Public Service Commission of Wisconsin
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PSC, DOJ Win Victory for Utility Consumers in 7th Circuit Alliant v. Bie

MADISON – The Public Service Commission and the Department of Justice won a major victory in the 7th Circuit today backing strong regulatory protections for utility consumers. The ruling solidly supports the Commission's authority to assure the financial integrity and sound operation of the state's utilities. The ruling also reinforces the Commission's authority to continue to protect ratepayers from risky investments by holding companies.

Upholding substantial portions of the previous ruling by Federal District Judge John Shabaz, the Seventh Circuit sided with the Public Service Commission and the Department of Justice in upholding Wisconsin's Holding Company Law under a constitutional challenge by Alliant Energy.

Alliant sued the Commissioners in their official capacities in the year 2000, alleging that Wisconsin's Holding Company Act unfairly restricted interstate commerce under the federal constitution. District Judge Shabaz sided with the PSC on all counts in May, 2002. Alliant appealed the ruling to the 7th Circuit in Chicago. The Department of Justice argued the case for the state of Wisconsin.

Chairperson Bridge today hailed the ruling, saying, "This is a tremendously important victory for consumers. It leaves crucial customer-protection measures intact. The authority to assure the financial integrity and sound operation of our public utilities is critical to the Commission. I commend the Commission staff and my colleagues at the Department of Justice for defending the law."

"The ruling by the 7th Circuit today is a victory for Wisconsin," Attorney General Peg Lautenschlager said today. "This ruling upholds our state statutes and the rights of Wisconsin to regulate the financial structure of Wisconsin utility holding companies, for the benefit of Wisconsin consumers."

At issue in the case was the state's ability to impose restrictions on a holding company in order to prevent it from draining the equity out of a regulated utility company in attempt to support outside business ventures. Wisconsin law permits the Commission to take enforcement action if the holding company impairs the credit of the utility. The Commission also conducts regular audits of utility holding company systems and examines capital structure. Those key structural requirements of the Holding Company Act, and the authority of the Commission to enforce them, were expressly upheld by the 7th Circuit.

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In its ruling, the 7th Circuit said, "The dangers inherent in the mere existence of utility holding companies render a great need for structural regulation of those companies. A State is entitled to regulate the financial structure and investments of companies that control utilities in that State. Otherwise it would lose considerable power to police the rates charged for the provision of utility service."

The 7th Circuit further said, "These provisions were part of a larger legislative compromise. Wisconsin clearly has an interest in policing its public utilities to protect the welfare of ratepayers. The existence of a holding company creates the opportunity and incentive for deceptive practices such as cross-subsidization from the regulated public utility to a non-regulated subsidiary. It is not at all clear that Wisconsin would have authorized the formation of public utility holding companies had it not been for these protective controls."

Chairperson Bridge added, "Once the equity has been drained from a utility and funneled into other ventures and potentially lost, it is very difficult to rectify the situation afterwards. It makes more sense to monitor the debt-to-equity ratios and prevent the decline in the first place. Upholding the law ensures that we as regulators do not have to wait until the horse is out of the barn to take action. Given the financial headlines in recent years, this is critical."

A component of the Federal District Court ruling was overturned, allowing Alliant Energy (as a holding company) to incorporate outside the state of Wisconsin. On the "utility domicile" issue however, the 7th Circuit sided with the PSC saying that the regulated utility must continue to be incorporated in Wisconsin, which allows state regulators to maintain close oversight of the utility.

The Commission's previous holding company audit of Alliant Energy identified a trend of declining equity and increased debt both at the utility and at the holding company levels. The Commission argued strongly in the court case that preventive measures were necessary in order to reverse such trends.

Commissioner Bie said, "This is a major victory for both shareholders and ratepayers. Consumers can feel confident that the utilities in Wisconsin that provide them service are financially sound and well-managed; and shareholders can be confident that risky, speculative non-utility investments by utility holding companies will continue to be prudently limited."

Commissioner Garvin said, "I'm delighted with today's ruling because it ensures that Wisconsin ratepayers will not face the same fate as some investors in today's energy markets. This ruling affirms Wisconsin's longstanding regulatory tradition."

Alliant Energy Corporation (previously WPL Holdings) was formed as a holding company in 1987 under the Wisconsin Utility Holding Company Act and became the parent of Wisconsin Power and Light, a regulated utility. The 7th Circuit's ruling means that the Commission will continue its longstanding regulatory approach of periodic audits, rate case capital structure reviews, and transaction monitoring.

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