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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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### **PUBLIC UTILITIES REGULATION IN WISCONSIN**

Public utility service, including the provision of electricity, water, and gas, is subject to unique regulation relative to other industries. This regulation is driven, in part, by concerns that unregulated, monopoly utilities could abuse their market power and impose excessive rates. Conversely, the regulation is also driven by concerns that true competition between utilities would result in duplicative infrastructure, unnecessarily burdening ratepayers. These issues, coupled with a recognition of the vital role that utilities play in modern life, have motivated the extensive regulation of utilities in Wisconsin and other states.

This information memorandum provides historical background on public utility regulation in Wisconsin and discusses key features of this regulatory framework.

### **HISTORICAL BACKGROUND**

Until 1907, Wisconsin's public utilities were largely regulated at the local level. Municipalities granted public utilities franchises<sup>1</sup> to operate within municipal boundaries, and exercised authority to regulate utility service and rates. Most electric service was provided by private entities, though some municipalities also owned and operated electric utilities. Conversely, most water service was provided by municipalities, though private businesses also owned and operated certain water utilities.<sup>2</sup>

Wisconsin's historic approach resulted in significant variation in utility regulation across the state. Some municipalities granted multiple franchises for the same service, creating competition between utilities. Other municipalities used their franchising authority to grant a monopoly to a single public utility. While the franchises granted by some municipalities expired every few years, others were perpetual.<sup>3</sup>

State policymakers questioned the value of competition between utilities. There was recognition that multiple utilities serving the same area would result in duplicative infrastructure and, therefore, waste and needless costs to ratepayers. There were also concerns that competition for customers could depress rates to a point that would threaten the financial viability of utilities, ultimately threatening the reliability of service.<sup>4</sup>

Questions also arose regarding the capacity of municipalities to adequately regulate utilities. As the complexity of utility service increased, municipalities found themselves lacking necessary technical expertise. Further, policymakers worried that local control was dominated by local

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<sup>1</sup> In this context, a franchise is an authorization (e.g., a right or license) granted by a government to an entity that affords that entity the exclusive right to offer services within a particular area.

<sup>2</sup> [Fred L. Holmes, \*Regulation of Railroads and Public Utilities in Wisconsin\* \(1915\).](#)

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*, and [William L. Crow, \*Legislative Control of Public Utilities in Wisconsin\*, \*Marquette Law Review\* 18, no. 2 \(Feb. 1934\).](#)

influences and biases, rendering such control inappropriate for utilities serving multiple communities.<sup>5</sup>

In response to these concerns, the Legislature enacted the 1907 Public Utilities Law, laying the framework for the system of utility regulation that exists today. The law limited competition among public utilities by granting them monopoly status and replaced municipal control with state regulation. Central to the law was the conclusion that the interests of consumers, industry, and investors were best served by giving monopoly power to public utilities while subjecting them to extensive regulation administered by a state commission. [Ch. 499, Laws of 1907.]

## **FRAMEWORK FOR PUBLIC UTILITY REGULATION**

Though Wisconsin law and the public utility industry have evolved considerably since the early 1900s, much of the framework established in the 1907 Public Utilities Law persists today. Key features of this approach, each of which is described in more detail below, include:

- Centralized regulatory authority, vested in the Public Service Commission (PSC).
- A broad definition of “public utility.”
- Monopoly status for public utilities.
- Minimum service standards.
- Utility rates set by the PSC.
- Eminent domain authority for public utilities and cooperatives, subject to state approval.
- Regulation of public utility ownership and securities.

### **Centralized Regulatory Authority, Vested in the PSC**

Under Wisconsin law, the PSC is the primary entity responsible for the regulation of public utilities.<sup>6</sup> The statutes enumerate a variety of powers and duties for the PSC, and broadly provide that the commission has jurisdiction to “supervise and regulate every public utility in this state and to do all things necessary and convenient to its jurisdiction.”<sup>7</sup> [[s. 196.02 \(1\), Stats.](#)]

The PSC is led by three commissioners, one of whom the Governor designates to serve as the chairperson. [[s. 15.79 \(1\), Stats.](#)] The commissioners each serve six-year terms and are appointed by the Governor with the advice and consent of the Senate. [[s. 15.06 \(1\) \(c\) 1., Stats.](#)] While the commissioners are ultimately responsible for determining the actions taken by the PSC, their work is supported by a professional staff of auditors, accountants, engineers, attorneys, planners, and economists.

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<sup>5</sup> *Id.*

<sup>6</sup> The 1907 Public Utilities Law transferred authority over public utility regulation from municipalities to the state’s Railroad Commission, which had been created to serve the similar function of regulating the rates and service of railroads in Wisconsin. In 1931, the Legislature established the PSC and transferred authority over public utilities to the new commission. [[Ch. 183, Laws of 1931.](#)]

<sup>7</sup> This information memorandum focuses on the PSC’s regulation of electric, water, and gas public utilities. However, the PSC also regulates certain, limited aspects of the telecommunications industry. Further, the PSC has various nonregulatory duties, including management of the state energy office and the administration of several grant programs.

## Broad Definition of a “Public Utility”

The scope of Wisconsin’s public utilities law is shaped by the statutory definition of a “public utility,” codified in [s. 196.01 \(5\), Stats.](#) The definition generally provides that a public utility is any entity that may “own, operate, manage or control . . . all or any part of a plant or equipment, within the state, for the production, transmission, delivery or furnishing of heat, light, water or power directly or indirectly<sup>8</sup> to or for the public.” It includes both privately owned entities and municipally owned entities. Thus, the PSC regulates investor-owned utilities and municipal utilities in much the same manner.

The public utility definition includes various exceptions that narrow its scope. [[s. 196.01 \(5\) \(b\), Stats.](#)] Notably, the definition excludes cooperative associations (“cooperatives”) that provide heat, light, power, or water to their members.<sup>9</sup> As a result of their exclusion from the public utility definition, the PSC does not regulate the rates or service standards of cooperatives. However, the PSC does exercise control over their large construction projects and service territories. [[ss. 196.491 \(3\) and 196.495, Stats.](#)]

## Monopoly Status for Public Utilities

Another core aspect of utility regulation in Wisconsin is the monopoly status afforded to public utilities.<sup>10</sup> To operate as a public utility, an entity must possess a grant of authority from the state, often referred to as an “indeterminate permit.”<sup>11</sup> [[ss. 196.01 \(3\) and 196.54, Stats.](#)]

The PSC is generally prohibited from authorizing another public utility or a cooperative to provide service where a public utility with an indeterminate permit or a cooperative is already providing a similar service. Similarly, a municipality is prohibited from establishing a public utility if there is already a public utility with an indeterminate permit in the municipality. [[ss. 196.495 \(1m\) \(a\), 196.50 \(1\) \(a\), and \(4\), Stats.](#)]

Under certain circumstances, a public utility’s monopoly status can be terminated. The PSC may authorize another public utility to provide competing service in an area if the PSC determines that public convenience and necessity requires it. State law can also compel the sale of a public utility to a municipality. More specifically, Wisconsin law establishes that a public utility is deemed to have consented, under its indeterminate permit, to a future purchase by a municipality in which the “major part” of the public utility is situated. This option can be exercised at the municipality’s discretion, subject to terms and conditions set by the PSC, and

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<sup>8</sup> Certain entities (known as independent power producers or wholesale merchant generators) sell electricity output at wholesale, either under long-term power purchase agreements with public utilities, or in markets operated by the Midwest Independent System Operator. While this could be seen as “indirectly” producing power for the public, the courts and the PSC have not interpreted the public utility definition to include these entities. The Wisconsin Supreme Court has recognized that a company does not render itself a public utility simply by furnishing power to a public utility, who in turn furnishes that power to the public. [*Union Falls Power Co. v. Oconto Falls*, 221 Wis. 457 (1936).]

<sup>9</sup> Cooperatives are not-for-profit organizations owned and managed by members for the purposes of providing service to members themselves.

<sup>10</sup> The idea that public utilities are provided monopoly status in exchange for government regulation of service and rates is often referred to as the “regulatory compact.” While this term does not appear in the Wisconsin statutes or administrative code, it is used in Wisconsin and in other states to describe the relationship between a public utility and a utility regulator.

<sup>11</sup> The 1907 Public Utilities Law provided that a public utility could exchange its municipal franchise for an indeterminate permit. [[Ch. 499, Laws of 1907, s. 1797m to 77.](#)] Because few public utilities made the exchange, a 1911 act mandated the conversion of all franchises to indeterminate permits. [[Ch. 596, Laws of 1911; s. 196.54 \(2\), Stats.](#)]

the purchase terminates the public utility's indeterminate permit. [[ss. 196.50 \(1\) \(a\) and 196.54 \(4\) and \(5\), Stats.](#)]

## Service Standards for Public Utilities

While a public utility benefits from its monopoly status, state law also obligates it to serve all customers who reasonably demand service.<sup>12</sup> [[s. 196.37 \(2\), Stats.](#)] This generally entails offering prospective customers the same type of service that the public utility already provides to nearby customers.<sup>13</sup> Additionally, state law generally prohibits a public utility from abandoning or discontinuing service without first obtaining approval from the PSC. [[s. 196.81, Stats.](#)]

Wisconsin law also specifies minimum standards for public utility service. The statutes broadly provide that a public utility must furnish “reasonably adequate” service and facilities. [[s. 196.03 \(1\), Stats.](#)] To this end, PSC regulations establish more specific, technical requirements for the provision of public utility service, including requirements relating to the reliability and nature of service (e.g., the voltage provided to customers).<sup>14</sup> A public utility must also include terms and conditions for its service within the rate schedules it files with the PSC (commonly referred to as a public utility’s “tariffs”). [[ss. 196.19 \(2\) and 196.20 \(1\), Stats.](#)]

## Rates Set by the PSC

In recognition of the market power held by public utility monopolies, Wisconsin law regulates the rates that public utilities charge to their customers. The statutes require rates to be “reasonable” and “just,” and public utilities are generally prohibited from raising rates without first obtaining PSC approval. [[ss. 196.03 \(1\) and 196.20 \(2m\), Stats.](#)] While the PSC has significant discretion in setting rates, it may not set rates so low that they qualify as confiscating public utility’s property, nor so high that they qualify as “extortionate” or “excessive.”<sup>15</sup>

The PSC generally uses rate-of-return regulation when setting rates. This form of ratemaking allows a public utility to recover costs of capital investments (e.g., power plants) while allowing investors (e.g., shareholders) to receive a return on their investment in the public utility.<sup>16</sup> In principle, the rate of return that the PSC authorizes reflects the return necessary to attract investor capital, and should be commensurate with the level of risk an investor incurs by choosing to invest in a public utility.<sup>17</sup>

Within rate regulation, certain public utility expenses (such as labor, fuel, and taxes) are not subject to a rate of return. While the PSC provides for recovery of these expenses within a public

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<sup>12</sup> While public utilities are obligated to serve those who reasonably demand service, PSC rules address circumstances under which a public utility may disconnect a customer. For instance, a public utility may disconnect a customer for nonpayment or for violations that interfere with the service of others. [See [subch. III, ch. PSC 113](#), and [ss. PSC 134.062 to 134.0625](#), and [185.37, Wis. Adm. Code.](#)]

<sup>13</sup> *Milwaukee v. Public Service Commission*, 268 Wis. 116 (1954).

<sup>14</sup> Standards relating to electric, gas, and water public utility service may be found in [chs. PSC 113, 134](#), and [185, Wis. Adm. Code](#), respectively.

<sup>15</sup> *Wisconsin Telephone Co. v. Public Service Commission*, 232 Wis. 274 (1939).

<sup>16</sup> The value of the property on which a public utility is authorized to earn a rate of return is often referred to as a public utility’s “rate base.”

<sup>17</sup> A more technical discussion of risk and rates of return for utilities may be found in John D. Quackenbush, *Cost of Capital and Capital Markets—A Primer for Utility Regulators*, National Association of Regulatory Utility Commissioners (Dec. 2019), <https://pubs.naruc.org/pub.cfm?id=CAD801A0-155D-0A36-316A-B9E8C935EE4D>.

utility's rates, the expenses are simply passed through to ratepayers and are not subject to an additional markup.

## **Eminent Domain Authority for Public Utilities, Subject to State Approval**

“Eminent domain,” or the power to condemn (i.e., “take”) private property for public use, is based upon the power of a sovereign state over property within its borders.<sup>18</sup> Though eminent domain is a governmental power that is generally not held by private entities, the state has conferred this power on public utilities and cooperatives in situations where private property is needed for certain facilities. [[s. 32.02, Stats.](#)] In some instances, PSC approval is required before a public utility or cooperative may exercise eminent domain authority. [[s. 32.07 \(1\), Stats.](#)]

Regardless of whether eminent domain is required, the state exercises control over the construction of public utility facilities by requiring PSC approval of certain projects. For the largest projects, a public utility must obtain a certificate of public convenience and necessity (CPCN) from the PSC.<sup>19</sup> When granting a CPCN, the PSC undertakes an extensive review process and must make a range of determinations about a proposed facility, many of which relate to the facility's siting. [[s. 196.491 \(3\), Stats.](#)]<sup>20</sup>

For relatively smaller projects, a public utility must obtain a certificate of authority (CA) from the PSC. The PSC may refuse to issue a CA if it finds that a project would: (1) substantially impair the efficiency of the service of the public utility; (2) provide facilities unreasonably in excess of probable future requirements; or (3) add to the cost of service without proportionately increasing the value or quantity of service.<sup>21</sup> The CA review process is less extensive than the CPCN review process, and generally does not consider issues related to siting. [[s. 196.49, Stats.](#)]

## **Regulation of Public Utility Ownership and Securities**

Various provisions of Wisconsin law address public utility ownership and securities. While some of these provisions were established under the 1907 Public Utilities Law, others are the product of subsequent legislative action. Broadly, these laws aim to prevent excessive rates, safeguard the financial viability of public utilities, and address arrangements that may be used to evade regulations.

To begin, public utility ownership is regulated and restricted in various ways. Notably, state law prohibits a foreign corporation from receiving authorization to own, operate, or control a public utility. [[s. 196.53, Stats.](#)] Additionally, formation of public utility holding companies is subject to PSC approval, and state law limits the maximum value of nonutility assets that may be held by a public utility holding company. [[s. 196.795, Stats.](#)] A public utility must also obtain PSC approval before merging with, or acquiring stock of, another public utility. [[s. 196.80, Stats.](#)]

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<sup>18</sup> Further information on eminent domain in Wisconsin can be found in [Legislative Council, Eminent Domain: Statutory Authority and Procedures, Information Memorandum \(Nov. 2014\)](#).

<sup>19</sup> The CPCN requirement applies to electric generating facilities with a capacity of 100 megawatts or greater, as well as certain high-voltage transmission lines. [[s. 196.491 \(1\) \(e\), \(f\), and \(g\), Stats.](#)]

<sup>20</sup> The requirement to obtain a CPCN is not limited to public utilities. Nonutility entities, such as independent power producers and electric cooperatives, are also required to obtain a CPCN for certain projects. However, the review requirements differ for projects proposed by utilities versus those proposed by nonutilities. Further discussion of these differences is included on pages 1 and 2 of [Legislative Council, Regulation of Solar Generation Facilities, Information Memorandum \(Feb. 2024\)](#).

<sup>21</sup> Certain projects are exempt from the CA requirement, including projects that fall below specified cost thresholds. [[s. 196.49 \(5g\), Stats.](#)]

In addition to the above, state law grants the PSC broad control over public utility securities (e.g., stocks and bonds). Before issuing securities, a public utility must apply for permission from the PSC, and the PSC may not approve security issuances that it determines are for improper purposes or for amounts in excess of the public utility's capital needs. Furthermore, the PSC may order a public utility to stop paying dividends to its stockholders. [[ss. 201.03, 201.05, and 201.11, Stats.](#)]

To address concerns relating to self-dealing, state law requires public utilities to obtain approval from the PSC for contracts and other arrangements with "affiliated interests" (generally, entities that have a certain amount of ownership in common with the public utility). The PSC may only grant its approval if it finds that the contract or arrangement is reasonable and in the public interest. [[s. 196.52, Stats.](#)]

This information memorandum was prepared by Benjamin Kranner, Senior Staff Analyst, on February 12, 2025.