

PUBLIC SERVICE COMMISSION OF WISCONSIN

Memorandum

March 15, 2019

TO: Interested Persons

FROM: Eric Esser, Division Administrator
Bradley Rose, Assistant Administrator
Andy Galvin, Assistant 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

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. 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.)

At its open meeting of February 21, 2019, the Commission discussed the text of proposed revisions to Wis. Admin. Code ch. PSC 185 and made determinations, including directing staff to solicit additional comments only on specific sections of the proposed rules and receive these

written comments by March 30, 2019. ([PSC REF#: 360389](#).)

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.¹ 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

¹2011 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.

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 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.² Commenters included representatives of individual utilities,

² 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

water industry associations, the Citizens Utility Board, the Alliance for Water Efficiency, and the Municipal Environmental Group-Water Division (MEG-Water). Meg-Water convened eleven different working groups in developing its 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 they do not.

Commission staff prepared a Commission Agenda Memorandum that summarized key provisions of the Proposed Rules and the comments received. ([PSC REF#: 360008](#).) The Commission considered this matter at its open meeting of February 21, 2019. ([PSC REF#: 360389](#).) As stated earlier, the Commission seeks comments only on the sections described below.

ANALYSIS OF PROPOSED RULES

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. The proposed rule

& Associates, P.A., and Alliance for Water Efficiency ([PSC REF#: 330074](#)); and Wesley Hoem, Rural Community Assistance Program ([PSC REF#: 330094](#)).

includes a definition of “written” or “in writing” that includes providing information in electronic form with the intended recipient’s permission.

The Commission directed Commission staff to modify the language in Wis. Admin. Code § 185.33(4) to change “shall” to “should,” and solicit additional comments on 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. The Commission directed Commission staff to modify the proposed rules in Wis. Admin. Code § PSC 185.35 to retain the existing language related to meter under-registration of 97 percent instead of the 98 percent registration in the proposed rules.

The proposed rule includes a 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. The Commission clarified that the provision requiring annual reporting would first apply to annual reports filed on April 1, 2021, and directed Commission staff to solicit additional comments on the term “inaccurate meter” included in Wis.

Admin. Code § PSC 185.35(8).

Deposits for residential service

The proposed rule would allow 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 proposed rule would allow a customer to pay the deposit in not less than three equal monthly installments and provides 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 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.

The Commission approved the proposed rule in Wis. Admin. Code § PSC 185.36 but withheld a final determination as to whether a change should be made to Wis. Admin. Code § PSC 185.36(1)(b). The Commission noted that the existing rules in Wis. Admin. Code § PSC 185.36(1)(b) do not allow a water utility to require a deposit from a residential customer with gross quarterly income that is at or below 200 percent of federal income poverty guidelines.

The federal income poverty guidelines, which are updated annually, are used throughout Wisconsin to provide assistance and protection to low income customers. As an example, the Wisconsin Home Energy Assistance Program (WHEAP) includes the federally funded Low Income Home Energy Assistance Program (LIHEAP) and the Public Benefits Energy Assistance Program. By providing financial assistance to eligible households to help pay a portion of their heating and electric energy costs, WHEAP assists households with low incomes in meeting their home energy needs. Eligible households may receive a benefit payment once per heating season

(October 1 through May 15). In addition to home energy needs, Wisconsin also provides assistance for telephone customers through Lifeline. Lifeline is a Wisconsin Universal Service Fund Program that makes essential telecommunications more affordable for low income households by reducing monthly telephone charges.

The Commission directed Commission staff to solicit additional comments on how Wis. Admin. Code § PSC 185.36(1)(b) is discriminatory in favor of low income customers or otherwise contrary to the law.

Disconnection and refusal of service

The proposed rule includes a provision 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. 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. The Commission directed Commission staff to solicit additional comments on the proposed rule in Wis. Admin. Code § PSC 185.37(14).

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. The proposed rule also includes requirements related to how deferred payment agreement terms are established, including situations in which a deferred payment agreement must be offered, the maximum down payment request amount, and the minimum number of installment payments required. 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 non-payment. The Commission directed Commission staff to solicit additional comments on the proposed rule in Wis. Admin. Code § PSC 185.38.

Unconscionability and oppressive and deceptive practices prohibited

The proposed rules add two new sections related to unconscionability and oppressive and deceptive practices and are similar to sections included in the electric service rules. The proposed rules include a provision 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.” The Commission directed Commission staff to solicit additional comments on the proposed rules in Wis. Admin. Code §§ PSC 185.40 and PSC 185.405.

General construction requirements

Existing rules include requirements that a main or service line be placed at such a depth or otherwise protected as shall prevent freezing. 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. The Commission directed Commission staff to compare the proposed rules in Wis. Admin. Code § PSC 185.52 to the statutes and/or rules of other relevant regulatory authorities and provide further information to the Commission.

Commission staff reviewed Wis. Admin. Code chs. SPS 381 (Definitions and Standards) and SPS 382 (Design, Construction, Installation, Supervision, Maintenance and Inspection of Plumbing.) While Wis. Admin. Code § SPS 382.40 contains requirements for the design and installation of mains, service lines, and control valves, the requirements apply to water supply

infrastructure that is privately owned. Wisconsin Admin. Code chs. SPS 381 and SPS 382 do not include requirements for facilities owned by a water public utility. As such, proposed Wis. Admin. Code § PSC 185.52 does not appear to be duplicative of or conflict with rules for which the Department of Safety and Professional Services is responsible.

Commission staff also reviewed Wis. Admin. Code chs. §§ NR 810 (Requirements For the Operation and Maintenance of Public Water Systems) and NR 811 (Requirements For the Operation and Design of Community Water Systems) and found no requirements related specifically to water service lines. Commission staffs' review found the following provisions related to water mains appear in Wis. Admin. Code ch. NR 811 and proposed Wis. Admin. Code § PSC 185.52.

1. Ownership of mains. Proposed Wisconsin Admin. Code § PSC 185.52(1)(a) states “Unless otherwise provided in the utility’s schedule of rates and rules, a utility shall own, maintain, repair and replace all mains in its distribution system.” Wisconsin Admin. Code § NR 811.68(1) states “The distribution system of a municipal water system shall be owned and maintained by the waterworks owner.”
2. Installed depth. Proposed Wis. Admin. Code § PSC 185.52(1)(am) states “A utility shall place any main that it owns at such depth or otherwise protected as shall prevent freezing.” Wisconsin Admin. Code § NR 811.73(e) states “Sufficient earth or other suitable cover shall be provided over mains to prevent freezing. A minimum cover of 5 to 7 feet is required unless determined by the department to be unnecessary in specific cases. Insulation may be required at some installations to prevent freezing.”
3. Networked systems. Proposed Wis. Admin. Code § PSC 185.52(1)(c) states “Where practical, each utility shall design and construct its distribution system to maximize

service reliability.” Wisconsin Admin. Code § NR 811.70 contains several provisions related to service reliability. Wisconsin Admin. Code § NR 811.70(1) states “Water mains and water distribution systems shall be designed to maintain point-of-entry water quality. Special consideration shall be given to distribution main sizing, providing multidirectional flow where possible, providing an adequate number of shut-off valves for distribution system control, providing an adequate number of fire hydrants where fire protection will be provided, and providing for adequate flushing throughout the system. Systems shall be designed to maximize turnover, to minimize the number of dead ends and to minimize residence times while delivering code complying pressures and flows.” In addition, this subchapter includes technical design requirements related to flooding, wetland identification, pressure within the distribution system, minimum diameter of water mains, minimum flow and pressure to provide fire protection, small diameter mains, dead ends, valving, and specific friction coefficients used in checking the hydraulic characteristics of new water mains.

4. Segmentation of system. Proposed Wis. Admin. Code § PSC 185.52(1)(d) states “A utility shall provide valves at reasonable intervals and at appropriate locations so that repairs to or maintenance of the mains shall minimize service interruptions.” Wisconsin Admin. Code § NR 811.70(4) states “Sufficient valves shall be provided on water mains so that inconvenience or sanitary hazard to water users will be minimized during maintenance and construction.”
5. Location of mains. Proposed Wis. Admin. Code § PSC 185.52(1)(e) states “Utility-owned mains shall be located either in a public right-of-way, or in a readily accessible easement. As much as possible, easements shall be free of encumbrances such as

pavement, expensive landscaping, mobile home pads, permanent structures, etc.

Wisconsin Admin. Code § NR 811.68(2) states “All water mains owned by a municipal water system on private property shall be installed in permanent easements.”

In addition, the Commission directed Commission staff to solicit additional comments on the proposed rules in Wis. Admin. Code § PSC 185.52.

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 rule does not require that a utility achieve a particular water audit score or benchmark or adopt any particular measure. 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. The Commission directed Commission staff to solicit additional comments on the proposed rule in Wis. Admin. Code § PSC 185.85.

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. 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. The proposed rules also include requirements related to the

provision of water to customers during the time a 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. The Commission directed Commission staff to solicit additional comments on the proposed rule in Wis. Admin. Code § PSC 185.88.

Key Background Documents

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

DS:jac DL:01676040