

# Businesses seek repayment years after natural gas price manipulation

By [Thomas Content](#) of the Journal Sentinel  
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A sudden spike in natural gas prices 15 years ago — a hike federal investigators ultimately determined had resulted from illegal manipulation by the likes of Enron Corp. — cost Wisconsin businesses an estimated \$100 million more in 2001 than they had paid a year earlier.

Yet even though subsequent settlements with gas traders and suppliers resulted in federal penalties totaling \$350 million, no money has ever been returned to the Wisconsin businesses that overpaid for natural gas.

On Monday, those businesses, including engine maker Briggs & Stratton Corp., catalog printer Arandell Corp. in Menomonee Falls and Carthage College in Kenosha, will have their plea heard by the U.S. Supreme Court. At issue: whether the state's antitrust laws or federal energy regulations should take precedence in the case.

Lawyers for the Wisconsin plaintiffs say essentially that federal regulators were asleep at the switch when the manipulation was occurring early in the last decade, and that the businesses should be entitled to recover damages under state antitrust laws. In addition to Briggs, Arandell and Carthage, plaintiffs include the paper company known until last week as NewPage, Sargento Foods, ATI Ladish Forging and Merrick's Inc.

They contend that Wisconsin antitrust law exists to prohibit conspiracies to manipulate prices and allows injured parties to sue to recover damages caused by illegal price manipulation.

"The issue before this court is whether known market manipulators should be able to avoid antitrust liability for voluntary, collusive activities that successfully caused rampant inflation of retail natural gas prices in Wisconsin," attorney Robert Gegios of Glendale law firm Kohner Mann & Kailas said in a filing with the court.

Gegios and his firm have been involved in the case for more than eight years. On their side: the American Antitrust Institute, as well as attorneys general from Wisconsin, Kansas and 19 other states.

"This has cut across a wide panoply of industries and commerce," Gegios said in an interview. "There was a lot of damage done with this increase in prices."

The case made it to the U.S. Supreme Court after an appeals court in San Francisco sided with natural gas customers and overturned a lower-court ruling that had sided with the energy companies.

## Effect felt here

The striking jump in natural gas prices in 2000-'01 created an energy crisis in California and contributed to the collapse of Enron. But it was also felt in Wisconsin, a state that relies heavily on natural gas.

Heating costs soared for consumers in the state, while natural gas costs charged to many businesses in Wisconsin doubled in one year.

A series of investigations by federal regulators subsequently found widespread manipulation by at least a dozen companies involved in the gas supply business, including Enron, Entergy Corp., El Paso LLC, Oneok Inc. and others.

The investigations determined that the natural gas companies had fabricated trades and submitted fictional price information to key industry publications such as Gas Daily that were listing the official price of gas.

The investigations led to guilty pleas for some gas traders. And for the energy companies involved, inquiries by the U.S. Department of Justice and Commodities Futures Trading Commission resulted in the settlements with penalties totaling more than \$350 million.

Kansas Attorney General Derek Schmidt will be among those participating in oral arguments on Wisconsin's side Monday.

"We will vigorously defend Kansas consumer-protection laws from the federal administration's power-grab," Schmidt said in a statement. "We think 75 years of state authority to protect consumers from natural gas price-fixing at the retail level should be left intact."

The businesses, joined by the states, filed their lawsuits under antitrust laws because there was no other alternative for them to recoup the higher prices paid during the energy crisis.

In supporting the state attorneys general and the businesses that contend they overpaid for natural gas, the American Antitrust Institute said Congress intentionally meant to allow the use of antitrust laws as a means to prevent anti-competitive practices that might arise following congressional moves to deregulate the natural gas industry.

"Congress has deregulated the natural gas market since the late 1970s, eliminating price caps and narrowing FERC's active jurisdiction," the institute said. "Market forces are now the predominant price-setting mechanism in the natural gas industry."

## Role of federal regulators

But the energy and utility companies that are defendants in the case say federal regulations should take precedence when it comes to the natural gas industry — not state antitrust laws. A key issue before the Supreme Court is whether the Federal Energy Regulatory Commission was the sole authority regulating natural gas companies during the period targeted by the class action suit.

Lawyers for the natural gas companies as well as the U.S. solicitor general's office argue that the courts should respect FERC's role in regulating natural gas markets.

Trade associations for the natural gas industry also say a ruling that favors the states and businesses buying natural gas could threaten to mire the industry in regulatory uncertainty at a time when it needs to invest hundreds of billions of dollars to expand pipelines and natural gas-fueled power plants to help implement the Obama administration's climate change regulations.

"A very material source of risk in the sector arises from regulatory uncertainty. In particular, investors must be assured that the investments they make today will not be rendered unprofitable, or significantly riskier, tomorrow by changes in the basic rules of the game or their inconsistent application," the trade groups said. "It is therefore critical that the industry know who its regulators are, and the scope of the regulators' authority."

Billions of dollars are at stake in the Wisconsin case and several similar cases, the energy companies say in their brief to the Supreme Court.

Those companies say the Wisconsin suit and other lawsuits are looking to tap state antitrust and consumer-protection laws that could force natural gas companies to repay all the money the businesses spent on natural gas "as a 'punitive' measure, even if the alleged practices only caused a minor increase in the purchase price."

"Invoking these generous state-law remedies, (the companies that bought natural gas) looked for a payday that — in the aggregate — could total billions of dollars," the natural gas companies say in their brief.

In a recent regulatory filing, one of the defendants, Oklahoma-based Oneok, said it was impossible to determine how much the company could be liable for in damages and repayments if the natural gas companies lose their cases.

A potential decision in the customers' favor "could result in future charges that may be material to our results of operations," Oneok said in a filing with securities regulators.

Several suits, including in California, have already been settled, but cases in Wisconsin, Kansas, Missouri and Colorado are pending.

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