

**PUBLIC SERVICE COMMISSION OF WISCONSIN**

Natural Gas Public Utility Territorial Agreements

1-AC-245

**NOTICE OF HEARING**

<b>Hearing Date</b>	<b>Tuesday, February 17, 2015 – 10:00 a.m.</b>
<b>Hearing Location:</b>	<b>Amnicon Falls Hearing Room – 1<sup>st</sup> Floor Public Service Commission 610 North Whitney way Madison, Wisconsin</b>

<b>Comments Due:</b> <b>March 17, 2015 - Noon</b>	<b>Address Comments To:</b> <b>Sandra J. Paske, Secretary to the Commission Public Service Commission P.O. Box 7854 Madison, WI 53707-7854</b>
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The Public Service Commission of Wisconsin proposes an order to renumber and amend PSC 133.07 (1) and (3); amend PSC 133.03 (1) (intro.), (2) (b), (3) (a) (intro.) and (b), 133.07 (2) (title) and (2), and 133.08 (3) and (6) (d); and create 133.07 (1), (1m) (d), (2m), (3) (b), and (3) (b) (note) regarding natural gas territorial agreements.

**ANALYSIS PREPARED BY THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

The analysis is set forth as Attachment A.

**TEXT OF PROPOSED RULE**

The text of the proposed rule is set forth as Attachment B.

**INITIAL REGULATORY FLEXIBILITY ANALYSIS**

This rule will not affect small businesses. The s. 227.114 (12), Stats., definition of “small business” states that to be considered a small business, the business must not be dominant in its field. Since gas, electric and water utilities are monopolies in their service territories, they are dominant in their fields, and so, are not small businesses.

## FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

The Fiscal Estimate and Economic Impact Analysis are included as Attachment C.

### NOTICE OF HEARING

**NOTICE IS GIVEN** that pursuant to s. 227.16(2)(b), Stats., the commission will hold a public hearing on these proposed rule changes in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, on **Tuesday, February 17, 2015, at 10:00 a.m.** This building is accessible to people in wheelchairs through the Whitney Way (lobby) entrance. Handicapped parking is available on the south side of the building.

### WRITTEN COMMENTS

Any person may submit written comments on these proposed rules. The record will be open for written comments from the public, effective immediately, and until **March 17, 2015, at noon**. All written comments must include a reference on the filing to docket 1-AC-245. File by one mode only.

**Industry:** File comments using the Electronic Regulatory Filing system. This may be accessed from the commission's web site (<http://psc.wi.gov>).

### **Members of the Public:**

Please submit your comments in one of the following ways:

- **Electronic Comment.** Go to the commission's web site at <http://psc.wi.gov>, and click on the "ERF - Electronic Regulatory Filing" graphic on the side menu bar. On the next page, click on "Need Help?" in the side menu bar for instructions on how to upload a document.
- **Web Comment.** Go to the commission's web site at <http://psc.wi.gov>, click on the "Public Comments" button on the side menu bar. On the next page select the "File a comment" link that appears for docket number 1-AC-245.
- **Mail Comment.** All comments submitted by U.S. mail must include the phrase "Docket 1-AC-245 Comments" in the heading, and shall be addressed to:

Sandra J. Paske, Secretary to the Commission  
Public Service Commission  
P.O. Box 7854  
Madison, WI 53707-7854

Docket 1-AC-245

The commission does not accept comments submitted via e-mail or facsimile (fax). Any material submitted to the commission is a public record and may appear on the commission's web site. The commission may reject a comment that does not comply with the requirements described in this notice.

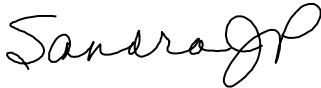
### **CONTACT PEOPLE**

Questions regarding this matter should be directed to docket coordinator Daniel Sage, at (608) 267-9486 or Daniel.Sage@wisconsin.gov. Media questions should be directed to the Communications Director at (608) 266-9600. Hearing or speech impaired individuals may also use the commission's TTY number, if calling from Wisconsin (800) 251-8345, if calling from outside Wisconsin (608) 267-1479.

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 get this document in a different format should contact the docket coordinator, as indicated in the previous paragraph, as soon as possible.

Dated at Madison, Wisconsin, this 12<sup>th</sup> day of January, 2015.

By the Commission:

A handwritten signature in cursive script, appearing to read "Sandra J. Paske".

Sandra J. Paske  
Secretary to the Commission

SJP:JMD:mc:DL: 00950774

**ANALYSIS PREPARED BY THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

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

This rule is authorized under ss. 196.02 (1) and (3), 196.50 (1) (am), and 227.11, Stats. Section 227.11 authorizes an agency to promulgate administrative rules. Section 196.02 (1) authorizes the Commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3) grants the Commission specific authority to promulgate rules. Section 196.50 (1) (am), as created by Act 300, specifically requires the Commission to develop rules in this matter.

**B. Statute Interpreted**

This rule implement s. 196.50 (1), Stats.

**C. Related Statutes or Rules**

None.

**D. Brief Summary of Rule**

This rulemaking is being done to bring the commission's administrative rules relating to natural gas public utility territorial agreements into conformity with 2013 Wisconsin Act 300 (Act 300). Before Act 300, a natural gas utility could not provide service in a municipality already served by a different gas utility unless it received a certificate from the commission. Act 300 allows a gas utility to provide service in a municipality served by another gas utility without commission action, if: (1) the utilities have entered into a territorial agreement about which customers will be served by which utility, (2) the additional utility's service territory is adjacent to the municipality it now wants to serve, and (3) the additional utility will only serve a limited number of customers in the municipality it now wants to serve.

**E. Comparison with Existing or Proposed Federal Legislation**

The commission is not aware of any existing or proposed federal legislation on this matter.

**F. Comparison with Similar Rules in Surrounding States**

The commission is not aware of any similar rules in surrounding states.

**G. Effect on Small Business**

This rule will not affect small businesses. The s. 227.114(12), Stats., definition of “small business” states that to be considered a small business, the business must not be dominant in its field. Since electric, gas, and water utilities are monopolies in their service territories, they are dominant in their fields and, so, are not small businesses.

**H. Comments**

Comments on this rule may be submitted as outlined in the Notice of Hearing.

**I. 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 obtain this document in a different format should contact the docket coordinator listed below.

**J. Agency Contact People**

Questions regarding this rule should be directed to docket coordinator Daniel Sage, at (608) 267-9486 or Daniel.Sage@wisconsin.gov. Media questions should be directed to the Communications Director, at (608) 266-9600. Hearing or speech-impaired individuals may also use the commission’s TTY number; if calling from Wisconsin, (800) 251-8345; if calling from outside Wisconsin (608) 267-1479.

**TEXT OF PROPOSED RULE**

**SECTION 1.** PSC 133.03 (1) (intro.), (2) (b) and (3) (a) (intro.) and (b) are amended to read:

**PSC 133.03 (1)** (intro.) CONSTRUCTION, INSTALLATION, OR USE. ~~A~~Except as provided in s. PSC 133.07 (2m), a gas public utility shall obtain a certificate of authority before constructing, installing, or placing in operation any of the following:

(2) (b) Paragraph (a) does not apply when a gas public utility uses cylinders of gas in order to keep customers in service temporarily during repairs, replacements, or modifications to the gas distribution system.

(3) NOTIFICATION REQUIRED. (a) (intro.) Unless a gas public utility is required to obtain a certificate of authority, it shall notify the commission of any of the following projects using the notification procedure in par. (b):

(b) A gas public utility desiring to proceed with a project identified under par. (a) shall file a notification with the commission at least 15 days, or as soon as practicable, before it intends to begin construction of the project. The notification shall include a brief description and location of the project.

**SECTION 2.** PSC 133.07 (1) is renumbered 133.07 (1m), and 133.07 (1m) (a) to (c) (intro.) as renumbered are amended to read:

**PSC 133.07 (1m) FILING.**

(a) A gas public utility may enter into a general or limited territorial agreement with another gas public utility. A gas public utility that enters into a general territorial agreement shall file the territorial agreement with the commission for review and approval. A gas public utility that enters into a limited territorial agreement shall file the territorial agreement with the commission.

(b) A general territorial agreement does not grant a gas public utility authority to serve in a municipality.

(c) (intro.) A gas public utility which seeks approval of a general territorial agreement shall include in its filing all of the following:

**SECTION 3.** PSC 133.07 (1) is created to read:

**PSC 133.07 (1)** For purposes of this section:

(a) “General territorial agreement” means any territorial agreement other than a limited territorial agreement.

(b) “Limited territorial agreement” means a territorial agreement under s. 196.50 (1) (am), Stats.

**SECTION 4.** PSC 133.07 (1m) (d) is created to read:

**PSC 133.07 (1m) (d)** A gas public utility shall file a signed limited territorial agreement with the commission. The utility shall include all of the following in its filing:

1. Identification of the commission action or docket that granted a gas public utility authority for providing service in the municipality affected by the agreement.
2. A detailed map and the legal description of the area covered by the limited territorial agreement, including a showing that the area to be served by the additional gas public utility is adjacent to a municipality that the utility is already authorized to serve.
3. Identification of the number of additional customers to which the additional gas public utility will provide service.
4. A statement that none of the additional customers to be served are located more than ½ mile from an existing service territory boundary between the original and the additional gas public utilities.
5. An evaluation demonstrating the reasons for the territorial agreement, such as avoiding controversy over the area to be served by each gas public utility, avoiding duplication of facilities, or providing more efficient service.
6. Proof that the municipality involved has authorized the additional gas public utility’s provision of service in the municipality.

**SECTION 5.** PSC 133.07 (2) (title) and (2) are amended to read:

**PSC 133.07 (2) (title)** AUTHORITY TO SERVE THROUGH A GENERAL TERRITORIAL AGREEMENT.

- (a) 1. When one gas public utility is authorized by the commission to provide gas service in a municipality, and that utility has entered into a general territorial agreement with another gas public utility that does not have commission authorization to serve in the municipality, the additional utility shall apply for and receive from the commission a certificate under ss. 196.49 and 196.50, Stats., before it can provide gas utility service in the municipality.
2. If the service area sought by one of the utilities covered by the general territorial agreement requires commission approval under this paragraph, that utility's filing for a certificate of authority shall include an evaluation demonstrating why provision of service by an additional utility in the municipality is needed.

3. If a certificate of authority is granted, the certificate will specify the portions of the municipality in which the additional utility is authorized to serve. Any subsequent amendments to the general territorial agreement between the utilities will be considered under par. (b).

(b) When 2 or more gas public utilities are authorized by the commission to provide gas service in a municipality, and the service area boundaries of the utilities are identified in a general territorial agreement, the authorized service areas may be modified without the need for the commission to issue amended or additional certificates of authority if the commission approves an amended general territorial agreement to which all affected gas public utilities are signatories. Commission approval of an amended general territorial agreement constitutes amended authorizations.

(c) When more than 2 gas public utilities are authorized by the commission to provide gas service in a municipality, and the service area boundaries of some, but not all, of the utilities are identified in a general territorial agreement, the authorized service areas may be modified without the need for the commission to issue amended or additional certificates of authority if the commission approves an amended general territorial agreement after giving opportunity for the gas public utility not covered by the amended boundary agreement to object. If an objection is received, the commission may proceed with approving the amended general territorial agreement or may require the agreement signatories to apply for amended certificates of authority. Commission approval of an amended general territorial agreement constitutes amended authorizations.

**SECTION 6.** PSC 133.07 (2m) is created to read:

**PSC 133.07 (2m) AUTHORITY TO SERVE THROUGH A LIMITED TERRITORIAL AGREEMENT.** (a) A gas public utility may provide service in a municipality served by another gas public utility without first obtaining a certificate from the commission to serve that municipality if all of the following apply:

1. The gas public utilities enter into a limited territorial agreement regarding areas to be served by each utility in the municipality.
2. The area to be served by the additional gas utility is adjacent to a municipality where the additional gas public utility is already authorized to serve.
3. The additional gas public utility will provide service to 5 or fewer additional customers in the municipality.
4. None of the additional customers to be served are located more than ½ mile from an existing service territory boundary between the original and the additional gas public utility.

(b) A gas public utility may not amend a limited territorial agreement. To expand the territory covered by a limited territorial agreement the utilities shall do one of the following:

1. If the additional territory meets the requirements of par. (a), then enter into a new limited territorial agreement covering the additional territory and file it under sub. (1) (d).



2. If the additional territory does not meet the requirements of par. (a), then enter into a general territorial agreement covering the additional territory and file a request for approval under sub. (1) (c).

**Note:** For example: if 2 utilities have an existing limited territorial agreement that covers a portion of their original service territory boundary and want to have an agreement that covers a different portion of their original service territory boundary, they may enter into a new limited territorial agreement that covers the new territory.

But, for example, if the existing limited territorial agreement covers a ½ mile wide strip east of their original service territory boundary and they want to have an agreement that covers a ½ mile strip that is east of the new service territory boundary created by the existing limited territorial agreement, they must enter into a general territorial agreement to cover the additional strip.

**SECTION 7.** PSC 133.07 (3) is renumbered 133.07 (3) (a), and amended to read:

**PSC 133.07 (3) FILING DEADLINE.** (a) ~~Requests~~ A gas public utility shall file a limited territorial agreement, a request for approval of a general territorial agreements shall be filed agreement, or an amended general territorial agreement with the commission, and receive approval when necessary, before the utilities provide service as permitted under the agreement. ~~Amended territorial agreement shall be filed with the commission within 30 days after the date the amended agreement is signed and shall request commission approval of the proposed change.~~

**SECTION 8.** PSC 133.07 (3) (b) and (3) (b) (note) are created to read:

PSC133.07 (3) (b) A gas public utility shall file an amended general territorial agreement with the commission within 30 days after the date the amended agreement is signed and shall request commission approval of the proposed change.

**Note:** See sub. (2) (b) and the note that follows about amending limited territorial agreements.

**SECTION 9.** PSC 133.08 (3) and (6) (d) are amended to read:

**PSC 133.08 (3) NEW AUTHORITY TO SERVE ANNEXED AREA.** A gas public utility that is authorized to provide service in a municipality that annexes an area of another municipality shall apply for commission authorization under ss. 196.49 and 196.50, Stats., to provide service in an annexed area if another gas public utility is authorized to provide service in the municipality from which the area is annexed and is serving customers or has facilities in the annexed area. The commission shall determine which portions of the annexed area may be served by each utility.

**(6)(d)** If the service area sought by the gas public utility in the annexed area requires commission approval under s. 196.50, Stats., the filing shall include an evaluation demonstrating why provision of service by a second gas public utility in the municipality is needed.

**SECTION 10.** EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE  
101 EAST WILSON STREET, 10TH FLOOR  
P.O. BOX 7864  
MADISON, WI 53707-7864  
FAX: (608) 267-0372

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

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1. Type of Estimate and Analysis

Original       Updated       Corrected

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2. Administrative Rule Chapter, Title and Number

PSC 133 Construction, installation, and placing in operation of facilities by gas utilities

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3. Subject

This rulemaking will bring Wis. Admin. Code ch. PSC 133 into conformity with 2013 Wisconsin Act 300. 2013 Wisconsin Act 300 allows a natural gas public utility to serve in another gas utility's territory under certain circumstances.

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4. Fund Sources Affected

GPR     FED     PRO     PRS     SEG     SEG-S

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5. Chapter 20, Stats. Appropriations Affected

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6. Fiscal Effect of Implementing the Rule

No Fiscal Effect       Increase Existing Revenues       Increase Costs  
 Indeterminate       Decrease Existing Revenues       Could Absorb Within Agency's Budget  
 Decrease Cost

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7. The Rule Will Impact the Following (Check All That Apply)

State's Economy       Specific Businesses/Sectors  
 Local Government Units       Public Utility Rate Payers  
 Small Businesses **(if checked, complete Attachment A)**

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8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes       No

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9. Policy Problem Addressed by the Rule

Brings the rule into conformity with the statute. Streamlines the process for limited territorial agreements.

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10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

All natural gas utilities, National Federation of Independent Business, Citizens Utility Board, League of Wisconsin Municipalities, Wisconsin Counties Association and Wisconsin Towns Association.

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11. Identify the local governmental units that participated in the development of this EIA

League of Wisconsin Municipalities, Wisconsin Counties Association and Wisconsin Towns Association

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Minimal or none.

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE  
101 EAST WILSON STREET, 10TH FLOOR  
P.O. BOX 7864  
MADISON, WI 53707-7864  
FAX: (608) 267-0372

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

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13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Brings the rule into conformity with the statute. Streamlines the process for limited territorial agreements.

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14. Long Range Implications of Implementing the Rule

Brings the rule into conformity with the statute. Streamlines the process for limited territorial agreements

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15. Compare With Approaches Being Used by Federal Government

There is no comparable federal program.

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16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Surrounding states do not have provisions that allow such territorial agreements.

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17. Contact Name Lisa Farrell

18. Contact Phone Number 608-267-9086

This document can be made available in alternate formats to individuals with disabilities upon request.

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DEPARTMENT OF ADMINISTRATION  
DOA-2049 (R03/2012)

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**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

NA

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes
  - No
-