

Stray Voltage Legislation: A review

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Overview:

- Courts and juries
- “Five star” Stray voltage legislation
- The alternative
- Legislative summary
- Developing legislation and regulations

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Courts and juries – the tort system

- Purpose:
- Provide remedies (often financial compensation) for damages caused by willful or negligent wrongdoing

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What juries need

1. Clearly defined rights and duties
2. Quantifiable damages
3. Willful or negligent wrongdoing
4. A question of fault



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If you have:

1. Clear rights and duties
2. Quantifiable damages
3. Simple negligence

You may have no need for a civil court

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The world we're in

We live in a society exquisitely dependent on science and technology, in which hardly anyone knows anything about science and technology.
- Carl Sagan

In real life, any theory will do as long as it gets the case to the jury, whose natural sympathies will usually produce a large judgment without much concern for the legal technicalities.
- The New Republic, Nov. 18, 1985

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Issues with resolving stray voltage claims in civil courts

- Disputes are technically complex
- Rights and duties are ambiguous
- Damages may be difficult to quantify
- Cost of bringing a case to court
 - Small but legitimate claims may not be raised

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Two options:

1. Reduce the need for courts and juries to resolve stray voltage claims
2. Compensate for the inherent shortcomings of juries

“Five star” legislation and regulations do both

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Five star stray voltage legislation:



- Defines balanced rights and duties for stakeholders (and juries)
- Relies on established science
- Includes standardized protocols to evaluate compliance
- Includes process for handling disputes
- Is developed by consensus

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Five star stray voltage legislation continued:

- Makes recognizing non-compliance easy
- Helps ensure consumers get reliable information from a qualified investigator
- Can give juries an independent initial finding from a regulatory body, as opposed to contradictory expert opinions

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Five star stray voltage legislation doesn't:

- Take away the consumer's right to sue for damages
- Give energy providers immunity
- Prevent consumers from using an independent consultant
- Prevent consumers from using different voltage benchmarks on their dairies

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The big picture

- Indices and benchmarks for electric service already exist
 - ANSI C84.1
 - IEEE-519
- Fundamentally, stray voltage legislation simply adds another index and benchmark
 - Animal contact voltage
 - Preventive Action Level or Level of Concern

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The alternative:

Regulation through litigation

- With poor or no explicit stray voltage regulation, consumers will use the tort system
- Juries define rights and duties
- Litigation experience may become the basis for utility policies and practices
- Rights and duties may change from case to case

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The alternative:

Regulation through litigation

- Regulation through litigation can create rights and duties based on exceptions
- May bypass regulators and the public in creating new industry standards
 - Michigan Attorney General filed suit attempting to force Consumer's Energy to prevent any contribution to stray voltage from its distribution system.

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Lack of legislation impacts dairy producers too

- Successful claims based on bad science spread misinformation in the community
- Non-standardized investigation protocols produce conflicting results
- It may not be cost effective to raise small but legitimate claims

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Regulation through litigation example:

- By 1999, the Wisconsin PSC had established a rigorous investigation protocol and a "Level of Concern" based on stray voltage research.
- A \$1.2M judgment against a utility was upheld, supported by the dairy producer's "alternative theory" based on "non-traditional stray voltage" even though the traditional stray voltage was below the PSC's established level of concern.

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Regulation through litigation example:

This ...decision makes it much more likely that farmers will bring stray voltage claims against utilities, since such claims may succeed even if the utility has met PSC standards. Utilities also must now consider methods of measuring and dealing with nontraditional, or ground current stray voltage.

- Boardman Municipal Law Newsletter,
August 2003

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Legislative summary: Wisconsin Statute 196.857 (1987)

- requires PSC to establish program (PSC dockets 05-EI-106 and 115).
 - Requires PSC to develop program with standardized tests for utilities and investigator training
 - No statutory stray voltage threshold
 - Consumer rights are undefined/unlimited
 - No process for handling complaints

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Legislative summary:

Minnesota HF1157 (introduced 2011)

- Would create task force to study rulemaking for the MPUC
 - Resulting MPUC rules were required to:
 - Define stray voltage
 - Standardize testing for utilities
 - Address mitigation of stray voltage sources
 - Task force required a minimum of 16 members
- **The legislation did not pass**

On March 19, 2012, a jury awarded \$750k to a MN dairy. The measured cow contact voltage was below 1.0V.

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Legislative summary: Michigan

- MPSC rules 460.2701-2707 (have the force of law)
 - Describes a standardized testing protocol for utilities
 - Defines a preventive action level of 1.0V
 - Appears to create balanced rights and duties for utilities and consumers
 - Includes a process for handling complaints

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Legislative summary: Connecticut

- DPUC 94-05-35 (no statute)
 - Defines 0.5V level of concern at cow contact and 1.0V for primary NEV.
 - Calls for task force of stakeholders – no evidence task force was created
 - No statutory stray voltage/current threshold
 - No standardized test protocol
 - Consumer/utility rights and duties are not balanced
 - No defined complaint process – task force charged with evaluating a dispute resolution function

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Legislative summary: Vermont

- No formal statute or rules
 - Voluntary program to use neutral isolators where the primary NEV exceeds 0.5V.
 - Results in almost universal isolation of dairy farms

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Legislative summary: Iowa

- SF2286 and HF2375 – Introduced in last session. Never passed.
- Revised to SF270 and HSB178, introduced in the current legislative session.
 - Latest legislation would require IUB to establish uniform measurement protocol.
 - Removes definition of Preventive Action Level
 - Dairy producer may notify utility and file civil claim simultaneously
 - Rights and duties of utilities and consumers are not balanced

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Legislative summary:
Ontario Canada

- June 2009 – Ontario Energy Board Distribution System Code revised to include:
 - Section 4.7: Farm Stray Voltage
 - Appendix H: Farm Stray Voltage Distributor Investigation Procedure
 - Summary:
 - standardizes test procedures
 - Establishes thresholds and contribution limits
 - Requires notifications to customers about services
 - Requires qualified investigators

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Legislative summary: South Dakota

- Early stages...
 - A small committee representing cooperatives has prepared draft legislation based on Idaho's legislation.
 - They plan to add representatives from the SD department of Ag. or the PUC, and the dairy industry.
 - The plan is to begin working in April to reach consensus on legislation that could be presented in the 2015 legislative session.

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Legislative summary: Idaho Title 61, Chapter 8

- Defines terms such as “stray current or voltage” and “cow contact points”
- Establishes a uniform “preventive action level” and describes it
- Required the Idaho PUC to establish procedures and protocols
- Establishes procedures for handling complaints

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Eight years with Idaho's stray voltage statutes and PUC Rules

Investigations by Utility: >200

Lawsuits: 0

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What is unique in Idaho?

- Statute includes two very important clauses:
 1. *Any measurements of stray current or voltage not made in compliance with commission rules shall be inadmissible before the commission or in any civil action.*
 2. *The commission rules shall be applicable to dairy producers, utilities, and all persons or entities involved in any way in the measurement or remediation of stray current or voltage in this state.*

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Legislative summary: Idaho

- Statute and IPUC rules do not prevent anyone from pursuing a jury trial. However, IPUC has first jurisdiction in any case against a utility
- Statute and rules do not prevent the use of other measurement techniques
 - But those techniques cannot be used before the PUC or in court

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Unexpected benefits

- Independent investigators using “unique” techniques and theories have left.
- Dairy producers are not getting conflicting information regarding stray voltage.
- Utility/dairy producer working relationship is very good

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Developing five star stray voltage legislation

Communication is key.



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Remember the big picture

- Five star stray voltage legislation simply:
 - Adds additional electric service indices (cow-contact voltage, neutral-to-earth voltage) and benchmark(s) (Preventive Action Level)
 - Standardizes measurement of these indices
- This is similar to ANSI C84.1 and IEEE-519
 - These standards already define a number of indices and associated benchmarks that describe acceptable electric service

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Legislation/Rule development

- Small, empowered group with representatives of all stakeholders
 - Legal representatives to help with wording
- Note: Trial lawyers are not legitimate stakeholders in legislation intended to further define electric service standards.

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Recommendations from experience

Start with something, then edit, edit, edit.



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Some legislative hurdles

- PUC/PSC might not have all the authority they need
- Legislation can provide that authority

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Conclusions

- Five star legislation:
 - clearly defines balanced rights and duties for all stakeholders
 - Makes it easy to recognize legitimate claims
 - Can eliminate the need for courts and juries
 - Benefits BOTH consumers and providers
 - Good legislation is developed collaboratively

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Why does it matter?

- Without stakeholders recognizing the benefits of good legislation, they won't support it
- Without understanding what makes good legislation, we'll end up with bad legislation
- Bad legislation doesn't balance rights and duties for the stakeholders
- Bad legislation may create duties that don't address perceived rights, so there is a rights/duties mismatch.
- Parties will work around legislation that doesn't address their rights

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Questions?

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