

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

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

This rulemaking is authorized under ss. 196.02 (1) and (3), 196.06 (3), 196.12 (1), 196.15, 196.16 (2), 196.19 (4), and 196.37, 227.11 (2) and 281.346 (8), Stats. 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 to govern its proceedings and to regulate the mode and manner of all inspections, tests, audits, investigations and hearings. Section 196.06 requires each public utility to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the commission and to comply with all directions of the commission relating to such books, accounts, papers and records. Section 196.12 (1) requires each public utility to furnish to the commission, in the form and at the time the commission requires, accounts, reports or other information. Section 196.15 requires the commission to prescribe for each kind of public utility, other than a telecommunications utility, suitable and convenient standard commercial units of product or service. Section 196.16 (2) requires the commission to establish rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurement of public utility service. Section 196.19 (4) authorizes the commission to prescribe the form of the schedule of all rules and regulations of each public utility that, in the judgment of the commission, in any manner affect the service or product, or the rates charged. Section 196.37 authorizes the commission to determine and make any just and reasonable order relating to a measurement, regulation, practice, act or service to be furnished, imposed, observed and followed in the future by a public utility. Section 227.11 authorizes agencies to promulgate administrative rules. Section 281.346 (8) directs the commission to work in cooperation with the Department of Natural Resources (DNR) and Department of Safety and Professional Services (DSPS) to develop and implement a statewide water conservation and efficiency program, including requirements for water public utilities.

**B. Statutes Interpreted**

This rulemaking interprets ss. 196.02 (1) and (3), 196.06 (3), 196.12 (1), 196.15, 196.16 (2), 196.19 (4), and 196.37, 227.11 (2) and 281.346 (8), Stats.

**C. Related Statutes or Rules**

The DNR and the commission have overlapping jurisdiction for some aspects of the regulation of water public utilities, including construction standards and water conservation programs. The DNR's regulatory authority extends beyond water public utilities to include 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. The commission's authority is limited to water public utilities as defined under s. 196.01(5)(a), Stats.

Chapter NR 809 establishes the standards for safe drinking water. Chapters NR 810 and NR 811 establish the requirements for the operation and maintenance of public water systems and the requirements for the operation and design of community water systems. Chapter NR 852 establishes a statewide water conservation program for all water users, including water public utilities. Chapter NR 856 sets the requirements for water use registration and reporting.

**D. Brief Summary of Rule**

The commission has promulgated utility service rules for each industry it regulates. Chapter PSC 185, which establishes service rules related to water public utilities, has not been comprehensively updated since 1997. In the last 20 years, the commission has noted numerous policy problems that this proposed rule addresses including: failure to reflect electronic recordkeeping; ensuring utility customers have sufficient information

about water utilities' rates and rules; the need for rules governing extraordinary utility investment to extend service to new customers; disputes regarding payment options, and disconnection, deposit, and billing policies; failure to reflect changes in metering technology; lack of whistleblower protections and protections against oppressive and deceptive practices; delayed utility investigations and resolution of meter problems that can result in customers receiving significant back-bills long after they use water; bills for customers who have payment arrangements that do not include sufficient information; disputes related to utility and customer responsibilities during cold weather conditions; meter testing and accuracy limit rules that do not cover all meter types; standards for water loss control based on percentage benchmarks which do not provide utilities with sufficient direction to identify appropriate, cost-effective options for managing water that they pump, treat, and distribute but for which they do not collect revenue; duplication with administrative rules established by the DNR.

The proposed rule allows water public utilities to keep records in electronic format and defines written or in writing to include electronic communications. It will also require utilities to notify customers annually, rather than upon request, about payment options including deferred payment agreements and budget billing, disconnection, and dispute procedures and the contact information for the commission. This requirement aligns the requirements for water utilities with those applicable to electric and gas utilities.

The proposed rule will require additional information to be added to each utility's schedule of rates and rules to address situations involving water leaks, the provision of wholesale service, extraordinary investment by the utility to extend service to new customers or significantly increase the quantity or quality of service provided to an existing customer. The proposed rule also updates the billing requirements to require utility bills to display a customer's consumption in gallons and include the number of days in the billing period, the bill due date, clear explanation of any codes, abbreviations or terminology used on the bill and clear itemization of any payment arrangements. If necessary, the proposed rule allows the utility to provide the information in separate mailing or electronic mailing if applicable.

The proposed rule clarifies the process for addressing utility billing errors, including malfunction of meters and misapplication of rates, to create a single section addressing this process and repeals inconsistent requirements associated with certain types of metering technology. The proposed rule also updates the requirements associated with deposits and deferred payment agreements to establish uniform, consistent payment terms.

The proposed rule includes whistleblower protections that prohibit a utility from interfering with, restraining, or coercing any employee from disclosing information to the commission or other governmental body regarding the safety and reliability of the utility or retaliating against the employee for disclosing such information. The proposed rule also includes prohibitions against unconscionable, oppressive and deceptive practices.

The proposed rule updates the meter accuracy requirements to cover all types of utility meters and allows any meter to be used to measure water so long as it meets the accuracy requirements. The proposed rule also allows a utility, in lieu of periodic testing, to adopt a new meter replacement program that results in each meter being replaced within 20 years of the original date of installation if the utility has data to demonstrate that the meters remain accurate for the 20-year period.

The proposed rule revises conservation requirements to eliminate percentage benchmarks and instead require a water audit be conducted and used to establish utility goals to reduce non-revenue water. The proposed rule also eliminates duplication with administrative rules established by the DNR related to flushing and pressure.

Finally, the proposed rule updates and clarifies the rules related to utility and customer responsibilities during winter conditions and freezing. The proposed rule includes definitions of the facilities for which the

utility and customer are responsible, responsibilities for thawing and, if applicable, providing an alternative source of water, identification of the source of the freezing and annual customer notices, information to be included on notices when a utility requests that a customer run water to prevent freezing and a method for calculating the credits for the water run.

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

Rates and service rules for water public utilities are the exclusive jurisdiction of the States. There are no existing or proposed federal regulations pertaining to water quantity or water conservation that affect water public utilities. However, water public utilities must comply with regulations promulgated under the federal Safe Drinking Water Act, which may include conditions or restrictions on system design and construction to protect public health and ensure safe drinking water. The Great Lakes Compact, an interstate compact ratified by the U.S. Congress, applies to water public utilities that withdraw surface or groundwater from the Lake Michigan and Lake Superior watersheds.

## **F. Comparison with Similar Rules in Surrounding 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 all of the following:

1. Adopt a mandatory or voluntary water conservation program.
2. Regulate withdrawals from the Great Lakes watershed, both groundwater and surface water.
3. Prohibit the diversion of water from the Great Lakes watershed, with some limited exceptions.

Specifically, the Great Lakes Compact required each state to implement a water conservation and efficiency program by December 2010, including state-specific water conservation and efficiency goals and objectives and either voluntary or mandatory conservation requirements for water users. The DNR has adopted administrative rules to implement the Compact in chs. NR 850, NR 852, NR 856, and NR 860.

Because water utility regulation is a state matter, each state regulates its water public utilities differently. The commission has the most comprehensive jurisdiction over both municipal and privately-owned water utilities in the upper Great Lakes region. State 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 that promotes conservation, including seasonal rates, time of use rates, water budget rates, excess use rates, or inclining block rates. Public water utilities must update their plan and, upon notification, submit it to the Minnesota Department of Natural Resources for approval every ten years. Water utilities are also required to provide educational information about water conservation to their customers. The Minnesota Department of Natural Resources 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 percent of water pumped.

### Illinois

The Illinois Commerce Commission (ICC) regulates investor-owned utilities, including 33 water, 5 sewer, and 14 combined water and sewer utilities. Illinois has administrative rules governing applications for service, deposits, billing requirements, payment plans, irregular billing, refunds and credits and disconnections. However, 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 Department of Natural Resources 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 water pumped; 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. Iowa has administrative rules governing utility records, tariffs, metering, meter reading, extensions of service, customer information, deposits, inaccurate billing, disconnection of service, customer complaints and meter testing. In addition, the Iowa Department of Natural Resources 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.

#### Michigan

The Michigan Public Service Commission does not regulate water utility rates and charges. 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 has administrative rules governing records retention, metering, meter testing, meter accuracy, billing, billing inaccuracies, deposits, disconnection, reconnection, customer information, rate schedules and extensions. Indiana does not have other water conservation requirements for public water utilities outside of its responsibilities under the Great Lakes Compact.

### **G. Effect on Small Business**

This rule will not affect small businesses. The Wis. Stat. § 227.114(1) definition of “small business” states that to be considered a small business, the business must not be dominant in its field. The vast majority of water and combined water and sewer utilities are publicly owned and are not small businesses. Further, since water utilities and combined water and sewer utilities are monopolies in their service territories, they are dominant in their fields.

### **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, David Prochaska, at (608) 266-5739 or david.prochaska@wisconsin.gov. Small Business questions should be directed to the small business regulatory coordinator, Kristy Nieto at (608) 261-9419 or Kristy.Nieto@wisconsin.gov. Media questions should be directed to the Communications Director, Elise Nelson, at (608) 266-9600 or Elise.Nelson@wisconsin.gov. Hearing or speech-impaired individuals using TTY may call these numbers via Wisconsin Telecommunications Relay Service (WTRS) by dialing 711 and requesting to call one of these agency staff contact numbers.

## **FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS**

A completed Fiscal Estimated and Economic Impact Analysis are included as Attachment C.