

## **Report From Agency**

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Water Conservation and Construction Rules

1-AC-232

Clearinghouse Rule 11-039

### **ORDER ADOPTING FINAL RULES**

The Public Service Commission of Wisconsin proposes an order to repeal PSC 185.815, 185.84 and 185.87; to renumber PSC 185.21 (intro.) and 185.22 (5); to renumber and amend PSC 185.33 (2); to repeal and recreate chapter PSC 184 and PSC 185.85; and to create PSC 185.12 (3e), (3m), (3s), (4m), (10e), (10m), (10s), (11m), (12m), (17m), (20g), (20r) and (22), 185.21 (1) (title), 185.21 (2), 185.33 (1m), 185.89, 185.90 and subchapter IX of chapter PSC 185, relating to water conservation and construction by water utilities and municipal combined water and sewer utilities.

### **REPORT TO THE LEGISLATURE**

The Report to the Legislature is set forth as Attachment A.

### **FISCAL ESTIMATE**

There are no additional costs to state government as a result of these changes. There may be additional costs to local municipally-owned utilities, but also potential savings. There are only six privately-owned water utilities and the impacts on these utilities are the same as on municipally-owned utilities. A completed Fiscal Estimate form is included as Attachment B.

**EFFECTIVE DATE**

These rule amendments shall take effect on the first day of the month following publication in the *Wisconsin Administrative Register* as provided in s. 227.22 (2), Stats.

**CONTACT PERSON**

Questions regarding this matter, including small business questions, should be directed to Docket Coordinator Jeffrey Ripp, Assistant Administrator for Water, at (608) 267-9813, or jeffrey.ripp@wisconsin.gov. Media questions should be directed to Kristin Ruesch, Communications Director, at (608) 266-9600. Hearing- or speech-impaired individuals may also use the Commission's TTY number: If calling from Wisconsin, use (800) 251-8345; if calling from outside Wisconsin, use (608) 267-1479.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Anyone who needs to obtain this document in a different format should contact the docket coordinator listed above.

Dated at Madison, Wisconsin, February 6, 2012

By the Commission:

/s/ Sandra J. Paske

Sandra J. Paske  
Secretary to the Commission

SJP:JL:hms:G:\Rules\Active\1-AC-232\3-Legislative Report\Final\1-AC-232 Order Adopting Final Rules.docx

Attachments

**REPORT TO THE LEGISLATURE****A. NEED FOR THE RULE**

The changes to ch. PSC 184 will clarify and simplify the procedures for obtaining Commission approval of construction projects, service area extensions, and related projects proposed by regulated water utilities and combined water and sewer utilities. The changes are needed to reflect Commission decisions, policies, and priorities made in the nearly 20 years since the rules were last updated. The proposed changes to ch. PSC 185 will implement the Commission's water conservation programs for water public utilities, update water loss standards, consolidate provisions related to water supply emergencies and curtailment of service, and establish criteria for voluntary customer incentive and rebate programs. The changes to ch. PSC 185 are necessary to ensure consistent implementation of previous Commission decisions, enhance coordination with the Department Natural Resources' water conservation programs, and provide greater clarity and flexibility to water utilities in implementing water conservation and efficiency programs.

**B. PLAIN LANGUAGE ANALYSIS**

The analysis is set forth as Attachment A1.

**C. TEXT OF THE RULE**

The text of the Final Rule is set forth as Attachment A2.

**D. PUBLIC HEARING ATTENDEES AND COMMENTS**

The public comment period ended on August 2, 2011. A public hearing was held on July 26, 2011, at the Public Service Commission building, 610 North Whitney Way, Madison, Wisconsin. No members of the public commented at the hearing. The Commission received written comments from the following individuals and organizations:

1. Lawrie Kobza, Attorney  
For the Municipal Environmental Group – Water Division (MEG)
2. Kelli Reindt, Utility Clerk  
For the City of Appleton
3. Mary Ann Dickinson, President  
For the Alliance for Water Efficiency (AWE)
4. Kira Loehr, Attorney  
For the Citizens Utility Board (CUB)

5. Elizabeth Wheeler, Attorney  
For Clean Wisconsin

MEG, AWE, CUB, and Clean Wisconsin generally support the proposed rules, but each group provided specific comments and suggestions related to specific provisions in the rule. The City of Appleton commented only on the proposed change to lengthen the review of construction projects from 60 to 90 days.

Comments on ch. PSC 184

MEG commented on the scope and definitions used in the proposed rule. MEG requested that these sections clarify the types of entities that are required to submit projects to the Commission for approval. The Commission clarified the applicability and definition sections to address these concerns. The rule applies only to those entities that are currently regulated by the Commission under s. 196.01 (5) (a), Stats., which include private and municipal water public utilities, combined municipal water and sewer utilities, and privately owned sewer utilities. The rule does not apply to unregulated sewer utilities.

MEG suggested that the terms “project,” “plant,” and “facilities” be defined to avoid confusion and clarify the types of activities that require Commission approval. The term “plant” is intended to be used as it is described in the Uniform System of Accounts for municipal water utilities. The term “facilities” is undefined and is intended to mean the same as the plain English definition. The Commission uses the term “project” generically to mean any activity that requires Commission approval, whether it is an expansion of a utility service area or construction of facilities. The Commission has addressed this concern by ensuring consistent use of these terms and by identifying the types of projects that require approval and identifying projects that are exempt.

MEG requested clarification on the types of activities that require Commission authorization. In general, Commission authorization is required before initiating, expanding, or consolidating utility service. Commission authorization is also required before undertaking any construction project with a total estimated cost of \$250,000 or 25 percent of the utility’s prior year operating revenues, whichever is less, unless the project is specifically exempt under the rule. The proposed rules require Commission authorization before constructing most facilities outside of the utility’s service area, regardless of whether the area is currently served by another utility. The Commission believes that this change is consistent with s. 196.49 (1) (am), Stats., which requires that a public utility obtain a certificate from the Commission before transacting business in a new municipality.

MEG also questioned whether the provision requiring Commission authorization for deregulation of sewer utilities belongs in this chapter. The Commission agrees with MEG and has eliminated the procedures for the deregulation of the sewer portion of a combined municipal water and sewer utility from the proposed rule. The Commission will continue to follow the general procedures under s. PSC 2.11, abandonment of service, for sewer utility deregulation.

The rule presented at the public hearing required Commission approval prior to construction of a “regional pipeline.” MEG requested that this term be defined or eliminated. The Commission agrees and has changed the rule to require Commission authorization for the installation of any utility main installed outside of a utility’s service area and for the installation of a utility main larger than eight inches in diameter and longer than three miles, which would be considered a Type II project requiring an Environmental Assessment under s. PSC 4.10. The Commission believes that any water main that is intended to serve as a regional pipeline would meet this criteria. Water main replacement and installation that is entirely within a utility’s service area would be exempt from Commission review and approval, unless it would be considered a Type II action.

MEG raised questions regarding which projects would be categorically exempt from Commission review and which would be exempt because they cost less than the specified cost threshold. MEG suggested that a project with a *de minimis* fiscal impact, regardless of the nature of the project, should be exempt from review. The Commission agrees with MEG and has revised the rule to exempt any project with a total cost of less than \$250,000, or 25 percent of the utility’s operating revenues in the previous year, whichever is less. This provides the Commission with the ability to review construction projects at small utilities that could have a significant fiscal impact on ratepayers while excluding projects at larger utilities that will not have a significant fiscal impact on ratepayers.

MEG generally supports the list of categorically exempt construction projects. However, MEG requested clarification of the status of some projects as well as the exemption of additional projects, including movable equipment (vehicles), replacing windows and roofs on utility buildings, existing motors and pumps that are part of chemical feed systems, and filtration media at membrane filtration plants. CUB disagrees with the categorical exemptions for construction projects. CUB argues that some routine maintenance and repair projects, automated metering systems, and other exempted projects could have a significant impact on ratepayers and should be reviewed by the Commission. CUB suggests that the threshold of \$250,000 or 25 percent of operating revenues be applied to all projects and that no projects be categorically exempt.

The Commission acknowledges that the exempt projects could have an effect on ratepayers. However, in practice, the Commission does not currently require water utilities to obtain a certificate for many of these projects. Instead, the Commission sends an acknowledgement letter that allows the utility to proceed with the project. Further, the Commission believes that it is unlikely to deny routine maintenance and repair projects. Nonetheless, the Commission agrees with CUB that automated metering systems may represent a significant capital investment above and beyond routine repair and replacement and that these projects should be reviewed. As a result, the Commission has eliminated the proposed categorical exemption for automated metering systems. Routine repair and replacement of water meters, as required by PSC § 185.76, would continue to be exempt from Commission review. The intent of the exemptions is to direct staff resources toward reviewing only the most significant construction projects that may have a larger effect on ratepayers or those facilities that may be excessive for the utility’s purposes. Since the vast majority of regulated water utilities are municipally owned, there is less risk that a utility will construct excessive facilities in order to earn a larger return on its utility-financed plant.

The list of categorically exempt projects in this rule will provide greater certainty to utilities. The Commission also confirms that the categorical exemptions identified by MEG are intended to cover routine maintenance or replacement of equipment and facilities used by the utility. The Commission agrees with MEG and has included a categorical exemption for movable equipment and vehicles.

The City of Appleton noted its concern with increasing the length of time for the Commission to review construction projects from 60 to 90 days. Under the existing rule, the Commission has 60 days from the date it receives a complete application to take an action. The proposed rules would have required the Commission to schedule a hearing or issue its decision within 90 days, unless the project is subject to an environmental analysis or environmental impact statement under ch. PSC 4. The Commission has determined that the proposed change is unnecessary and has reinstated a deadline of 60 days from the notice issuance in the final rule unless the Commission takes an action on the application or the application requires the preparation of an environmental assessment.

Existing rules allow the Commission to either issue a certificate or a letter of acknowledgement for any project, but the rules do not establish criteria that distinguish these two forms of approval. The rules presented at the hearing would have allowed the Commission to send a letter of acknowledgement, rather than a certificate of authority (certificate), to the utility for any project with a total cost of less than \$500,000 after issuing a notice of investigation. Projects that cost more than \$500,000 would require that the Commission determine whether a hearing is necessary before issuing a certificate. CUB disagrees with the \$500,000 threshold and instead proposes that the Commission issue a notice of proceeding and provide an opportunity for hearing for any project that exceeds a cost threshold based on the percentage of previous year operating revenues. The Commission has reviewed its procedures and has determined that acknowledgement letters are unnecessary. Instead, a utility will be required to obtain a certificate for any project that is not exempt under the rule. In practice, this will not change the process of reviewing projects but will simply result in a new format for the document confirming the Commission's authorization.

Under the proposed rule, a utility would be required to notify the Commission if the cost of a project exceeds 25 percent of the original estimate approved by the Commission. CUB suggests that the cost "collar" for approved projects should be reduced from 25 percent to 10 percent. CUB argues that this change would be consistent with practices for electric utilities regulated by the Commission and that a lower collar would better protect ratepayers from expensive cost overruns. The Commission agrees with CUB and has made this change.

The final rule identifies the information that must be submitted to the Commission as part of an application. Most of the requirements are the same as those contained in the existing rule. However, applicants would be required to demonstrate the actions taken to mitigate the need for any new groundwater or surface water supply, such as through water loss control or demand management measures. In addition, the list has been expanded to include additional information frequently requested by Commission environmental review staff for those projects that are subject to an environmental analysis or environmental impact statement under ch. PSC 4.

Comments on ch. PSC 185

In general, Clean Wisconsin, AWE, and CUB support the proposed changes to this rule. Clean Wisconsin urges the Commission to adopt rules that promote strong conservation practices among Wisconsin utilities. AWE expresses its strong support for the proposed rule changes, which it believes will help the State comply with the Great Lakes-St. Lawrence River Basin Water Resources Compact. CUB believes that the proposed rules are streamlined and balanced.

MEG supports the proposed customer class definitions for residential, commercial, industrial, and public authority customers. MEG requests that the Commission clarify the treatment of multi-family buildings, such as apartments and condos. Clean Wisconsin requests that the Commission define multi-family customers as part of the residential class or create a separate multi-family class to allow more targeted conservation efforts for these customers. The Commission agrees with these comments and the final rules define multi-family residential customers. However, the Commission intends to continue the practice of treating multi-family buildings as commercial customers for most rate-setting and accounting purposes. This rule does not preclude a utility from requesting that the Commission establish a multi-family residential class and a separate rate schedule for these customers. Nonetheless, even if a utility adopts a multi-family class rate, the utility will still be required to combine multi-family sales with commercial sales in its annual report to the Commission, as required under account 461.1 – Metered Sales to Commercial Customers of the Uniform System of Accounts for water utilities (January 31, 2008). Similarly, the Commission has defined the terms “irrigation” and “irrigation customer” because some utilities have requested a separate customer class for these customers. Sales to irrigation customers should be reported under account 465 – Other Water Sales, regardless of the classification of the customer’s primary meter.

The Commission understands Clean Wisconsin’s concerns regarding the classification of multi-family residential customers and the manner in which sales and revenue information is tracked and reported. The Commission shares these concerns, but disagrees that additional changes are needed in this rule. Changes to the accounting treatment of multi-family residential customers can be accomplished through a Commission order amending the Uniform System of Accounts. The majority of water utilities do not currently have different rates for different customer classes. The Commission expects that the number of utilities requesting class-specific rates will increase. As a result, the Commission agrees to work with the water utility industry to investigate the accounting changes necessary to implement the new customer classes. This will provide utilities with an opportunity to address any technical issues related to metering and ensure proper classification of each customer before such a change is required.

The final rules would amend s. PSC 185.21 to require that public utilities adopt water rates that reflect the cost of service to each customer class and include a volume charge based on actual consumption. In addition, the final rules allow the Commission to approve rates that promote efficient water use and that establish a separate customer class for multi-family customers. The intent of these changes is to ensure that water utility customers pay a volumetric charge for water service as a way to promote efficient use. This section would prohibit flat rate water service (e.g., unlimited water use at a fixed price). CUB argues that the requirement that rates include a fixed charge is unnecessary and may in fact prevent the Commission from

enacting rate designs that would enhance conservation. The Commission agrees with CUB. The requirement that water rates include a fixed charge has been eliminated from the proposed rules.

Clean Wisconsin requests a number of additional rate-related changes that would create more stringent requirements for utilities. Specifically, Clean Wisconsin believes that utilities should be required to file rate cases every two years and consider conservation rates in every rate case. Clean Wisconsin also argues that the Commission should require all utilities to bill customers monthly. The Commission does not agree with these changes. A requirement for utilities to file rate cases every two years would create additional and unnecessary workload. Similarly, a requirement for utilities to bill customers monthly would create additional costs for ratepayers. Quarterly billing may be appropriate for some utilities and the Commission believes that it is reasonable to continue to establish billing frequencies through its rate-making process.

Clean Wisconsin strongly supports the proposed water loss and water audit requirements, while MEG identified a number of concerns with the proposed changes. Specifically, MEG requests clarification on the components of the water audit that would be attributed to non-revenue water and the method for determining water loss. The components of the water audit that comprise water loss and non-revenue water are clearly described in the proposed rule and follow the American Water Works Association's (AWWA) water audit method, which is explained in greater detail in its M-52 Manual. In addition, utilities already provide this information in their annual financial reports. AWE supports the adoption of the AWWA water audit methodology. The Commission believes that the proposed changes would ensure consistency in the method in which these data are reported.

The proposed rules would require utilities with 1,000 or more customers to achieve a water loss of less than 15 percent while utilities with fewer than 1,000 customers would be required to achieve a water loss of less than 25 percent. MEG is concerned about variation in water loss that may occur due to differences in pumping between dry years and wet years, and due to variance in the amount of water used for street cleaning, fire protection, and other authorized purposes. MEG suggests that the water loss standard be 25 percent for all utilities. The Commission disagrees and believes that the proposed standards represent an achievable level of water loss control for most utilities. The proposed water loss standards were developed using benchmarks established by information reported by utilities in Wisconsin as well as national water loss best management practices. A more stringent standard for larger systems is appropriate based on their larger system capacity. The Commission understands that unique, one-time events such as a catastrophic main break could affect the reported water loss numbers for a utility in a single year. However, the proposed rules provide an opportunity for utilities to explain the reason for the excessive water loss as part of their required water loss control plan.

MEG suggests that utilities be required to provide a written explanation instead of filing a water loss control plan when they exceed the proposed water loss standards. Under the current rules, the Commission already requires utilities with excessive non-revenue water and unaccounted-for water to provide information explaining the reasons for the losses. The rule would simply standardize the manner in which utilities report this information and define it as a water loss control plan. The plan would describe the reasons for the excessive water loss, analyze the costs to the utility related to the excessive water loss, and identify the steps the utility



has taken or will take to address the problem. The Commission believes that the proposed changes will provide greater regulatory certainty for the utilities in addressing water loss and protect ratepayers from unnecessary or excessive utility costs related to water loss. Since most of this information is already being collected, the Commission does not believe that the proposed requirements would create additional reporting burden for water utilities.

MEG questions when the new water loss control plan and leak detection requirements would take effect. Under the final rule, a utility would be required to file a water loss control plan beginning with its 2012 annual report, which is required to be filed by April 1, 2013. Similarly, the requirement that a utility conduct a leak detection survey would not take effect until after three consecutive years under the new reporting requirements, or April 1, 2015. However, the effective date of this rule should not be construed to limit the Commission's authority to ensure that utility rates and charges are reasonable and just under ch. 196, Stats. The Commission may find it reasonable to require a utility to reduce water losses before authorizing a rate increase or approving construction of new water supply facilities before these implementation dates.

The rules would require that a utility provide information to its residential customers upon request that would assist them in comparing their water use to similar customers and in reducing their water use. The rules also require a utility provide consumption information in gallons to its customers, even if they bill in cubic feet. Clean Wisconsin and AWE generally support these changes, but Clean Wisconsin asks that the Commission require utilities to calculate bills in gallons rather than simply provide a means of converting cubic feet to gallons. MEG argues that utilities should not be required to provide information about water conservation to their residential customers because the Commission has funded a water conservation position and has some information already available on its web site. Instead, MEG notes that utilities should be allowed to reference water conservation information on the Commission's web site. The Commission disagrees with MEG and believes that each utility has unique circumstances and that a utility can provide the most appropriate information to its customers. The proposed rule does not specify the manner in which this information should be provided, except to note that it may be provided on a utility's web site.

The Commission recognizes the value of providing information to customers to help them in making informed choices about their water use. One way to accomplish this is to require that bills are calculated in understandable units (gallons) and that utilities provide their customers with information that allows comparison of a customer's usage to their peers. These changes could result in additional costs to utilities to update their billing systems. As a result, the Commission is providing options to utilities in making this information available to customers, but is not specifying the format for providing this information. However, the Commission directed staff to investigate the costs that would be associated with: 1) requiring all utilities to provide consumption information in gallons; 2) providing a comparison of residential consumption to each customer annually; and 3) providing customers education materials to help them reduce their use. The Commission directed staff to include a recommendation on these items as part of the ongoing efforts to update the water utility service rules in Commission rulemaking docket 1-AC-233.

The rules establish criteria for utilities that wish to implement voluntary conservation programs. MEG notes that the proposed rules would require a net-cost effectiveness analysis before the Commission could approve a utility water conservation program. MEG believes that while the proposed criteria make sense for customer incentives such as toilet rebates, the proposed criteria may be too onerous for public education programs and similar conservation efforts. The Commission agrees with MEG and has revised the rules to require a cost-effectiveness analysis and the other information only for customer incentives and rebate programs. It is the Commission's intent to encourage utilities to conduct water efficiency and conservation efforts. The reasonableness of other conservation program-related costs can be reviewed in the context of a rate case.

Clean Wisconsin supports the criteria for evaluating voluntary water conservation programs, but requests that the Commission require utilities that do not propose a program as part of a rate case to discuss the reasons for not doing so. Clean Wisconsin also suggests that the Commission establish a dollar amount, as a percentage of the total revenue requirement, that should be set aside for conservation programs. The Commission disagrees with requiring utilities to demonstrate why they are not implementing a voluntary program because such a requirement would create an unnecessary burden on utilities. Also, the Commission does not agree with establishing criteria for the amount that can be spent on conservation programs in the rule. The Commission can best determine the appropriate costs for these programs only through a full rate review. The threshold may differ for each utility and these programs should be evaluated on a case by case basis.

MEG suggests that the proposed changes in the newly created s. PSC 185.89 (3) alter the standards for utilities in restoring service after a service interruption. The Commission has revised the language in the final rule to require that utilities make a "reasonable effort" to restore service after an interruption. The Commission believes that this reasonableness standard will provide clarity and is consistent with other provisions of this section.

#### E. RESPONSE TO THE LEGISLATIVE COUNCIL REPORT

A copy of the Legislative Council's report and the Commission's response is included as Attachment A3.

#### F. FINAL REGULATORY FLEXIBILITY ANALYSIS

The final rule will not affect small businesses. Section 227.114 (1), Stats., defines a small business as: "a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000." The vast majority of the 583 water public utilities in Wisconsin are municipally owned. There are six privately owned water utilities, of which only one (Superior Water and Light) had revenues in excess of \$5 million in 2010. However, utilities operate as monopolies in their service territories, and therefore are dominant in their field. The final rule may have a beneficial impact on water utilities because it will streamline the process for approving construction projects, clarify water loss standards and

reporting requirements, and provide flexibility in implementing water conservation programs. The Commission estimates that implementation of the final rules will not require additional funding for most utilities. As a result, small businesses that are customers of water utilities should not incur additional charges or rate increases because of these rules.

## PLAIN LANGUAGE ANALYSIS

### **A. Statutory Authority and Explanation of Authority**

This rule is authorized under ss. 196.02 (1) and (3), 196.12, 196.49, and 281.346 (8), Stats. Section 196.02 (1), Stats., authorizes the Commission to do all things necessary and convenient to its jurisdiction over public utilities. Section 196.02 (3), Stats., grants the Commission specific authority to promulgate reasonable rules to govern its procedures. Section 196.12, Stats., authorizes the Commission to require utilities to report financial information, which includes expenditures on water conservation programs. Section 196.49 (3), Stats., authorizes the Commission to adopt rules regarding utility construction projects that will materially affect the public interest. Section 281.346 (8), Stats., directs the Commission to cooperate with the Department of Natural Resources (DNR) and the Department of Safety and Professional Services (formerly the Department of Commerce) to develop and implement a statewide water conservation and efficiency program, including requirements for water public utilities.

### **B. Statutes Interpreted**

Sections 196.02, 196.03, 196.10, 196.37, 196.49, and 281.346 (8), Stats.

### **C. Related Statutes or Rules**

DNR and the Commission have overlapping jurisdiction in the regulation of water public utilities. DNR's regulatory authority is generally related to its role in protecting public health and managing water resources, while the Commission's authority is related to the financial regulation of utilities. DNR reviews water utility extensions and alterations which may affect the quality or quantity of water delivered by an existing community water system under s. 281.41, Stats., and ch. NR 108 (July 2010). DNR also regulates surface water withdrawals under s. 30.18, Stats., and groundwater withdrawals, including municipals wells, under s. 281.34, Stats., and ch. NR 812 (July 2002).

The Commission has authority under ss. 196.49 and 196.50, Stats., and ch. PSC 184 to review water utility construction and expansion for public convenience and necessity. A utility cannot proceed with construction unless DNR and the Commission approve the project. Section 196.025 (2m), Stats., establishes a consultation process for DNR and the Commission to cooperate on projects that require an environmental assessment or an environmental impact statement under s. 1.11, Stats.

DNR and the Commission also share jurisdiction for implementing a statewide water conservation program. The Commission has a responsibility to ensure that ratepayers are protected from unreasonable charges (s. 196.03, Stats.) and that utilities do not build facilities unreasonably in excess of probable future needs (s. 196.49 (3) (b) 2., Stats.). The Commission promotes water conservation and efficiency as a way for utilities to reduce operating costs, avoid building unnecessary capacity, and to help ratepayers manage their water usage and reduce their

bills. In addition, water utilities in Wisconsin must comply with the provisions of The Great Lakes-St. Lawrence River Basin Water Resources Compact (Great Lakes Compact), an interstate compact ratified by the U.S. Congress. While the Great Lakes Compact applies only to utilities that withdraw surface or groundwater from the Lake Michigan or Lake Superior watersheds, the implementing legislation in Wisconsin (2007 Wisconsin Act 227) establishes additional statewide requirements under ss. 281.346 and 281.347, Stats. These include water use reporting, water conservation, and water supply planning programs. Specifically, s. 281.346 (8), Stats., directs DNR to work with the Commission and the Department of Safety and Professional Services (formerly the Department of Commerce) in developing and implementing a statewide water conservation program. DNR promulgated its water conservation program requirements in ch. NR 852 (Dec. 2010). This rule contains mandatory conservation program requirements for water utilities in the Great Lakes watershed and voluntary elements for utilities outside of the Great Lakes watershed. DNR's regulatory jurisdiction includes any system that provides water for public use such as schools, mobile home parks, co-ops, and private wells that serve multiple homes or businesses, while the Commission's authority is limited to water public utilities.

#### **D. Summary and Analysis of the Final Rules**

The final rules will implement the Commission's water conservation and efficiency program and streamline the process for approving construction and related projects for water public utilities. The most substantial changes include all of the following:

- Clarify the Commission's rules and procedures for approving water utility construction projects, including identifying projects that are categorically exempt from review.
- Define commonly used terms in chs. PSC 184 and 185.
- Standardize the water auditing and reporting methodology, revise water loss standards, and require water loss control plans for utilities with excessive water loss.
- Establish criteria for utilities wishing to implement voluntary, utility-financed water conservation programs, such as toilet rebate programs.
- Consolidate and clarify requirements related to water supply emergencies, service interruptions, and curtailment of service.

#### Chapter PSC 184

The final rule repeals and recreates ch. PSC 184. This rule establishes criteria and procedures for establishing a new water utility, expanding a utility's service area, and obtaining Commission approval for water (and some sewer) utility construction projects. This rule applies to water utilities, as defined in s. 196.01 (5), Stats., and to combined municipal water and sewer utilities, as defined in s. 66.0819, Stats. The final rule does not extend the Commission's jurisdiction to non-regulated sewer utilities.

The final rule clarifies that any water utility or combined water and sewer utility must obtain Commission authorization before constructing facilities or extending service within a municipality that is not currently being served by that utility, as required under Wis. Stat. s. 196.49 (1) (am). This requirement has not been consistently applied under existing rules. In general, the Commission has only required that a water utility seek Commission authorization if

it intends to initiative service or construct facilities in a municipality that is already served, in whole or in part, by another water utility. The final rule clarifies that Commission authorization is required regardless of whether another utility is already serving that municipality.

The final rule clarifies the types of projects for which a utility must obtain Commission approval, known as a certificate of authority (certificate). In general, a utility must obtain a certificate from the Commission before constructing, purchasing, installing, modifying, replacing, or placing into operation any plant or facility if the project cost exceeds \$250,000 or 25 percent of the utility's gross operating revenues in the previous year. Projects that typically require Commission approval include the following:

- Groundwater wells, surface water intakes, and other sources of water supply.
- Water treatment, purification, and disinfection facilities.
- Elevated tanks, reservoirs, and other storage facilities.
- Installation of automated metering systems.
- Pumping stations, pressure-reducing stations, and associated facilities.
- Utility buildings.
- Utility mains outside of the utility's service area.
- Utility mains larger than eight inches in diameter and longer than three miles (considered Type II projects requiring an environmental analysis under s. PSC 4.10).
- Sewer facilities, including pumping facilities or sewage treatment and disposal plant.
- Any other project not otherwise exempted by rule.

The final rule exempts certain projects that will not materially affect the public interest. Specifically, the final rule exempts any project with a total cost that is less than \$250,000 or 25 percent of the utility's gross operating revenue in the previous year, whichever is less. In addition, the final rule categorically exempts the following projects, regardless of cost:

- Installing, replacing, or repairing water mains, sewer mains, service laterals, hydrants, or valves within the utility's service area, unless the project is a Type I or Type II action that requires an environmental review under s. PSC 4.10. Currently, the only type of water or sewer project subject to this criteria would be the construction or replacement of water or sewer main that is eight inches or greater in diameter and three or more miles long (see ch. PSC 4, Table 2).
- Routine replacement and repair of meters.
- Installing, replacing, or repairing supervisory control and data acquisition systems, telemetry equipment, or other electronic monitoring and control systems.
- Replacing or repairing existing pumps, motors, or associated equipment.
- Conducting routine maintenance or repair to utility facilities, including buildings used for utility purposes.
- Repairing or replacing filtration media used in existing water treatment purification and disinfection facilities.
- Installing plant in accordance with filed extension rules and tariff provisions.
- Installing plant in compliance with a Commission order.
- Relocating or modifying existing plant to accommodate highway or airport construction.

- Acquiring vehicles or other movable equipment.

The final rule requires that a utility submit its application for a project at least 90 days but no more than two years before beginning the project. The utility is required to notify the Commission if the project is not completed within two years of receiving authorization. The final rule also requires the utility to notify the Commission if the scope, design, or location of the project changes significantly, or if the total project costs exceed the estimated project cost authorized by the Commission by more than 10 percent.

The rule also specifies the information that must be included in the utility's application to the Commission. For most projects, this includes a description of the project and its costs, a justification for the project, information about the location of the project, estimates of annual operating expenses, and any plant retirements. The final rule also requires a water utility to provide information about any actions it has taken to mitigate the need for construction of new water supply facilities, such as water loss control or water conservation measures. The rule also specifies the type of information that must be provided to assist the Commission in completing its environmental review under ch. PSC 4.

The final rule clarifies the procedures that the Commission follows in reviewing and approving construction projects. When an application is received, the Commission issues a notice of investigation or notice of proceeding according to s. PSC 2.09. The Commission may approve, modify, or deny the project. If the project is approved, the Commission issues a certificate of authority which allows the utility to proceed with the project. If the Commission does not take an action within 60 days of issuing a notice of investigation, the utility may proceed with the project. The Commission is not required to hold a hearing unless a hearing is required by statute or rule, the Commission treats the application as a contested case, or the project requires the preparation of an environmental impact statement. Finally, the proposed rule ensures coordination between the DNR and the PSC for projects that require an environmental impact statement or environmental analysis, as required by s. 196.025(2m), Stats.

#### Chapter PSC 185

The rule defines commonly used customer classes in utility tariffs, including residential, multi-family residential, non-residential, commercial, industrial, irrigation only, and public authority. Likewise, the rule establishes definitions for utility classes based on the number of customer connections. Class AB utilities have 4,000 or more connections, Class C utilities have between 1,000 and 4,000 connections, and Class D utilities have fewer than 1,000 connections. These definitions have been widely used by utilities and are included in guidance documents related to the Commission's Uniform System of Accounts for water utilities, but they have not previously been included in the rule. Several other commonly used terms are also defined in the rule.

Setting the appropriate price for water is important for encouraging efficient water use and ensuring that the utility can recover its costs in an equitable manner. The final rules specify that water utilities rates shall adopt rates that reflect the cost of service for each customer class and include a volume charge based on actual consumption. The Commission already requires

meters for general service customers. This rule simply states that it is the Commission's policy to approve cost-based rates with a volumetric charge component. In addition, the rule allows a water utility to implement a rate structure that encourages customers to use water efficiently, such as an inclining block or seasonal rate, unless the Commission finds that such a rate would be discriminatory or otherwise not in the public interest. The Commission has approved conservation-oriented rates for approximately 12 utilities in the state and this change is intended to codify existing Commission practice. Finally, the rule allows a water utility to request that the Commission establish rates for multi-family residential customers as a separate customer class.

Excessive water losses negatively affect utility finances because a water utility must purchase electricity and chemicals to produce the water that is lost through leaks before it can be sold to customers. These costs are passed on to all utility customers. Moreover, excessive water loss often indicates a need for capital improvements to replace aging water mains and other infrastructure. By reducing water losses, a utility can delay the need for additional wells to meet growing demand. The Commission currently requires water utilities to report annually the amount of water pumped, the amount of water sold, the amount of water lost in the distribution system through leaks and losses, the amount of water used within the system for utility purposes (e.g., hydrant and main flushing), and "unaccounted for" water. The Commission uses this information to benchmark performance and ensure that utilities are operating efficiently.

The final rule standardizes the method that utilities use to conduct an annual system-wide water audit and specifies how this information is to be reported to the Commission. Under the rule, water loss is defined to include any water that is pumped and treated to drinking water standards but that is not sold to utility customers due to leaks, theft, metering errors, and other factors. This definition is consistent with the water audit methodology adopted by the American Water Works Association (AWWA).

Under existing rules, water utilities with excessive system losses or unaccounted for water are required to identify the reasons for the losses and submit a corrective action plan to the Commission. The final rule revises the criteria that the Commission uses to determine whether a utility has excessive water loss. Class AB and Class C utilities would be required to submit a correction action plan if their water loss exceeds 15 percent of the water entering the distribution system and Class D utilities would be required to submit a plan if their water loss exceeds 25 percent. The final rule requires utilities with excessive water loss to identify the reasons for the losses and submit a corrective action plan to the Commission. The rule also allows the Commission to require a utility to conduct a leak detection survey of its distribution system if the utility's water loss exceeds the standard for three consecutive years.

A number of Wisconsin water utilities have already implemented water conservation programs to reduce customer demand. The final rule establishes criteria for utilities that wish to implement a voluntary water conservation program that would provide incentives to customers, such as toilet rebates. The rule does not require a water utility to implement a demand management program. There are a variety of reasons why a utility would want to implement a water conservation program, including limitations on existing wells and supply, rapidly growing demand, excessive outdoor water use in the summer, and new regulatory requirements, such as the Great Lakes Compact.



Unlike the Focus on Energy program, there is no statewide funding mechanism for water conservation programs. As a result, water utilities must request that the Commission approve the use of ratepayer funds for these programs on a case-by-case basis. In previous rate case decisions, the Commission has established guidelines for utilities to follow when considering a water conservation program. The proposed rule codifies these guidelines, providing clear and consistent guidance to utilities who wish to offer rebates or customer incentives. The rule also requires utilities to report on conservation-related expenditures and program outcomes annually. The rule will assist the Commission in evaluating whether a proposed conservation program is reasonable, cost-effective, and in the public interest. This will ensure that utilities will be able to recover the costs of implementing voluntary water conservation efforts through rates.

The final rule consolidates and updates existing requirements in ch. PSC 185 related to providing a continuous and adequate water supply, procedures for temporary interruption of service, and emergency operations. In addition, the rule creates a new section that authorizes a utility to declare a water supply shortage if it cannot adequately meet customer demand due to drought, insufficient source supply or excessive demand. Such a declaration authorizes the utility to make temporary curtailments to customers, other than essential use customers such as hospitals. Such curtailments must follow the utility's approved water supply shortage curtailment plan on file with the Commission. If a water utility does not submit such a plan, the rule establishes a utility's responsibilities during a water supply shortage.

Customer outreach and education are important components of the Commission's water conservation programs. Customers who understand their water usage are more likely to make informed decisions that lead to more efficient usage. The final rule requires any water utility that bills customers for usage in units of cubic feet to also provide consumption information in gallons, or a formula that can be used to convert usage from cubic feet to gallons. In addition, a utility is required to provide information upon customer request, including a comparison of that customer's usage to similar customers and information that will help the customer in reducing outdoor use, repairing leaks, and implementing other conservation measures. The utility may make this information available to the public on its web site.

#### **E. Comparison with Existing or Proposed Federal Regulations**

There is no federal regulation of water public utility rates and service rules because the financial regulation of water and sewer utilities is the exclusive jurisdiction of the States. Further, there are no existing or proposed federal regulations pertaining to water quantity or water conservation that would affect Wisconsin water public utilities. However, water public utilities must comply with the federal Safe Drinking Water Act and associated Wisconsin laws, which may include conditions or restrictions on system design and construction to protect public health and ensure safe drinking water. In addition, water utilities that withdraw surface or groundwater from the Lake Michigan and Lake Superior watersheds must comply with the provisions of The Great Lakes-St. Lawrence River Basin Water Resources Compact (Great Lakes Compact), an interstate compact ratified by the U.S. Congress.

## **F. Comparison with Similar Rules in Adjacent States**

All eight Great Lakes States—New York, Pennsylvania, Ohio, Indiana, Illinois, Wisconsin, Michigan, and Minnesota—are party to the Great Lakes Compact, which requires each state to do a number of things to regulate groundwater and surface water withdrawals from the Great Lakes watershed and implement a mandatory or voluntary water conservation program. Specifically, the Great Lakes Compact requires each state to implement a water conservation and efficiency program that includes state-specific water conservation and efficiency goals and objectives and either voluntary or mandatory conservation requirements for water users. The Wisconsin DNR has adopted administrative rules to implement the Great Lakes Compact in chs. NR 850 (January 2011), NR 852 (January 2011), NR 856 (January 2011), and NR 860 (October 2011).

Each state regulates its water public utilities differently. Wisconsin has the most comprehensive financial regulation over both municipal and privately-owned water utilities in the upper Great Lakes region. State utility commission jurisdiction in the surrounding states varies from partial regulation of regional and privately-owned systems to a completely deregulated water industry. Some of the surrounding states have enacted more comprehensive water conservation programs than Wisconsin. The requirements in the surrounding states are described below.

Minnesota - Neither municipal nor investor-owned water utilities are subject to Minnesota Public Utilities Commission oversight. Instead, rates and charges are subject to the oversight of the local municipal or regional governing body. Nonetheless, Minnesota statutes require each water utility serving more than 1,000 people to adopt a water rate structure by 2013 that promotes conservation, including seasonal rates, time of use rates, water budget rates, excess use rates, or inclining block rates. Water utilities are also required to provide educational information about water conservation to their customers. The Minnesota DNR also recommends that utilities meter all customer usage and conduct a water audit, and implement a leak detection and repair program if unaccounted for water is greater than 10% of pumpage.

Illinois - The Illinois Commerce Commission (ICC) regulates investor-owned utilities, including 33 water, 5 sewer, and 14 combined water and sewer utilities. Municipally owned utilities are not regulated by the ICC. Communities that are served by Lake Michigan, including the City of Chicago and many suburbs, are subject to special requirements known as the Lake Michigan Water Allocation Program, which authorizes the Illinois DNR to manage the allocation of water among regional organizations and municipalities. These requirements include water conservation as a condition of their allocation permit and are intended to fulfill the state's requirement under a U.S. Supreme Court Decree. The requirements include metering for all new construction and remodeling; reducing unaccounted-for water to less than 8 percent of annual pumpage; establishing ordinances for water-saving fixtures; adopting water rate structures based on metered usage and which discourage excessive use; and restricting non-essential outdoor usage.

Iowa - The Iowa Utilities Board regulates investor-owned water utilities but not municipally owned water utilities. The Iowa DNR may, in any permit granted to a community public water supply, include conditions requiring water conservation practices and require emergency

conservation practices after notification by the department. Generally, water conservation practices are not required, although individual permits may have conservation requirements added to them by the state. Iowa is not subject to the Great Lakes Compact.

Michigan - The Michigan Public Service Commission does not regulate water utilities. Michigan does not have other water conservation requirements for public water utilities outside of its responsibilities under the Great Lakes Compact.

Indiana - The Indiana Utility Regulatory Commission (IURC) regulates the rates, terms, and conditions of service for both municipal and investor owned water and wastewater utilities. However, all municipal utilities and investor-owned wastewater utilities serving fewer than 300 customers can opt out of IURC regulation. Indiana does not have other water conservation requirements for public water utilities outside of its responsibilities under the Great Lakes Compact.

#### **G. Data, Methodology, and Effect on Small Business**

In rewriting the water construction rule, ch. PSC 184, the Commission considered information from a variety of sources including water utilities, consumer and environmental groups and the Municipal Environmental Group–Water Division. In addition, the Commission analyzed historical data relating to past water and sewer utility construction application filings to determine the appropriate dollar thresholds for requiring Commission review of such applications.

With respect to the water conservation provisions in ch. PSC 185, the Commission also considered the input of the same outside sources. In addition, the Commission consulted with the Department of Natural Resources to coordinate both agencies' water conservation programs to avoid conflicting jurisdiction. The Commission also analyzed past Commission determinations that dealt with water conservation on a case-by-case basis to attempt to identify the best practices for use on a more general basis.

Because this rule will not directly affect small businesses, no specific factual or analytical studies were conducted.

#### **H. Accommodation**

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding, or who needs to receive this document in a different format, should contact the Docket Coordinator, as indicated in the following paragraph.

#### **I. Agency Contacts**

Questions regarding this matter, including small business questions, should be directed to Docket Coordinator Jeffrey Ripp, Assistant Administrator for Water, at (608) 267-9813, or [jeffrey.ripp@wisconsin.gov](mailto:jeffrey.ripp@wisconsin.gov). Media questions should be directed to Kristin Ruesch,

Communications Director, at (608) 266-9600. Hearing or speech impaired individuals may also use the Commission's TTY number: If calling from Wisconsin, use (800) 251-8345; if calling from outside Wisconsin, use (608) 267-1479.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TEXT OF THE RULE**

SECTION 1. Chapter PSC 184 repealed and recreated to read:

**Chapter PSC 184**

**Construction of and Placing into Operation of Water and Sewer Facilities**

- PSC 184.01 Scope.
- PSC 184.02 Definitions.
- PSC 184.03 Activities requiring commission authorization.
- PSC 184.04 Applications for commission authorization.
- PSC 184.05 Commission procedures.
- PSC 184.06 Emergency work.

**PSC 184.01. Scope. (1) APPLICABILITY.** This chapter applies to a utility.

**(2) INDIVIDUAL SITUATIONS.** Nothing in this chapter precludes the commission from giving individual consideration to exceptional or unusual situations or, upon investigation, from establishing requirements for a utility or service that are different from those provided in this chapter.

**PSC 184.02 Definitions.** In this chapter:

**(1)** “Acquire” means the acquisition of plant in place and ready for operation, but does not include the purchase of materials or equipment for later installation.

**(2)** “Certificate” means a certificate issued by the commission under ss. 196.49 or 196.50, Stats.

**(3)** “Commission” means the public service commission.

**(4)** “Department” means the department of natural resources.

**(5)** “Municipality” means a city, village or town.

1 (6) "Plant" means all equipment, property, or facilities included in the utility plant accounts  
2 under the uniform system of accounts prescribed by the commission.

3 (7) "Project cost" means the total estimated costs of a proposed project including land  
4 acquisition, construction, pilot testing, test wells, inspection, and fees for professional services.

5 (8) "Service area" means the geographic area within which a utility has an obligation to provide  
6 service.

7 (9) "Utility" means a water public utility, as defined in s. 196.01(5) (a), Stats., a combined water  
8 and sewer public utility under s. 66.0819, Stats., or any person, except a governmental unit, who  
9 furnishes service to or for the public by means of a sewerage system, as defined in s. 281.01 (14),  
10 Stats.

11

12 **PSC 184.03 Activities requiring commission authorization. (1) NEW UTILITY.** A person  
13 intending to operate as a utility may not begin construction of, install, or place in operation any  
14 facilities for furnishing water or sewer service in a municipality in which the person is not  
15 currently furnishing water or sewer service as a utility without the commission's prior approval.

16 **(2) EXPANSION, ACQUISITION, AND INTERCONNECTION.** A utility shall obtain a  
17 certificate from the commission before undertaking any of the following:

18 (a) Constructing facilities or initiating service in a municipality not currently served by the  
19 utility.

20 (b) Constructing facilities or initiating service in a service area of another utility.

21 (c) Acquiring or placing in operation existing facilities for furnishing water or sewer service  
22 obtained from another person or utility.

1 (d) Establishing an interconnection with another utility with which it has no existing  
2 interconnection.

3 (e) Combining or consolidating with another utility.

4 **(3) CONSTRUCTION OF FACILITIES.** A utility shall obtain a certificate from the  
5 commission before constructing, purchasing, installing, modifying, replacing, or placing in  
6 operation any plant not exempt under sub. (4) if the project cost exceeds \$250,000 or 25 percent  
7 of the utility's gross water or sewer operating revenue received during the previous calendar  
8 year, whichever is less.

9

10 **Note:** Examples of projects that typically require a certificate include all of the  
11 following:

- 12 1. Groundwater wells, surface water intakes, and other sources of water supply.
- 13 2. Water treatment, purification, and disinfection facilities.
- 14 3. Elevated tanks, reservoirs, and other storage facilities.
- 15 4. Pumping stations, pressure-reducing stations, and associated facilities.
- 16 5. Utility buildings.
- 17 6. Utility main if a portion of the main is located outside of the utility's service area  
18 or if the main is eight inches or greater in nominal diameter and three or more  
19 miles long.
- 20 7. Sewer facilities, including any pumping facilities or sewage treatment and  
21 disposal plant.

22

23 **(4) CERTIFICATE NOT REQUIRED.** Notwithstanding sub. (3), a utility does not need a  
24 certificate to do any of the following:

25 (a) Install, replace, or repair a utility main, unless one of the following applies:

- 26 1. A portion of the main is located outside of the utility's service area.

- 1 2. The main is eight inches or greater in nominal diameter and three or more miles long.
- 2 (b) Install, replace, or repair service laterals, hydrants, or valves within the utility's service area.
- 3 (c) Routine meter repair or replacement.
- 4 (d) Install, replace, or repair supervisory control and data acquisition (SCADA) systems,
- 5 telemetry equipment, or other electronic monitoring and control systems.
- 6 (e) Replace or repair existing pumps, motors, or associated equipment.
- 7 (f) Conduct routine maintenance or repair to utility facilities, including buildings used for utility
- 8 purposes.
- 9 (g) Replace or repair filtration media used in existing water treatment purification and
- 10 disinfection facilities.
- 11 (h) Install plant in accordance with filed extension rules and rates.
- 12 (i) Install plant in compliance with a commission order.
- 13 (j) Relocate or modify existing plant to accommodate highway or airport construction.
- 14 (k) Acquire vehicles or other movable equipment.

15

16 **PSC 184.04 Applications for commission authorization. (1) TIMING AND COST**

17 INCREASES. (a) For any project requiring commission authorization under s. PSC 184.03, a

18 person or utility shall submit the information required in this section at least 90 days, but no

19 earlier than 2 years, before beginning the project.

20 (b) For any project receiving commission authorization under s. PSC 184.05 that is not begun

21 within 2 years from the date of the authorization, a utility shall notify the commission of revised

22 project costs, the schedule for completion, and any other changes to the proposed project. The

23 commission may reconsider its authorization for a revised project under s. PSC 184.05.



1 (c) If the scope, design or location of a project receiving commission authorization under s. PSC  
2 184.05 changes significantly, or if it is discovered or identified that the project cost may exceed  
3 the estimated project cost by more than 10 percent, the utility shall promptly notify the  
4 commission as soon as the utility becomes aware of the possible change or cost increase. The  
5 commission may reconsider its authorization for a revised project under s. PSC 184.05.

6 **(2) CONSULTATION.** For projects subject to s. 196.025 (2m), Stats., before submitting an  
7 application for a certificate, a utility shall consult with commission staff, in cooperation with  
8 staff from the department, on the scope of the proposed project, the alternatives that must be  
9 considered in the application, and additional information that the commission may require as part  
10 of the application.

11 **(3) CONTENTS OF APPLICATION.** A person or utility seeking authorization for any activity  
12 under s. PSC 184.03 (1) and (2) or a utility seeking a certificate under s. PSC 184.03 (3) shall  
13 submit an application to the commission that includes all of the following, where applicable:

14 (a) A description of the project including all project components, phases, and a schedule of  
15 construction.

16 (b) Information supporting the purpose and necessity of the project.

17 (c) An analysis and description of alternatives to the project.

18 (d) An analysis of the effect of the project on the quality and reliability of service.

19 (e) The project cost itemized by major plant accounts as identified in the uniform system of  
20 accounts, including all administrative, overhead, engineering, legal, construction, and inspection  
21 costs.

- 1 (f) Identification of the proposed project funding sources, including utility or municipal sources  
2 and outside grants or loans. If the project will be financed, the utility shall include expected  
3 financing rates and terms.
- 4 (g) An estimate of annual operating costs of the project, by major expense accounts as identified  
5 in the uniform system of accounts.
- 6 (h) A description of any plant being retired or replaced and the year it was placed in service, if  
7 known.
- 8 (i) A map showing the location of the project and all proposed facilities by Public Land Survey  
9 System (PLSS) quarter-quarter section or by another methodology approved by the commission.
- 10 (j) A list of any permits or approvals required by other state agencies or local governmental units  
11 and a statement indicating whether the permits or approvals have been applied for or obtained.
- 12 (k) For a project under s. PSC 184.03 (3), that includes new or expanded groundwater wells,  
13 surface water intakes, or other sources of water supply, information on any action the utility has  
14 taken to mitigate the need for the project.
- 15 (L) The identification of any flood-sensitive facilities that would be located in designated flood  
16 plains or flood-prone areas.
- 17 (m) For utility main construction projects, include all of the following:
- 18 1. The identification and description of each surface water potentially affected by construction.
  - 19 2. The identification and description of each wetland potentially affected by construction.
  - 20 3. An evaluation of whether any endangered or threatened species are present and what affect  
21 the project could have on those species. For each species identified, describe how the proposed  
22 project may be modified to reduce or eliminate any potential effect on the species.

- 1 4. An evaluation of whether any known archeological or historical resources are present. For  
2 each resource identified, describe how the proposed project may be modified to reduce or  
3 eliminate any potential effect on the resource.
- 4 (n) Information to allow the commission to prepare an environmental assessment for a project  
5 subject to s. PSC 4.10 (2), or for a project that require coordinated commission and department  
6 review under s. 30.025, Stats. After consultation with the applicant, the commission shall  
7 identify any additional information required on a case-by-case basis.
- 8 (p) Any other information relevant to the project requested by the commission.
- 9 **(4) GROUPING OF PROJECTS.** As an alternative to requesting a certificate for each project  
10 separately, a utility may submit on an annual basis a list of projects requiring approval under s.  
11 PSC 184.03 (3) that the utility intends to begin constructing within one year. For each project on  
12 this list, the utility shall include the information required by this section.
- 13 **(5) APPLICATION SUBMITTAL.** A person or utility shall submit an application under this  
14 section using the commission's Electronic Regulatory Filing (ERF) system.
- 15
- 16 **PSC 184.05 Commission procedures. (1) APPLICATION REVIEW.** (a) Upon receipt of a  
17 complete application under s. PSC 184.04, the commission shall issue a notice of investigation or  
18 notice of proceeding.
- 19 (b) The commission may approve or deny an application in whole or in part, and may modify or  
20 condition the authorization as the public convenience and necessity may require.
- 21 **(2) TIME FOR REVIEW.** Unless the application requires the preparation of an environmental  
22 assessment under s. PSC 4.10 (2), if no action is taken by the commission within 60 days after  
23 the commission issues a notice of investigation under sub. (1) (a), the utility may proceed with

1 the construction work. If the commission requests additional information to process an  
2 application after issuing a notice of investigation, the 60-day waiting period before construction  
3 work may commence begins the date the additional information is received by the commission.

4 **(3) HEARING.** The commission is not required to hold a hearing on a utility application for a  
5 certificate unless any of the following apply:

6 (a) A statute or rule otherwise requires a hearing.

7 (b) The commission treats the application as a contested case, as defined in s. 227.01 (3), Stats.

8 (c) The proposed project requires the preparation of an environmental impact statement under s.  
9 1.11, Stats.

10 (d) The commission determines a hearing is appropriate.

11

12 **PSC 184.06 Emergency work.** In case of an emergency resulting from the failure of power  
13 supply or from fire, storm, or similar events, a utility may begin necessary repair work without  
14 receiving prior commission authorization. The utility shall promptly notify the commission of  
15 the emergency work and shall, within 30 days after commencing the work, furnish the  
16 commission with the information required under s. PSC 184.04 (3).

17

18 SECTION 2. Section PSC 185.12 (3e), (3m) and (3s) are created to read:

19 **PSC 185.12 (3e)** “Class AB utility” means a public utility that has more than 4,000 service  
20 connections.

21 **(3m)** “Class C utility” means a public utility that has not fewer than 1,000 nor more than 4,000  
22 service connections.

23 **(3s)** “Class D utility” means a public utility that has less than 1,000 service connections.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

SECTION 3. Section PSC 185.12 (4m) is created to read:

**PSC 185.12 (4m)** “Commercial customer” means a business, not-for-profit organization, or other institution that provides goods or services and that takes service for non-residential purposes.

**Note:** Churches, private schools, private colleges and universities, co-ops, and associations are non-governmental entities and are considered commercial customers.

SECTION 4. Section PSC 185.12 (10e), (10m) and (10s) are created to read:

**PSC 185.12 (10e)** “Industrial customer” means a customer who is engaged in the manufacture or production of goods.

**(10m)** “Irrigation” means the use of water to sustain crops, lawns, or landscapes, including water used on athletic fields, parks, and golf courses.

**(10s)** “Irrigation customer” means a customer who has water service provided primarily for irrigation and other outdoor uses.

SECTION 5. Section PSC 185.12 (11m) is created to read:

**PSC 185.12 (11m)** “Multi-family residential customer” means a customer taking service for a building that is intended primarily for residential purposes, has three or more dwelling units, and is served by a single water meter.

1           **Note:** For accounting purposes, sales to multi-family residential customers are recorded  
2           as commercial sales under to the Commission’s Uniform System of Accounts for  
3           Municipal Water Utilities (January 2008).

4  
5   SECTION 6. Section PSC 185.12 (12m) is created to read:

6  
7   **PSC 185.12 (12m)** “Non-residential customer” means any commercial, industrial, or public  
8   authority customer.

9  
10   SECTION 7. Section PSC 185.12 (17m) is created to read:

11  
12   **PSC 185.12 (17m)** “Public authority customer” means a customer that is a department, agency,  
13   or entity of the local, state, or federal government, including a public school, college, or  
14   university.

15  
16   SECTION 8. Section PSC 185.12 (20g) and (20r) are created to read:

17  
18   **PSC 185.12 (20g)** “Residential customer” means a customer taking service for residential or  
19   domestic purposes but does not include a multi-family residential customer.

20  
21   **(20r)** “Station meter” means a meter used to measure the volume or flow of water within a  
22   utility’s distribution system and not used to measure customer use. Station meter includes any  
23   meter used to measure water pumped from groundwater wells, surface water intakes, storage  
24   facilities, treatment facilities, or booster pumps.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

SECTION 9. Section PSC 185.12 (22) is created to read:

**PSC 185.12 (22)** “Water conservation” means practices, techniques, and technologies that reduce the demand for water, reduce water loss or waste, or improve water use efficiency.

SECTION 10. Section PSC 185.21 (intro.) is renumbered PSC 185.21 (1) (intro.).

SECTION 11. Section PSC 185.21 (1) (title) is created to read:

**PSC 185.21 (1)** (title) INCLUDED IN SCHEDULES.

SECTION 12. Section PSC 185.21 (2) is created to read:

**PSC 185.21 (2) RATES FOR WATER SERVICE.** (a) A public utility shall adopt general service water rates that reflect the cost of service for each class of customer and include a volume charge based on actual customer consumption.

(b) A public utility may not adopt a rate under par. (a) if the commission finds that the rate is discriminatory or otherwise not in the public interest.

(c) The commission may approve rates that promote efficient water use.

(d) A utility may adopt rates that treat multi-family residential customers as a separate customer class.

1 SECTION 13. Section PSC 185.22 (5) is renumbered PSC 185.22 (5) (a).

2

3 SECTION 14. Section PSC 185.33 (1m) is created to read:

4

5 **PSC 185.33 (1m)** A public utility that calculates its volume charges in units of cubic feet shall  
6 include customer usage in both cubic feet and gallons on the customer bill or provide a formula  
7 for converting usage in cubic feet to gallons on the customer bill. In lieu of providing the  
8 information on the customer bill, a public utility may provide the information in a document  
9 provided to each customer under sub. (1) (f).

10

11 SECTION 15. Section PSC 185.33 (2) is renumbered PSC 185.22 (5) (b) and, as renumbered,  
12 amended to read:

13

14 **PSC 185.22 (5) (b)** Upon a residential customer request, the public utility shall provide  
15 consumption information by billing periods for at least the last year and information and  
16 instructions needed by the customer to make consumption comparisons to similar residential  
17 customers in the same class and to evaluate water conservation efforts.

18

19 SECTION 16. Section PSC 185.815 is repealed.

20

21 SECTION 17. Section PSC 185.84 is repealed.

22

23 SECTION 18. Section PSC 185.85 is repealed and recreated to read:



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

**PSC 185.85 Water audits and water loss control. (1) DEFINITIONS.** In this section:

(a) “Apparent loss” means the volume of water attributable to customer and station meter inaccuracies, billing and data transfer errors, unauthorized consumption, and theft.

(b) “Authorized consumption” means the volume of water used by metered and unmetered customers and the volume of water used for other purposes that is implicitly or explicitly authorized by the utility, including water used for flushing water mains and sewers, fire protection and training, street cleaning, public fountains, freeze prevention, and other municipal purposes regardless of whether the use is metered.

(c) “Non-revenue water” means the volume of water equal to the difference between the volume of water entering the distribution system and the volume of water that is sold.

(d) “Real loss” means the volume of water attributable to leaks and losses in the pressurized distribution system up to the customer meter, including water lost due to main breaks, service breaks, and tank and reservoir overflows.

(e) “Revenue water” means the volume of water entering the distribution system that is billed and for which the utility receives revenue.

(f) “Unaccounted-for water” means the volume of water entering the distribution system for which a specific use or purpose cannot be determined.

(g) “Water loss” means the difference between the volume of water entering the distribution system and authorized consumption.

**Note:** Water loss equals the sum of real and apparent losses that are caused by unauthorized consumption, meter inaccuracies, accounting errors, data processing errors, leaks in transmission and distribution mains, leaks in service connections up to the

1 customer meter, seepage, overflow, evaporation, theft, malfunctioning distribution  
2 system controls, and other unaccounted-for water, as described in the American Water  
3 Works Association M36 manual – Water Audits and Water Loss Control Programs.  
4

5 **(2) UTILITY PRACTICES.** A public utility shall do all of the following:

6 (a) Meter all water uses and sales, where practicable.

7 (b) Maintain and verify the accuracy of customer meters.

8 (c) Maintain and verify the accuracy of station meters.

9 (d) Identify and repair leaks in its distribution system to the extent that it is reasonable for the  
10 public utility to do so.

11 (e) Control water usage from hydrants.

12 (f) Maintain a continuing record of system pumpage and metered consumption.

13 (g) Conduct an annual water audit under sub. (3).

14 **(3) WATER AUDITS.** (a) A public utility shall conduct an annual water audit on a calendar  
15 year basis and submit the results of the audit to the commission no later than April 1 of the  
16 subsequent year.

17 (b) A public utility water audit shall include the measured or estimated volume of all of the  
18 following:

19 1. Water purchased or pumped from all sources.

20 2. Water used in treatment or production processes.

21 3. Water entering the distribution system.

22 4. Water sold, including both metered and unmetered sales.

23 5. Water not sold but used for utility-authorized purposes, including flushing mains, fire  
24 protection, freeze prevention, and other authorized system uses.

- 1 6. Water loss.
- 2 7. Unknown or unaccounted-for water.
- 3 (c) The components of a water audit are shown in Table 1.
- 4

1  
2

**Table 1. Water Audit Components**

System Input Volume (Finished Water + Purchased Water)	Authorized Consumption	Billed	Billed Metered Consumption (including water exported, wholesale sales)	Revenue Water	
			Authorized Consumption		Billed Unmetered Consumption (Bulk water sales, utility uses)
		Unbilled Authorized Consumption	Unbilled Metered Consumption		Non- revenue Water
			Unbilled Unmetered Consumption		
	Water Losses	Apparent Loss	Unauthorized Consumption (Theft, uncontrolled hydrants, etc.)	Non- revenue Water	
			Metering Inaccuracies (Customer, station meters)		
			Data Handling Errors		
		Real Losses	Leakage on Transmission and Distribution Mains		
			Leakage and Overflows at Utility's Storage Tanks		
			Leakage on Service Connections		

			(Up to point of customer meter)	
--	--	--	---------------------------------	--

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

**(4) WATER LOSS CONTROL.** (a) Each public utility shall calculate its annual percentage of non-revenue water and its percentage of water loss, based on the volume of water entering its distribution system.

(b) A public utility shall submit to the commission a water loss control plan if a water audit shows the public utility has any of the following:

1. A percentage of non-revenue water that exceeds 30 percent.
2. A percentage of water loss that exceeds 15 percent for a Class AB or Class C utility or 25 percent for a Class D utility.

(c) A water loss control plan under par. (b) shall include all of the following:

1. The reasons for the excessive non-revenue water or water loss.
2. A description of the measures that the utility plans to undertake to reduce water loss to acceptable levels within a reasonable time period.
3. An analysis of the costs of implementing a water loss control program, including a comparison of lost sales revenue and the costs that would be avoided by reducing leaks and losses.
4. Any additional information required by the commission.

(d) The commission may require a public utility to conduct a leak detection survey of its distribution system if for three consecutive years the public utility’s percentage of water loss exceeds 15 percent for a Class AB or Class C utility or 25 percent for a Class D utility.

SECTION 19. Section PSC 185.87 is repealed.

1 SECTION 20. Section PSC 185.89 is created to read:

2

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

4 **Service. (1) ADEQUACY OF WATER SUPPLY.** A public utility shall exercise reasonable

5 diligence to furnish a continuous and adequate supply of water to its customers.

6 **(2) EMERGENCY OPERATION.** (a) A public utility shall make reasonable provisions to meet

7 an emergency resulting from the failure of power supply or from fire, storm, or similar events. A

8 public utility shall inform its employees of procedures to be followed in an emergency to prevent

9 or mitigate the interruption or impairment of water service.

10 **(3) INTERRUPTIONS OF SERVICE.** (a) A public utility shall make all reasonable efforts to

11 prevent interruptions of service. If an interruption occurs, the public utility shall make

12 reasonable efforts to re-establish service with the shortest possible delay, consistent with safety

13 to its employees, customers, and the general public.

14 (b) If an emergency interruption significantly affects fire-protection service, a public utility shall

15 immediately notify the fire chief or other responsible local official.

16 (c) A public utility shall make reasonable efforts to schedule planned interruptions at times that

17 minimize customer inconvenience. A public utility shall make reasonable efforts to notify

18 customers of the time and anticipated duration of a planned interruption.

19 (d) A public utility shall notify the Commission of a service interruption under s. PSC 185.44

20 (1).

21

22 SECTION 21. Section PSC 185.90 is created to read:

23

- 1 **PSC 185.90 Water Supply Shortage. (1) DECLARATION.** A public utility may declare a  
2 water supply shortage if the public utility cannot adequately meet customer demand due to  
3 drought, insufficient source capacity, or excessive demand.
- 4 **(2) PLAN.** A public utility may adopt a water supply shortage curtailment plan and file the plan  
5 with the commission under s. PSC 185.21.
- 6 **(3) APPLICABILITY.** Unless a public utility has adopted a water supply shortage curtailment  
7 plan under sub. (2), the provisions of this section apply.
- 8 **(4) TEMPORARY CURTAILMENT.** Except as provided in sub. (6), a public utility may  
9 temporarily curtail water service to some or all of its customers during a water supply shortage, if  
10 the curtailment is necessary to protect public utility facilities, to prevent a dangerous condition,  
11 or to alleviate a condition that presents an imminent threat to public health, welfare, or safety.
- 12 **(5) UTILITY RESPONSIBILITIES.** If a public utility determines that it is necessary to curtail  
13 service under this section, the public utility shall do all of the following:
- 14 (a) Make reasonable efforts to notify customers affected by the water supply shortage.
- 15 (b) Request all customers to enact voluntary water conservation measures to reduce water  
16 consumption, including limiting irrigation and other non-essential uses.
- 17 (c) Implement any curtailment in an equitable manner that allows the public utility to maintain  
18 reasonably adequate service to the greatest number of customers, consistent with public health,  
19 welfare or safety.
- 20 (d) Promptly restore service.
- 21 **(6) APPROVAL TO CURTAIL ESSENTIAL USE CUSTOMERS.** A public utility may not  
22 curtail service to a customer under this section without the commission's prior approval if the  
23 customer provides essential public health, welfare, or safety functions that require consistent

1 water service or if any of the conditions described in s. PSC 185.37 (8) (h), (8m), (9), or (10)  
2 apply.

3 (7) REPORT. A public utility shall report to the commission within 7 days of declaring a water  
4 supply shortage. The public utility shall include in the report the reasons for any curtailment, the  
5 number of customers affected, the duration of the curtailment, and any other information  
6 requested by the commission.

7

8 SECTION 22. Subchapter IX of chapter PSC 185 is created to read:

9

10 **Subchapter IX – Water Conservation and Efficiency**

11

12 **PSC 185.95 Definitions.** In this subchapter:

13 (1) “Net cost effectiveness” means the extent to which a water conservation program or measure  
14 is cost effective, after being adjusted for all of the following:

15 1. The amount of water savings that would have been achieved in the absence of the water  
16 conservation program or measure.

17 2. The amount of water savings directly attributable to the influence of the water conservation  
18 program or measure but that is not specifically included in the program or measure.

19

20 **PSC 185.96 Customer Education Requirements.** Upon a residential customer’s request, a  
21 public utility shall provide information to the residential customer that may assist the customer in  
22 reducing outdoor water use, repairing residential water leaks, and implementing other water  
23 conservation measures. This information may be provided on the public utility’s web site.

24



1 **PSC 185.97 Voluntary Water Conservation Rebate or Incentive Programs. (1)**

2 DEFINITION. In this section, “voluntary program” means a water conservation program a  
3 public utility voluntarily proposes to administer or fund that provides rebates or other direct  
4 financial incentives to customers for water-efficient products or services.

5 **(2) REQUEST TO ADMINISTER OR FUND A VOLUNTARY PROGRAM.** A public utility  
6 may not administer or fund a voluntary program without commission approval. A public utility  
7 may file a request with the commission for authorization to administer or fund one or more  
8 voluntary programs within its service area. A utility requesting a voluntary program shall  
9 provide all of the following information:

- 10 (a) A description of the proposed program, including the target market, eligible measures,  
11 delivery strategy, marketing and communications strategy, incentive strategy, and potential  
12 market effects.
- 13 (b) The proposed annual program budget, including administrative costs, and source of funding.
- 14 (c) Annual and multi-year performance targets that are consistent with commission goals and  
15 policies.
- 16 (d) A portfolio and program level net cost effectiveness analysis.
- 17 (e) A description of the public utility’s proposed tracking and reporting system.
- 18 (f) A description of the public utility’s proposed evaluation, measurement, and verification plan.
- 19 (g) A description of how the public utility will coordinate its voluntary program with any  
20 statewide water conservation program, including any requirements contained in NR chapter 852.
- 21 (h) Any other information the commission requests.

22 **(3) APPROVAL OF VOLUNTARY PROGRAM.** (a) The commission shall consider each of  
23 the following when deciding whether to approve a voluntary program:

- 1 1. Whether the program is in the public interest.
- 2 2. The likelihood the public utility will achieve its program goals.
- 3 3. The inclusion of appropriate water conservation measures.
- 4 4. The adequacy of the proposed budget.
- 5 5. The net cost effectiveness of the program.
- 6 6. The adequacy of the public utility's evaluation, measurement, and verification plan.
- 7 7. The level of coordination with any statewide water conservation program, including any
- 8 requirements contained in NR chapter 852.

9 (b) Unless the voluntary program is included in a general rate proceeding, the commission shall  
10 issue its decision to approve, deny, or modify a proposed voluntary program in writing within 40  
11 working days after receiving the proposal. If the commission denies or modifies a proposed  
12 voluntary program it shall explain its reasons for the denial or modification. If the commission  
13 denies a voluntary program, the public utility may revise and resubmit a request for approval of a  
14 voluntary program at any time.

15 **(4) MODIFYING OR DISCONTINUING A VOLUNTARY PROGRAM.** A public utility may  
16 request that the commission authorize the modification or discontinuation of a voluntary program  
17 at any time. A public utility may not modify or discontinue a voluntary program without  
18 commission approval.

19 **(5) RETURN OF FUNDS.** The commission may require a public utility to return any unspent  
20 funds collected for a voluntary program approved under this section to its ratepayers.

21 **(6) ANNUAL REPORTS.** A public utility receiving commission approval for a voluntary  
22 program under this section shall submit an annual report to the commission no later than April 1  
23 following the covered year. The report shall include all of the following:

- 1 (a) A summary of program activities in the previous calendar year.
- 2 (b) An itemized accounting of administrative and program costs.
- 3 (c) The program balance or deficit at the end of the year.
- 4 (d) Estimated water savings attributable to the program, by customer class.
- 5 (e) The number of customers receiving rebates or other incentives.
- 6 (f) Estimated non-water benefits, including energy savings.
- 7 (g) Other performance metrics identified by the public utility.
- 8 (h) Any other information requested by the commission.

9 **(6) AUDITS AND VERIFICATION.** The commission may conduct an audit, or contract with an  
10 independent third-party evaluator to conduct an audit, to verify the performance of a public  
11 utility’s voluntary program. The public utility shall pay for the costs of the evaluation, as  
12 determined by the commission.

13

14 **SECTION 23. INITIAL APPLICABILITY.** **(1)** The requirement for a water loss control plan  
15 under s. PSC 185.85 (4) (b) first applies to a water audit under s. PSC 185.85 (3) conducted after  
16 the effective date of this subsection.

17 **(2)** The requirement for a leak detection survey under s. PSC 185.85 (4) (d) first applies to water  
18 audits under s. PSC 185.85 (3) conducted after the effective date of this subsection.

19

20 **SECTION 24. EFFECTIVE DATE.** This rule takes effect on the first day of the first month  
21 following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.

22

23 (End)

24

LCRC  
FORM 2

---

---

## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

---

---

**Richard Sweet**  
*Clearinghouse Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Pam Shannon**  
*Clearinghouse Assistant Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE **11-039**

AN ORDER to repeal PSC 185.815, 185.84, and 185.87; to renumber PSC 185.21 (intro.) and 185.22 (5); to renumber and amend PSC 185.33 (2); to repeal and recreate ch. PSC 184 and 185.85; and to create PSC 185.12 (3e), (3m), (3s), (4m), (10e), (10m), (10s), (12m), (17m), (20g), (20r), and (22), 185.21 (1) (title) and (2), 185.33 (1m), 185.89, 185.90, and subchapter IX of ch. PSC 185, relating to water conservation and construction by water utilities and municipal combined water and sewer utilities.

Submitted by **PUBLIC SERVICE COMMISSION**  
06-03-2011 RECEIVED BY LEGISLATIVE COUNCIL.  
06-30-2011 REPORT SENT TO AGENCY.

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached                      YES    ✓                      NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2)]

Comment Attached                      YES    ✓                      NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached                      YES                                      NO    ✓

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached                      YES    ✓                      NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached                      YES    ✓                      NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached                      YES                                      NO    ✓

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached                      YES                                      NO    ✓

## CLEARINGHOUSE RULE 11-039

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### **1. Statutory Authority**

Section PSC 184.01 (2) states that nothing in ch. PSC 184 precludes the commission from “giving individual consideration to exceptional or unusual situations or, upon investigation, from establishing requirements for a utility or service that are different from those provided in this chapter.” This language appears to allow the commission to proceed as if there were no rule in place if it chose to do so, giving “individual consideration” (which is not defined) or applying different requirements for a utility or service under any circumstances that it could justify as “exceptional or unusual situations” or “upon an investigation” (also not defined.). It appears to allow variance from provisions of the rule that repeat statutory requirements.

The commission should ensure that statutory provisions allow for such variances from requirements that would otherwise apply and not rely solely on a rule provision to provide that authority. Further, the rule should specify the types of “exceptional or unusual situations” that would justify applying different requirements.

#### **2. Form, Style and Placement in Administrative Code**

a. The number of any section in the PSC series of the Administrative Code should be preceded by the initials “PSC.” This rule fails to observe this convention in several instances. [s. 1.03 (2) (b), Manual.]

b. In s. PSC 184.04 (1) (c), the term “*force majeure*” should be replaced with an English equivalent or with descriptive language expressing this idea more precisely. [s. 1.01 (1), Manual.]

c. Where multiple subunits of a section of the Administrative Code are affected by a single rule SECTION, the section number is not repeated for each subunit. See, for example, the treatment in this rule of s. PSC 185.12 (10e), (10m), and (10s). [s. 1.04 (2) (a) 4., Manual.]

d. In s. PSC 185.12 (20g), the exception to the exception (“unless otherwise specified by tariff”) to the definition of “residential customer” is substantive, and should be placed in the main text of the rule. [s. 1.01 (7) (b), Manual.] What is more, the exception to the exception conflicts with the definition of “commercial customer”. The definitions should

specify that multi-family dwellings where three or more dwelling units are served by a single water meter are commercial customers; the substantive provisions of the rule would then authorize a water utility to provide a separate tariff for those customers or to include them in the residential tariff.

- e. A rule section should be added at the end specifying the effective date of the rule.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

- a. Where is the PSC's Uniform System of Accounts laid out? A reference to this would make the definition of "plant", in s. PSC 184.02 (6), more useful, and would help clarify subsequent provisions, as well.
- b. In s. PSC 184.05 (a), the reference to s. PSC 184.03 should be to s. PSC 183.04.
- c. Section PSC 185.85 (3) requires that audits be in a format specified by the PSC. This rule is where that format should be specified, and the form should be attached to the rule package when it comes to the Legislature for review. The same comment applies to s. PSC 185.97 (5). [s. 1.09 (2), Manual.]

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

- a. As noted in comment 4. a., above, the term "plant" is defined in s. PSC 184.02 (6). However, in s. PSC 184 .02 (1), it is unclear what is meant by "a unit of plant or mains". The wording seems awkward, but perhaps this is a term of art in the industry. If it is grammatically correct as stated, it might be helpful to define the phrase. Otherwise, for example, it appears that the word "an" should be inserted before "existing plant" in s. PSC 184.03 (2) (c). See also s. PSC 184.03 (5) (f) and review the entire rule for other occurrences of the word "plant" not preceded by an article.
- b. In s. PSC 184.03 (2) (b), the phrase "an area" should be replaced by "a service area".
- c. In s. PSC 184.03 (3), what does "deregulation" refer to? Because the commonly understood meaning of this term does not make sense in this context, a definition for the term is needed.
- d. In s. PSC 184.03 (4) (a) 7., if "sewer facilities" includes two things--pumping facilities and sewage treatment and disposal plants--the comma following "facilities" should be replaced by the word "or". If it includes three things--pumping facilities, sewage treatment plants, and disposal plants, then the comma after "utilities" should be retained and the phrase "treatment and" should read "treatment, or".
- e. In s. PSC 184.03 (4) (b), the comma after "purchasing" should be deleted and a comma should be inserted after "par. (a)".
- f. In s. PSC 184.04 (3) (j), "other units of government" should be clarified to indicate whether it refers to other state agencies, local units of government, or both.
- g. In s. PSC 184.05 (2), presumably the intent is that the application is

considered approved if the commission takes no *final* action (i.e., an action to approve or deny the application) within 90 days of its notice of investigation. As written, the commission could notice a hearing on the application (a kind of action) and this 90-day deadline would have been met. Also, this provision should be rewritten in the active voice.

h. Chapter PSC 184, as affected by this rule, refers variously to “a person,” “a utility,” or “a person or utility.” In some cases, such as s. PSC 184.03 (1) and (2), the distinction is clear; in other cases it is not clear. For example, presumably s. PSC 184.04 (1) should refer to “person or utility”, since it applies to projects requiring PSC authorization under s. PSC 184.03, and since s. PSC 184.03 (1) applies to “any person”. It appears that s. PSC 184.04 (6) should also refer to “person or utility”. The entire chapter should be reviewed for correct use of these terms.

i. In s. PSC 184.06, it would be helpful to define “emergency”. The language in s. PSC 185.89 (2) (a) relating to emergency operations may be helpful.

j. Section PSC 185.12 (3m) should be revised to clarify that the numbers 1,000 and 4,000 are included, such as “...that has not fewer than 1,000 nor more than 4,000 service connections”.

k. Read strictly, the second sentence of the definition of “irrigation customer” in s. PSC 185.12 (10s) is not limited to irrigation and other outdoor uses. For example, it could include a water bottling plant. This could be clarified by inserting the phrase “that is used primarily for irrigation and other outdoor uses and” after “measuring water”. Also, the use of the word “may” is inappropriate in a definition--either the term includes the described entities or it does not. If there is discretion in application of the term, that should be dealt with in the main text of the rule.

l. Does the term “non-residential customer” in s. PSC 185.12 (12m) include irrigation customers, as the common meaning of the term would suggest? If not, this should be clarified; if it does, are there any customers (other than residential customers) that it does *not* include? If not, it would not seem necessary to define the term.

m. In s. PSC 185.12 (17m), the reference to “authority” in the term “public authority customer” could cause confusion, as the word “authority” refers to a set of quasi-governmental entities created by statute and delineated in s. 16.70 (2), Stats. Use of a different term should be considered. Note that the definition of “agency” in s. 16.70 (1e), Stats., appears to cover the state-level entities that the rule is attempting to capture.

n. This rule would be an opportunity to replace the semicolons at the ends of s. PSC 185.21 (1) (a) to (h), as renumbered by this rule, with periods. The same applies with regard to s. PSC 185.33 (4), and possibly with regard to other sections. Also, while cleaning up s. PSC 185.33 (4), note that, in s. PSC 185.33 (4) (intro.), the word “should” should be replaced with “shall”. There likely are other format errors in the chapters affected by this rule that could be cleaned up.

o. There are two subsections numbered s. PSC 185.85 (3); the second, obviously, should be s. PSC 185.85 (4).



p. In the treatment clause to s. PSC 185.85 (in SECTION (17)), “recreated” should not have a hyphen. Also, in the rule text, “unaccounted-for” should be hyphenated, as it is in the analysis, since it is used as an adjective. In s. PSC 185.95, “cost effectiveness” should *not* be hyphenated, since it is used as a noun.

q. In s. PSC 185.85 (2) (d), what is “cost-effective”? How, and by whom, is cost effectiveness determined? These questions are only partially answered by subch. IX of ch. PSC 185. In s. 185.85 (2) (g), the phrase “, in accordance with sub. (3)” could be added after “audit”.

r. Is there a Class A of water utilities? Is it to this class that s. PSC 185.85 (4) (b) 1. applies? If so, that subdivision should say as much; if not, to whom does it apply? Also, if there is a Class A of water utilities, should s. PSC 185.85 (4) (d) include them?

s. The final use of the word “and” in s. PSC 185.85 (4) (d) should be replaced with “or”.

t. Does a water shortage curtailment plan under s. PSC 185.90 (2) require PSC approval before the applicability provision in s. PSC 185.90 (3) is effective, or will any plan supersede s. PSC 185.90? If approval is required, the rule should say so.

u. In s. PSC 185.90 (6), the word “ESSENTIAL” in the title is misspelled.

v. Section PSC 185.97 (1) (b) is superfluous, since a water utility may not implement *any* elements of a voluntary water conservation program without PSC approval. If sub. (1) (b) is eliminated, the “(a)” after the subsection title should be deleted.

## **RESPONSES TO LEGISLATIVE COUNCIL REPORT**

### ***1. Statutory Authority***

The language in s. PSC 184.01(2) appears in multiple commission rules, and has done so dating back to the 1950s. This flexibility is important given the quick changes that can occur in the industries regulated by the commission and is authorized under s. 196.02(1), Stats. The rule is not totally open-ended. The commission must examine the facts and circumstances of an individual case and may only change requirements if there is an unusual or exceptional circumstance. This would occur only after due process is given and rarely occurs in practice.

### ***2. Form, Style and Placement in Administrative Code***

- a. Corrections made.
- b. Correction made as the Latin term was deleted as unnecessary.
- c. Corrections made.
- d. The definitions have been reworked to avoid the problems identified.
- e. Appropriate initial applicability and effective date provisions added.

### ***4. Adequacy of References to Related Statutes, Rules and Forms***

- a. The Commission adopts Uniform System of Accounts (USOA) under s. 196.06, Stats. All USOA are adopted by Commission order and are available on the Commission's website.
- b. Correction made.
- c. Corrections made as the requirements were deleted as unnecessary.

### ***5. Clarity, Grammar, Punctuation and Use of Plain Language***

- a. Corrections made.
- b. Corrections made.

- c. Correction made as the provisions were deleted.
- d. Corrections made.
- e. Correction made.
- f. Correction made.
- g. Section PSC 184.05(2) has been rewritten to more closely follow existing s. PSC 184.05(2). The provision does not refer to a final action approving or denying an application.
- h. Review done and revisions made where appropriate, such as in ss. PSC 184.04(1) and (6).
- i. Correction made.
- j. Corrections made.
- k. Corrections made as the second sentence was deleted.
- l. Definition revised; “non-residential customer” does not include “irrigation customer.”
- m. The term “public authority customer” is used extensively now in the water industry and is a historical term of art. It is not changed in the revised rule.
- n. This rule does not make style changes on chapter PSC 185 outside of the provisions actually affected by the rule. The Commission has a separate rulemaking docket open to revise that chapter and general style corrections will be done in that rulemaking.
- o. Correction made.
- p. Corrections made.
- q. Corrections made.
- r. For purposes of this rule chapter, the definition of a Class A water utility is not necessary.
- s. Correction made.
- t. A water shortage curtailment plan does not require Commission approval.
- u. Correction made.
- v. Corrections made as the section was revised.



<b>Session 2011</b>				
<p style="text-align: center;"> <input checked="" type="checkbox"/> ORIGINAL                      <input type="checkbox"/> UPDATED  <input type="checkbox"/> CORRECTED                      <input type="checkbox"/> SUPPLEMENTAL         </p> <p><b>FISCAL ESTIMATE</b> DOA-2048 N(R10/96)</p>	<p>LRB or Bill No./Adm. Rule No. <b>PSC 184 and 185</b></p> <p>Amendment No. if Applicable</p>			
<b>Subject</b> Relating to Water Conservation and Construction by Water Utilities and Municipal Combined Water and Sewer Utilities				
<b>Fiscal Effect</b>				
<p><b>State:</b> <input checked="" type="checkbox"/> No State Fiscal Effect</p> <p>Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.</p> <table style="width:100%; border: none;"> <tr> <td style="width: 33%; border: none;"> <input type="checkbox"/> Increase Existing Appropriation                      <input type="checkbox"/> Increase Existing Revenues  <input type="checkbox"/> Decrease Existing Appropriation                      <input type="checkbox"/> Decrease Existing Revenues  <input type="checkbox"/> Create New Appropriation         </td> <td style="width: 33%; border: none; vertical-align: top;"> <input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget    <input type="checkbox"/> Yes    <input type="checkbox"/> No   <input type="checkbox"/> Decrease Costs         </td> <td style="width: 33%; border: none;"></td> </tr> </table>		<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Decrease Costs	
<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Decrease Costs			
<b>Local:</b> <input type="checkbox"/> No local government costs				
<p>1. <input checked="" type="checkbox"/> Increase Costs              <input type="checkbox"/> Permissive        <input checked="" type="checkbox"/> Mandatory</p> <p>2. <input type="checkbox"/> Decrease Costs              <input type="checkbox"/> Permissive        <input type="checkbox"/> Mandatory</p>	<p>3. <input checked="" type="checkbox"/> Increase Revenues              <input type="checkbox"/> Permissive        <input checked="" type="checkbox"/> Mandatory</p> <p>4. <input type="checkbox"/> Decrease Revenues              <input type="checkbox"/> Permissive        <input type="checkbox"/> Mandatory</p>	<p>5. Types of Local Governmental Units Affected:  <input type="checkbox"/> Towns            <input type="checkbox"/> Villages            <input type="checkbox"/> Cities  <input type="checkbox"/> Counties        <input checked="" type="checkbox"/> Others: Public Water Utilities  <input type="checkbox"/> School Districts        <input type="checkbox"/> WTCS Districts</p>		
<b>Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>Affected Ch. 20 Appropriations</b>			
<b>Assumptions Used in Arriving at Fiscal Estimate</b>				
<p><u>State Fiscal Effects</u></p> <p>There are no estimated state fiscal effects from the proposed changes to administrative rules for water utilities under Wis. Admin. Code PSC 184 and 185.</p> <p>The proposed changes update the thresholds for water and sewer projects requiring specific Commission authorization to better reflect current utility operations. The proposed changes also implement the Commission’s water conservation and efficiency program under its general authority in Wis. Stat. Chapter 196 and ensure coordination with the Department of Natural Resources (DNR), as directed under Wis. Stat. s. 281.346 (8). The revisions clarify commonly used definitions, standardize the method for tracking and reporting water lost in the distribution system, and require water loss control plans from utilities that exceed water loss standards. The proposed rules establish criteria to assist a utility in implementing a voluntary water conservation program that includes customer rebates or other financial incentives. In addition, the proposed changes consolidate and renumber rules on adequacy of water supply, emergency operations and interruption of service; clarify current rule by specifying steps utilities must take to prevent and minimize interruptions; and require utilities to notify the Commission after an emergency curtailment of service.</p> <p>The proposed changes allow the Commission to provide adequate review of utility construction projects while coordinating with the DNR as directed under Wis. Stat. s. 281.346 (8), and implementing a water conservation and efficiency program. The Commission’s overall workload is not anticipated to be affected by the proposed changes, and therefore the revised rules will have no state fiscal effect.</p>				
<p><u>Local Fiscal Effects</u></p> <p>All but six of the 583 water utilities regulated by the Public Service Commission are municipally owned. Any costs to local government will be incurred by municipal water utilities.</p> <p>The proposed rule changes are not estimated to have a fiscal impact to municipal water utilities overall. Some municipal water utilities could see a reduction in costs from the updated rules on Commission review of construction projects. Some utilities may see short-term cost increases from the requirement to develop and submit to the Commission a water-loss control plan and, potentially, a leak-detection survey. It is estimated that 15% to 20% of</p>				

municipal water utilities have water-loss levels that would require a water-loss control plan. However, additional reporting costs for utilities are estimated to be offset in the long term through reduced operating costs and reduced infrastructure needs through water-loss control and water conservation. Some utilities may see increased costs from the requirement to provide consumption information on customer bills. However, the rule provides flexibility to utilities in determining the best way to provide consumption information.

If needed, local governments could offset any increased, short-term, costs with increased water rates.

Fiscal Effects for Small Businesses

The proposed rules are not estimated to have a fiscal impact to small businesses as a group, although some small businesses may benefit from conservation measures facilitated under the proposed rules. The proposed rule changes regarding service curtailments may also be beneficial by avoiding unplanned interruptions of service that can be costly to small businesses.

Note: Six regulated water utilities are privately owned, but they do not meet the definition of a small business because they are monopolies in their service territories.

**Long-Range Fiscal Implications**

Water conservation and efficiency measures implemented under the proposed rules are anticipated to facilitate efficient water use by both utilities and ratepayers. Improvements to water efficiency are expected to reduce costs for municipal utilities by reducing utilities' costs for pumping and treating water and avoiding the need for future capital investments (wells, storage, and other facilities).

**Agency/Prepared by: (Name & Phone No.)**  
Anne Olson 267-9086

**Authorized Signature/Telephone No.**  
Anne Olson 267-9086

**Date**  
12/9/2011

