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CLEARINGHOUSE RULE 95-040

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. The commission should review the entire rule to ensure that it consistently conforms to the preferred drafting form and style set forth in the Manual. Examples of provisions in the rule not adhering to this form and style include that the rule does the following:

- (1) Does not use the present tense and active voice in ss. PSC 98.04 (2) (c) 6. (intro.), 7. (intro.) and 10. and (e) and 98.06 (3). See s. 1.01 (1), Manual.
- (2) Does not use “shall” to denote mandatory or absolute duties or directives and “may” to denote permissive privileges or discretionary authorities in ss. PSC 98.03 (3) and 98.04 (1) (a), (2) (c) 1. to 3., 7. (intro.) and 10., (e) and (f), (5), (6) and (7) (a) and (b). See s. 1.01 (2), Manual.
- (3) Capitalizes the “Wisconsin advanced telecommunications foundation” rather than spelling it in lower-case letters in s. PSC 98.04 (2) (e) and (g). See s. 1.01 (4), Manual.
- (4) Expresses concepts in parentheses in ss. PSC 98.02 (1), (3) and (4) and 98.04 (2) (c) 1. e. See s. 1.01 (6), Manual.
- (5) Incorporates substantive provisions in the definition of “gross domestic product - price index” in s. PSC 98.02 (2). See s. 1.01 (7) (b), Manual.

- (6) Uses slashed alternatives in s. PSC 98.04 (2) (g). See s. 1.01 (9) (a), Manual.
- (7) Omits "... [revisor inserts date]" in references to the effective date of the rule in s. PSC 98.04 (2) (c) 4. and (d) 1. See s. 1.01 (9) (b), Manual.
- (8) Uses vague words, like "such," in ss. PSC 98.04 (7) (a) and 98.06 (2). See s. 1.01 (9) (c), Manual.
- (9) Does not end subunits with a period, rather than a semicolon, in s. PSC 98.04 (2) (b) 1. to 8. and (c) 1. a. to d., 6. a. and 7. a. and b. See s. 1.03 (intro.), Manual.
- (10) Does not capitalize the first letter in the first word in s. PSC 98.04 (2) (b) 1. to 9.
- (11) Does not cite internal references correctly in s. PSC 98.04 (1) (b), (2) (c) 5. and 8. (intro.), (d) 3. and (e) and (5). See s. 1.07 (2), Manual.
- (12) Does not use "Stats." in citing statutes in s. PSC 98.04 (7) (b). See s. 1.07 (2), Manual.

b. If the commission intends the text in s. PSC 98.04 (7) (intro.) to be a title to sub. (7), then it should not be included, as no other subsection in s. PSC 98.04 contains a title. See s. 1.05 (1) Manual. If the commission intends this introduction to introduce the text in pars. (a) and (b), then the introduction should be reworded to form a complete sentence when read with the text of par. (a) or (b).

c. The rationale for placing the rule in ch. PSC 98 is not apparent since the current Wisconsin Administrative Code does not contain chs. PSC 13 to 97. If the commission has a reason for skipping these chapters it should inform the reader of the reason in the analysis accompanying the rule. If there is no reason, the text of ch. PSC 98 should be placed in a lower-numbered chapter.

d. In general, text following a list or a formula should be placed in a separate subunit to facilitate reference to these provisions. For example, the paragraph following s. PSC 98.04 (2) (b) 9. should be numbered par. (bm); s. PSC 98.04 (5) should be divided into pars. (a) and (b), with par. (b) beginning with "(b) Revenue weights shall be calculated..."; and s. PSC 98.04 (6) should be divided into pars. (a) and (b), with par. (b) beginning with "(b) The 3-year maximum API..." Similarly, the paragraph beginning "Within 120 days..." following s. 98.04 (7) (b) should be numbered par. (c).

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

a. Since s. 196.196 (1) (c) and (e) 1., Stats., provides rule-making authority to the commission, these provisions should be cited in the analysis accompanying the rule as part of the statutory authority for the rule.

b. Section PSC 98.01 indicates that ch. PSC 98 implements s. 196.196, Stats. Similarly, s. PSC 98.03 (1) (intro.) applies to a “telecommunications utility opting to be price regulated under s. 196.196, Stats.” When read literally, these references to s. 196.196, Stats., imply that ch. PSC 98 applies to a telecommunications utility electing to be price regulated under s. 196.196 (1) (b), Stats., and to a telecommunications utility with 150,000 or less access lines in use in this state electing to be price regulated under s. 196.196 (4) (a), Stats. If the commission does not intend ch. PSC 98 to apply to elections under s. 196.196 (4) (a), Stats., then it should revise the references to s. 196.196, Stats. in ch. PSC 98 as appropriate.

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

a. The references to “these rules” and “rules promulgated here” in s. PSC 98.01 are vague. The commission should consider replacing these terms with references to “this chapter.”

b. The use of the phrase “in a manner as prescribed” in s. PSC 98.02 (2) is wordy; it appears that “in the manner prescribed” would suffice and be less awkward.

c. The definition of “services” in s. PSC 98.02 (8) is potentially confusing because a general term, “services,” is defined in terms of a specific phrase, “price regulated services.” The normal construction of definitions is to have a specific term defined as a subset of a general term. An alternative is to use the phrase “price regulated services” in ch. PSC 98 and to define “price regulated service” to mean a telecommunications service specified in s. 196.196 (1) (a) 1., Stats., or by the commission under s. 196.196 (1) (a) 2., Stats. In addition, the rule does not consistently use the defined term “services.” See, for example, the use of “price regulated services” in s. PSC 98.05 (2) and (3).

d. The use of the phrase “at least” in s. PSC 98.03 (1) (intro.) implies that the commission will require additional information as part of the utility’s filing required under sub. (1). To ensure uniform application of the rule, can the commission specify this additional information in the rule?

e. Section PSC 98.03 (1) (b) refers to “rates” but does not qualify the services to which these rates apply. The commission should specify the services, such as price-regulated services, to which these rates apply.

f. Section PSC 98.04 (1) (a) uses the undefined term “price regulated rate.” The commission should review whether the rule should defined this term.

g. To improve the grammar of ss. PSC 98.04 (1) (c) and 98.05 (2), these provisions should begin with an article such as “a.”

h. To minimize confusion over the interpretation of the equation for the annual price cap index (PCI) in s. PSC 98.04 (2) (intro.), the commission should consider clarifying the meaning of the “INC” and “PEN” terms. For example, s. PSC 98.04 (2) (c) 1. (intro.) and (d) 1. both specify a “PEN” term that applies to this equation. Does the commission intend that both of these “PEN” terms be added together in the formula in sub. (2) (intro.)?

i. The reference to the phrase “as measured in units” in s. PSC 98.04 (2) (b) (intro.) is potentially confusing. Does the commission mean to refer to “appropriate units”?

j. Section PSC 98.04 (2) (c) 2. applies to a telecommunications utility at the time it elects price regulation. Does the commission intend that subd. 2. should also apply to any telecommunications utility that has elected price regulation prior to the effective date of this rule? In contrast, par. (c) 4. authorizes a price regulated utility that has elected this regulation prior to the effective date of the rule to file company-specific benchmarks and measurement time frames within 30 days of the effective date of the rule. The commission should review these subdivisions and, as appropriate, reconcile these conflicting standards.

k. Are the industry standards referred to in s. PSC 98.04 (2) (c) 5. and 6. a. the same as the industrywide benchmarks referenced in s. PSC 98.04 (2) (c) 1.? If so, the commission should use consistent terminology in referring to these standards. If not, the commission should review whether the difference should be clarified.

l. Section PSC 98.04 (2) (c) 7. and 8. refer to the “per component value in Table 1 in s. PSC 98.04 (2) (g).” Similarly, s. PSC 98.04 (2) (d) 3. refers to the annual “component” that is assigned a “penalty or incentive value based on Table 1 in s. PSC 98.04 (2) (g).” Table 1 in par. (g) does not contain components; it does specify “adjustment factors.” To clarify the rule, the commission should consider specifying the relation between components and the adjustment factors in Table 1. Based on the Note following Table 1, it appears, for example, but is not explicit, that the quality of service components for a particular utility are to be added together and the sum of these components may not exceed the quality of service penalty value specified in Table 1.

m. The first sentence in Note 1 to Table 1 in s. PSC 98.04 (2) (g) essentially duplicates the content of the first sentence in s. PSC 98.04 (2) (g) and is thus redundant. The second sentence in Note 1 indicates the penalty values per individual component will vary depending upon the number of components and the assigned weights. Will there also be components in the infrastructure investment incentive value in Table 1 that par. (g) or this Note should also identify?

n. Since the rule is interpreting s. 196.196 (1), Stats., it appears that the text of s. PSC 98.04 (7) (b) would be clarified if the reference in the last sentence of par. (b) to s. 196.196 (1) (c), Stats., were replaced with a reference to the appropriate provisions in ch. PSC 98.

o. The rule specifies, in the last sentence in s. PSC 98.04 (7) (b) and in s. PSC 98.05, two additional mechanisms for the rates for price-regulated services of a price-regulated telecommunications utility to be changed. If these rates of a price-regulated telecommunications utility are changed under either of these two provisions, the rule is silent on the effect of the changes on subsequent allowable price increases and mandatory price decreases under the price cap formula specified in s. PSC 98.04 (7) (a). The commission should consider clarifying those effects.

p. The commission should review the formulas and associated text in s. PSC 98.04 (3) to (7) to ensure that the application of the formulas will conform with the intent of s. 196.196 (1) (c), Stats. For example, though sub. (7) (b) recognizes that during the initial three-year period after a utility elects price regulation, the rates for basic message telecommunications service may be increased subject to the statutorily specified price cap, subs. (3) and (5) specify that on the third anniversary date of a utility’s election, the cumulative “PCI” and “API” are to be reinitial-

ized at 100. This appears to preclude any increase in basic message telecommunications rates. Another example is that it is not apparent where subs. (3) to (7) implement the requirement in s. 196.196 (1) (c) that “[t]he first permitted increase after the telecommunications utility elects to become price regulated shall be limited by the most recent annual change in the gross domestic product price index, less 2 percentage points [3 percentage points for specified large utilities], plus or minus any penalty or incentive adjustment.” It appears that this provision is a one-time constraint that will occur at different times depending upon the utility and the service subject to the rate increase. At the very least, the commission should consider inserting appropriate references to sub. (7) (b) as exceptions to subs. (3) and (5). In addition, the commission should consider whether the rule would be clarified by doing any of the following:

- (1) Reorganize subs. (3) to (7) to specify the prescribed indices and formulas and related qualifiers for each major time period specified in s. 196.196 (1) (c), Stats. These time periods are the initial three-year period after a utility’s price regulation election during which rates for most price-regulated services may not be increased, the next three years and then subsequent years.
- (2) Add titles or text in s. PSC 98.04 to identify in the rule what provision in s. 196.196 (1) (c) a particular index, formula or qualifier implements.