

STATE OF MICHIGAN
ENVIRONMENTAL PERMIT REVIEW COMMISSION

In the Matter of

The Petition of Bay Mills Indian Community
on the permit issued to
Enbridge Energy Limited Partnership,

MOAHR Docket No. 21-008197

Bay Mills Indian Community, Petitioner,

DECISION OF ENVIRONMENTAL PERMIT REVIEW COMMISSION

July 11, 2022

JURISDICTION

This case is before the Environmental Permit Review Panel (Panel) of the Environmental Permit Review Commission as a result of the Petitioner's timely appeal of an Administrative Law Judge (ALJ) Order Dismissing Contested Case, issued on February 18, 2022 (Order). The Order granted the motion for summary disposition filed by the Permittee, Enbridge Energy Limited Partnership (Enbridge), dismissing the petition for contested case hearing in this matter as untimely, under R 792.10109(2). The Order states that the petition was received by the Michigan Office of Administrative Hearings and Rules (MOAHR) after 5 p.m. on April 26, 2021, and therefore was correctly marked as received on April 27, 2021.

Consistent with MCL 324.1317(2), the Panel convened on April 15, 2022, and June 24, 2022. Meetings of the Panel were conducted consistent with the Open Meetings Act, 1976 PA 267, as amended, and the framework provided in MCL 324.1317, incorporating MCL 324.1315(2) and (3).

Consistent with MCL 324.1317(3), the Panel invited the parties to file written briefs to identify issues of concern with the ALJ's Order. A written brief was filed by Bay Mills Indian Community (Bay Mills) and written responsive pleadings were filed by Enbridge and the Department of Attorney General on behalf of the Department of Environment, Great Lakes, and Energy (EGLE). On June 24, 2022, the Panel listened to oral arguments from the parties prior to deliberation and voting.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The issue before the Panel is whether Bay Mills timely filed its petition for a contested case hearing pursuant to the MOAHR Administrative Hearing Rules. R 792.10303(2) states: ". . . The date of receipt by the department shall be the date a petition is filed. Unless otherwise stated in a statute, a petition shall be filed within 60 days from the date of the department's decision to be considered timely." R 792.10109(2) states: "Documents received by the hearing system after 5 p.m. eastern standard time are considered filed on the following business day." The decision being contested by

Bay Mills was a permit issued February 25, 2021, by EGLE's Water Resources Division. Bay Mills' petition for a contested case hearing was filed electronically from Chicago at 4:36 p.m. central daylight savings time on April 26, 2021. As Michigan was also observing daylight savings time, the petition was received by MOAHR at 5:36 p.m. eastern daylight savings time on April 26, 2021. Because the petition was received by MOAHR after 5 p.m., it was docketed as being received on April 27, 2021, which exceeded the 60-day requirement in R 792.10303(2).

The panel agrees with Bay Mills that the plain and unambiguous language of the applicable administrative rule, which references 5 p.m. eastern standard time, should dictate. Bay Mills argues that the principles of statutory interpretation apply to the construction of administrative rules.¹ The most basic rule of statutory construction is that the plain and unambiguous language of a statute must be applied as written, and if that language is clear and unambiguous on its face, further interpretation is not permitted.² Bay Mills argues that eastern standard time is not the same as eastern daylight savings time. Eastern daylight savings time is four hours behind Coordinated Universal Time while eastern standard time is five hours behind Coordinated Universal Time. Even though Michigan was observing eastern daylight saving time on April 26, 2021, R 792.10109(2) mandates that eastern standard time apply to the filing of the petition in this case. Therefore, the Bay Mills petition was received by MOAHR at 4:36 p.m. eastern standard time on April 26, 2021, and was timely filed under MOAHR's Administrative Hearing Rules.

After consideration of the Administrative Hearing Rules, the parties' briefs and oral argument, and the administrative record in this matter, the Panel finds that the Administrative Law Judge did not act properly in dismissing the Bay Mills contested case petition on the grounds of being untimely. The wording of R 792.10109(2) clearly states that the petition must be received by 5:00 p.m. eastern standard time, which as argued by Bay Mills, has a distinct and definitive interpretation that not only is understood by the general public, but is defined explicitly by the Royal Observatory in Greenwich, England as -5 Greenwich Mean Time. Any other interpretation of this rule would violate plain language guidelines.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law, and consistent with MCL 324.1317(4), at the conclusion of its June 24, 2022 meeting, the Panel unanimously voted to REVERSE the Order Dismissing Contested Case, and REMAND the case back to the ALJ for consideration of the merits of the case, and to proceed in accordance with the APA and all applicable statutes and rules.

Pursuant to MCL 324.1317(4), this opinion is the final decision of the Department of Environment, Great Lakes, and Energy, and is subject to judicial review as provided under the APA and other applicable law.

¹ *Detroit Base Coalition for Human Rights of the Handicapped v Dep't of Social Services*, 431 Mich 478; 428 NW2d 335 (1988).

² *Nowell v Titan Ins. Co.*, 466 Mich 478; 648 NW2d 157 (2002).

Matthew J. Germane

Matt Germane, Chair

Murray C. Borello

Murray Borello, Commissioner

Heather A. Dawson

Heather Dawson, Commissioner