

PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation on the Commission's Own Motion to Ensure Safe, Reliable and Affordable Access to Utility Services During Declared Public Health Emergency for COVID-19

5-UI-120

ORDER

This is the Order in the Commission's investigation to ensure safe, reliable, and affordable access to utility services during the public health emergency declared in response to COVID-19.

Background

On March 12, 2020, Governor Evers issued Executive Order #72,¹ declaring a public health emergency in response to the COVID-19 Coronavirus.² On March 13, 2020, the Wisconsin Department of Health Services (DHS) ordered the closure of all public and private schools.³ On March 18, 2020, DHS ordered that the number of children and staff present at child care settings be restricted and authorized the voluntary closure of child care settings.⁴ On March 20, 2020, DHS ordered the prohibition, with certain exceptions, of public and private gatherings of 10 or more people, extended the ordered school closure until the end of the public health emergency, and issued "social distancing" guidelines.⁵

To facilitate the Commission's ongoing efforts to ensure the continued availability of and access to vital services during the public health emergency, Chairperson Rebecca Cameron

¹ <https://evers.wi.gov/Documents/EO/EO072-DeclaringHealthEmergencyCOVID-19.pdf>

² COVID-19 is a virus that has not previously infected humans. On March 11, 2020, the World Health Organization officially declared COVID-19 a pandemic.

³ <https://evers.wi.gov/Documents/EO/SignedSchoolClosure.pdf>

⁴ https://evers.wi.gov/Documents/COVID19/DHS%20Order6_3.18.2020.pdf

⁵ <https://evers.wi.gov/Documents/COVID19/EMO08-MassGathering10v.2.pdf>

Valcq on March 20, 2020, requested that Governor Evers exercise his authority under Wis. Stat. § 323.12(4)(d) and temporarily suspend certain provisions of Wis. Admin. Code chs. PSC 113, 134, and 185 relating to service rules for electric, natural gas, and water public utilities, which constrained the manner in which the Commission may structure utility tariffs. On March 22, 2020, Governor Evers issued Emergency Order #11, granting the request and temporarily suspending the administrative code provisions set forth in the order.⁶

Opinion

The Commission has authority to supervise and regulate every public utility in this state, do all things necessary and convenient to its jurisdiction, and initiate an investigation into any matter within its jurisdiction. Wis. Stat. § 196.02(1) and (7). The Commission initiated this investigation to determine the steps necessary to ensure that, during the pendency of the public health emergency, the public utilities and customers of this state have the flexibility and protections needed to ensure that all customers continue to receive adequate service under terms that are reasonable, given the significant changes that have occurred in the circumstances facing public utilities and their customers, since the terms of their various tariffs were approved by the Commission. Wis. Stat. §§ 196.03(1) and 196.37(2).

Since the inception of the state's regulation of public utilities in 1907, the Commission has had specific authority under Wis. Stat. § 196.70(1) to temporarily alter or amend any existing rates, schedules, or orders when the Commission deems it "necessary to prevent injury to the business or interest of the people or any public utility in case of any emergency

⁶ Emergency Order #11, signed March 22, 2020, https://content.govdelivery.com/attachments/WIGOV/2020/03/22/file_attachments/1407866/PSC%20Emergency%20Order%20with%20request%20FINAL%202020-03-22.pdf.

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to be judged of by the [C]ommission...” 1907 Wisconsin Act 499. In making such alterations, the Commission has discretion to adopt requirements that are greater, lesser, or different from the requirements otherwise applicable under the administrative code, based upon considerations relating to “exceptional or unusual situations.” Wis. Admin Code §§ PSC 113.01(2), 134.01(2), and 185.11(4). By suspending rule provisions which constrained the manner in which the Commission may structure utility tariffs, the Governor further enhanced the Commission’s discretionary authority to alter and amend tariffs during the public health emergency.

The Commission finds that the continued availability of and access to electric, gas, and water service in the home is essential for enabling residential utility customers to abide by guidelines issued by DHS and other public health agencies relating to personal hygiene and “social distancing” by remaining in the home to the fullest extent possible. Furthermore, the Commission finds that the economic impacts of social distancing and restrictions during the public health emergency may result in commercial operations being unable to afford the service needed for their continued operations, which would pose a risk to public health by impeding the availability of products and services. These economic impacts also place residential, commercial, industrial, and farm customers at risk of being unable to make payments and deposits that would otherwise be necessary in order to prevent disconnection, avoid the accumulation of late fees, and obtain needed reconnection.

The Commission judges the public health emergency to be an emergency for purposes of exercising its authority under Wis. Stat. § 196.70 and finds it necessary to temporarily alter

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the schedules of all electric, gas, water, and steam utilities of the state to prevent injury to the business and interests of the people and public utilities of the state.

For the foregoing reasons, the Commission finds it necessary to temporarily alter the tariff provisions of all public utilities in this state by amending them to provide that, notwithstanding any tariff provision to the contrary, during the public health emergency, and until further order of the Commission, all electric, gas, steam, and water public utilities:

- May not disconnect or refuse service to any customer in any class for any reason other than those specified in Wis. Admin. Code §§ 113.0301(4) and (5), 113.0302(4) and (5), 134.062(3) and (4), 134.0622(3) and (4), 185.37(3).
- May request that an applicant for new service provide documentation to prove identity and residency, but may not refuse service to any customer in any class for failure to provide such documentation.
- Shall offer to any customer, regardless of customer class, a deferred payment agreement, if the customer is unable to pay a bill in full, for the period beginning with the effective date of this order.
- May not assess upon any customer any fee or charge for late payment for an arrearage incurred during the period beginning with the effective date of this order.
- May not require a cash deposit or other guarantee as a condition of any new service.
- Shall request any modification of these requirements by submitting a petition to the Commission in this docket.

The following sections provide further clarification regarding the measures necessary to comply with the foregoing tariff provisions. Public utilities seeking clarification or alteration

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of these provisions shall petition the Commission by filing a request in this docket. The Commission may take action on such requests either collectively or individually, as appropriate, and issue supplemental orders in this proceeding. Within 30 days after the effective date of this Order, Commission staff shall report back to the Commission with a summary of these requests.

Disconnection and Refusal of Service

The Commission finds that compliance with the disconnection and refusal of service tariff alterations described above requires a public utility to contact any customer, regardless of customer class, whose service is currently disconnected, assess whether the respective property is occupied or in use, and determine whether, per Wis. Admin. Code §§ 113.0301(4) and (5), 113.0302(4) and (5), 134.062(3) and (4), 134.0622 (3) and (4), 185.37 (3), there are any conditions which would preclude the utility from safely reconnecting the service, and work with the customer to safely reconnect service. Utilities may contact customers via phone, email, or mail, as available, using the contact information the utility has on file for the customer of record.⁷

Documentation of Residency and Identity

The Commission finds that compliance with the tariff alterations described above means that a public utility may not disconnect or refuse service for any reason other than that

⁷ Wisconsin Stat. § 66.0809(5)(bm) provides, “No earlier than 14 days after receiving a notice under par. (b) of a tenant’s past-due charges for electric service, the owner of a rental dwelling unit may request that the municipal public utility terminate electric service to the rental dwelling unit. Except as provided under rules of the public service commission relating to disconnection of service and subject to the procedural requirements under those rules, unless all past-due charges are paid, the municipal utility shall terminate electric service to the rental dwelling unit upon receipt of a request under this paragraph. This paragraph does not apply if a municipal public utility does not use the procedures under sub. (3) to collect the past-due charges.” This provision applies when the landlord and the utility have met certain prerequisites under Wis. Stat. § 66.0809. Utilities receiving landlord requests for electric service disconnections during the public health emergency shall provide notice to the Commission.

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set forth above. Utilities may not refuse to reconnect service or turn on new service for failure to provide the items enumerated under Wis. Admin. Code § PSC 113.0408, 134.051, or 185.30, as these provisions have been suspended. Furthermore, utilities may not refuse to reconnect service or turn on new service for failure to provide the items enumerated under Wis. Admin. Code § PSC 113.0409, 134.053, or 185.305, as the Commission finds that the exceptional and unusual circumstances faced by nonresidential customers as a result of the public health emergency necessitate adopting the standards applicable to residential customers, although those standards are different from what would otherwise be applicable to nonresidential customers under these code provisions. The Commission finds this means the utility can request, but cannot delay reconnection or turning on new service, if the customer has not provided application, identification, and residency information, until such a time the Commission issues an Order reauthorizing disconnection and refusal of service for these reasons.

Deferred Payment Agreements

The Commission finds that the provisions of Wis. Admin. Code chs. 113, 134, and 185 pertaining to procedures for deferred payment agreements apply, except the availability of agreements shall not be limited to certain customers. Therefore, to comply with the foregoing provisions, a public utility may apply these provisions but must make such agreements available to any of its customers unable to pay a bill in full.

Although the Commission does not have authority⁸ to require a municipal utility to offer a deferred payment agreement to a customer who is a tenant at a rental dwelling unit, the

⁸ Wisconsin Stat. § 66.0809(9) provides “A municipal utility is not required to offer a customer who is a tenant at a rental dwelling unit a deferred payment agreement. Notwithstanding. ss. 196.03, 196.19, 196.20, 196.22,

Commission, through this Order, alters the tariffs of municipal utilities to provide that, notwithstanding any provision of the tariff to the contrary, the municipality may choose to offer a deferred payment agreement to a customer who is a tenant at a rental dwelling unit.

Waiver of Credit Card Fees

To encourage online payment, the Commission finds it reasonable to allow utilities to waive credit card convenience fees beginning with the effective date of this Order and until the Commission issues a subsequent Order lifting this general permission. Utilities shall contact the Commission to request to opt-in to waiving fees, and will be provided a temporary tariff provision indicating the waiver to be in effect during this period.

ORDER

1. The Commission has authority to issue this Order pursuant to Wis. Stat. §§ 196.02(1), 196.70, and Wis. Admin. Code §§ PSC 113.01(2), 134.01(2), and 185.11(4).
2. No public utility may disconnect or refuse service to any customer in any class for any reason other than those specified in Wis. Admin. Code §§ 113.0301(4) and (5), 113.0302(4) and (5), 134.006(3) and (4), 134.0622 (3) and (4), 185.37 (3).
3. Every public utility may request that an applicant for new service provide documentation to prove identity and residency, but no public utility may refuse service to any customer in any class for failure to provide such documentation.
4. Every public utility shall offer to any customer, regardless of customer class, a deferred payment agreement.

196.37, and 196.60, a determination by a municipal utility to offer or not offer a deferred payment agreement does not require approval, and is not subject to disapproval, by the public service commission.”

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5. No public utility may assess upon any customer, regardless of customer class, any fee or charge for late payment for an arrearage incurred during the period beginning with the effective date of this order and extending to the last day of the public health emergency.
6. No public utility may require a cash deposit or other guarantee as a condition of new service.
7. Public utilities need not file tariff amendments to conform to this Order. A copy of this Order shall be made available to the public pursuant to Wis. Stat. § 196.19, Wis. Admin. Code §§ PSC 113.406(1)(a), 134.05, 185.33(1)(f).
8. Public utilities shall work with Commission staff to determine the appropriate method and frequency with which the utilities are to notify the Commission of: landlord requested termination of municipal electric service pursuant to Wis. Stat. § 66.0809(5)(bm) and requests to waive credit card convenience fees
9. A public utility seeking to request a modification of these requirements shall make such request by submitting a petition to the Commission in this docket.
10. The Commission delegates to the division administrators of the Division of Energy Regulation and Analysis, the Division of Water Utility Regulation and Analysis, and the Division of Digital Access, Consumer and Environmental Affairs the authority to approve a utility request to disconnect a customer for a reason other than as provided in Order Point 2.
11. The Commission delegates to the division administrators of the Division of Energy Regulation and Analysis, the Division of Water Utility Regulation and Analysis, and

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the Division of Digital Access, Consumer and Environmental Affairs the authority to provide further clarifications to this Order as may be required.

12. This Order is effective one day after the date of service.

13. Jurisdiction is retained.

Dated at Madison, Wisconsin, the 24th day of March, 2020.

By the Commission:

A handwritten signature in cursive script that reads "Steffany Powell Coker".

Steffany Powell Coker
Secretary to the Commission

SP: DL:01727334

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN
4822 Madison Yards Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.⁹ The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013

⁹ See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.