

7th Circ. Pauses Federal Suit Over Wis. Transmission Line

By [Clark Mindock](#)

Law360 (October 22, 2021, 2:04 PM EDT) -- The Seventh Circuit has put a pause on a federal suit over a \$500 million Wisconsin power transmission line, saying the case involves similar claims to a parallel state case and it would be wasteful to proceed in tandem.

A three-judge panel said Thursday that a lower court got things wrong when it denied an abstention motion filed by Wisconsin's Public Service Commission, which has been sued by two state environmental groups that say the 100-mile high-voltage power line is unnecessary and was approved despite clear conflicts of interest of two of the voting commission members.

While the Seventh Circuit backed the lower court's determination that the commission's sovereign immunity arguments fell flat — with little precedent, the panel said the alleged violations appear to be ongoing — it said the district court was wrong when it said the federal and state litigation both didn't invoke federal due process claims.

"The environmental groups have raised materially identical due process recusal claims in both state and federal court. Given the context — this case implicates serious state interests regarding the operation of Wisconsin administrative law and judicial review of state agency proceedings — it's appropriate to abstain from exercising federal jurisdiction to give the state courts an opportunity to decide the recusal issue," the panel said.

Counsel for the environmental groups said the results are a mixed bag.

"We are pleased that the Seventh Circuit agreed with our arguments that the Public Service Commission does not have immunity in this case, but are very disappointed by the perplexing decision to rule sua sponte, without real briefing or argument, that the courts should abstain in this case," said Howard Learner, the executive director of the Environmental Law and Policy Center.

The suit was filed by environmental groups Driftless Area Land Conservancy and the

Wisconsin Wildlife Foundation in December 2019, targeting a proposed American Transmission Co. high-voltage line that would run from Dubuque to Dane County. The line was approved by the commission in September 2019 and was developed and approved by the [Midcontinent Independent System Operator](#), or MISO, in 2011 as a part of that operator's long-term planning process.

According to the environmental groups, two commissioners on the PSC voted on the approval despite clear conflicts of interest.

One of those commissioners, Michael Huebsch, has acted as a MISO advisory committee member and regularly attends meetings and conversations with MISO's board and staff outside PSC processes, according to the complaint.

They alleged that the other commissioner, Rebecca Valcq, was conflicted in the case because she worked previously as counsel for an energy company that is owned by [WEC Energy Group Inc.](#), which holds a 60% controlling interest in ATC, the power line developer.

A representative for the commission didn't immediately respond to a request for comment Friday.

The environmental groups are represented by Catherine E. White and Stephen P. Hurley of [Hurley Burish SC](#) and Howard A. Learner and Rachel L. Granneman of the Environmental Law and Policy Center.

The commissioners are represented by Ryan J. Walsh of Elmer Stahl LLP and Zachary Ramirez of the [Wisconsin Public Service Commission](#).

The case is Driftless Area Land Conservancy et al. v. Rebecca Valcq et al., case number [20-3325](#), in the [United States Court of Appeals for the Seventh Circuit](#).

--Editing by Stephen Berg.