

PUBLIC SERVICE COMMISSION OF WISCONSIN

2019 Biennial Rules Report to Joint Committee for Review of Administrative Rules pursuant to Wis. Stat. § 227.29

1-AC-2019

Pursuant to Wis. Stat. § 227.26(4), the Public Service Commission of Wisconsin (Commission) petitions the joint committee for review of administrative rules (JCRAR) to repeal rules the Commission has determined to be unauthorized.

ORDER ADOPTING FINAL RULE

This is an Order of the Public Service Commission of Wisconsin proposing to repeal PSC 136.05, 173.02 (4), (6), (7), (11), (13), (14), and (15), 173.06, 173.07, 173.08, 173.09, 173.10, 173.11 and 173.12.

ANALYSIS PREPARED BY THE PUBLIC SERVICE OF WISCONSIN

A. Text of Rule

The proposed rule text is provided in Appendix A to this Order.

B. Statute Interpreted

Previous statutory authority for Wis. Admin. Code § 136.05 was Wis. Stat. § 196.97. Previous statutory authority for Wis. Admin. Code §§ PSC 173.02 (4), (6), (7), (11), (13), (14), and (15) and 173.06, 173.07, 173.08, 173.09, 173.10, 173.11 and 173.12 was Wis. Stat. 256.35 (3m).

C. Statutory Authority and Explanation of Authority

Pursuant to Wis. Stat. § 227.26 (4), the Commission may petition for repeal of an unauthorized rule. An unauthorized rule is one that “an agency lacks the authority to promulgate due to the repeal or amendment of the law that previously authorized its promulgation.”

Wisconsin Admin. Code. § PSC 136.05 restricts the non-essential use of natural gas. However, 2011 Wisconsin Act 154 repealed Wis. Stat. § 196.97 which prohibited the installation or connection to a natural gas distribution system any device that the Commission determined, by rule, to be a non-essential use of natural gas. 2011 Wisconsin Act 154 also repealed the Commission’s rulemaking authority under Wis. Admin. Code § PSC 136.05. This administrative code provision has an explanatory note stating,

“This section is unenforceable due to the repeal of s. 196.97, Stats., by 2011 Wis. Act. 154 and will be repealed.”

Wisconsin Admin. Code §§ PSC 173.02 (4), (6), (7), (11), (13), (14), and (15), 173.06, 173.07, 173.08, 173.09, 173.10, 173.11 and 173.12 relate to the Wireless 911 Fund. The Wireless 911 Fund was created by 2003 Wisconsin Act 48, which became law on September 2, 2003. Pursuant to the previous Wis. Stat. § 256.35 (3m), the Wireless 911 Fund reimbursed county governments and wireless providers for the costs incurred to establish an enhanced wireless 911 system that automatically reported the geographic location of callers placing wireless calls to 911. However, Wis. Stat. § 256.35 (3m) sunset in April 2009. As a result, the Commission no longer has rule-making authority related to the Wireless 911 Fund.

D. Related Statutes or Rules

There are no other related statutes or rules.

E. Plain Language Analysis

The Commission no longer has statutory or rulemaking authority for Wis. Admin. Code §§ PSC 136.05, 173.02 (4), (6), (7), (11), (13), (14), and (15), 173.06, 173.07, 173.08, 173.09, 173.10, 173.11 and 173.12. Therefore, the Commission has determined that these administrative code provisions are unauthorized due to the passage of 2011 Wisconsin Act 154 and Wis. Stat. § 256.35 (3m) sunset in April 2009. Pursuant to Wis. Stat. § 227.26 (4), the Public Service Commission of Wisconsin (Commission) petitions the joint committee for review of administrative rules (JCRAR) to repeal these administrative rules the Commission has determined to be unauthorized.

F. Agency Contact Person

Questions regarding this matter should be directed to Kara Koonce at (608) 267-2405 or Kara.Koonce@wisconsin.gov.

Dated at Madison, Wisconsin, the 26th day of August, 2021.

By the Commission:

A handwritten signature in black ink that reads "Steffany Powell Coker". The signature is written in a cursive, flowing style.

Steffany Powell Coker
Secretary to the Commission

KMK:ccs:DL:01822475

Appendix A

TEXT OF PROPOSED RULE

Section 1. PSC 136.05 is repealed.

Section 2. PSC 173.02 (4), (6), (7), (11), (13), (14), and (15) are repealed.

Section 3. PSC 173.06 is repealed.

Section 4. PSC 173.07 is repealed.

Section 5. PSC 173.08 is repealed.

Section 6. PSC 173.09 is repealed.

Section 7. PSC 173.10 is repealed.

Section 8. PSC 173.11 is repealed.

Section 9. PSC 173.12 is repealed.

Section 10. Effective Date. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
