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## PSC Approves Stormwater Credit Methodology

The Wisconsin Public Service Commission has decided its first case involving the reasonableness of stormwater utility charges. The case involves the City of Eau Claire and Plainwell Tissue, a paper company located in the City. Plainwell Tissue had complained to the PSC that the City's stormwater charges as applied to it were unjust and unreasonable. Its primary argument was that such charges were unreasonable because a majority of the stormwater on its property drained directly into the Chippewa River, and did not enter the City's constructed storm sewer system.

In recognition of the fact that some of the stormwater from Plainwell discharged directly into the Chippewa River, the City granted Plainwell a credit on its stormwater bill. This credit amounted to a 70% reduction in the charges paid by Plainwell. The PSC, however, by a 2-1 vote, found that this credit was not enough because 80% of the Plainwell property discharged directly into the River.

The PSC was required to determine what a reasonable utility charge to Plainwell would be. After several rounds of discussions between PSC staff and City staff, City staff proposed a new credit methodology. In developing this proposed methodology, the following facts were particularly relevant: (1) a portion of Plainwell's property drained directly into the Chippewa River; (2) this portion of Plainwell's property did not enter any City stormwater conveyance facility, other than the Chippewa River;

(3) the Chippewa River currently has assimilative capacity to contain stormwater drainage; (4) the City considers the Chippewa River, and all other receiving streams, to be an essential part of the City's stormwater system; (5) Plainwell uses the Chippewa River to store and dispose of its stormwater; (6) Plainwell, as a user of the receiving stream, should contribute to the cost of monitoring and maintaining water quality; (7) Plainwell, as a user of the receiving stream, should contribute to the cost of ensuring the water in the receiving stream stays in the stream (downstream flood protection); and (8) Plainwell, as a contributor of stormwater, should contribute to the administrative and management costs of the stormwater utility.

With these considerations in mind, City staff recommended that the City's stormwater costs be recovered using the following rate components. The first component would be a Base Component. The Base Component costs are to include the stormwater utility's estimated annual administrative and management costs and water quality costs. The Base Rate is paid by all property in the City with impervious area. The second component would be a Operation and Maintenance Component. The Operation and Maintenance Component costs are to include the stormwater utility's estimated annual operation and maintenance costs for the City's stormwater conveyance system. The third component is a Capital and Debt Service Component.

# Midwest ISO and Alliance RTO Reach Settlement

Representatives of the Midwest ISO and the proposed Alliance ISO have reached an agreement in principle that appears to have ensured the survival of both regional transmission organizations (“RTOs”). The agreement was reached after several weeks of negotiations set in motion by a Federal Energy Regulatory Commission (“FERC”) order issued on January 24, 2001. The order had directed the two rival organizations to participate in a settlement conference in order to resolve the controversy caused by FERC’s approval of an innovative rate structure in the Alliance RTO proposal and the related defection to the Alliance of a number of the Midwest ISO’s transmission-owning members.

According to a report issued by the FERC Administrative Law Judge who presided over the settlement discussions, the agreement between the Midwest ISO and Alliance provides for a single “super-regional” rate which removes all seams and pancakes between the two RTOs. In addition to the uniform pricing structure, the settlement permits approval of the proposed withdrawal of Illinois Power Company, Commonwealth Edison Company and Ameren Services from the Midwest ISO, setting an exit fee of \$60 million. The comprehensive settlement also provides for coordinated transmission planning, security coordination, and congestion management.

The agreement is intended to provide the benefits of a single RTO for the entire region, while preserving the different business models favored by the participants. A final settlement agreement is due to be filed with the Commission in mid-March. Both the Midwest ISO and the Alliance Companies continue to expect to begin operations on or before December 15, 2001.

— Richard A. Heinemann

## SPEAKERS FORUM

April 6, 2001

### **Denying a Cable Renewal Request: A Legal Perspective**

2001 WAPC Spring Conference  
Wisconsin Dells, WI

Anita T. Gallucci

April 26, 2001

### **Stormwater Management and Stormwater Utilities League of Wisconsin**

Municipalities Community Development Institute  
Madison, WI

Richard A. Lehmann & Lawrie J. Kobza

April 27, 2001

### **Dealing with the Aggressive Applicants and Opponents**

Town Lawyers Institute  
Madison, WI

Richard A. Lehmann

May 1-4, 2001

### **401(k) Plans**

Employee Benefits Institute of America  
Cleveland, OH

Cynthia A. VanBogaert

May 7, 2001

### **Zoning Enforcement**

Univ Extension  
Madison, WI

Richard A. Lehmann

May 8-11, 2001

### **401(k) Plans**

Employee Benefits Institute of America  
Minneapolis, MN

Cynthia A. VanBogaert

May 16, 2001

### **Stormwater Utilities**

Water Law Institute  
Stevens Point, WI

Richard A. Lehmann

June 15, 2001

### **Religious Land Use Law**

Municipal Attorney Institute  
Delavan, WI

Richard A. Lehmann

## Case Involving Insurance Coverage For Environmental Claims Is Dismissed

In June of last year, the Wisconsin Supreme Court accepted review of a case raising an important issue of insurance coverage for environmental claims. The issue was whether an insured could stack coverage under annual general liability policies for environmental contamination that caused continuing damage to property of third parties over a period of several years. In *Society Insurance v. Town of Franklin*, 2000 WI App. 35, 233 Wis.2d 207, the Court of Appeals held in favor of the insured municipality, deciding that the Town of Franklin could stack the property damage coverage limits available under general liability policies it had purchased in 14 consecutive years. These limits were declared available to pay the town’s liability for contribution to the costs of cleaning up land that had been used by the town in years past as an open dump and later as a licensed landfill.

Following the Court of Appeals decision in February, 2000, Society Insurance petitioned the Supreme Court for further review, a petition which the Court granted. A decision by the Supreme Court was expected this year. There will be no decision, however, because the petition was withdrawn and the matter dismissed based on a joint settlement agreement of the parties.

In the absence of a Supreme Court decision, the published decision of the Court of Appeals stands as controlling Wisconsin law. Therefore, Wisconsin now follows the “continuous trigger” theory for determining when property damage occurs for insurance coverage purposes. Under this theory, property damage occurs continuously from the date of first contribution to the contamination through the date when damage from the contamination becomes manifest. Where a polluted landfill causes continuing contamination to surrounding property over the course of many years, the insured can stack coverages so that one policy’s property damage limits apply for each year in which covered property damage takes place.

— Catherine M. Rottier

## Why Wisconsin Municipalities Operate Telecommunications Utilities

Over a century ago, many smaller Wisconsin communities, left in the dark by the private utilities, formed electric utilities of their own, so that more than just the wealthy could enjoy the miracle of electric lights. Just as a century ago in the electric power industry, Wisconsin's major telecommunications companies are investing their resources primarily in the most lucrative urban markets, while all but ignoring rural and low-income communities.

Some of Wisconsin's public power communities, the majority of which operate in communities with populations under 5,000, have decided once again to do for their communities what the private companies have failed to do. That is, provide prompt access to the full benefits of the Information Superhighway, including economic development and educational opportunity. These communities recognize that telecommunications services are as essential to the prosperity of their communities as electricity, water and roads. Wisconsin's public power communities, given their long history of providing high quality affordable electric service to their communities are particularly well positioned to help bridge the so-called "Digital Divide" for their largely rural communities.

On January 28, 2000, the cities of Reedsburg and Sun Prairie were the first municipalities in the state to be certified by the Public Service Commission of Wisconsin ("PSC") as telecommunications providers. Fourteen others were soon to follow: Marshfield, Two Rivers, River Falls, Richland Center, Shawano, Oconto Falls, Stoughton, Manitowoc, Plymouth, Waupun, Menasha, Kaukauna, Oconomowoc, and De Forest (the only municipality certified by the PSC that does not operate an electric utility).

The City of Reedsburg provides a good example of how a municipal fiber optic network can benefit a small municipality. Reedsburg is building an advanced telecommunications network to support a variety of current and future electric and water utility system and business applications. These applications include such things as monitoring and control of electric substations, remote monitoring of electric demand meters, automated meter reading, and on-line customer billing. The municipal telecommunications system will also be used to connect municipal buildings to take advantage of high-speed data services and to replace existing telephone service. Not only is this expected to increase the efficiency of local government, Reedsburg also anticipates significant savings to the municipal government in avoided telephone charges.

Reedsburg's municipal utility is working with the local school district to provide for the installation and design of a telecommunications system that would allow for the connection of a network by the school district. Reedsburg believes that it is vitally important that local schools have access on an affordable basis to the Information Superhighway. Reedsburg is now turning its attention to providing high-speed data services to local businesses. Reedsburg believes such services will foster economic development in its community, since such services currently are not offered on a competitive basis in Reedsburg.

—Anita T. Gallucci

## PSC Approves Stormwater Credit Methodology *Continued from page 1*

The Capital and Debt Service Component costs are to include the capital costs and debt service payments for the City's stormwater conveyance system. These costs would be paid for by all property in the City with impervious area except those non-residential properties which drain directly into a receiving stream that has the capacity to accept the volume of water discharged.

The City staff's proposed credit methodology has been approved by the PSC. Currently it is the PSC's only word on what constitutes reasonable stormwater utility charges. For more information on stormwater utilities and the reasonableness of stormwater charges, please give us a call. Boardman Law Firm represented the City of Eau Claire in this PSC proceeding.

—Lawrie J. Kobza

## Budget Bill Affects Municipal Entities

The Governor's Budget Bill has a number of provisions which impact municipal entities. The Bill proposes a reduction in the state gross receipts tax upon wholesale electric sales. The tax would be reduced from 3.19% to 1.59% for a five-year period.

The Bill also eases current rules on sales of municipal utilities. The Municipal Electric Utilities of Wisconsin (MEUW) has already indicated that it opposes these provisions, which eliminate steps that allow public participation and comment on a sale of a utility, including review by the Public Service Commission and a local referendum.

—Michael P. May

## Federal Energy Legislation Introduced

With each new session of Congress, a new piece of energy legislation is introduced. This session is no different. Senator Frank Murkowski (R-Alaska) introduced a new energy policy bill (the Energy Security Act of 2001) which would repeal the Public Utility Holding Company Act (PUHCA) and the Public Utility Regulatory Policies Act (PURPA). The bill provides some fix for public power communities with respect to private use IRS tax rules, but it has a number of provisions which prompted American Public Power Association (APPA) Executive Director Alan Richardson to indicate that APPA could not support the bill in its current form.

The bill is considered by many to be a placeholder until energy policy proposals from the Bush administration are unveiled later this spring.

—Michael P. May

# MUNICIPAL LAW NEWSLETTER

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If you have a particular topic you would like to see covered, or if you have a question on any article in this newsletter, feel free to contact any of the Boardman attorneys listed below who are contributing to this newsletter.

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Richard L. Bolton	283-1789	rbolton@boardmanlawfirm.com
Christopher J. Dodge	283-1777	cdodge@boardmanlawfirm.com
Anita T. Gallucci	283-1770	agallucci@boardmanlawfirm.com
Robert E. Gregg	283-1751	rgregg@boardmanlawfirm.com
Rhonda R. Hazen	283-1724	rhazen@boardmanlawfirm.com
Richard A. Heinemann	283-1706	rheinemann@boardmanlawfirm.com
Lawrie J. Kobza	283-1788	lkobza@boardmanlawfirm.com
Richard A. Lehmann	283-1719	rlehmann@boardmanlawfirm.com
Michael P. May	283-1737	mmay@boardmanlawfirm.com
Jennifer S. Mirus	283-1799	jmirus@boardmanlawfirm.com
Jon C. Nordenberg	283-1739	jnordenberg@boardmanlawfirm.com
Catherine M. Rottier	283-1749	crottier@boardmanlawfirm.com
Mark J. Steichen	283-1767	msteichen@boardmanlawfirm.com
Laura M. Sutherland	283-1774	lsutherland@boardmanlawfirm.com
Cynthia A. Van Bogaert	283-7543	cvanbog@boardmanlawfirm.com
Steven C. Zach	283-1736	szach@boardmanlawfirm.com

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Boardman, Suhr, Curry & Field LLP  
Fourth Floor  
1 South Pinckney Street  
P.O. Box 927  
Madison, WI 53701-0927

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