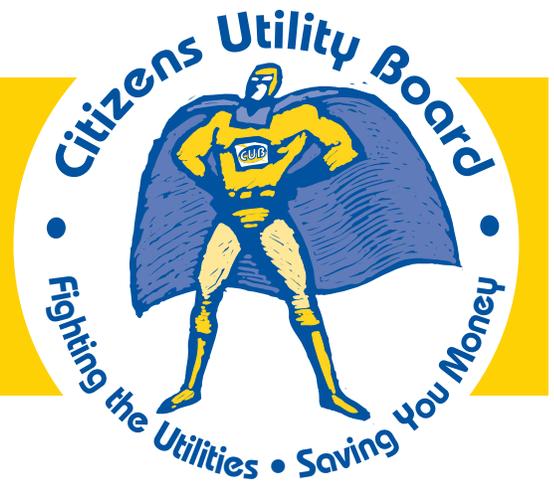


# CUB Reporter

Citizens Utility Board Newsletter • SPRING 2007



## Alliant Proposed Plant: Higher Rates, More Pollution

The Citizens Utility Board and Clean Wisconsin have joined forces to oppose Alliant Energy's application to the Public Service Commission of Wisconsin (PSC) for a permit to construct a 300 megawatt coal-fired power plant on the shores of the Mississippi River near Cassville.

Alliant filed its application for a construction permit on February 7, 2007. Alliant's proposal would add a third coal plant to the two existing plants at Alliant's Nelson Dewey facility. Alliant Energy is the holding company that owns the Wisconsin Power & Light utility.

Investing in outdated coal technology now means higher rates in the future because in the next few years, Congress will likely impose regulations on global warming pollution, such as carbon dioxide, that will likely increase the cost of burning coal. Alliant's proposed plant is not only bad for public health and the environment, it is also bad for household budgets.

According to the U.S. Environmental Protection Agency, Alliant Energy's existing coal burners at the Nelson Dewey site now emit over 1.7 million tons of global warming pollutants into the atmosphere each year. If the state allows Alliant to build its proposed plant, a projected 3.8 million tons of global warming pollutants would be released annually from the site.

"Now that Governor Doyle has announced his intention to address global warming here in Wisconsin, it's time to stop building old-technology coal plants," said Katie Nekola, attorney for Clean Wisconsin. "Instead of reducing global warming emissions, Alliant's proposal will more than double carbon

dioxide pollution from the plant."

From 1990 to 2005, Wisconsin's global warming emissions increased by 25 percent. Three new power plants currently being constructed (two coal plants for We Energies in Oak Creek, and one coal plant for Wisconsin Public Service Corp. in Wausau) will increase Wisconsin's global warming pollutants by an additional 10 percent.

During 2007, CUB and Clean Wisconsin will be fighting Alliant's coal plant proposal at the Public Service Commission. CUB and Clean Wisconsin will be urging Alliant to invest in energy efficiency, renewable energy, and in modern, proven technologies that emit fewer global warming emissions while protecting public health and boosting Wisconsin's economy.

## CUB Structure Update

In late 2005, CUB members voted overwhelmingly to merge CUB's 501(c)(3) and CUB's 501(c)(4) organizations.

Since its beginning in 1980, CUB has actually been two organizations: the Citizens Utility Board, Inc., and the Public Interest Fund of the Citizens Utility Board (PIF-CUB). With your support, CUB has now been restructured as one organization.

Last fall, the U.S. Internal Revenue Service approved 501(c)(3) status for the reorganized CUB, which means all gifts to CUB are now tax deductible.

These changes will greatly simplify our financial accounting and budget processes and will not restrict CUB's ability to advocate on your behalf for reasonable utility rates and policies. CUB will continue to provide the same or better advocacy services with fewer administrative costs and greater financial transparency.

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# From the Executive Director

As this newsletter makes clear, there's never a dull moment at CUB. Since our job is to keep a watchful eye on the state's energy and telecom utilities, we're always able to find important work to do.

Perhaps our most important victory in 2006 was asking the Public Service Commission to reject a request from ERCO Worldwide, which owns a chemical manufacturing plant in Port Edwards. ERCO wanted to receive a subsidy from ratepayers in the form of lower electric rates. The PSC rightly rejected ERCO's request, which if granted, would have undermined one of the most important principles of utility regulation: No Discrimination. In utility regulation, "no discrimination" means that ratepayers receiving similar service should pay similar rates. This principle, enshrined into law 100 years ago, protects ratepayers from subsidizing powerful corporations that try to shake down their utility for lower rates.

Unfortunately, it's not unusual for corporations and others to look for special deals. The movement toward electricity deregulation, which is still marching forward on orders from the Federal Energy Regulatory Commission, is nothing but an attempt by utilities and large corporations to make huge profits off the backs of residential ratepayers. ERCO's request for special rates was a backdoor attempt at deregulation. CUB remains on the lookout for other schemes that could threaten ratepayers.

For 2007, one of the most important issues is whether Alliant Energy, which owns the Wisconsin Power & Light utility, will receive permission from the Public Service Commission to build a new 300 megawatt coal-



fired power plant on the Mississippi River near Cassville. Coal-fired power plants are one of the largest sources of global warming pollution. By proposing to build a coal plant, Alliant is threatening our pocketbooks as well as the environment. Global warming pollutants, such as carbon dioxide, will likely be regulated within the next 5 to 10 years, which means electricity from coal-fired power plants will increase in price. CUB, along with Clean Wisconsin, will be fighting Alliant's proposal.

CUB will also be (1) fighting the sale of the Point Beach Nuclear Power Plant to an unregulated company; (2) trying to stop the utilities from rewriting established "fuel rules;" (3) asking the Wisconsin Supreme Court to stop AT&T's robbery of consumers in the form of collecting illegal sales taxes; and (4) suing the Public Service Commission to return \$52 million to We Energies ratepayers.

A special thanks to you, our members, who make CUB's work possible.

-Charlie Higley-

# CUB 2007 Activity Update

Thanks to the ongoing support of our members, foundation funders and intervenor compensation from the Public Service Commission (PSC), CUB fights for all Wisconsin utility consumers.

CUB continues to fight for you in rate cases before the PSC, legal cases in court and by advocating for policy changes in the legislature. Here is an update of CUB activities for 2007, including some completed cases and ongoing work.

## PSC Cases

### **Wisconsin Power & Light Co., Rate Case for 2007 Rates, Docket 6680-UR-115**

On March 17, 2006, WPL filed an application with the PSC requesting authority to increase its electric utility rates by \$87.6 million, an 8.6% increase, and to increase its natural gas utility rates by \$8 million, a 2.7% increase, to be effective January 1, 2007. Later in 2006, WPL revised its request and sought a \$164.7 million electric increase, or a 17.8% increase.

During the case, CUB's expert witness argued that WPL was overestimating the costs for fuel for 2007. The PSC agreed with CUB and reduced WPL's request by \$1.5 million.

CUB also argued that WPL should earn a rate of return (profit) of no more than 10.4%, whereas WPL was asking for 11.5%. The PSC approved a profit rate of 10.8%, which will save ratepayers \$7 million from what WPL was asking for. Thankfully, the PSC has lowered WPL's profit rate over the past few years.

The PSC also supported CUB's recommendation to exclude an imputation of \$119 million in the capital structure for the lease underlying new power plants built in Sheboygan Falls in 2005, for a ratepayer savings of \$8 million.

On January 19, 2007, the PSC authorized an electric rate increase of \$36.2 million, a 3.9% increase, and a \$1.9 million rate decrease for natural gas operations, a 0.6% decrease for 2007 rates. CUB's efforts saved WPL ratepayers at least \$15 million.

### **PSC Denies ERCO's Request for a Special Deal**

As part of the WPL rate case, ERCO Worldwide, Inc., which owns a chemical manufacturing plant in Port Edwards and buys electricity from WPL, asked for lower electricity rates so that they could invest in equipment that would reduce emissions of mercury from its Port Edwards facility.

ERCO asked the PSC to approve a special contract with WPL to lock in a low electric rate that would only increase 4% each year, whereas ERCO's electricity rates have increased on average 10% each year since 1997. This contract would have forced WPL's residential and business customers to subsidize ERCO.

Also in this proceeding, WPL had asked the PSC to approve a special electricity rate for ERCO that would force WPL customers to subsidize ERCO by at least \$23 million over the next ten years.

CUB's legal team, led by Curt Pawlisch of Cullen Weston Pines & Bach, argued that the requests for special electricity rates for ERCO would not only be illegal, but if granted, would set a bad precedent that would encourage other companies to look for handouts from ratepayers. CUB argued that it was the responsibility of ERCO's shareholders to pay for pollution control equipment, and that it would be illegal for WPL's customers to subsidize those costs.

The Commission voted unanimously to deny ERCO's request for a special utility rates and also denied WPL's proposed \$23 million dollar subsidy for ERCO. CUB appreciates the PSC's decision to defend 100-year-old principles of utility regulation that protect ratepayers from discriminatory deal making between utilities and powerful companies.

### **Wisconsin Public Service Corp., Rate Case for 2007 Rates, 6690-UR-118**

On March 31, 2006, WPS filed a request for authority to increase its electric rates by \$136.9 million, a 15.8% increase, and to increase its Wis-

consin natural gas rates by \$22.6 million, a 3.9% increase, to be effective January 1, 2007.

WPS proposed to forego a request for a rate increase in 2008 if the PSC agreed to allow WPS to implement a two-year pilot "revenue stabilization mechanism" (RPS). CUB argued that the PSC should reject the use of this mechanism unless WPS implements energy efficiency programs that encourage customers to save energy, which WPS was not willing to do.

CUB also argued that the RPS could allow WPS to receive profits as high as 16.6%, instead of the authorized 10.9%. The Commission agreed with CUB and denied WPS's request for this revenue stabilization mechanism. Had this mechanism been approved, WPS could have earned excess revenues of \$68 million.

On January 11, 2007, the PSC concluded the case and authorized a \$56.7 million annual rate increase for WPS's electric operations, a 6.6% increase, and an \$18.9 million rate increase for natural gas operations, a 3.8% increase, for 2007 rates. Based in part on CUB's effort, the PSC reduced WPS's profits by \$10 million

### **Merger between WPS Resources and Peoples Energy, 9405-YI-100**

On July 10, 2006, WPS Resources and Peoples Energy Corp. announced their intent to merge.

WPS Resources Corporation (WPSR) is the holding company that owns Wisconsin Public Service Corporation, a regulated utility that sells electricity and natural gas in the Green Bay area. Peoples Energy Corporation (Peoples) is the holding company that owns two regulated utilities that sell natural gas in Chicago, namely Peoples Gas Light and Coke Company and North Shore Gas Company.

In proceedings before the PSC, CUB objected to the merger because mergers rarely if ever provide benefits to the ratepayers of the utilities. Like other utility holding companies that have proposed mergers, WPSR made

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# CUB 2007 Activity Update

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## Citizens Utility Board

**(CUB)** is a state-wide membership organization incorporated under state and federal laws regulating non-profit groups.

The purpose of the organization is to:

1. ensure effective and democratic representation of residential, farm and small business utility customers before regulatory agencies;
2. ensure effective and democratic representation of residential, farm and small business utility customers before the legislature and other public bodies; and
3. provide education on utility service costs and on the benefits and methods of energy conservation for consumers.

## Citizens Utility Board

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promises that “synergy savings” resulting from more efficient utility operations would outweigh the costs of the merger and provide benefits to ratepayers.

During the proceedings, CUB pointed out that three-fourths of mergers fail to provide benefits to the acquiring company’s shareholders, let alone ratepayers, and that “synergy savings” rarely provide any benefit to ratepayers. Utility mergers almost always enrich utility executives while causing higher rates for utility ratepayers and the loss of jobs of utility workers.

In addition to criticizing the often fictional “synergy savings” promised by utility management, CUB raised concerns about the problems afflicting the utilities owned by Peoples.

For starters, Peoples Gas Light and Coke Company and North Shore Gas Company had to refund \$100 million swindled from their customers in a shady deal involving Enron Corporation.

Next, the Peoples Gas utility has very old gas pipes, with some dating back to the Civil War. Not only have there been explosions on the Peoples Gas system, but repairs and replacement of old pipes located under the streets of downtown Chicago will be very expensive, posing liability threats to its new Wisconsin owners.

Unfortunately, the PSC approved the merger on February 8, 2007.

## Utility Fuel Rules, 1-AC-224

On June 23, 2006, the PSC opened a rulemaking proceeding to consider making changes to the rule electric utilities must follow in recovering the cost of fuel used to make electricity.

The current rule allows the PSC to change future rates to deal with fuel cost increases of an “extraordinary or emergency nature,” and only after a public hearing.

The utilities are proposing to change the rule so that rates could be adjusted even if a utility didn’t experience an “extraordinary” or “emergency” event. However, Wisconsin made automatic adjustment of rates illegal in 1983, because if utilities could pass fuel costs on to ratepayers automatically, the utilities would have no incentive to minimize and control these costs, and rates would go higher than necessary.

The current fuel rule is providing significant benefits to consumers. Each of Wisconsin’s major utilities gave refunds to customers in 2006 because of over-collection of fuel costs.

CUB believes this is not the time to make it easier for utilities to charge higher rates, especially since rates have increased more than 50 percent since 1997. CUB will urge the PSC to reject the proposal from the utilities and to leave the fuel rule alone.

This proceeding will continue during 2007.

## We Energies, Proposed Sale of the Point Beach Nuclear Power Plant, 6630-EI-113

CUB is opposing the proposed sale of the Point Beach Nuclear Power Plant, currently owned by We Energies to FPL Energy, a utility holding company headquartered in Florida. We Energies announced its intent to sell the plant on December 20, 2006.

During the next year or so, the PSC will decide if the sale of Point Beach, a 1,033 megawatt nuclear plant located in Two Rivers, is in the public interest. CUB will oppose the sale in the proceedings at the PSC.

CUB is concerned that the sale could lead to higher costs for ratepayers, and that the State of Wisconsin will lose jurisdiction over what is arguably the state’s most polluting industrial operation; Point Beach produces thousands of pounds of high-level radioactive wastes every year, for which there are no safe means of disposal.

FPL Energy could run the plant to maximize profits instead of safety. The PSC would have no authority over whether investments should be made to keep the plant operating safely, or whether the plant should be shut down should problems arise regarding its operation.

FPL Energy could potentially use the site to store nuclear waste from other nuclear reactors. FPL Energy could even sell the plant to another entity, all without oversight by the PSC and the Wisconsin public.

If the PSC approves the sale of Point Beach, the Commission will have taken

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## CUB 2007 Activity Update

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another step toward electricity deregulation, which will mean higher electricity rates, more pollution, more profits for energy companies, and less control over energy policy by the people of Wisconsin.

### Court Cases

#### **Butcher v. Ameritech**

Since 1991, AT&T has been illegally charging customers for sales taxes. If you are an AT&T customer, there's a good chance AT&T (formerly known as Wisconsin Bell, then Ameritech, then SBC) has been charging you for sales taxes on items that are not supposed to be taxed.

In 1991, the State Legislature passed a law that made it illegal for phone companies to charge and collect sales taxes for telephone installation charges, call waiting, voice mail, directory assistance, and other services and fees.

Despite this law, AT&T continued charging sales taxes on many of these items. Although the exact number isn't known yet, CUB believes that AT&T

has taken millions of dollars from customers.

The facts of the case (*Butcher v. Ameritech*) are hard to dispute:

- In 1991, the Wisconsin legislature outlawed taxing certain phone services.
- Ameritech (now AT&T) continued illegally taxing these services.
- These illegal taxes were not itemized, but hidden in the total phone bill tax.

Despite these facts, lower courts have ruled against consumers – declaring that consumers must uncover the illegal taxes prior to paying the bill. What the courts have said is that you must review and calculate the sales tax on every bill you receive (and know what items are taxable and what items are not) before you pay the bill — or you lose all rights to challenge the tax. This amounts to little more than taxation without notification.

CUB has entered this case on the side of the consumer, fighting AT&T and the lower courts' rulings. *Butcher v. Ameritech* is one of the most important cases for consumers to reach the courts

in decades. Unfortunately, despite acknowledging the harmful effect their decision will have on consumers, lower courts have ruled against consumers and for AT&T.

The lower court's decision to accept AT&T's argument, allows AT&T – not to mention Wal-Mart, other utility companies, oil companies, and *every other retailer* that collects sales taxes or any payment from consumers – to overcharge consumers with abandon, knowing that unless the consumer challenges the tax before payment, they're home free to keep their illegally collected money.

Our ray of hope – and what we're arguing at the Wisconsin Supreme Court – is that the Wisconsin Court of Appeals recognized the merit of our public policy argument. The appeals court found that:

**“it is unrealistic to require taxpayers to know all the sales tax laws and to analyze every one of their daily transactions involving sales taxes to**

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## ***CUB 2007 Activity Update***

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**determine if they are correctly computed...”**

The Court of Appeals decision (which went against consumers) found that the AT&T bills “**do not indicate whether each service is or is not being taxed.**”

Most of the millions in illegal sales taxes collected by AT&T have been given to the Wisconsin Department of Revenue, which has turned a blind eye to this problem and is allowing AT&T to continue this abusive practice. AT&T has also kept an unknown amount of money for covering the costs of collecting the illegal taxes.

AT&T and the Wisconsin Department of Revenue’s position in the *Butcher* case is in contrast to recent federal rulings. Earlier this year, the U.S. Treasury Department abandoned its interpretation of a 100-year old federal phone tax – announcing it will return some \$15 billion to consumers.

In public statements AT&T said it agreed with the U.S. Treasury Department’s decision – even though they continue to nickel and dime its customers for millions of dollars for sales taxes it’s not supposed to charge.

So far, lawsuits haven’t stopped AT&T’s robbery. Lower courts have ruled in favor of AT&T and against consumers. Therefore, CUB is asking the Wisconsin Supreme Court to step in and stop AT&T’s illegal behavior.

*CUB would like to thank Terrence Polich of the Madison law firm of Clifford & Raihala for representing CUB free of charge during the challenge before the Court of Appeals.*

### **We Energies**

CUB has joined the Wisconsin Industrial Energy Group (WIEG) in a lawsuit against the PSC for allowing We Energies to keep \$52 million in excess profits – over and above its previously allowed rate of return of 12.2%. CUB and WIEG want the money returned to ratepayers.

This case stems from a ruling the PSC made in 2005 regarding “excess earnings” made by We Energies from 2001 to 2003. We Energies contends that the \$52 million came from merger-related savings after its 2000 merger with WICOR, the owner of Wisconsin Gas. The PSC said We Energies should be allowed to keep the extra income as payment for cutting costs and becoming more efficient.

CUB and WIEG are arguing that the PSC decision violates PSC rules regarding fuel costs, which stipulate that if earnings rise above the authorized profit level, then the excess earnings must be returned to ratepayers.

The PSC’s own analysis shows that We Energies exceeded its approved rate of return, and therefore, CUB and WIEG contend that the \$52 million should be returned to ratepayers.

The lawsuit is now before the state Court of Appeals.

### **Legislation Update**

#### **141 Rules**

Wisconsin passed legislation that will greatly strengthen energy efficiency efforts throughout the state. Signed into law in March 2006, 2005 Wisconsin Act 141 adopts most of the recommendations of Governor Jim Doyle’s Task Force on Energy Efficiency and Renewables (GTF), which was formed to develop creative, consensus-based policy options and business initiatives that would restore Wisconsin as a leader in energy efficiency and renewable energy. CUB participated on the task force, urging stronger support for energy efficiency and renewables.

When it takes effect in July 2007, Act 141 will strengthen and improve Wisconsin’s energy efficiency programs; increase the amount of electricity produced with renewable sources such as wind, sun and biofuels; and strengthen the building codes for homes and commercial buildings.

CUB is currently participating in proceedings to develop administrative rules to implement Act 141. CUB is working to make sure the administrative rules maximize opportunities for Wisconsin residents and businesses to make their facilities more energy efficient.

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## Call for CUB board of directors Nominations

Attention CUB members – the CUB board of directors is seeking nominations for new board members.

Nominees should share CUB’s commitment that ratepayers deserve a strong voice to ensure safe, reliable utility service at reasonable rates. Nominees must be current CUB members.

Particularly strong nominees will possess skills in:

- Fundraising
- Finance
- Human Resources
- Marketing
- Nonprofit Management
- Strategic Planning

If you’re interested in serving a 3-year term on the CUB board of directors, please submit your resume

and your response to the two following questions, by May 1st 2007, to [higley@wiscub.org](mailto:higley@wiscub.org) or mail to:

Charlie Higley, Executive Director  
Citizens Utility Board  
16 N. Carroll St., Suite 720  
Madison, WI 53703

Questions:

- What skills and experience would you bring to the board? (200 words maximum)
- Why do you want to be on the CUB board of directors and what do you hope to accomplish during your 3-year term? (200 words maximum)

