

Consent Decree

I. Introduction

1. This Consent Decree is entered into by the Enforcement Bureau of the Federal Communications Commission ("Bureau") and Wisconsin Energy Corporation ("WEC").

II. Background

2. WEC is a Milwaukee-based holding company with subsidiaries in utility and non-utility businesses. The company serves more than one million electric and 921,000 natural gas customers in Wisconsin and Michigan's Upper Peninsula through its utility subsidiaries - Wisconsin Electric Power Company ("WEPCO"), Wisconsin Gas Company ("WGC") and Edison Sault Electric Company ("ESELCO"). In connection with its public utility activities, WEC maintains vital communications systems utilizing licenses issued by the Commission. Its non-utility subsidiaries include energy services and development, pump manufacturing, waste-to-energy and real estate businesses. WEC reported annual revenues of \$2,272,000,000 for the fiscal year ending December 31, 1999.

3. In March 2000, WEC's counsel informed the Enforcement Bureau's Investigations & Hearings Division that the company had discovered a number of instances in which it acquired control of radio facilities through a succession of mergers and corporate reorganizations without prior Commission consent. WEC's counsel indicated that the company was conducting an internal review to determine the scope of the problem. Thereafter, on June 9, 2000, WEC submitted an analysis of the results of its internal review. WEC submitted a superseding analysis on July 11, 2000, and supplemental information on November 7, 2000.

4. In its collective filings, WEC revealed the following:

Wisconsin Energy Corporation. Through 1986, Wisconsin Natural Gas Company ("WNG") and WEC were wholly-owned subsidiaries of WEPCO. Effective January 1, 1987, the companies effectuated a corporate reorganization whereby WEC became the holding company of, and acquired all outstanding shares of stock in, WEPCO and WNG. At the time of the transaction, WEPCO was the licensee of 19 land mobile stations. Although the corporate restructuring resulted in a *pro forma* transfer of control of WEPCO's authorizations to WEC, WEC did not request Commission consent to transfer control of WEPCO's licenses to WEC until May 23, 2000, more than 13 years after the fact. The Commission granted its consent on June 13, 2000.

Wisconsin Electric Power Company. In April of 1994, two Multiple Address System (MAS) microwave licenses held by WEPCO expired. Although Section 301 of the Communications Act of 1934, as amended, prohibits unlicensed operation, WEPCO continued to operate the stations without seeking new or renewed licensing. Applications to re-license the stations were filed on September 13, 2000, and granted on December 5, 2000. On November 14, 2000, WEPCO requested Special Temporary Authority ("STA") to operate the facilities. The STAs were granted on November 17, 2000. In addition, in 1992, WEPCO relocated a facility for one point-to-point microwave station without Commission authorization. WEPCO has continued to operate the facility from the unlicensed location since that time. On November 7, 2000, WEPCO requested an STA to operate the point-to-point microwave facility at the new location and filed an application to modify its license accordingly. The STA was granted on November 20, 2000.

Wisconsin Natural Gas Company. Effective January 1, 1996, WNG (a wholly-owned subsidiary of WEC) merged into WEPCO (also a wholly-owned subsidiary of WEC) and ceased to exist. Although this corporate reorganization resulted in the *pro forma* transfer of control of 20 stations (seven land mobile and 13 microwave) from WNG to WEPCO, the companies did not request Commission consent to the transfer of control of the stations.

Six of the land mobile licenses held by WNG expired on October 17, 1999 and the seventh land mobile license expired on February 25, 2000. WEPCO, into which WNG had merged, continued to operate the stations without authority. On April 19, 2000, WEPCO obtained an STA to operate the land mobile stations. It also filed applications to re-license them. All of the applications were granted in September 2000. In addition, the license for one microwave station held by WNG expired on December 23, 1998. WEPCO continued to operate this station until approximately June 12, 2000, when it discontinued operation. On May 19, 2000, WEPCO filed an application for Commission consent to the assignment of the 12 unexpired microwave licenses. All were granted on May 31, 2000.

Wisconsin Southern Gas Company. Effective January 1, 1994, Wisconsin Southern Gas Company, an unrelated utility, merged into WNG and ceased to exist. As a consequence, WNG acquired control over one land mobile station licensed to Wisconsin Southern Gas Company. Although this transaction resulted in the substantial transfer of control of the station to WNG, WEC did not request Commission consent to the assignment of license for the station until May 19, 2000, more than six years later. The Commission granted its consent on June 9, 2000.

Edison Sault Electric Company. On May 31, 1998, ESELCO, an unrelated utility holding company, merged into WEC and ceased to exist. As a consequence, WEC acquired control of three land mobile stations licensed to ESELCO's wholly-owned subsidiary, Edison Sault Electric Company, now a wholly-owned subsidiary of WEC. Although the transaction resulted in the substantial transfer of control of the three stations to WEC, WEC did not request Commission consent to the assignment of licenses for the stations until May 23, 2000, nearly two years later. The Commission granted its consent on June 12, 2000.

Presque Isle Power Plant. On or about December 31, 1987, WEPCO acquired the Presque Isle Power Plant from the Upper Peninsula Power Company ("UPPCO"). At the time, UPPCO was the licensee of one Land Mobile Station which was used in connection with the operation of the power plant. Following the acquisition, UPPCO continued to operate and manage the power plant for WEPCO pursuant to a management agreement. UPPCO also continued to operate the one station.

Ten years later, on January 1, 1998, the management agreement between the companies terminated and WEPCO assumed control of the station. WEPCO did not seek or obtain Commission consent to the substantial transfer of control of the station at that time. Thereafter, on August 1, 1998, UPPCO requested cancellation of the license without WEPCO's knowledge. WEPCO continued to operate the station without authority until April 19, 2000, when it was granted an STA. WEPCO filed an application to re-license the land mobile station at the Presque Isle Power Plant on June 26, 2000. The application was granted on December 5, 2000.

United Illuminating Company. On April 15, 1999, Wisvest-Connecticut, LLC ("Wisvest-CT"), a wholly-owned subsidiary of Wisvest Corporation (itself a wholly-owned subsidiary of WEC), acquired two power plants from United Illuminating Company through an asset purchase. In connection with this transaction, Wisvest-CT also acquired

control of certain frequencies associated with three land mobile stations licensed to United Illuminating Company. Although the transaction resulted in the substantial transfer of control of the stations to Wisvest-CT, the companies did not timely request Commission consent to the partial assignment of the three licenses. On April 19, 2000, Wisvest-CT, through WEC, obtained an STA to operate the stations previously licensed to United Illuminating Company. On June 23, 2000, Wisvest-CT filed a new application to license the subject frequencies. The application was granted on September 1, 2000.

In addition, Wisvest-CT began operating a land mobile station on 451/456.0375 MHz in the mistaken belief that the acquisition of the power plants also included an entitlement to operate on these frequencies. Wisvest-CT operated on these frequencies without authorization until July 3, 2000, pursuant to conditional authority. Wisvest-CT's new application to license the frequencies was granted on September 21, 2000. Wisvest-CT also began operating a new marine coastal station using five frequencies when it acquired the power plants from United Illuminating Company without authority. Wisvest-CT was granted a license to operate the facilities on June 24, 1999.

III. Definitions

5. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Commission" means the Federal Communications Commission.
 - (b) "Bureau" means the Commission's Enforcement Bureau.
 - (c) "WEC" means Wisconsin Energy Corporation.
 - (d) "Order" means the order of the Enforcement Bureau adopting this Consent Decree.
 - (e) "Final Order" means the Order that is no longer subject to administrative or judicial reconsideration, review, appeal, or stay.
 - (f) "Act" means the Communications Act of 1934, as amended, Title 47 of the United States Code.

IV. Agreement

6. WEC agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

7. The Bureau and WEC agree that this Consent Decree does not constitute an adjudication on the merits or any finding on the facts or law regarding any violations of the Act or the Commission's rules committed by WEC.

8. WEC agrees that it shall make a voluntary contribution to the United States Treasury in the amount of \$25,000.00 within 10 calendar days after the Bureau releases the Order adopting this Consent Decree.

9. WEC agrees to implement, within 10 calendar days after the Bureau releases the Order adopting this Consent Decree, a comprehensive internal program, a summary of which is attached hereto, to ensure WEC's future compliance with the Act, the Commission's rules, and the Commission's policies.

10. In express reliance upon the representations contained herein, the Bureau agrees to terminate its investigation into the matters discussed in paragraphs 3 - 4, above.

11. The Bureau agrees not to institute any new proceeding, formal or informal, of any kind against WEC for apparent violations of Section 310(d) of the Act or Section 301 of the Act arising from the matters discussed in paragraphs 3 - 4, above.

12. In the event that WEC is found by the Commission or its delegated authority to have engaged in a violation of Section 310(d) of the Act and/or Section 301 of the Act subsequent to the release of the Order adopting this Consent Decree, WEC agrees that the conduct described in paragraphs 3 - 4, above, may be considered by the Commission or its delegated authority in determining an appropriate sanction.

13. WEC waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order is limited to adopting the Consent Decree without change, addition, or modification.

14. WEC and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without change, addition, or modification.

15. WEC and the Bureau agree that in the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

16. WEC and the Bureau agree that if WEC, the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither WEC nor the Commission shall contest the validity of the Consent Decree or Order, and WEC and the Commission shall waive any statutory right to a trial *de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and shall consent to a judgment incorporating the terms of this Consent Decree.

17. WEC agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, Title 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters discussed in paragraphs 3 - 4, above.

18. WEC agrees that any violation of the Order adopting this Consent Decree shall constitute a separate violation and subject WEC to appropriate administrative sanctions.

19. WEC and the Bureau agree to be bound by the terms and conditions stated herein.

20. WEC and the Bureau agree that this Consent Decree may be signed in counterparts.

**ENFORCEMENT BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: _____
David H. Solomon
Chief

Date

WISCONSIN ENERGY CORPORATION

By: _____
Larry Salustro
General Counsel and Senior Vice President

Date

SUMMARY OF COMPLIANCE PROGRAM OF WISCONSIN ENERGY CORPORATION

Corporate Compliance Program to Include FCC Regulations

WEC's Section 310(d) and Section 301 compliance program is part of a larger FCC compliance program that involves the following elements: a compliance manual and a training program, which include identifying and handling potential transfers covered by Section 310(d) and proper operations pursuant to Section 301.

WEC's Compliance Manual

A compliance manual has been developed and will be updated as necessary. WEC's licensing personnel have ready access to the compliance manual and are to follow the procedures contained in it. Such personnel are also encouraged to contact the company's law department with any questions they may have.

Compliance Training Program

WEC in conjunction with its outside telecommunications counsel, has established an FCC compliance training program specifically geared to employees who engage in FCC licensing-related activities. The program includes a thorough review of FCC transfer of control issues. It is anticipated that training sessions will be conducted at least annually to ensure compliance with the Communications Act of 1934, as amended, and the FCC's regulations.

Internal Process

WEC has a centralized process for the handling of all FCC licensed facilities and related FCC applications and matters. This will help ensure that all FCC rules and regulations are being adhered to prior to and during any corporate restructuring, acquisitions or related transactions. WEC is sensitive to the requirements of 47 U.S.C. § 310(d) and § 301 and will maintain open communications among its personnel in order to prevent any *pro forma* or substantive unauthorized assignments and/or transfers of control and operations of stations without authorization.