

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 96-017

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.]

1. Statutory Authority

Section 66.069 (1) (a), Stats., provides that a municipally owned public utility may bill on a monthly, quarterly or semiannual basis. In contrast, s. PSC 185.32 authorizes any water utility to bill on a monthly, bimonthly or quarterly basis or on any other billing cycle authorized by the commission. The commission does not appear to have the authority to approve billing cycles for municipally owned utilities other than those cycles specified in s. 66.069 (1) (a), Stats., although it appears that the commission may authorize other billing cycles for privately owned water utilities. Section PSC 185.32 should be modified to conform with s. 66.069 (1) (a), Stats., with respect to municipally owned water utilities.

2. Form, Style and Placement in Administrative Code

a. The analysis to the rule identifies a number of statutes as providing authority to the commission for this rule-making order, only three of which actually provide explicit rule-making authority. These are ss. 196.02 (3), 196.16 (2) and 227.11 (2), Stats. Section 227.014 does not exist. The other cited statutes, presumably, are interpreted by the rule and the analysis should cite them as being interpreted, rather than as providing authority for the rule.

b. The text of the rule should not be shown in an attached appendix, but should be shown in the rule itself. Since this is a one-section rule, the entire text would appear in SECTION 1. Also, a second SECTION should be included providing an effective date for the rule. For a description of the arrangement of rule-making orders, see s. 1.02, Manual.

c. The rule repeals and recreates an entire chapter of the Administrative Code. However, the analysis indicates that many sections of this rule are unchanged. This makes the rule much longer than necessary and makes it difficult for a reader to determine what changes to policy are being accomplished by the rule. It would be much more appropriate for the rule to treat only those sections of ch. PSC 185 that are being changed and to omit those sections that are not being changed.

d. The fact that the rule repeals and recreates ch. PSC 185 suggests that that chapter is being entirely revamped and updated by the rule-making order. This would be good news, in that the chapter in question has extensive deficiencies in the areas of drafting style and format. However, the rule-making order does not correct these deficiencies and, in fact, introduces new deficiencies. If the commission intends to repeal and recreate ch. PSC 185, it should completely redraft that chapter to correct these deficiencies. The remaining comments in this report are illustrative of the kinds of problems that exist in the rule and are intended to serve as a conceptual guide, rather than step-by-step instructions, for the correction of these deficiencies.

e. The major subdivisions of ch. PSC 185 should be identified as subchapters, rather than parts. In addition, they should be indicated in the table of contents.

f. Section PSC 185.11 (4) makes use of the notation “and/or.” Slashed alternatives should be avoided. [See s. 1.01 (9) (a), Manual.]

g. The definitions in s. PSC 185.12 should be arranged in alphabetical order. [See s. 1.01 (7) (a), Manual].

h. In s. PSC 185.12 (1), the phrase “Public Service Commission” should be printed in lower case.

i. The definition of “ability to pay” in s. PSC 185.12 (5) contains substantive material that should be placed in the text of the rule. It appears that this term may not need defining.

j. Section PSC 185.12 should contain a definition of the term “utility,” so that the entire chapter may make use of the term rather than making use of alternatives such as “water public utilities.” However, see the use of the term “utilities” in the last sentence of s. PSC 185.17 (5).

k. The rule does not make correct use of notes. Explanatory material and examples should be placed in notes, rather than in the text of the rule. In s. PSC 185.12 (15), the material beginning with “examples of some public assistance are:” should be placed in a note. The last sentence in s. PSC 185.12 (16) should be placed in a note or placed in the text of the rule, rather than in a definition. Parenthetical references to other sections that may apply to the subject of a particular provision, such as that found in s. PSC 185.15, should be placed in notes.

l. References to “this rule” or “these rules” should be replaced by references to the specific rules in question. Presumably, s. PSC 185.13 should be referring to “this chapter” while s. PSC 185.16 (4) should be referring to “this section.” In s. PSC 185.17 (5), the words “the above” should be replaced by “this section.” There are numerous other examples.

m. Throughout the rule, history notes regarding the current rule are included. These notes are both inappropriate and inaccurate with regard to the proposed new rule.

n. All material that follows an introductory clause should read as a continuation of the sentence begun in the introduction. For example, s. PSC 185.16 (4) does not follow as a continuation of the sentence begun in s. PSC 185.16 (intro.). Section PSC 185.16 (intro.) and (1) to (3) should be renumbered s. PSC 185.16 (1) (intro.) and (a) to (c); s. PSC 185.16 (4) should be renumbered s. PSC 185.16 (2). Furthermore, the words “the utility” which begin both s. PSC 185.16 (2) and (3), as currently numbered, should be deleted for the same reason.

o. Mandatory actions should be identified by the use of the word “shall,” while permissive actions should be identified by the use of the word “may.” Alternative terms, such as “must,” “will,” “should” or “can,” should not be used. [See s. 1.01 (2), Manual.] For example, in s. PSC 185.17 (2), the word “will” should be replaced by the word “shall.”

p. The last sentence of s. PSC 185.17 (3) should be replaced by the following: “Contacting a one-call system, such as the diggers hotline system established under s. 182.0157 (1m), Stats., shall constitute compliance with this subsection.”

q. All material in a rule should be numbered. Whenever there is a break in the text to form a new paragraph, that new paragraph should be given a unique number. For example, the material following s. PSC 185.19 (5) should be numbered. Since the material does not follow from s. PSC 185.19 (intro.), that latter section should be renumbered s. PSC 185.19 (1) (intro.), and the unnumbered material should be numbered s. PSC 185.19 (2). Similarly, the unnumbered material on page 409 should be numbered. Also, all items in a list should be numbered. For example, the items in s. PSC 185.19 (3) and (4) should be numbered as subdivisions after subs. (1) to (5) are renumbered as pars. (a) to (e).

r. Is the document “Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities,” referenced in the Note following s. PSC 185.19, intended to be incorporated in this rule by reference? If so, see s. 2.08, Manual, regarding the procedures for incorporating standards by reference.

s. Rules should be written in the active voice clearly indicating who is responsible for complying with the specific requirements of the rules. For example, the first two sentences of s. PSC 185.22 (1) should both say “the utility shall keep” rather than “there shall be kept”; the third sentence should say “a utility shall give reasonable notice” rather than “reasonable notice shall be given.” In another example, the second sentence of s. PSC 185.37 (3) states “upon disconnection, a written explanation of the dangerous conditions shall be provided.” This tells neither who must provide the written explanation nor to whom the explanation must be provided. Presumably, the utility must provide the explanation, but does it provide the explanation to the customer, the Commission, or both?

t. The material in s. PSC 185.22 (5) is merely an explanatory comment and should be placed in a note. Also, what is meant by “the above information”? Does this refer to subs. (1) to (4)?

u. In s. PSC 185.32 (8) (c), the phrase “As provided for par. (8) (a)” should be replaced by the phrase “As provided in par. (a).” The entire rule should be reviewed for the appropriate use of internal cross-references.

v. Section PSC 185.33 uses an incorrect format for the numbering of subunits. See s. 1.03, Manual, for a description of the system of numbering used in rules. Also, internal references contained in this and other sections need to be corrected. [See s. 1.07 (2), Manual.]

w. The underscoring found in s. PSC 185.33 (1) (f), and in subsequent rule provisions should be omitted.

x. It appears that s. PSC 185.33 should be broken into a larger number of subsections. In particular, the material beginning with s. PSC 185.33 (1) (h) 2. is not information to be shown on a utility bill.

y. Introductory material should end with a phrase such as “all of the following” or “any of the following.” An example of a provision that fails to include such a phrase is found in s. PSC 185.36 (2) (intro.).

z. Section PSC 185.37 is poorly organized. This section should start with a complete list of the circumstances under which a utility may disconnect a customer’s service. It may be appropriate to follow this with a complete list of circumstances under which it is prohibited to disconnect service. Following these provisions, a complete outline of the procedures that a utility must follow in disconnecting service should be presented.

aa. Section PSC 185.37 (9) should read as follows: “Notwithstanding ss. PSC 113.1324 and 134.0624, a utility may disconnect residential water utility service at any time, unless water service is a necessary part of a dwelling’s heating system.”

ab. In s. PSC 185.52 (1) (e), the notation “(1)” should be deleted. Also, the use of the notation “etc.” should be avoided.

ac. In s. PSC 185.795, the notation “(1)” should be deleted since the provision is not divided into two or more subunits. [See, also, s. PSC 185.42.]

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

When a rule refers to another provision of law, it should identify that provision of law by cross-reference. For example, s. PSC 185.36 (6) should refer to s. PSC 185.37 instead of referring to “the rules pertaining to disconnection and refusal of service.” Section PSC 185.37 (9) should refer to the moratorium on disconnection of electric and gas service created under ss. PSC 113.1324 and 134.0624.

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

a. Section PSC 185.11 (3) is unclear and appears to be missing needed material. Also, given sub. (3), what is the purpose of the exception in sub. (4)?

b. No definition is given of the term “base meter,” although it is used rather frequently in the rule. This term should be defined.

c. In s. PSC 185.12 (6), to tie the concept to the actions of a utility, the phrase “committed or created by a utility” could be added after the second occurrence of the word “action.”

d. The definitions contained in s. PSC 185.12 (7) and (8) do not, properly speaking, define the terms. A definition of “customer-requested termination” might be a “cessation of service at the request of the customer.” A definition of “denied or refused service” might be “service that a utility has refused to provide to a present or future customer, occupant or premises.” However, are definitions of these terms actually needed?

e. The last sentence of s. PSC 185.15 might be clearer if written as an applicability provision, such as the following: “This section applies to, but is not limited to, water service for...”

f. The phrase “the volume of” should be inserted before the phrase “water used for fire protection” in s. PSC 185.31 (1).

g. In the sixth sentence of s. PSC 185.32, who approves the “acceptable third party”?

h. In s. PSC 185.33 (1) (a) and (b), what is the difference between “billable party” and “customer”? Since the term “customer” is defined as any party that receives service and is the party billed for that service, there appears to be no difference. In that case, the term “customer” should be used in both instances.

i. In s. PSC 185.33 (1) (h) 7., what authority to make a one-time late payment charge is referred to? Would it be clearer to state as follows: “If the utility’s approved rate tariff authorizes the utility to make a one-time late payment charge...”? The same comment applies to s. PSC 185.33 (1) (h) 8., with regard to monthly late payment charges.

j. In s. PSC 185.36, the text of the rule, as well as the titles, should make it clear that this section refers to residential service. The same is true for s. PSC 185.36 regarding nonresidential service.

k. In s. PSC 185.36 (6) (e), it appears that the word “such” should be inserted before the word “as.” Subsection (8) should be rewritten to read: “Residential service may be refused or disconnected for failure to pay a deposit request under the procedures in s. PSC 185.37.”

l. Does s. PSC 185.37 (2) (b) refer to outstanding account balances with any utility or only with the utility from which the customer currently receives or is requesting service? Also, it appears that the word “a” should be inserted before the word “previous.”

m. In s. PSC 185.38 (2), it appears that the word “the” should be inserted before the phrase “current bill.”

n. Section PSC 185.39 (1) provides that when a customer disputes a utility’s request for a deposit or other guarantee, disputes billing or disputes a disconnection or refusal of service, the utility must investigate the dispute promptly and completely. Subsection (2) provides that after a customer has pursued available remedies with a utility, the customer may request that commission staff informally review the disputed issue and recommend terms of settlement. This subsec-

tion also provides that the commission staff may request the utility to investigate the dispute. Why would the commission staff request an additional utility investigation after a customer has pursued available remedies with the utility, when those available remedies include the requirement that the utility investigate the dispute?

o. In s. PSC 185.39 (5) (a), it appears that the word “a” should be inserted before the word “formal.”

p. In s. PSC 185.42, it appears that the phrase “name of the complainant, and address” should be replaced by the phrase “the complainant’s name and address.”

q. In s. PSC 185.43 (2) (b), it appears that both occurrences of the word “its” should be replaced by the word “their.”

r. Section PSC 185.55 (intro.) should be rewritten to read: “(1) In this section, “system losses” means the difference between the metered pumpage into the distribution system and metered consumption.” The remaining subsections should be renumbered accordingly.