

# **PUBLIC SERVICE COMMISSION OF WISCONSIN**

## **Memorandum**

February 5, 2019

### **FOR COMMISSION AGENDA**

TO: The Commission

FROM: Bradley Rose, Acting Administrator  
Andy Galvin, Acting Administrator  
Denise Schmidt, Policy Initiatives Advisor  
Division of Water, Telecommunications and Consumer Affairs

RE: Water Utility Service Rules

1-AC-233

Clearinghouse Rule No. 17-055

Suggested Minute: The Commission (approved/modified/rejected) the proposed water utility service rules and directed Commission staff to draft an Order Adopting Proposed Rules and the associated report to the Legislature and to make the necessary filings. If the Legislative review period expires without further comment, or the Legislature approves the rules without change, Commission staff is directed to prepare an Order Adopting Final Rules and to make the required filings without further Commission action.

### **INTRODUCTION**

The rulemaking in this docket deals with revisions to the water utility service rules, Wis. Admin. Code ch. PSC 185. Chapter PSC 185, which establishes service rules related to water public utilities, has not been comprehensively updated since 1997. The proposed rules update simplifies and clarifies the standards related to the provision of water service by public utilities, and is intended to codify Commission decisions in the intervening 20 years and current practices. To the extent possible, the proposed changes are also intended to provide consistency with the electric and natural gas service rules, as there are 84 public utilities that provide water service in addition to electric or natural gas service, or both, in the state of Wisconsin.

Since 1997, the Commission has noted numerous policy concerns with the existing rules that these proposed rules address, including: failure to reflect electronic recordkeeping; ensuring utility customers have sufficient information about water utilities' rates and rules; the need for rules governing extraordinary utility investment to extend service to new customers; disputes regarding payment options, and disconnection, deposit, and billing policies; failure to reflect changes in metering technology; lack of whistleblower protections and protections against oppressive and deceptive practices; delayed utility investigations and resolution of meter problems that can result in customers receiving significant back-bills long after they use water; bills that do not include sufficient information for customers who have payment arrangements; disputes related to utility and customer responsibilities during cold weather conditions; meter testing and accuracy limit rules that do not cover all meter types; standards for water loss control based on percentage benchmarks which do not provide utilities with sufficient direction to identify appropriate, cost-effective options for managing water that they pump, treat, and distribute but for which they do not collect revenue; and duplication with administrative rules established by the Wisconsin Department of Natural Resources (WDNR).

A copy of the proposed rules which are the subject of this memorandum can be found at Attachment B to the Notice of Hearing. ([PSC REF#: 327842](#), Attachment B.)

## **Background**

The Commission accepted a Statement of Scope in this docket on June 9, 2010. ([PSC REF#: 136959](#).) The Statement of Scope did not require approval by the Governor's office

because it was finalized well before the approval requirement was created.<sup>1</sup> It was published in the *Wisconsin Administrative Register* on June 30, 2010, in Register No. 654.

([PSC REF#: 134868](#).) On January 20, 2017, the Commission requested input concerning the economic impact of the proposed rule changes. ([PSC REF#: 297006](#).) Five municipally-owned water utilities—Green Bay Water Utility, Kenosha Water Utility, Racine Water and Wastewater Utilities, Wisconsin Rapids Water Works & Lighting Commission, and the City of Appleton Finance Department—provided economic impact estimates. ([PSC REF#: 298074](#), [298125](#), [298108](#), [298112](#), and [298144](#), respectively.) The Commission also held rulemaking workgroup meetings in 2012, 2015 and 2016. ([PSC REF#: 164211](#), [PSC REF#: 276359](#), and [PSC REF#: 290764](#).) Representatives of approximately 20 utilities of varying size, as well as utility industry associations, attended those meetings.

On July 13, 2017, the Commission issued a Notice of Hearing in this rulemaking docket that provided a copy of the draft rules, an analysis of the proposed rules, an initial regulatory flexibility analysis, a fiscal estimate and economic impact analysis, a Wisconsin Environmental Policy Act determination, and provided the opportunity for testimony at a public hearing or through the submission of written comments by mail, on the Commission’s public web site or on the Legislative Rules Clearinghouse web site. ([PSC REF#: 327842](#).) On the same day the Notice of Hearing was issued, the Commission transmitted a copy of the Notice of Hearing to the

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<sup>1</sup> 2011 Wisconsin Act 21, section 9355, states:

GUBERNATORIAL APPROVAL OF EMERGENCY RULES. The treatment of sections 227.135(2), (3), and (4), 227.185, and 227.24(1)(e)1., 1d., and 1g. of the statutes first applies to a proposed rule or emergency rule whose statement of scope is presented to the governor for approval on the effective date of this subsection. (Section 227.185 is the section that requires a rule to be submitted to the Governor's office.)

2017 Wisconsin Act 57, section 36, states:

Initial applicability.

(1) This act first applies to a proposed rule or emergency rule whose statement of scope is presented for approval under section 227.135 (2) of the statutes on the effective date of this subsection.

Legislative Clearinghouse ([PSC REF#: 327845](#)) and to the Wisconsin Department of Administration ([PSC REF#: 327844](#)), pursuant to Wis. Stat. §§ 227.15 and 227.17, and provided Notice of Submission of Proposed Rules to the Joint Legislative Council Staff, pursuant to Wis. Stat. § 227.14(4m).

The Commission's Notice of Hearing and associated documents were published in the *Wisconsin Administrative Register* on July 24, 2017, in Register No. 739A4. ([PSC REF#: 328529](#), [PSC REF#: 328530](#), [PSC REF#: 328531](#), and [PSC REF#: 328532](#).) The Commission held a public hearing in this rulemaking docket on August 14, 2017, and accepted public comments via mail, its public web site and through the Legislative Rules Clearinghouse web site until August 24, 2017. No comments were provided at the public hearing held on August 14, 2017. ([PSC REF#: 329658](#).) A total of 38 public comments were received through the Commission's public web site.<sup>2</sup> Commenters included representatives of individual utilities, water industry associations, the Citizens Utility Board, the Alliance for Water Efficiency, and the Rural Community Assistance Program. One association, Municipal Environmental Group – Water Division (MEG-Water), convened eleven different working groups in developing its

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<sup>2</sup> City of Janesville ([PSC REF#: 329846](#)); Municipal Environmental Group - Water Division ([PSC REF#: 329849](#)); Baraboo Water Utility ([PSC REF#: 329866](#)); Waukesha Water Utility ([PSC REF#: 329884](#)); Wisconsin Rural Water Association ([PSC REF#: 329888](#) and [PSC REF#: 329908](#)); Racine Water Utility ([PSC REF#: 329892](#)); Watertown Water Utility ([PSC REF#: 329905](#)); Village of Bristol ([PSC REF#: 329910](#)); Cumberland Municipal Water Utility ([PSC REF#: 329912](#)); Merrill Water Utility ([PSC REF#: 329961](#)); Columbus Water and Light ([PSC REF#: 329971](#)); Badger Meter, Inc. ([PSC REF#: 329980](#)); City of De Pere ([PSC REF#: 329981](#)); Oak Creek Water and Sewer Utility ([PSC REF#: 329997](#)); Village of Mazomanie ([PSC REF#: 329998](#)); Village of Rib Lake ([PSC REF#: 330013](#)); Manitowoc Public Utilities ([PSC REF#: 330016](#)); League of Wisconsin Municipalities ([PSC REF#: 330017](#)); Weston Municipal Utilities ([PSC REF#: 330019](#)); Village of Friendship Water Utility ([PSC REF#: 330026](#)); Chippewa Water Utility ([PSC REF#: 330027](#)); City of Oshkosh Water Utility ([PSC REF#: 330028](#)); Sun Prairie Utilities ([PSC REF#: 330029](#)); Fort Atkinson Water Utility ([PSC REF#: 330030](#)); City of Appleton ([PSC REF#: 330031](#)); Broadhead Water and Light ([PSC REF#: 330032](#)); City of Brookfield Water Utility ([PSC REF#: 330033](#)); Hudson Public Utilities ([PSC REF#: 330034](#)); Green Bay Water Utility ([PSC REF#: 330038](#)); Madison Water Utility ([PSC REF#: 330039](#)); La Crosse Water Utility ([PSC REF#: 330047](#)); Reedsburg Utility Commission ([PSC REF#: 330049](#)); Kenosha Water Utility ([PSC REF#: 330051](#)); Citizens Utility Board ([PSC REF#: 330052](#)); Milwaukee Water Works ([PSC REF#: 330054](#)); Joint Comments by Water Systems Optimization, Inc., Cavanaugh & Associates, P.A., and Alliance for Water Efficiency ([PSC REF#: 330074](#)); and Wesley Hoem, Rural Community Assistance Program ([PSC REF#: 330094](#)).

comments. These working groups were comprised of representatives from twenty-five different water utilities and the Wisconsin Rural Water Association. ([PSC REF#: 329849.](#))

Commission staff considered whether the proposed rules have an environmental impact and concluded that they do not. Commission staff considered whether the proposed rules will impact housing and concluded that they do not.

### **ANALYSIS OF PROPOSED RULES**

The Commission is charged by the Legislature with jurisdiction to supervise and regulate every public utility in the state to ensure the efficient and fair provision of utility services in Wisconsin. The Commission works to ensure that, in the absence of competition, adequate and reasonably priced service is provided to utility customers. The Commission also provides resources, guidance, technical assistance, and training to the state's 577 water public utilities, in furtherance of the Commission's duty to ensure the adequate and reasonable provision of essential water service to Wisconsin households, businesses and communities.

The proposed updates and changes to the water utility service rules are based on Commission decisions, current practices, stakeholder input and expertise, and Commission staffs' legal, technical and policy expertise to ensure the application of best practices and lessons learned through thousands of investigations, rate cases, and audits, in addition to the perspective gained through working with customers and personnel of the 577 water public utilities in Wisconsin.

#### **Key Provisions of the Proposed Rules**

The proposed rules allow water public utilities to keep records in electronic format and define "written" or "in writing" to include electronic communications. They also require utilities to provide "written" notice to customers annually, rather than upon request, about payment

options, including deferred payment agreements and budget billing, disconnection, and dispute procedures, and the contact information for the Commission. This provision aligns the requirements for water utilities with those applicable to electric and natural gas utilities.

The proposed rules require additional information be added to each utility's schedule of rates and rules to address situations involving water leaks, the provision of wholesale service, and extraordinary investment by the utility to extend service to new customers or significantly increase the quantity or quality of service provided to an existing customer. The proposed rules also update the billing requirements to include the number of days in the billing period, the bill due date, clear explanation of any codes, abbreviations, or terminology used on the bill, and clear itemization of any payment arrangements. The proposed rules allow the utility, if necessary, to provide the information in a separate mailing or electronic mailing.

The proposed rules clarify the process for addressing utility billing errors, including malfunction of meters and misapplication of rates. The proposed rules create a single section addressing this process, repeal inconsistent requirements associated with certain types of metering technology, and update the requirements associated with deposits and deferred payment agreements to establish uniform and consistent payment terms.

The proposed rules include whistleblower protections that prohibit a utility from interfering with, restraining, or coercing any employee from disclosing information to the Commission or other governmental body regarding the safety and reliability of the utility or retaliating against the employee for disclosing such information. The proposed rules also include prohibitions against unconscionable, oppressive, and deceptive practices.

The proposed rules update the meter accuracy requirements to cover all types of utility meters and allow any type of meter to be used to measure water so long as it meets the accuracy

requirements. The proposed rules also allow a utility, in lieu of periodic testing, to adopt a new meter replacement program that results in each meter being replaced within 20 years of the original date of installation, if the utility has data to demonstrate that the meters will remain accurate for the 20-year period.

The proposed rules revise conservation and efficiency requirements by eliminating percentage benchmarks and instead requiring a water audit be conducted and used to establish utility-specific goals to reduce non-revenue water. The proposed rules also eliminate duplication with administrative rules established by the WDNR related to flushing and pressure.

Finally, the proposed rules update and clarify the rules related to utility and customer responsibilities during winter conditions and freezing. The proposed rules include definitions of the facilities for which the utility and customer are responsible, provide for the identification of the source of the freezing, specify the information to be included on notices when a utility requests that a customer run water to prevent freezing, and clarify the method for calculating customer bill credits for the water run to protect utility infrastructure.

## **ANALYSIS OF PUBLIC COMMENTS**

Commission staff appreciates the commitment of the state's water public utility staff to provide ratepayers with a high level of service. Water utility service areas in the state vary considerably, with the largest utility providing water service to more than 160,000 customers, and the smallest utility serving fewer than 25 customers. With 577 utilities providing drinking water service across the state, the water service rules play a key role in ensuring that a customer is provided a consistent level of service and billing transparency, regardless of whether that customer receives service from a large or a small utility. Unlike competitive business situations where customers often have multiple options, water public utilities function as monopolies in

providing an essential service to the state’s ratepayers. The Legislature has determined that Commission oversight through implementation of rules, statutes and policies is necessary to ensure that utilities provide reasonably adequate service and facilities in a manner that is equitable to ratepayers. The proposed revisions to those rules identified as in need of updates are intended to provide additional clarity and to reflect current industry best practices.

Wisconsin Admin. Code ch. PSC 185 is divided into nine subchapters addressing various standards related to different aspects of water public utility service. This analysis of public comments first provides a description of general comments that are not associated with any particular subchapter. The remainder of the analysis is organized by specific subchapter to reflect the organization of Chapter PSC 185.

### **General Comments Received**

While five utilities responded to the Commission’s request for input regarding the economic impact of the proposed revisions and provided estimated costs of complying with specific rule provisions ([PSC REF#: 298074](#), [PSC REF#: 298108](#), [PSC REF#: 298112](#), [PSC REF#: 298125](#), [PSC REF#: 298144](#).), no specific cost estimates were provided during the subsequent comment period. However, several commenters stated that they disagreed with the results of the Fiscal Estimate and Economic Impact Analysis and believe compliance with the proposed rules will be expensive. One utility commented that water service in Wisconsin is too inexpensive. Several utilities commented that their municipal status makes them best suited to determining how to deal with customers, without the need for rulemaking by the Commission.

### **Subchapter I – General**

- PSC 185.11 Authorization for and application of rules.**
- PSC 185.12 Definitions.**
- PSC 185.13 General requirement.**
- PSC 185.14 Whistleblower protection.**



**PSC 185.15 Free or discriminatory service prohibited.**  
**PSC 185.16 Protection of water utility facilities.**  
**PSC 185.18 Location of records**  
**PSC 185.19 Retention of records.**

In order to reduce areas of ambiguity identified in the rules in the time since their last update, the proposed amendments to Wis. Admin. Code ch. PSC 185, Subchapter I – General include changes to several definitions. Among these changes are clarifications to definitions of “residential customer” and “nonresidential customer,” as well as the addition of a definition of “written or in writing,” which allows for utilities to issue most required written notifications electronically instead of in print or via postal mail. The proposed rules also create Wis. Admin. Code § PSC 185.14, which includes whistleblower protections that prohibit a utility from interfering with the disclosure of certain information to the Commission or other governmental body.

Public comments related to the proposed language of Subchapter I were limited in scope and number. One commenter noted that the whistleblower protection language is lacking in the current rule and supported the addition.

## **Definitions**

Some commenters provided specific analysis related to the definition of a residential customer, which the proposed rule defines as “a customer taking service for residential or domestic purposes and includes customers at properties such as duplexes and residential apartment buildings.” The current definition excludes “multifamily residential customer[s].” The commenters expressed concern that the definition would require a utility to offer a deferred payment agreement to an apartment building owner who keeps tenants’ service in his or her own name, with one commenter expressing concern related to cash flow. Another commenter discussed financial risk associated with applying residential deposit rules to an apartment

building owner or nursing home's jointly metered account, especially in cases in which the operators of these residential facilities are not located in the municipality.

In Wis. Admin. Code § PSC 185.12(18), the proposed rule defines "residential customer" as "a customer taking service for residential or domestic purposes and includes customers at properties such as duplexes and residential apartment buildings." The intent of clarifying the definition of residential customer is to ensure residential customer protections provided in the rule are applied appropriately and in a non-discriminatory manner to all customers taking service for residential purposes at residential dwellings. The proposed definition clarifies that a significant group of residential users – residents of apartment buildings, duplexes, nursing homes, and other similar non-single family homes or jointly metered properties – will be afforded the same protections as other residential customers with regard to available payment options, deposits, and disconnections, including disconnections of heat sources during the winter months. In order to apply protections to a variety of circumstances, current rule language includes a variety of terms, such as "occupant," "occupied dwelling," and "residential water service." The expanded definition of "residential customer" in the proposed rules is intended to reduce ambiguity that may exist as a result of terms included in the current rules.

The proposed definition of "residential customer" also makes clear that utilities should offer deferred payment agreements to all customers who receive service for residential use and not exclude accounts serving residential multi-unit dwellings. To address potential concerns related to the adequacy of payment agreements offered to customers in residential multi-unit dwellings, the proposed rule specifically allows a utility to require "a customer provided with service through a master meter to pay up to 50 percent of the amount outstanding" in order to establish a payment agreement. Therefore, if the owner of an apartment building with a master

meter has an outstanding bill, under the proposed rule, the utility would be able to require from that owner a payment of 50 percent of the arrears in order to establish a payment agreement. In cases in which a multi-family residential building is jointly metered, service is required by Wis. Stat. § 196.643(2) to be placed in the owner's name.<sup>3</sup> Therefore, if an owner's account is subject to disconnection for nonpayment, a resident of the building does not have an option to open an account in his or her own name in order to maintain the service. While the proposed rule cannot change that circumstance, it does clarify that utilities must offer a deferred payment agreement so that service to residents can remain on while payments are being made.

Some commenters expressed concern that the proposed definition of "residential customer" means residential deposit rules (as opposed to nonresidential deposit rules) would now apply to customers with a single meter serving multiple residences. In some cases, disconnection may not be a reasonable collection tool for buildings that house medical patients. Rather than amending the definitions used throughout the chapter, the Commission may wish to amend the proposed nonresidential deposit rules to make them also apply to master metered residential accounts. The provision in the proposed rule addressing deposits is addressed later in this memorandum.

Commission staff also notes that some commenters were concerned that the definitions of "residential customer" and "nonresidential customer" would impact customer classes for rates and accounting. However, the definitions in Wis. Admin. Code ch. PSC 185 do not change customer classes in utility filed rates or accounting.

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<sup>3</sup> Wisconsin Stat. § 196.643(2) JOINT METERING. If gas, electric or water service is measured jointly for 2 or more rental dwelling units, the owner shall maintain the account for gas, electric or water service in the name of the owner or in the name of the agent responsible for the collection of rent and the management of the rental dwelling units.

## **Commission Alternatives: Subchapter I – General**

**Alternative One:** Approve the proposed rules in Subchapter I.

**Alternative Two:** Modify and approve the proposed rules in Subchapter I.

**Alternative Three:** Do not approve the proposed rules in Subchapter I.

## **Subchapter II – Rate Schedule and Rules**

**PSC 185.21 Schedules to be filed with the commission.**

**PSC 185.22 Information available to customers.**

Comments from water public utilities and water utility associations raised concerns with updates in the proposed rules related to the addition of tariffs addressing the rates for water wasted due to leaks, the rules governing extraordinary investment by the utility to extend service to new customers or significantly increase the quantity or quality of service provided to an existing customer, and tariffs addressing wholesale service. Commenters also expressed concern that, rather than only notifying customers upon request about payment options, including deferred payment agreements and budget billing, disconnection, dispute procedures, and contact information for the Commission, the proposed rules require utilities to provide customers with this information annually in writing

### **Schedules to be filed with the Commission**

Under the proposed rules, if a utility offers a reduced rate for water wasted due to a leak unknown to the customer that is found in an appliance or plumbing, the utility would be required to file with the Commission the rates and rules applicable to the reduced rate.

Under the current rule, Wis. Admin. Code § PSC 185.35(6) provides, if a leak unknown to the customer is found in an appliance or the plumbing, the utility is encouraged to estimate the water wasted and bill for it at a reduced rate not less than the utility's cost, subject to the utility's

leak policy and written rules setting forth the method of determining a reduced rate. Under the current rule language, utilities are offering bill adjustments for the wasted amount of water at a rate that is unknown to the Commission. All other rates billed to customers are included in the utility's tariff. The proposed change would incorporate this reduced rate, if it is offered, in the utility's tariff. Including the rates and associated rules in utility tariffs will ensure policies regarding leaks are applied non-discriminatorily to all similarly situated customers and will streamline the Commission's complaint processing by eliminating the need to request a copy of the leak policy from the utility.

The proposed rules would require the addition of a new tariff specifying the rules governing extraordinary investment by the utility to extend service to new customers or significantly increase the quantity or quality of service provided to an existing customer. Most Wisconsin water utility tariffs include water main extension rules that govern responsibility for costs associated with main installations needed to serve new customers. However, unlike the tariffs of most electric utilities, water utility tariffs do not specify the rules and costs associated with other utility plant that may be necessary to serve large new customers or large increased demand from existing customers. The proposed rules would require rules that describe responsibility for such costs be specified in the utility's tariff.

In addition, the proposed rules would require additional information related to a utility's wholesale service and the areas in which service is rendered be added to the utility's rates and rules. Under the proposed rules, utility tariffs must include all rates and charges for service, including rates for water sold to another utility. The utility tariffs would also include a list of the municipalities and unincorporated communities in which service is rendered and the rates under which service shall be provided. The list of service areas and wholesale rates shall be filed in

such form as to facilitate ready determination of the rates applicable in each municipality and unincorporated community served at wholesale. Commenters suggested that this list should apply only to areas provided with retail service. Some comments also stated it is unclear what additional information is being required.

Wisconsin Stat. § 196.22 provides that a utility may only charge the rates specified in its schedules approved by the Commission. Wholesale rates are a rate charged by a utility.

The inclusion of such rates in Wis. Admin. Code § PSC 185.21 is consistent with Wis. Stat. § 196.22 and current utility tariff Schedule W-1, which already specifies the wholesale water rates and the communities provided with wholesale water service. Including in tariffs information about the unincorporated communities in which water utility service is rendered and the applicable rates is consistent with the electric service rules.

#### **Commission Alternatives: Schedules to be filed with the Commission**

**Alternative One:** Approve the proposed rule in Wis. Admin. Code § PSC 185.21.

**Alternative Two:** Modify and approve the proposed rule in Wis. Admin. Code § PSC 185.21.

**Alternative Three:** Do not approve the proposed rule in Wis. Admin. Code § PSC 185.21.

#### **Information available to customers**

The proposed rules would require utilities to notify customers annually, rather than only upon request, about payment options, including deferred payment agreements and budget billing, disconnection, dispute procedures, and contact information for the Commission. This notification is known as the residential customer “bill of rights.”<sup>4</sup> The requirement to provide

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<sup>4</sup> See Wis. Admin. Code § PSC 185.22, Note: “Note: The information in subs. (1) - (5) is contained in the commission's residential customer bill of rights.”

customers with this notice annually aligns the requirements for water utilities with those applicable to electric and natural gas utilities. Through experience handling thousands of customer complaints, Commission staff has found that many water utility customers are unaware of the applicable regulations and rules that are in place to provide consumer protection, including the rules regarding billing disputes, payment arrangements and disconnections.

Some commenters indicated that the requirement to provide this information annually to all customers will have an economic impact due to the additional cost associated with the printing and mailing of these notices. However, utilities have the option of providing such information as part of a bill, rather than as a separate mailing. In addition, the proposed rule provides that “writing” includes electronic communications, thereby allowing utilities to provide this information in electronic format with customer consent.

#### **Commission Alternatives: Information available to customers**

**Alternative One:** Approve the proposed rule in Wis. Admin. Code § PSC 185.22.

**Alternative Two:** Modify and approve the proposed rule in Wis. Admin. Code § PSC 185.22.

**Alternative Three:** Do not approve the proposed rule in Wis. Admin. Code § PSC 185.22.

#### **Subchapter III – Service and Billing**

**PSC 185.30 Application for residential service.**

**PSC 185.305 Application for nonresidential service.**

**PSC 185.31 Metered service.**

**PSC 185.32 Meter readings and billing periods.**

**PSC 185.33 Billing.**

**PSC 185.35 Adjustment of bills for metering or billing inaccuracies.**

**PSC 185.36 Deposits for residential service.**

**PSC 185.361 Deposits for nonresidential service.**

**PSC 185.37 Disconnection and refusal of service.**

**PSC 185.38 Deferred payment agreement.**

**PSC 185.39 Dispute Procedures.**  
**PSC 185.40 Unconscionability.**  
**PSC 185.405 Oppressive and deceptive practices prohibited.**

The Commission received relatively few comments regarding the proposed rules governing applications for service or metered service. The rules governing applications for service were updated in docket 1-AC-229, effective August 1, 2014.

**Commission Alternatives: Application for service and metered service**

**Alternative One:** Approve the proposed rules in Wis. Admin. Code §§ PSC 185.30, PSC 185.305 and PSC 185.31.

**Alternative Two:** Modify and approve the proposed rules in Wis. Admin. Code §§ PSC 185.30, PSC 185.305 and PSC 185.31.

**Alternative Three:** Do not approve the proposed rules in Wis. Admin. Code §§ PSC 185.30, PSC 185.305 and PSC 185.31.

**Meter readings and billing periods**

The proposed rule requires utilities to render bills for service within 30 days from the meter reading, while the current rule requires utilities to render bills within 50 days from the meter reading. Commenters indicated this change would not provide a utility with the time needed to review usage and identify, seek and resolve problems before sending the bill.

The purpose of the proposed change in the time to issue a bill is to ensure customers receive timely, accurate information regarding their water usage, which allows them to identify issues such as leaks, and take necessary action within a reasonable period of time. Timely billing also provides customers with information on which to base decisions regarding adoption of conservation measures that may help manage future bills. In determining an appropriate amount of time for a utility to issue a bill after reading a customer's meter, the Commission may wish to



consider balancing these customer service objectives with challenges utilities may face implementing billing changes.

Some commenters raised concerns with revisions related to a requirement in the proposed rule that utilities promptly investigate, with the intent to evaluate and resolve within 30 days, situations in which the automatic meter reading system does not provide a meter reading or indicates zero consumption. The commenters stated that this requirement will be difficult to comply, with since utilities may bill quarterly, have vacant properties with zero consumption, or have systems that provide automatic reads multiple times per day. Commenters also requested to change the “30 days” to “prior to the next scheduled billing read.”

Commission staff appreciates the comments received on this proposed provision, which is intended to address changes in meter reading technology since the water service rules were last updated. The addition of this provision in the proposed rules is intended to help ensure utilities utilize automatic meter reading systems to provide benefits to customers. Potential benefits include reductions in billing errors, number of estimated readings, and number of back bills due to malfunctioning meter reading equipment. Back billing in these types of situations often results in customer complaints because customers do not expect to be responsible for a bill that results from defective metering reading equipment or other billing errors. It is important for utilities to identify and resolve these concerns quickly to reduce confusion and ensure proper billing.

The requirement to investigate zero consumption or no meter reading is intended to apply to the billing period, not daily or hourly interval meter readings. This is consistent with the remainder of the section which addresses meter readings for billing purposes. The requirement to promptly investigate with the intent to resolve the situation within 30 days is important not

just to utilities that bill monthly, but also those that bill quarterly. For a utility that bills quarterly, the zero or no read situation may have been present longer, and the resulting billing difference could be higher than in the case of a utility that bills monthly. In the case of a vacant property, an investigation may result in a customer ending service and the meter being removed. Resolving this type of situation within 30 days ensures accurate billing and prevents possible damage to the utility-owned meter if the property is not heated during winter months.

Some commenters also expressed concern regarding the requirement in the proposed rule to obtain Commission approval prior to advancing or postponing the meter-reading date by more than 10 days. Utility rates set by the Commission include both a fixed charge and volume charge for the corresponding billing period. For most water utilities, the volume charge uses a block rate structure. Changes in the meter reading date may affect the amount of water usage that falls within each block of the volume rate blocks. In addition, the fixed charge is generally not calculated on a per-day basis. Thus, Commission approval for changes to the meter reading date would ensure accurate billing.

#### **Commission Alternatives: Meter readings and billing periods**

**Alternative One:** Approve the proposed rule in Wis. Admin. Code § PSC 185.32.

**Alternative Two:** Modify and approve the proposed rule in Wis. Admin. Code § PSC 185.32.

**Alternative Three:** Do not approve the proposed rule in Wis. Admin. Code § PSC 185.32.

#### **Billing**

The proposed rule would require a utility to place additional information on a customer's bill including: the customer's class of service, the number of days in the billing period, clear

itemization of any transferred balance, the bill due date, clear explanation of any codes, abbreviations or terminology used on the bill, and clear itemization of any payment arrangements, including the remaining amount owed under the payment agreement. The proposed rule allows the information regarding transferred balances and payment arrangements to be provided as a separate mailing in lieu of being included on the bill.

Some commenters expressed concerns about costs associated with including the additional information. They cited costs associated with potential changes to billing systems and difficulty in continuing to use post cards for billing purposes.

The proposed change is intended to harmonize the water utility billing requirements with those for electric and natural gas utilities to the extent possible, to better assist customers in understanding their bills, and to reduce confusion and customer complaints. While the additional information should require minimal additional billing space, Commission staff recognizes that some water utilities utilize post cards for billing purposes. As such, the proposed rule provides a utility the option to provide the itemization of any transferred balances and payment agreements as part of a separate mailing if such information cannot fit on a post card bill. In addition, a utility may offer electronic billing to customers.

The proposed rule requires a utility that calculates its volume charges in units of cubic feet to include customer usage in both cubic feet and gallons on the customer bill. Some commenters stated that, given the fact that readings on the bill match those presented on the meter under the current rule, this requirement would create a false representation of precision and could cause customer confusion. The commenters also stated it may be difficult for current billing software to accommodate this requirement.

Commission staff believes customers are generally better able to understand their water use and attendant bills in terms of gallons rather than cubic feet. However, Commission staff acknowledges that, in some cases, the proposed revisions may limit the ability of some utilities to communicate clearly and accurately with their customers regarding water use.

The Commission may wish to amend the proposed rule to allow utilities to include on the bill a formula for the conversion of cubic feet to gallons in place of billing in gallons. The Commission may also wish to add a requirement that requires utilities install meters that measure usage in gallons at such time as they undertake meter replacement programs. Current metering technology allows meter readings with a resolution down to the 10<sup>th</sup> or 100<sup>th</sup> of a gallon, and all meters sold by some manufacturers have the capability to read in gallons.

Some commenters raised concerns regarding the order in which partial payments are required to be applied to a customer bill under the proposed rule. The commenters indicated that they set disconnection thresholds and send arrears to the tax roll based on the age and amount of the outstanding debt, and application of partial payments under the proposed rule would place some customers at a greater risk to have their service disconnected or their arrears placed on the tax roll. While a clear, consistent method for applying partial payments was the intent of the rule, Commission staff acknowledges the potential concerns raised by the commenters in certain situations and agrees that reducing unnecessary disconnections is a mutual goal of the Commission and utilities. The Commission may wish to amend the proposed rule language to address this issue by changing the language from “shall” to “should.” Doing so will provide guidance to utilities while allowing them to make pragmatic adjustments when necessary to avoid unnecessary disconnections.

The proposed rule provides that, when a billing also includes charges for other utility services such as electric, natural gas, or sewer, payment for current service or arrears shall be applied on a pro rata basis, unless otherwise requested by the customer. Some commenters raised concern that allowing the customer to choose to apply the payment in a different manner may prevent the utility from disconnecting water service in order to obtain payment for other service types. However, under Wisconsin Admin. Code § PSC 185.37(8)(c) a utility may not disconnect or refuse service for failure to pay for a different type or class of utility service.

**Commission Alternatives: Billing**

**Alternative One:** Approve the proposed rule in Wis. Admin. Code § PSC 185.33.

**Alternative Two:** Modify and approve the proposed rule in Wis. Admin. Code § PSC 185.33.

**Alternative Three:** Do not approve the proposed rule in Wis. Admin. Code § PSC 185.33.

**Adjustment of bills for metering or billing inaccuracies**

Under the current rule, adjustments of bills due to metering inaccuracies, misapplication of rates, and other billing errors are addressed under two separate sections—Wis. Admin. Code § PSC 185.34, relating to adjustments of bills due to inaccurately reporting remote outside meters (ROMs) and Wis. Admin. Code § PSC 185.35 relating to adjustments due to base meter errors and other billing errors. The proposed rule eliminates Wis. Admin. Code § PSC 185.34 and addresses these various situations under Wis. Admin. Code § PSC 185.35.

Under the proposed rule, a bill is not required to be recalculated unless the meter in service is found to have an average percent registration of less than 98 or more than 102 percent. Some commenters expressed concern that adjusting the threshold for a slow meter from

97 percent to 98 percent would result in more back bills. The commenters also noted that, in some cases, the cost of calculating and issuing those bills may exceed the revenues collected. While the proposed rule would result in a consistent standard for accuracy, as billings would be adjusted if the meter is either 2 percent slow or fast, the Commission may wish to weigh this objective with the concerns raised by the commenters in determining the appropriate threshold at which recalculation of bills would be required.

The proposed rule requires a utility to recalculate bills for service for the full period of inaccuracy in certain circumstances. Some commenters expressed concern that this requirement was inconsistent with the statutory framework related to unbilled service. However, this provision relates to the recalculation of the bill, not the billing of the service. The statutory requirements in Wis. Stat. §§ 196.60(1)(a) and 196.635, which require the billing of all service supplied and limit back billing to 2 years, are not abrogated by and are consistent with this requirement. In addition, the commenters' reliance on Wis. Stat. § 893.93(1)(a) is misplaced, as that provision relates to the statute of limitations for filing an action in court, not the refund period for inaccurate utility billing.

Some commenters expressed concern regarding the requirement that a utility annually submit to the Commission a report of bill adjustments due to meter inaccuracies, misapplication of rates, and billing errors. Under the current rules, water utilities are already required to keep such records but do not submit a report to the Commission. Natural gas and electric utilities are currently required to submit this report to the Commission on or before April 1 of each year. (Wis. Admin. Code §§ PSC 134.14(6) and PSC 113.0924(5).) Municipal natural gas and electric utilities submit this information by filling out fields provided in the Commission's annual reporting system. The amended rule language makes water utility reporting requirements

consistent with those of natural gas and electric utilities. Consistent with requests from commenters, Commission staff intends to modify the annual reporting system to allow water utilities to provide this information in the annual report. . This report is useful to the Commission and other utilities, as more water utilities evaluate adoption of new metering and billing system technology and weigh the costs and benefits of various technologies.

**Commission Alternatives: Adjustment of bills for metering or billing inaccuracies**

**Alternative One:** Approve the proposed rule in Wis. Admin. Code § PSC 185.35.

**Alternative Two:** Modify and approve the proposed rule in Wis. Admin. Code § PSC 185.35.

**Alternative Three:** Do not approve the proposed rule in Wis. Admin. Code § PSC 185.35.

**Deposits for residential and nonresidential service**

Some commenters expressed concern regarding a provision that allows a utility to require a deposit from a new customer when the applicant has an outstanding account balance with the water utility which accrued within the last 6 years, that remains outstanding, and is not in dispute. The commenters indicated they would like to see no changes to the current language, which allows a utility to assess a deposit when the applicant has an outstanding balance with any Wisconsin natural gas, electric, water or sewer utility which accrued within the last 6 years, that remains outstanding, and is not in dispute.

However, customer information laws that were recently updated prohibit a municipal utility from releasing customer information without the consent of the customer, except in certain circumstances. It is unclear how a municipal utility would become informed of a delinquency with another utility without at least one of the utilities violating these privacy laws.

Some commenters raised concerns regarding a provision in the proposed rule that allows a customer to pay the deposit in not less than three equal monthly installments. Utilities throughout the state currently use different criteria in determining the period under which a customer pays a deposit. The proposed rule is intended to create a consistent, minimum number of payments to ensure consistent levels of service, and reduce questions from utilities and complaints from customers.

Some commenters expressed concern regarding the amount of the deposit that could be imposed under the proposed rule. Under the current rule, the amount of deposit is calculated based on the highest bill for any consecutive billing period, not to exceed four months, selected by the utility. Thus, a customer of a utility that bills monthly would receive a deposit for four months of service, while a customer of a utility that bills quarterly would receive a deposit for three months of service. The proposed rule alleviates this discrepancy by providing that the maximum deposit for a new or existing customer shall not exceed the highest estimated or actual gross bill for any three consecutive months within the preceding twelve months. The proposed rule ensures consistency in application of customer deposit practices across the state, as the billing period used by a utility will not affect the amount of the deposit.

The proposed rule retains the provision in the existing rule that does not allow a utility to require a deposit from a customer with gross quarterly income that is at or below 200 percent of federal income poverty guidelines. Some of the commenters expressed concern regarding their ability to manage risk of non-payment under the proposed provision and stated that the provision was discriminatory in favor of low income customers. They commented that there should not be income limitations on when a deposit may be requested and cited Wis. Stat. § 196.60, which applies to an unreasonable preference or advantage or an unreasonable prejudice or



disadvantage. Throughout Wisconsin law, many requirements are based on income levels. For example, low income customers are able to receive Energy Assistance to assist with payment of electric and gas bills. In addition, while a deposit can be a tool to manage risk of nonpayment, utilities have other tools available to help manage these situations, such as the ability to disconnect service for nonpayment, establish a deferred payment agreement or use the tax roll process.

Some commenters expressed concern about applying residential deposit rules to apartment building accounts, to which nonresidential deposit rules apply under the current rule. Under the proposed rules, there is some risk related to collecting payment from residential accounts such as large, jointly-metered apartment buildings, nursing homes, and other multi-unit buildings where the account is in an owner or property manager's name. At times, such an entity may have high arrears and may operate its business out of state and be difficult to reach. In addition, disconnection may not be a reasonable collection tool in certain buildings that house medical patients. Therefore, in light of the comments received, the Commission may wish to amend the proposed nonresidential deposit rules to also apply to master metered residential accounts. This change would allow utilities to collect a new customer deposit on this type of account in cases where the credit of the applicant for service has not been established to the utility's satisfaction.

#### **Commission Alternatives: Deposits for residential and nonresidential service**

**Alternative One:** Approve the proposed rules in Wis. Admin. Code §§ PSC 185.36 and PSC 185.361.

**Alternative Two:** Modify and approve the proposed rules in Wis. Admin. Code §§ PSC 185.36 and PSC 185.361.

**Alternative Three:** Do not approve the proposed rules in Wis. Admin. Code §§ PSC 185.36 and PSC 185.361.

### **Disconnection and refusal of service**

Some comments related to a provision in the proposed rule which prohibits disconnection for nonpayment of a delinquent account over 6 months old when a utility has not made collection efforts within that period of time. This provision is not a change from requirements in the current rule. The proposed rule change simply replaces the semicolon at the end of the section with a period to be consistent with current rule drafting guidelines. The commenters requested confirmation that sending a bill constitutes “collection efforts.” It has been a longstanding Commission staff interpretation of code that continued issuance of bills constitutes collection efforts.

Comments were also submitted related to a provision in the proposed rule that requires prompt reconnection following the elimination of the cause for disconnection. Prompt reconnection would be no later than the end of the second day following elimination of the cause for disconnection. Commenters suggested the language should be changed to ensure that no overtime would be required to accomplish a prompt reconnection.

The Commission does not currently have rules addressing how quickly service must be reconnected at a property after payment has been made or the cause for disconnection has been eliminated. This lack of guidance in the code has generated a significant number of both utility and customer questions and has resulted in complaints. Amending the language as suggested by the commenters may result in ambiguity, inconsistencies, and customer complaints over reconnection timelines, as they would depend on utility staffing. Should the Commission wish to amend this provision to address the concerns raised in the comments, the proposed rules could be

revised to specify that, if the cause for disconnection is eliminated on a Friday, Saturday or Sunday, service shall be restored no later than the next business day.

**Commission Alternatives: Disconnection and refusal of service**

**Alternative One:** Approve the proposed rule in Wis. Admin. Code § PSC 185.37.

**Alternative Two:** Modify and approve the proposed rule in Wis. Admin. Code § PSC 185.37.

**Alternative Three:** Do not approve the proposed rule in Wis. Admin. Code § PSC 185.37.

**Deferred payment agreement**

The proposed rule updates the requirements for deferred payment agreements based on changes to Wis. Stat. § 66.0809, related to municipal utility collections, a lengthy record of customer complaints related to deferred payment agreements, and consistent requests from utilities for clear, standardized requirements related to setting deferred payment agreement terms. Several comments were submitted related to the proposed changes. The comments focused on the following key issues: the situations in which a deferred payment agreement must be offered; the maximum down payment request amount; the minimum number of installment payments required; and concerns related to a requirement that a municipal utility offer a deferred payment agreement to a customer who is a residential tenant.

Under the proposed rule, a utility would be required to offer a deferred payment agreement prior to disconnection if the customer is disconnected and requesting reconnection, or every 15 months if the utility has a policy or practice to not disconnect customers for nonpayment. Some commenters indicated that their utility currently does not offer deferred payment agreements, as they do not disconnect service for nonpayment but rather use the tax roll

process to collect payment. However, the current rule already requires a utility to offer deferred payment agreements to residential customers and does not include an exception for a utility that does not disconnect service but r. In situations where a utility does not disconnect service, offering deferred payment agreements still provides benefits to a utility and a customer, as such an agreement involves a down payment towards the arrears, and amounts covered by a deferred payment agreement are not subject to late fees. As the tax roll process in Wis. Stat. § 66.0809 applies every 12 months, the 15-month requirement also ensures that delinquent amounts can be transferred as a property tax lien if the terms of a deferred payment agreement are not adhered to by a customer.

The proposed rule also provides that a deferred payment agreement includes: (1) the customer pays a reasonable amount of the outstanding bill, not to exceed the lesser of \$600 or 50 percent of the amount outstanding. A utility may require a customer provided with service through a master meter to pay up to 50 percent of the amount outstanding; and (2) the customer agrees to pay the remaining balance in not less than three equal monthly installments. Some commenters raised concerns about the application of deferred payment agreements to all residential customers, the \$600 maximum as it relates to very large bills, and the minimum number of installments.

By making the \$600 maximum inapplicable to customers provided with service through a master meter, the proposed rule already addresses situations where large customer bills are expected. As discussed previously, in cases in which service is jointly metered through a master meter, a resident of the building does not have an option to open an account in his or her own name in order to maintain the service. The proposed rule attempts to balance the collection efforts of the utility with the essential nature of the utility service by specifying that in such

cases, the utility may require up to 50 percent of the amount outstanding to enter into a deferred payment agreement.

In addition, the number of payments is an issue Commission staff frequently handles in complaints from water utility customers and questions from utility staff. In some cases, utilities have requested that customers make large weekly installments and make full payment of a bill within one month of establishing a deferred payment agreement. The requirement that the deferred payment agreement be structured to require no fewer than three equal monthly installments ensures outstanding balances will be paid in a reasonable period of time and adds clarity to the rule to minimize inconsistent application by utilities throughout the state and reduce customer complaints.

Finally, some commenters expressed concern that Wis. Stat. § 66.0809(9) provides that a municipal utility is not required to offer a deferred payment agreement to a customer who is a residential tenant, and the commenters believe the proposed rule may be inconsistent with the statute. However, in the proposed rule, Wis. Admin. Code § PSC 185.38(9) is created to read: “A municipal utility may adopt deferred payment agreement rules and practices as provided in s. 66.0809(9).” In addition, a separate rulemaking, docket 1-AC-247, is currently pending before the Commission to address legislative changes related to municipal utility collection practices.

**Commission Alternatives: Deferred payment agreement**

**Alternative One:** Approve the proposed rule in Wis. Admin. Code § PSC 185.38.

**Alternative Two:** Modify and approve the proposed rule in Wis. Admin. Code § PSC 185.38.

**Alternative Three:** Do not approve the proposed rule in Wis. Admin. Code § PSC 185.38.

## **Dispute procedures**

The proposed rule amends the dispute procedures to make the informal complaint investigation process faster and more efficient and conforms the formal review process to the Commission's procedure for all other similar cases, as provided in Wis. Admin. Code ch. PSC 2. The language in the current rule has resulted in questions and disputes over the process for addressing the various customer related provisions in Wis. Admin. Code ch. PSC 185.

Some commenters stated that the proposed rule appears to exceed the Commission's authority by applying the process to issues beyond a utility's request for a deposit or other matters related to the disconnection or refusal of service. However, the proposed rule specifically provides that the dispute procedures apply to "a utility's action or inaction under this chapter." Thus, the process is limited to the issues in Wis. Admin. Code ch. PSC 185, issues over which the Commission has jurisdiction.

Some commenters also stated that changes to the dispute procedures are not currently being proposed for electric and natural gas utilities and requested that the changes be considered in a separate rulemaking docket applicable to all service types. The purpose of this rulemaking is to update the water service rules. The proposed rule addresses issues identified by Commission staff since the rule was last comprehensively updated, including the current language in the dispute procedures section of the water rules. If the Commission wishes to address the dispute procedures more broadly, it could open a separate rulemaking docket to do so.

Some commenters expressed concern related to the complaint response time requirements, indicating it may be difficult for smaller utilities to comply, as staff at such utilities fulfill many roles with the local government. Under the current rule, a utility has 10 business

days to respond to a customer complaint filed with the Commission. The proposed rule reduces this time period to 7 calendar days. Utility staff have often indicated to Commission staff that they would like to see the complaint process be expedited as much as possible, as a more efficient process minimizes the time a disconnection is held during a complaint investigation. The same commenters even noted this issue as it relates to requests for formal review. Many smaller utilities respond much more quickly than the current 10 business day requirement. In addition, Commission staff has taken proactive steps to improve the complaint process by allowing utilities to upload to the Commission's web site information about the complaint. Commission staff also regularly provides extensions of time when necessary to allow further investigation. The ability of staff to provide extensions is retained in the proposed rule.

Some commenters also noted that under the proposed rule, the Commission staff determination in an informal complaint would be binding, unless formal review is sought, and the regular process in Wis. Admin. Code ch. PSC 2 would be applied to requests for formal review of a complaint. Over the last 5 years, the Commission has received more than 11,000 informal customer complaints. Of those, an average of less than 10 per year have resulted in requests for formal review.<sup>5</sup> Ensuring the Commission staff determination is binding and can be relied upon provides certainty for both the utility and the customer. In addition, considering the relatively low number of requests for formal review, concern about the application of the Commission's regular process resulting in delays of the disconnection appears overstated.

#### **Commission Alternatives: Dispute procedures**

**Alternative One:** Approve the proposed rule in Wis. Admin. Code § PSC 185.39.

**Alternative Two:** Modify and approve the proposed rule in Wis. Admin. Code

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<sup>5</sup> For example, in 2017, only one request for formal review was sought. In 2016, only one request for formal review was sought. In 2015, only four requests for formal review were sought.

§ PSC 185.39.

**Alternative Three:** Do not approve the proposed rule in Wis. Admin. Code

§ PSC 185.39.

### **Unconscionability and oppressive and deceptive practices prohibited**

The proposed rules add two new sections related to unconscionability and oppressive and deceptive practices. Similar sections are already included in the electric service rules. In general, commenters did not express concern about the inclusion of the section, with the exception of the subsection which states that a utility may not “[t]hreaten to disconnect a customer if the utility has a policy or practice not to disconnect customers for nonpayment.” If a utility is seeking to disconnect service for a reason other than nonpayment, this provision would not apply.

This provision is intended to ensure a utility does not send disconnection notices to a customer if the customer is not actually subject to disconnection. This is similar to an electric utility being unable to send disconnection notices during the cold weather period, when disconnection of a residential customer’s heat source is not permitted. In addition, if a utility intends to disconnect service, this section would not prohibit the sending of a notice.

### **Commission Alternatives: Unconscionability and oppressive and deceptive practices prohibited**

**Alternative One:** Approve the proposed rules in Wis. Admin. Code §§ PSC 185.40 and PSC 185.405.

**Alternative Two:** Modify and approve the proposed rules in Wis. Admin. Code §§ PSC 185.40 and PSC 185.405.

**Alternative Three:** Do not approve the proposed rules in Wis. Admin. Code §§ PSC 185.40 and PSC 185.405.



## **Subchapter IV – Records**

- PSC 185.41** Employees authorized to enter a customer's premises.
- PSC 185.42** Customer complaints.
- PSC 185.43** Construction records.
- PSC 185.44** Records and reports of service interruptions.
- PSC 185.45** Pumpage records.
- PSC 185.46** Metering equipment records.

Few comments addressed the updates in the proposed rules related to Subchapter IV – Records. These updates ensure the Commission is notified of service interruptions affecting 25 percent or 500 or more customers, whichever is less, as well as ensuring necessary information about meter testing is retained. Some commenters indicated their recordkeeping system is not compatible with the requirement to retain the meter readings before and after a test. However, if the meter is found to not be registering within the accuracy limits, such information is necessary in order to bill a customer accurately.

### **Commission Alternatives: Subchapter IV – Records**

**Alternative One:** Approve the proposed rules in Subchapter IV – Records.

**Alternative Two:** Modify and approve the proposed rules in Subchapter IV – Records.

**Alternative Three:** Do not approve the proposed rules in Subchapter IV – Records.

## **Subchapter V – Engineering**

**PSC 185.51 Requirement for good engineering practice.**

**PSC 185.52 General construction requirements.**

**PSC 185.53 Metering configuration.**

The updates in the proposed rules for this Subchapter clarify the ownership status of mains and service lines, ensure the utility and the customer are responsible for repairing their own facilities, eliminate dead-end provisions that already exist in WDNR rules, and specify the customer notifications required prior to temporarily shutting off service.

Some commenters raised concerns about requirements in the existing rules which are not proposed to be changed in this rulemaking. The primary issue related to the existing requirement that a main or service line be placed at such a depth or otherwise protected as will prevent freezing. The commenters stated that WDNR has regulations covering the burial depth of mains, and preventing freezing in extreme conditions may be impossible to achieve. The commenters suggested revising the requirement to provide that the mains and service lines shall be buried at such a depth or otherwise protected in a manner “reasonably expected” to prevent freezing.

Utility designers and contractors have long recognized the importance of placing utilities’ underground facilities below the expected frost line, not only to prevent or minimize freezing, but also to prevent structural damages which could occur due to frost heave. The existing rules recognize this practice and incorporate it within the general construction requirements. While the commenters note that WDNR has rules specifying burial depths for mains, similar rules for the appropriate burial depth for service lines do not exist in the WDNR code. Service lines, particularly the utility-owned portion of the service line, are at a higher risk of freezing due to snow being cleared from roads and regrading of roads that reduces burial depth. In addition, gooseneck connections from the top of the main have reduced cover and experience lower water

flow than mains. Should the Commission wish to amend the language in this provision as suggested by the commenters, it may wish to specify whether any change in construction requirements would be expected to result from the changes.

Some commenters also expressed concerns about the requirements in the proposed rules related to determining the appropriate location of control valves, the rules on single connections, and the provisions specifying utility-owned and customer-owned facilities and responsibilities, noting some utilities have a different ownership structure. The proposed rules specify that the utility shall provide valves at intervals to minimize service interruptions and shall ensure each connection to the main serves only one customer, except in certain circumstances. The proposed rules also state that the ownership of mains and service lines is subject to the utility's schedule of rates and rules, thus allowing for preexisting ownership arrangements that differ from the norm.

#### **Commission Alternatives: Subchapter V – Engineering**

**Alternative One:** Approve the proposed rules in Subchapter V – Engineering.

**Alternative Two:** Modify and approve the proposed rules in Subchapter V – Engineering.

**Alternative Three:** Do not approve the proposed rules in Subchapter V – Engineering.

#### **Subchapter VI – Customer Meters, Accuracy Requirements**

**PSC 185.61 Meters.**

**PSC 185.65 Accuracy requirements for meters.**

Some commenters raised concerns regarding provisions in the proposed rules related to the installation of meters and the meter accuracy requirements. The primary installation concern related to installations by utility-authorized contractors. The proposed rule does not address the contractual relationship between a utility and its contractor, nor does it prohibit a utility from contracting with a third-party to install meters. The proposed rule is intended to ensure meters

are not installed by customers, as the utility is ultimately responsible for billing and other errors associated with an improperly installed meter.

The proposed changes to the meter accuracy requirements simplify and improve consistency by ensuring that all meters, regardless of type, meet specified accuracy limits. These accuracy limits also correspond to the accuracy at which no recalculation of bills is required. Some commenters noted that the changes are not consistent with the American Water Works Association (AWWA) meter accuracy standards. The commenters recommended that the rule be amended to align with standards specified by the AWWA. The comments recommended that meter types that do not have accuracies specified by the AWWA be held to the accuracy standards for positive displacement meters and turbine meters, depending on the intended application.

Over the years, Commission staff has fielded numerous utility inquiries on whether, and how, the accuracy table on positive displacement meters can, or should, be applied to electromagnetic and ultrasonic meters. While the intent of the proposed rule was to simplify and bring consistency to meter accuracy requirements and simplify billing, Commission staff recognizes the value of consistency with national standards. Should the Commission wish to amend this provision, it could consider retaining the current accuracy standards and specifying that meters without listed accuracies must meet the requirements of positive displacement meters and turbine meters, depending on the intended application. The Commission could also include language that clarifies that the accuracy requirements apply to the complete metering installation.

## **Commission Alternatives: Subchapter VI – Customer Meters, Accuracy Requirements**

**Alternative One:** Approve the proposed rules in Subchapter VI – Customer Meters, Accuracy Requirements.

**Alternative Two:** Modify and approve the proposed rules in Subchapter VI – Customer Meters, Accuracy Requirements.

**Alternative Three:** Do not approve the proposed rules in Subchapter VI – Customer Meters, Accuracy Requirements.

## **Subchapter VII – Meter Testing**

- PSC 185.71** Meter testing facilities and equipment.
- PSC 185.72** Calibration of meter testing equipment.
- PSC 185.73** Testing of customer meters.
- PSC 185.74** Test flows.
- PSC 185.75** Required tests of customer meters.
- PSC 185.751** Alternate sample-testing plan for "before-use" test for 5/8-, 3/4-, and 1-inch meters.
- PSC 185.76** Periodic tests.
- PSC 185.761** Alternative sample-testing plan for in-use meters.
- PSC 185.77** Request and referee tests.
- PSC 185.79** Remote outside meter (ROM) and automatic meter reading system tests.
- PSC 185.795** Electrical safety.

Some commenters raised concerns with updates in the proposed rules that allow utilities to adopt a 20-year replacement program in lieu of testing small customer meters on a 10-year basis if the utility has data to demonstrate that the meters will remain accurate for the 20-year period. The commenters expressed concern that this language provides the Commission with discretion to require utilities to test meters after a replacement program has been initiated. One commenter also noted that the current rule assumes that all non-revenue water is attributable to inaccurate meters.

The current rule provides that a utility may elect to adopt a 20-year meter replacement program for small customer meters if the utility's non-revenue water and water loss are below prescribed percentages. Water loss and non-revenue water percentages may be more reflective of conditions outside a utility's control (water use patterns, weather, customer mix, for example) than they are accurate indicators of operational efficiency. As a result, industry experts, including AWWA, discourage use of these percentages as a performance benchmarking tool. In addition, not all non-revenue water is necessarily linked to meter inaccuracies. Commission staff agrees with the commenter who stated that the language in the existing rules is problematic in this regard. To address these flaws in the current rule, the proposed updates remove the percentage benchmarks. However, allowing a utility to adopt a 20-year replacement program without any regard for meter accuracy over the 20-year period may not be reasonable. The proposed rule balances this concern by using a data driven approach that allows utilities to use a replacement program instead of testing if the utility has data to demonstrate the continued accuracy of meters.

**Commission Alternatives: Subchapter VII – Meter Testing**

**Alternative One:** Approve the proposed rules in Subchapter VII – Meter Testing.

**Alternative Two:** Modify and approve the proposed rules in Subchapter VII – Meter Testing.

**Alternative Three:** Do not approve the proposed rules in Subchapter VII – Meter Testing.

## **Subchapter VIII – Operating Requirements**

**PSC 185.82 Pressure standards.**

**PSC 185.83 Station meters.**

**PSC 185.85 Water audits and nonrevenue water control.**

**PSC 185.86 Flushing mains.**

**PSC 185.88 Cold weather conditions and freezing.**

**PSC 185.89 Adequacy of Water Supply, Emergency Operations and Interruptions of Service.**

**PSC 185.90 Water Supply Shortage.**

### **Quality of water, pressure standards and station meters**

The proposed rules repeal existing requirements related to water quality, as such rules are duplicative of WDNR rules. The proposed rule also revises the pressure standards to be consistent with WDNR rules, and clarifies requirements related to station meters.

#### **Commission Alternatives: Quality of water, pressure standards and station meters**

**Alternative One:** Approve the repeal of Wis. Admin. Code § PSC 185.81 and the proposed rules in Wis. Admin. Code §§ PSC 185.82 and PSC 185.83.

**Alternative Two:** Modify and approve the repeal of Wis. Admin. Code § PSC 185.81 and the proposed rules in Wis. Admin. Code §§ PSC 185.82 and PSC 185.83.

**Alternative Three:** Do not approve the repeal of Wis. Admin. Code § PSC 185.81 or the proposed rules in Wis. Admin. Code §§ PSC 185.82 and PSC 185.83.

### **Water audits and nonrevenue water control**

The proposed rule related to water loss control removes outdated terminology and percentage benchmarks. The proposed rule also builds on water audit reporting requirements currently found on page W-15 of the utilities' annual reports to the Commission by requiring that utilities use a spreadsheet program specified by the Commission to conduct an annual water audit. The proposed revisions also remove the current requirement that utilities adopt leak

detection whenever certain percentages of water loss or non-revenue water are exceeded.

Commenters described both concern with and support for the proposed revisions.

Commenters expressed concern that specifying software for conducting a water audit is too prescriptive, and the AWWA Free Water Audit software is too difficult to use, particularly for small systems. They commented that using the software may increase utility costs. One commenter contended that the AWWA software is designed only for large systems. Several commenters also expressed concern about how the Commission will determine whether a utility is making progress in reducing its non-revenue water, that the Commission will use results of a utility's water audit to compel a utility to undertake water loss intervention activities that are not cost-effective, and that all utilities will be required to develop a plan, regardless of their level of non-revenue water. Several commenters further indicated that utilities have a financial incentive to reduce water loss and that water utilities will do so without being required to conduct a water audit and develop a plan. One commenter opined that water loss control is already working well.

Several commenters expressed support for the proposed updates, indicating that the AWWA software is widely recognized as an industry best practice for conducting a water audit, and utilities of all sizes across the country have benefited from its use. The commenters stated that there should not be different standards for small and large utilities, as all utilities are run by licensed professionals. The commenters indicated that based on their experience, small utilities, given a minimal amount of training, have demonstrated they are capable of using the software. The commenters also noted that using the same reporting standard for all utilities provides consistency in performance indicators. One commenter recommended adding a requirement that utilities identify the steps they intend to take in their water loss control plans, as well as provide annual updates to the plans and goals. Annual updates would help ensure that changes in cost-



effectiveness of various water loss control activities are considered and plans are updated accordingly. A commenter also recommended several changes to definitions and language, while another noted that the proposed rule will likely reduce overall utility costs and improve utility service to the benefit of all customers.

While current water loss control efforts are effective for some utilities, on a statewide basis, utilities produced approximately \$83,000,000 worth of non-revenue water in 2016. Utilities of any size can benefit greatly from the enhanced productivity and institutional capacity that results from evaluation of data and adoption of best practices in non-revenue water control. Use of the AWWA's free spreadsheet tool, which was developed in consideration of both large and small systems, represents an opportunity for small utilities, who do not enjoy the same operational economies of scale that large utilities do. Small systems in particular may not have sufficient resources to purchase software or hire consultants to identify cost-effective priorities for reducing non-revenue water. Customers of small utilities should enjoy the same benefits from productivity gains as do customers of large utilities.

While Commission staff acknowledges that there is a learning curve associated with any new software, the proposed rules do not include a performance standard for reporting or achieving a particular water audit score. Unlike the current rule, the proposed rule addresses the fact that every system is different. The proposed rule allows utilities to develop plans that are based on system-specific factors rather than requiring that all utilities adopt prescribed control measures based on a rigid, percentage benchmark. In this regard, the proposed rule is much less prescriptive than the existing rule and is more likely to lead to plans that are cost-effective and meet the specific needs and desired level of service in a particular community.

While several commenters expressed concern regarding extra costs associated with the water audit software, they did not provide detail about the incremental additional costs or effort compared to what is currently required in preparing page W-15 of the utilities' annual reports to the Commission. Utilities across Wisconsin have used the AWWA software without incurring the extra cost associated with hiring a consultant. Free resources and training are available on the Commission, AWWA and Environmental Finance Center Network's (EFCN) web sites, and free technical assistance is available through the EFCN and Rural Community Assistance Program.

Currently, six states, along with Puerto Rico, require use of the AWWA software, and several other states are currently considering requiring its use. In addition, Wisconsin utilities have been collecting and reporting data on water loss using AWWA terminology for years; the AWWA software requires utilities to collect data for only a few additional data fields compared to what is already required on page W-15 of the utilities' annual reports to the Commission. However, to accommodate a transition to the new reporting format, the Commission may wish to consider amending the proposed rule, as suggested by a commenter, to allow for alternative water audit and plan reporting dates that are aligned with the municipal budget cycle. The proposed rule could be amended to allow for the information to be filed by April 1, which is the date annual reports are due, or a date specified by the Commission. Doing so would ensure the process remains flexible to help align with other planning by the utility.

Some commenters' concern that utilities may be forced to adopt improvements that are not cost-effective appears overstated. The proposed rule does not require that a utility achieve a particular score or benchmark or adopt any particular measure. However, the Commission could consider revising the language in the proposed rule, which permits the Commission to require a

utility take “any reasonable action,” to “any cost-effective action.” In addition, the definition of “Economic Level of Leakage” could be changed as suggested by a commenter, to reflect the definition in the AWWA M36 Manual.

**Commission Alternatives: Water audits and nonrevenue water control**

**Alternative One:** Approve the proposed rule in Wis. Admin. Code § PSC 185.85.

**Alternative Two:** Modify and approve the proposed rule in Wis. Admin. Code § PSC 185.85.

**Alternative Three:** Do not approve the proposed rule in Wis. Admin. Code § PSC 185.85.

**Flushing mains**

No comments were received on the provisions that update the rule pertaining to flushing of mains to ensure consistency with WDNR requirements and current rule drafting guidelines.

**Commission Alternatives: Flushing mains**

**Alternative One:** Approve the proposed rule in Wis. Admin. Code § PSC 185.86.

**Alternative Two:** Modify and approve the proposed rule in Wis. Admin. Code § PSC 185.86.

**Alternative Three:** Do not approve the proposed rule in Wis. Admin. Code § PSC 185.86.

**Cold water conditions and freezing**

The proposed rules include significant updates to the rule regarding cold weather conditions and freezing. The Commission has had rules governing the thawing of frozen services since at least 1972. Since that time, the Commission has received hundreds of customer complaints and utility questions about the rule. In one case, the current rule resulted in litigation.

The customer complaints and utility inquiries identified the need for additional clarity in the existing rule regarding responsibilities for thawing the portions of the service line owned by the utility and those owned by the customer, the provision of water to customers during the time the service line is frozen, documentation of the cause of the freezing to allow appropriate corrective action to be taken, appropriate notification to customers if the utility requests that water be run, and the appropriate method for crediting a customer if water is run to prevent freezing of utility-owned facilities.

Comments were received expressing concern that the proposed rule is unduly complicated and prescriptive, is longer than the current rule, and does not consider the practicalities of utility staff working in extreme conditions. The commenters were specifically concerned about provisions that require a utility to thaw facilities it owns, determine the source of the freezing, prevent future freezes within a reasonable period of time, provide a lasting solution to freezing service lines, and supply a customer with water using an alternative method, if practicable. Commenters also noted that the rules appear to address situations that occur under extreme conditions rather than those that occur during an average winter without considering the extra cost of doing so. Commenters suggested several alternatives to the proposed rule, ranging from eliminating all requirements that the utility thaw frozen service lines, to retaining the existing rule, to ensuring that utilities remain responsible for thawing both the utility-owned and customer-owned service line, except in certain situations. Some commenters also stated that a utility's thawing of a frozen service line should be an option, not a requirement, and that a distinction should be made between protecting against freezing under normal conditions and protecting against freezing under unusually cold conditions. However, no definitions of what would constitute "normal" versus "unusually cold" conditions were provided.

This section of the proposed rule is longer than the existing section, as it addresses issues raised over many years by both utilities and customers concerned with the lack of detail in the current rule. The proposed rule establishes a general rule regarding situations under which a utility is responsible for thawing or preventing freezing of facilities it owns, and situations under which a customer is responsible for thawing or preventing freezing of facilities the customer owns. This rule is consistent with current ownership and maintenance requirements included in water utility tariffs. Exceptions to the general rule include situations where the utility has not notified the customer that freezing has occurred in the customer-owned portion in the past, in which case the utility would be required to conduct the first thaw at a location. Another exception is where a utility disconnects a customer's service when freezing could reasonably be expected to occur. Finally, an exception occurs when a utility has provided notification to a customer requesting that the customer run water. The proposed rules clarify that in this situation, the utility is not responsible for thawing the customer-owned portion of the service line.

By requiring that a utility determine whether the freezing was in the utility-owned or customer-owned portion of the service line, the proposed rule ensures information about the situation is collected and documented. Some commenters stated that it is not always possible to determine the location of freezing in the field, and that such documentation would divert utility staff time from thawing. The proposed rule addresses these situations by specifying that the utility shall treat the freezing as having begun in the utility-owned portion, unless there is a record of the customer-owned portion freezing in the past. The documentation is necessary to help either the utility or customer take informed action to prevent freezing in the future. Some commenters also questioned whether the proposed rule would require the utility to provide bottled water during the time the service remains frozen. The proposed rule requires only that

the utility provide an alternative source, if practicable. In Commission staff's experience, the most common alternative source has been a connection to a neighboring property.

**Commission Alternatives: Cold weather conditions and freezing**

**Alternative One:** Approve the proposed rule in Wis. Admin. Code § PSC 185.88.

**Alternative Two:** Modify and approve the proposed rule in Wis. Admin. Code § PSC 185.88.

**Alternative Three:** Do not approve the proposed rule in Wis. Admin. Code § PSC 185.88.

**Adequacy of water supply, emergency operations and interruptions of service and water supply shortage**

No comments were received on these sections of the proposed rules, which make technical modifications to conform to rule drafting guidelines.

**Commission Alternatives: Adequacy of water supply, emergency operations and interruptions of service and water supply shortage**

**Alternative One:** Approve the proposed rules in Wis. Admin. Code §§ PSC 185.89 and 185.90.

**Alternative Two:** Modify and approve the proposed rules in Wis. Admin. Code §§ PSC 185.89 and 185.90.

**Alternative Three:** Do not approve the proposed rules in Wis. Admin. Code §§ PSC 185.89 and 185.90.

**Subchapter IX – Water Conservation and Efficiency**

**PSC 185.95 Definitions.**

**PSC 185.97 Voluntary Water Conservation Rebate or Incentive Programs.**

No comments were received on these sections of the proposed rules, which make technical modifications to conform to rule drafting guidelines. The proposed rule also repeals Wis. Admin. Code § 185.96, as the conservation notification requirements to customers were moved to Wis. Admin. Code § 185.22.

**Commission Alternatives: Subchapter IX – Water Conservation and Efficiency**

**Alternative One:** Approve the proposed rules in Subchapter IX – Water Conservation and Efficiency.

**Alternative Two:** Modify and approve the proposed rules in Subchapter IX – Water Conservation and Efficiency.

**Alternative Three:** Do not approve the proposed rules in Subchapter IX – Water Conservation and Efficiency.

**Commission Alternatives on the Rulemaking:**

**Alternative One:** Approve the proposed Water Service Rules, direct Commission staff to draft an Order Adopting Proposed Rules and the associated report to the Legislature and to make the necessary filings. If the Legislative review period expires without further comment, or the Legislature approves the rules without change, Commission staff is directed to prepare an Order Adopting Final Rules and to make the required filings without further Commission action.

**Alternative Two:** Approve the proposed Water Service Rules as modified by the Commission, direct Commission staff to draft an Order Adopting Proposed Rules and the associated report to the Legislature and to make the necessary filings. If the Legislative review period expires without further comment, or the Legislature approves the rules without change, Commission staff is directed to prepare an Order Adopting Final Rules and to make the required filings without further Commission action.

**Alternative Three:** Do not approve the proposed Water Service Rules, and return the rulemaking to Commission staff with further direction.

Key Background Materials:

[Statement of Scope - PSC REF#: 132923](#)

[Notice of Hearing signed and served 07/13/2017 - PSC REF#: 327842](#)

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