

Clearinghouse Rule 07-078

PROPOSED ORDER OF THE DEPARTMENT OF ADMINISTRATION

The Wisconsin Department of Administration proposes an order to **repeal** Adm 43.08(1)(c) and Adm 43.11(1); **renumber and amend** Adm 43.08(1)(d), 43.11(2), (3) and (4); **amend** Adm 43 (title), 43.01, 43.02, 43.03(1), 43.03(15) and (16), 43.04(2) and (3), 43.06(1) and (2)(a), 43.06(2)(d) and (e), 43.06(3), 43.07, 43.08 (title) and 43.08(1), 43.08(3)(b) and (4), 43.09(1) and (5), 43.10(1), 43.12(1) and (2); **repeal and recreate** Adm 43.05 and 43.08(3)(a); and **create** Adm 43.11(4), of the Wisconsin Administrative Code, relating to Non-Municipal Electric Utility Low-Income Assistance Fees.

Analysis Prepared by the Department of Administration:

Statutory Authority: ss. 16.004 (1), 16.957(2)(c) 4. and 5., and (4)(b), Stats.

Statutes Interpreted: ss. 16.957(1) to (4), Stats.

Explanation of agency authority: Under s. 16.957(2)(c) and (4)(b), Stats., the Department of Administration is required to promulgate rules for state low-income assistance programs.

Related statute or rule: None

Plain language analysis of proposed amendments: 1999 Wisconsin Act 9 included major provisions relating to aspects of electric utility regulation, commonly referred to as “Reliability 2000.” That legislation created a new statutory framework within which public benefit programs relating to low-income energy assistance and energy conservation and renewable energy were continued and expanded. Under ss. 16.957(2)(c) and (4)(b), Stats., the Department of Administration was directed to promulgate rules setting fees to be collected by utilities from their customers, and establishing requirements and procedures related to those low-income and energy conservation programs. 2005 Wisconsin Act 141 revised many of the provisions of the earlier Act 9 and transferred responsibility and funding for energy conservation and renewable programs to non-municipal electric utilities under supervision of the Public Service Commission. However, low income assistance programs for non-municipal electric utility customers were not changed and continue to be funded as they have been and remain the responsibility of the Department of Administration. This rule revision makes the changes necessary to comply with 2005 Wisconsin Act 141. It also makes modifications to the procedure used to collect the low-income assistance fee, to simplify provisions that have proven cumbersome in practice, and to reflect realistic deadlines for various steps in the procedure.

In numerous locations throughout the entire Adm 43, the term “public benefits” has been replaced with a more specific “low-income assistance”.

Section Adm 43.03(1) modifies the definition of “amount invoiced” to clarify that the amount determined by the Department and invoiced to the non-municipal electric

utilities is only an estimate of what the Department believes can be collected from utility customers under provisions of the statutes and this rule.

Section Adm 43.04(2) & (3) clarifies language and removes the requirement to use the named data sources to calculate the low-income assistance need, leaving the choice of data source to the discretion of the Department rather than specify a source that the department cannot assure will always be available. The removal of named data sources is also incorporated into Adm 43.05, 43.06.

Section Adm 43.05(4) adds a requirement that the Department compare the calculated low-income assistance program funding amounts to be collected to the ability of each non-municipal electric utility to collect that amount in consideration of the statutory 3% cap on each customer's utility bill under ss. 16.957(4)(c) 3. & (5)(am). If the calculated amount to be collected exceeds the amount collectable under the cap, the department may reduce the amount.

Section 43.06 changes the date, from March 1 to April 1, by which the department must determine the number of residential and non-residential customers used to allocate the amount to be collected. The same section also changes the date, from March 1 to May 15, by which the department must notify each non-municipal electric utility of the amount to be collected and the calculations used to determine that amount.

Section 43.07 removes the beginning date for the low income assistance fee collection because the date has already passed. It also changes the date, from April 1 to June 1, by which the non-municipal electric utilities must submit their plans to collect the amount determined for the low-income assistance program. Section 43.07(3) reflects the statutorily mandated change in the identification of the low-income assistance program on the utility customer bill. It is now known as "state low-income assistance fee" rather than a "non-taxable customer charge." Section 43.07 (8) moves back, from May 15 to June 20, the date by which a non-municipal electric utility must file a modified collection plan if the original is disapproved by the department.

Section 43.08(3) is rewritten to simplify the reconciliation of actually collected fees with the amount originally estimated by the department. The new requirement applies only to residential collections. Variations are to be reflected by changes to the next year's amount collected. If an under-collection would result in substantial harm to the low-income programs the department may postpone the change until the following reconciliation period. The ability of a non-municipal electric utility to request of waiver of any under-collected fee is removed under Adm 43.08(3)(c).

The requirement for an initial announcement of program availability is removed from Adm 43.11 because that announcement has already been made. Further, a provision is added to Adm 43.11 requiring the annual report of each non-municipal electric utility to be submitted in an electronic format specified by the department.

Summary of, and comparison with, existing or proposed federal regulations: No known existing or proposed federal regulations comparable to the proposed rules.

Comparison with rules in adjacent states: None of the four states neighboring Wisconsin has created a fee to fund low income energy assistance programs. Consequently, there are no rules comparable to this one which establishes a Wisconsin fee and procedures to calculate and collect it.

Summary of factual data and analytical methodologies: The department relied on the following sources to draft the proposed rules or to determine the impact on small businesses:

2005 Wisconsin Act 141 transfers the energy assistance and renewable energy responsibilities to the Public Service Commission. The proposed rule amendments remove references to the “public benefits” programs to comply with 2005 Wisconsin Act 141. There are no new reporting requirements or operational standards resulting from the proposed rule amendments.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: The proposed rules will have no effect on small businesses. The proposed amendments revise terminology to comply with 2005 Wisconsin Act 141.

Effect on small business: None

Agency contact person:

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Place where comments are to be submitted and deadline for submission: Comments may be submitted to the agency contact person that is listed above and via the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> .

Initial Regulatory Flexibility Analysis: Pursuant to s. 227.114, Stats., the rule amendments herein are not expected to negatively impact on small businesses. The rule will have no specific affect on small businesses. Small businesses will no longer be required to pay the efficiency portion of the “non-taxable fixed charge” currently included with utility bills. Rather, a comparable amount will now be included in the regular electricity bill. The State Low-Income Assistance Fee, which represents the low-income portion of the previous fee will appear on the electric bill after July 1, 2007, but the fee itself is imposed on all electric utility customers by s. 16.957(4), Stats. The rule does not establish any compliance or reporting requirements, or performance standards for small businesses.

Fiscal Effect: None.

TEXT OF RULE:

Section 1. Chapter Adm 43 (title), Adm 43.01, 43.02 and 43.03(1) are amended to read:

Non-Municipal Electric Utility ~~Public Benefits~~ Low Income Assistance Fee

Adm 43.01 Authority. Sections 16.004(1) and 16.957 ~~(2)(c) and~~ (4)(b) Stats., authorize the department to promulgate rules for non-municipal electric utility ~~public benefits~~ low-income assistance fees.

Adm 43.02 Purpose. The purposes of this chapter are to establish the ~~public benefits~~ low-income assistance fee to be collected by each non-municipal electric utility from its customers, and to provide procedures for collecting that fee.

Adm 43.03 Definitions. In this chapter:

(1) “~~Amount~~ Estimated invoiced amounts” means that portion of the ~~public benefits~~ low-income assistance program funding level that is approved and ~~allocated~~ annually estimated by the department to be collectable by each non-municipal electric utility ~~to be collected~~ from its customers.

Section 2: Adm 43.03(15) and (16) are amended to read:

(15) “~~Public benefits~~ Low-income assistance fee” means that ~~portion of the amount~~ invoiced determined by formula that a non-municipal electric utility allocates to and collects from a customer, and may include approved reasonable and prudent expenses.

(16) “~~Public benefits~~ Low-income assistance program funding level” means the total funds to be collected by all electric providers annually under s. 16.957 (4) and (5), Stats.

Section 3. Adm 43.04(2) and (3) are amended to read:

(2) Average annual income of low-income household data shall be estimated ~~by averaging~~ using the annual income of all households at or below 150% of the poverty threshold as shown by the most recent data available on or before March 1 ~~from the U.S. census bureau or the department’s demographic services section.~~

(3) The number of low-income households shall be estimated by totaling the number of households at or below 150% of the poverty threshold as shown by the most recent data available on or before March 1 ~~from the U.S. census bureau or the department’s demographic services section.~~

Section 4: Adm 43.05 is repealed and recreated to read:

Adm 43.05 Establishing the low-income assistance program funding level. (1) Annually on or before March 1 the department shall determine, in accordance with

s. 16.957 (4) and (5), Stats., the low-income assistance program funding level for the following fiscal year.

(2) When establishing the low-income assistance program funding level, the department shall determine the number of residential and non-residential customers served by each electric provider based on the most recent data available on or before April 1.

(3) After establishing the low-income assistance program funding level, the department, using the formulas provided in s. 16.957 (4) (c) and (5), Stats., shall determine the portion of the low-income assistance program funding level that the non-municipal electric utilities shall collect each fiscal year. The department shall allocate 70% of this portion to be collected from residential customers and 30% to be collected from non-residential customers.

(4) After determining the residential and non-residential amounts to be collected, the department shall make a determination as to the ability to collect the full amounts as determined by the formula. The basis of the determination shall be multiplying the most recent gross sales of the non-municipal electric utilities by the cap of 3%. If the department determines that the result exceeds the non-municipal electric utility's ability to collect, the department may reduce the amount to be collected to a level the department believes can be collected.

Section 5. Adm 43.06(1) and (2)(a) are amended to read:

Adm 43.06. Allocating the amount invoiced. **(1)** The department shall annually determine the number of residential and non-residential customers for each non-municipal electric utility based upon the most recent data available on or before ~~March~~ April 1 ~~from the annual report of major utilities, licensees and others filed with the federal energy regulatory commission, or similar sources as determined by the department.~~

(2)(a) The department shall calculate the amount ~~invoiced~~ to be collected by determining a residential component and a non-residential component and adding those components together.

Section 6. Adm 43.06(2)(d), (e) and (3) are amended to read:

(d) In cooperation with the non-municipal electric utilities, the department may adjust the estimated residential component to minimize any inequities resulting from the application of the restrictions in s. 16.957 (4) (c) 3., Stats., in order to produce a more uniform ~~public benefits~~ low-income assistance fee. The adjustment process may change the amount of the residential component allocated to a non-municipal electric utility, but shall not change the total residential component.

(e) In cooperation with the non-municipal electric utilities, the department may adjust the estimated non-residential component to minimize any inequities resulting from the application of the restrictions in s. 16.957 (4) (c) 3., Stats., in order to produce a more uniform ~~public benefits~~ low-income assistance fee. The adjustment

process may change the amount of the non-residential component allocated to a non-municipal electric utility, but shall not change the total non-residential component.

(3) The department shall provide all calculations and related information in writing to each non-municipal electric utility in the form of a single annual ~~invoice~~ notification on or before ~~March 1~~ May 15. This documentation shall include an itemization of the residential and non-residential components based on the proportions prescribed in s. 16.957 (4) (b) 2., Stats.

Section 7. Adm 43.07 and Adm 43.08 (title), (1) are amended to read:

Adm 43.07 Collecting the ~~public benefits~~ low-income assistance fee. (1) ~~IMPLEMENTATION. Implementation of the public benefits fee collection plan shall begin in fiscal year 2001.~~ DEADLINES. The department may, at its discretion, modify any deadlines contained in this rule upon notification to the appropriate affected parties.

(2) COLLECTION PLAN. On or before ~~April~~ June 1, each individual non-municipal electric utility shall submit a collection plan and supporting documentation to the department for collecting the following fiscal year's amount invoiced and for recovering reasonable and prudent expenses. The ~~public benefits~~ low-income assistance fee collection plan shall be based on the calculations and related information provided by the department under s. Adm 43.06. Each non-municipal electric utility shall submit documentation that demonstrates its implementation plan and a budget of expenses necessary to comply with the requirements in s. Adm 43.09.

(3) CHARGES BILLED. Each customer bill that includes a ~~public benefits~~ low-income assistance fee shall identify the ~~public benefits~~ low-income assistance fee as a "~~non-taxable fixed charge.~~" "state low-income assistance fee." All charges relating to the cost of supplying electric service to a residential or non-residential customer shall constitute the basis for calculating the limit on customer bill increases specified in s. 16.957 (4) (c) 3., Stats.

(4) EQUITABLE ALLOCATION. Each non-municipal electric utility shall submit documentation with its ~~public benefits~~ low-income assistance fee collection plan that demonstrates that the amounts of the ~~public benefits~~ low-income assistance fee it intends to bill its residential and non-residential customers equitably allocates the amount constituting the residential component among its residential customer classes, and the amount constituting the non-residential component among its non-residential customer classes. The amount of the ~~public benefits~~ low-income assistance fee may vary between customer classes, but shall be uniform within a customer class, except for variations due to the maximum bill increase restrictions in s. 16.957 (4) (c) 3., Stats.

(5) REQUEST FOR REBATE. A customer that pays one or more bills to a single non-municipal electric utility for meters located within that utility's service territory, may present documentation to and request relief from that non-municipal electric utility if the ~~public benefits~~ low-income assistance fees paid by the customer within that

utility's service territory, when aggregated by the customer, exceed \$750 in any month. The non-municipal electric utility shall rebate that portion of the ~~public benefits~~ low-income assistance fee that exceeds \$750 in any month. Any amount so rebated to a customer under this provision shall be treated as an under-collection for purposes of s. Adm 43.08 (3).

(6) DEPARTMENT REVIEW. On or before ~~May 1~~ June 10, the department shall approve, modify, or deny each proposed collection plan and notify each non-municipal electric utility accordingly. The department shall provide reasons for a denial or modification in writing. A non-municipal electric utility may protest a denial or modification of its collection plan under the procedures set forth in s. Adm 43.12.

(7) PLAN IMPLEMENTATION. Each non-municipal electric utility shall implement an approved or modified ~~public benefits~~ low-income assistance fee collection plan at the start of the first monthly or periodic billing cycle of the following fiscal year. A modified collection plan shall be implemented even if a protest has been filed under s. Adm 43.12.

(8) DEPARTMENT DENIAL. (a) If the department denies a proposed ~~public benefits~~ low-income assistance fee collection plan, the non-municipal electric utility shall resubmit a collection plan to the department on or before ~~May 15~~ June 20 for the department's approval even if a protest has been filed under s. Adm 43.12. A resubmitted collection plan must address all comments and suggestions provided by the department in its denial.

(b) If the department denies a resubmitted collection plan, the non-municipal electric utility shall collaborate with the department to prepare a collection plan acceptable to the department. If the parties are unable to reach an agreement on or before June \pm 25, the department shall issue a collection plan for the non-municipal electric utility to implement the following fiscal year.

Adm 43.08 Payment and reconciliation of the ~~public benefits~~ low-income assistance fee. **(1) PAYMENT DUE DATES.** Each non-municipal electric utility shall make ~~equal monthly~~ payments to the department of the amount ~~invoiced~~, no later than the 15th day of each month. ~~The first payment of each fiscal year is due on the 15th day of the second full month of the fiscal year.~~

Section 8. Adm 43.08(3)(a) is repealed and recreated to read:

(3) RECONCILIATION OF COLLECTED FEES. (a) The department and each non-municipal electric utility shall at a minimum, once per year reconcile actual residential collections less total reasonable and prudent expenses approved by the department, with estimated invoiced amounts. All collections that exceeded the estimated invoiced amounts will be collected through an adjustment to the next invoice. A non-municipal electric utility that collected less than the estimated invoiced amount will receive a credit to their next invoice in the amount of the under collection. In the event that overall collections are significantly under the total estimated invoiced amount the department may postpone crediting the following invoice until the next reconciliation period if the department determines substantial

harm would be done to the operation of the low-income programs.

Section 9. Adm 43.08(3)(b) is amended to read:

(b) Once in any fiscal year, a non-municipal electric utility may submit a written request to the department to adjust its ~~public benefits~~ low-income assistance fee collection plan. The request shall contain the current amount that has been over-collected or under-collected and the amount that is forecasted to be over-collected or under-collected for the remainder of the fiscal year, the reasons for the differences and the non-municipal electric utility's proposed adjustments to its approved ~~public benefits~~ low-income assistance fee collection plan. The department shall indicate its approval or disapproval of the proposed adjustments in writing within 30 days of receipt of the request. The non-municipal electric utility may implement the collection plan adjustment immediately upon department approval. If the department does not approve a collection plan adjustment, the affected non-municipal electric utility may protest under procedures set forth in s. Adm 43.12.

Section 10. Adm 43.08(1)(c) is repealed.

Section 11. Adm 43.08(1)(d) is renumbered Adm 43.08(1)(c) and as renumbered, is amended to read:

(c) The department shall adjust a non-municipal electric utility's ~~public benefits~~ low-income assistance fee collection plan effective on the beginning of the fiscal year for which the collection plan was submitted, upon a successful appeal filed under s. Adm 43.12.

Section 12. Adm 43.08(4) is amended to read:

(4) ACCOUNTS RECEIVABLE AND UNCOLLECTIBLE ACCOUNTS. A non-municipal electric utility's reconciliation statement may include an estimation of the uncollected amount of its preceding year's ~~public benefits~~ low-income assistance fee that is recorded as an accounts receivable. A non-municipal electric utility's reconciliation statement may also include an estimated amount of its ~~public benefits~~ low-income assistance fee that was recorded in a previous fiscal year as accounts receivable and has been subsequently recognized as uncollectible revenues. The cost of uncollectible revenues may be included in a request for reasonable and prudent expenses in s. Adm 43.09.

Section 13. Adm 43.09(1) is amended to read:

Adm 43.09 Requesting approval for reasonable and prudent expenses. (1) A non-municipal electric utility may request recovery of reasonable and prudent expenses incurred in the development and implementation of its ~~public benefits~~ low-income assistance fee collection plan. The request shall be submitted in writing to the department for approval on or before February 15. The request shall include an accounting of actual costs for the previous calendar year. The non-municipal electric utility may include approved expenses in its ~~public benefits~~ low-income assistance fee collection plan for the following fiscal year.

Section 14. Adm 43.09(5) and Adm 43.10(1) are amended to read:

(5) A non-municipal electric utility shall document all reasonable and prudent expenses it seeks to include in the ~~public-benefits~~ low-income assistance fee.

Adm 43.10 Voluntary contributions. (1) ANNUAL OPPORTUNITY. At least annually, each electric utility shall provide its residential and non-residential customers an opportunity to make voluntary contributions to the trust fund established under s. 25.96, Stats., to fund their choice of programs established in ss. 16.957 (2) (a) ~~and (b) 1.~~, Stats. An electric utility shall provide the opportunity for its residential and non-residential customers to make such voluntary contributions by including an insert and return envelope in the mailing containing the annual public benefits report required by s. 16.957 (4) (am), Stats. Each electric utility may provide opportunities for its residential and non-residential customers to make voluntary contributions to an energy assistance fund administered by the electric utility at other times and by other methods.

Section 15. Adm 43.11(1) is repealed.

Section 16. Adm 43.11(2), (3) and (4) are renumbered Adm 43.11(1), (2) and (3), and as renumbered, are amended to read:

Adm 43.11 Reports and annual statements. (1) FINANCIAL REPORT. No later than 60 days after the end of each fiscal year, each non-municipal electric utility shall submit to the department a complete financial report of its ~~public-benefits~~ low-income assistance fees. The report shall include a complete explanation of the collection reconciliation and the balance as of the end of the fiscal year, an assessment of the implementation of its ~~public-benefits~~ low-income assistance fee collection plan, the amount collected by customer class, and any other matter the department determines necessary.

(2) DEPARTMENT STATEMENT. The department shall provide each non-municipal electric utility with an annual statement within 120 days of the end of each fiscal year identifying the total amount of the annual amount invoiced to each non-municipal electric utility, and describing the programs for which the ~~public-benefits~~ low-income assistance fees were used.

(3) NON-MUNICIPAL ELECTRIC UTILITY STATEMENT. Each non-municipal electric utility shall distribute the department's annual statement to each of its residential and non-residential customers. No non-municipal electric utility may be required to provide an individual customer the specific amount of ~~public-benefits~~ low-income assistance fees assessed to that customer when it distributes the department's annual statement.

Section 17. Adm 43.11(4) is created to read:

(4) REPORTS IN ELECTRONIC FORMAT. Each non-municipal electric utility shall

submit the report in 43.11 (1) using an electronic format specified by the department.

Section 18. Adm 43.12(1) and (2) are amended to read:

Adm 43.12 Appeals. (1) RIGHT TO PROTEST. A non-municipal electric utility that disputes the department's denial or modification of its proposed ~~public benefits~~ low-income assistance fee collection plan, the denial of an expense request, or the denial of a reconciliation statement may protest to the department. The non-municipal electric utility shall serve the protest in writing on the administrator of the department's division of energy ~~and public benefits~~ within 15 days of the receipt of the department's denial or modification of the proposed ~~public benefits~~ low-income assistance fee collection plan under s. Adm 43.07, the reconciliation statement under s. Adm 43.08, or the expense claim under s. Adm 43.09.

(2) AUTHORITY TO RESOLVE PROTESTS. The administrator of the department's division of energy ~~and public benefits~~ shall have the authority to settle and resolve any protest brought under this subsection. If the protest is not resolved by mutual agreement, the division administrator shall promptly issue a written decision to the protesting utility.

END OF RULE TEXT

Effective Date: This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Dated: August 15, 2007

_____/s/_____
Michael L. Morgan
Secretary of Administration