

Wisconsin Supreme Court upholds stray voltage award

Dec. 6, 2007

(Editor's note: Chris Hardie interviewed James and Grace Gumz in 2000 as the couple battled with stray voltage. To read that story go to [Electricity's dirty little secret](#))

By SCOTT BAUER Associated Press Writer

MADISON, Wis. (AP) — The Wisconsin Supreme Court on Thursday upheld a nearly \$533,000 award to Marathon County dairy farmers who claimed a power company's stray voltage hurt their cows' milk production.

In a 4-to-3 decision, the court rejected arguments made by Northern States Power Co., now doing business as Xcel Energy, that some verdict questions a judge submitted to the jury were in error.

The state's high court said no errors were made.

The court also ruled in favor of Clark County dairy farmers in a stray voltage case, sending it back to lower court for a trial.

In the Marathon County case, James and Michael Gumz of rural Athens said they began noticing physical and behavioral problems in their herd in 1991, 10 years after they bought their parents' dairy farm. The problems included cow deaths and poor milk production.

The problems persisted, and in 1996 they asked Northern States Power to conduct tests for stray voltage.

Stray voltage is electricity that leaks from a utility's electrical distribution system or farm wiring. Some utility companies argue stray voltage isn't a problem, while some farmers claim it hurts cows' health.

The power company said its tests showed the "cow contact voltage" was below the "level of concern."

However, an independent electrical tester hired by the farmers determined that stray voltage from the power company's distribution system was coming onto the farm.

The Gumzes sued in 2001 and were awarded \$332,336 by a Marathon County jury for lost milk production and lost market value of their cows and \$200,000 for "annoyance" and loss of use and enjoyment of their property.

An appeals court upheld the ruling, which the Supreme Court affirmed Thursday. The high court said the Gumzes' action was not barred under the state's six-year statute of limitations because they showed reasonable diligence in investigating the cause of damage to their herd.

But in a dissenting opinion, Justice Annette Ziegler said evidence suggested the Gumzes should have known about the problem's cause earlier and the statute of limitations applied. She also said the jury should have been allowed to consider more evidence related to whether poor farm management was at least partially to blame for the cows' health.

The Gumzes were pleased with the decision and happy to have the case over with, said Greg Cook, one of their attorneys.

"I'm hoping in the future, the utilities will wake up and realize it's a lot cheaper to fix these problems than fight them in court," Cook said.

The power company's attorney, J. Drew Ryberg, did not immediately return a message seeking comment.

In the other case, the Supreme Court ruled that a Clark County Circuit Court should have let a lawsuit brought by dairy farmers Ralph and Karline Schmidt proceed to trial.

The Schmidts claimed that stray voltage from Northern States Power was to blame for problems they saw in their dairy cows as far back as the late 1970s. An electrician hired by the farmers concluded there was a stray voltage problem.

The circuit court ruled that the six-year statute of limitations had expired since the Schmidts knew about the stray voltage problem in 1993 but didn't bring the lawsuit until 2001.

The Supreme Court, in upholding an appeals court decision, said it was not clear when the Schmidts knew for certain that stray voltage was the problem and therefore it was wrong for the lower court to rule in favor of the power company before considering evidence at a trial.

Stray voltage has been an issue for dairy farmers statewide since the early 1980s, prompting dozens of lawsuits against power companies.

Four years ago, the state Supreme Court upheld \$1.2 million in damages to a New London dairy couple from Milwaukee-based We Energies. The couple claimed stray voltage from an underground cable installed next to their farm in 1977 caused their herd's problems. The utility contended there was no science showing animals can be harmed from ground currents.