notice to the utility and after opportunity to be heard. Those actions are: (1) rescind, alter or amend any order fixing rates, tolls, charges or schedules, or any other order made by the Commission, and (2) reopen any case following the issuance of an order in the case. The statute is arguably ambiguous as to whether the Commission can reopen a case without a hearing, but there is no ambiguity as to whether the Commission can *decline* to reopen a case without a hearing. The requirement for a hearing applies, at most, only when the Commission decides to rescind, alter or amend an order, or to reopen a case.

By the Court.—Order reversed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

