

A detailed black and white line drawing of the Wisconsin State Capitol building, featuring a large central dome and a portico with columns. The drawing is centered on the page and serves as a background for the title text.

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CHAPTER 27
UTILITIES AND ENERGY

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TABLE OF CONTENTS

INTRODUCTION	1
STATE PUBLIC UTILITY REGULATION IN GENERAL.....	1
WATER SERVICE.....	3
Reliability, Availability, and Cost of Water Service.....	3
Minimum Water Quality and Safety Standards	3
TELECOMMUNICATIONS	3
The Universal Service Fund	4
The Wisconsin Broadband Expansion Grant Program	4
The Technology for Education Achievement (TEACH) Program.....	5
Municipal Broadband.....	5
Cable Video Service.....	6
ELECTRIC SERVICE	6
Generation.....	6
Transmission.....	7
Distribution.....	8
STATE ENERGY POLICY	8
Conservation and Renewable Energy Programs.....	9
Low-Income Energy Programs.....	11
ADDITIONAL REFERENCES	11
GLOSSARY	12

INTRODUCTION

The availability of heat, light, and water service are central to modern life. For this reason, an individual, business, or local government that provides one of these services to the public is deemed a “public utility” and is subject to regulations designed to ensure the availability of service and protect the interest of consumers and the public utilities themselves.

Although the requirements that govern a public utility depend in part on the type of service it provides, Wisconsin law generally regulates: (1) a public utility’s entrance into the Wisconsin market; (2) the area in which it may provide service; (3) the quality of its service; (4) the rates it may charge; and (5) the conditions under which it may terminate service.

This chapter provides an overview of the general regulations that govern all public utilities; discusses the industry-specific regulations that apply to water, telecommunications, and electric service; and briefly describes state policies relating to energy conservation and efficiency, and renewable energy.

STATE PUBLIC UTILITY REGULATION IN GENERAL

Wisconsin law defines “public utility” to mean 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 either directly or indirectly, to or for the public.” [s. 196.01 (5) (a), Stats.]

This definition includes both privately owned (investor-owned) entities and municipally owned entities, meaning that municipal public utilities and investor-owned public utilities are generally regulated in the same manner. Not included within this definition are cooperatives, which are not-for-profit organizations owned and managed by members for the purpose of providing service to the members themselves. Consequently, the state does not regulate the rates charged by cooperatives, although it does exercise control over their large construction projects and service territories. [s. 196.01 (5), Stats.]

To provide utility service in Wisconsin, a provider must possess an “indeterminate permit” issued by the Wisconsin Public Service Commission (PSC). The PSC is headed by three commissioners nominated by the Governor and confirmed by the Senate, who serve six-year terms, one of whom the Governor designates to serve as the chairperson. An indeterminate permit authorizes a public utility to provide service, protects it from competition, and subjects it to regulation and termination by the state. [ss. 15.06 (1) (c) 1., and 15.79 (1), Stats.]

The PSC is prohibited from authorizing a public utility or cooperative to provide service where another public utility or a cooperative is already providing a similar service, unless the PSC determines that the public convenience and necessity require authorizing the competition. Similarly, a municipality is prohibited from establishing a public utility if there is already a public utility in the municipality; although, a municipality in which the

major part of the public utility is situated, may, at its discretion, purchase the public utility for a price set by the PSC. [ss. 196.01 (3), 196.495 (1m) (a), 196.50 (1) (a) and (4), and 196.54 (4) and (5), Stats.]

A public utility may, with the approval of the PSC, enter into an agreement with another public utility or cooperative to change which utility will serve a given area. [ss. 196.495 (1m) (b) and (4) and 196.50 (1) (am) 1., Stats.]

In exchange for having the exclusive right to provide service in a particular area, a public utility must serve all who reasonably request service. This generally entails offering prospective customers the same type of service that the public utility already provides to customers located nearby. [s. 196.37 (2), Stats.; *Milwaukee v. Public Service Comm.*, 268 Wis. 116, 120(1954).]

A public utility must provide its customers with “reasonably adequate services and facilities.” To ensure service adequacy, the PSC exercises control over the service rules that a public utility has with its customers, sets performance standards, and requires public utilities to report on performance metrics, such as the frequency of service interruptions. To ensure that facilities are adequate, the PSC sets technical standards for equipment and requires public utilities to conduct certain inspection and maintenance activities. [ss. 196.03 (1), 196.19 (2), and 196.20 (1), Stats.]

Before constructing major new facilities, a public utility or a cooperative must obtain approval from the PSC. Among other reasons, the PSC may refuse 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 needs; or (3) add to the cost of service without proportionately increasing the value or quantity of service. [ss. 196.49 and 196.491, Stats.]

Unlike most industries, in which prices are set by the provider, the rates that a public utility may charge its customers are controlled directly by the state government through the PSC. The rates must be “reasonable” and “just.” If the PSC finds rates to be unjust or unreasonable, it must change the rates. Generally, rates are calculated to provide a public utility the opportunity to generate revenue sufficient to cover the cost of providing service plus a certain percentage return (i.e., profit) on its capital investment [ss. 196.03 (1), 196.19 (1), and 196.37 (1), Stats.]

A public utility may not discontinue providing service unless it first obtains approval from the PSC. In granting its approval, the PSC may impose any term, condition, or requirement that it deems necessary to protect the public interest. In addition, a public utility must obtain PSC approval for any changes in its service rules that reduce the public utility’s service obligations. [ss. 196.20 (1) and 196.81, Stats.]

WATER SERVICE

State law governs the reliability, availability, and cost of water service, while federal law largely sets minimum requirements relating water quality and safety.

Reliability, Availability, and Cost of Water Service

Most water utilities in Wisconsin are municipally owned, but a small number are investor-owned. Regardless of ownership, water utilities are subject to the general system of public utility regulation described in the preceding section. Municipally owned water utilities are entitled to the same rate of return (i.e., profit) permitted for investor-owned utilities. The income received by a municipal water public utility must first be used to meet operation, maintenance, debt service, and tax equivalent requirements for the utility, but any remaining income may be used for general city purposes or special municipal purposes. [s. 66.0811 (1), (2), and (3), Stats.]

Minimum Water Quality and Safety Standards

As described in Chapter 13, *Environmental Protection and Natural Resources*, the federal Safe Drinking Water Act establishes maximum contaminant levels for drinking water supplied from “public water systems,” which includes all systems that provide the public with water for human consumption through pipes and which have at least 15 service connections or regularly serve at least 25 individuals.

[42 U.S.C. ss. 300f (4) (A) and 300g; s. 281.61 (1) (c), Stats.]

Differing levels of federal regulation apply to a public water system depending on its number of service connections, number of people served, and the portion of a year for which a person receives service. The strictest regulations apply to “community water systems,” which are public water systems that serve at least 15 service connections used by year-round residents of the area, or which regularly serve at least 25 year-round residents. Fewer regulations apply to systems that serve 25 or more people for more than six months but less than one year, such as schools that have their own water supply. Still fewer regulations apply to public water systems that provide water in places where each individual consumer remains for only a short period of time, such as campgrounds. [42 U.S.C. s. 300f (15); s. 281.62 (1) (a), Stats.]

TELECOMMUNICATIONS

Most aspects of telephone, cable, and Internet service have been deregulated. With few exceptions, providers of these services are no longer required to make service available, and their rates are not controlled by state or federal agencies. State and federal activity is instead largely directed toward making service available and attainable through providing financial support to customers and service providers.

The Universal Service Fund

To help ensure that everyone can obtain and afford telecommunications service, the state created the Universal Service Fund (USF) in 1993. From the USF, the PSC provides direct assistance to low-income customers and customers in high-cost areas of the state. It also helps customers with disabilities obtain equipment to give them access to telecommunications and provides funding for the deployment of essential telecommunications services, such as telemedicine services in rural areas. The Legislature sets the budget for the program; the PSC apportions the cost among the telecommunications providers in the state, who then collect the funds from customers as a fee on their bills. USF revenue is also currently being used for broadband expansion grants, described below. [s. 196.218, Stats.]

The Wisconsin Broadband Expansion Grant Program

An interactive map of broadband service availability in Wisconsin is available at this address:

<https://psc.wi.gov/pages/programs/WBO.aspx>

The 2013-15 Biennial Budget Act (2013 Wisconsin Act 20) created the Wisconsin Broadband Expansion Grant Program. Under this program, the PSC awards grants to help incentivize and fund the construction broadband infrastructure. For-profit and not-for-profit organizations, including cooperatives and

telecommunications utilities, may apply for grants; in addition, a municipality may submit a joint application with another eligible applicant. [s. 196.504, Stats.]

In selecting among eligible projects, the PSC must give priority to projects that:

- Include matching funds.
- Involve public-private partnerships.
- Affect “unserved areas” (i.e., areas that lack fixed wireless or wired service that is provided at actual speeds of at least 20% of the upload and download speeds recommended by the federal government).
- Are scalable.
- Promote economic development.
- Will not result in delaying the provision of broadband service to areas neighboring the areas to be served by a proposed project.
- Will affect a large geographic area or a large number of individuals or communities that are “underserved” (i.e., are served by fewer than two providers).

Because the statutes do not prescribe the relative weight to be given to each of the priorities, the PSC has discretion in applying them.

The Technology for Education Achievement (TEACH) Program

Wisconsin facilitates Internet access for educational institutions through the TEACH Program, which distributes funding through three subprograms: (1) Educational Telecommunications Access; (2) Information Technology Block Grants; and (3) Educational Technology Training Grants.

The Educational Telecommunications Access subprogram helps subsidize the cost of providing schools with access to Internet service. Wisconsin law authorizes the Department of Administration (DOA) to provide telecommunications services to schools and certain other educational and governmental entities. DOA provides service by contracting with a consortium of private service providers to obtain access to a wide area network called BadgerNet. DOA charges each school \$100 or \$250 per month, which is less than the cost DOA must pay to obtain service. The Educational Telecommunications Access subprogram uses money from the USF to cover the difference in the cost. [ss. 16.972 (2), 16.99 (2g), 16.997 (2) and (2c), and 20.505 (4), Stats.]

The Information Technology Block Grant subprogram provides schools and public libraries in rural areas with funding for improving information technology infrastructure. [s. 16.9945, Stats.]

The Educational Technology Training Grants subprogram provides funding to consortia of eligible school districts, consortia of eligible public libraries, and eligible public library systems for the costs of training teachers and librarians to use educational technology. [s. 16.996, Stats.]

Municipal Broadband

With certain exceptions, in order for a city, village, or town (“local government”) to construct, own, or operate a facility for providing broadband service, it must hold a public hearing on the proposal. At least 30 days before the hearing, it must also prepare and make publicly available a report estimating the total costs and revenues derived from the facility, along with a cost-benefit analysis for a period of at least three years. [s. 66.0422 (2), Stats.]

In lieu of preparing a report and conducting a study, a local government may instead ask, in writing, each person that provides broadband service within the boundaries of the local government whether the person currently provides or intends to provide, within nine months, broadband service to the area proposed to be served by the local government. The local government may proceed to construct, own, or operate a facility for providing broadband service if any of the following conditions are satisfied:

- No one responds in the affirmative within 60 days.
- The local government finds that a person who responded by saying that it currently provides broadband service does not actually do so.

- The local government finds that a person who responded by saying that it intended to provide service within nine months did not actually begin providing service within that period. [s. 66.0422 (3d), Stats.]

Cable Video Service

For most of its history, land-based video service (i.e., cable television) was regulated by municipalities under franchise agreements negotiated between municipalities and service providers. 2007 Wisconsin Act 42 replaced municipal franchises with state franchises, issued by the Department of Financial Institutions (DFI). Generally, a franchise holder must pay each municipality in which it provides service a fee of up to 5% of the provider's revenues generated in the municipality, and must make certain channel capacity available for channels designated for public, educational, or governmental use. [s. 66.0420, Stats.]

Federal law requires video service providers to offer an entry-level basic tier service that includes all commercial and noncommercial educational local broadcast stations. In addition, a provider may also offer premium tiers with more programming than the basic service. [47 U.S.C. s. 543 (b) (7).]

Under federal law, a franchising authority, such as DFI, may regulate the rates charged for the basic service by a particular provider, if the Federal Communications Commission (FCC) concludes that the provider is not subject to "effective competition." In June 2015, the FCC issued an order finding that all cable systems nationwide are subject to "effective competition." As a result, DFI may not regulate rates for basic service unless it goes through a process at the federal level to prove that a particular cable provider is not subject to effective competition. [47 U.S.C. s. 543 (a) (2) (A); FCC Order 15-62.]

ELECTRIC SERVICE

Providing electric service involves the generation of electric power, the long-range transmission of power over high-voltage transmission lines, and the distribution of power to end users over low-voltage lines.

Generation

Any person wishing to construct a generation facility over a certain size must first obtain approval from the PSC.

For most generation facilities with a capacity of less than 100 megawatts (MW), a person must obtain a "certificate of authority" from the PSC.

The PSC may refuse to grant its approval if it finds that the proposed facility would: (1) substantially impair the efficiency of the public utility; (2) provide facilities unreasonably in excess of future needs; or (3) add to the cost of service without proportionately increasing the value or quantity of service. [s. 196.49 (3), Stats.]

The three components of the electric power system are generation, transmission, and distribution.

Before constructing a generation facility with a capacity of 100 megawatts or more, a person must obtain a Certificate of Public Convenience and Necessity (CPCN). The PSC may not approve the issuance of a CPCN, unless it finds that a proposed facility satisfies all of the requirements from the “certificate of authority” process listed above, as well as numerous other criteria, including: (1) the proposed facility satisfies the energy needs of the public; (2) the design and location of the facility is in the public interest, considering alternatives, as well as economic, safety, and environmental factors; (3) the proposed facility will not have an undue adverse ecological, public health, or aesthetic impact. [s. 196.491 (3), Stats.]

Sources of electric generation with a capacity of 15 megawatts or less that are located near the point where the electricity will be used or in a location that will support the functioning of the electric power distribution grid are referred to as “distributed energy generation resources” and are governed by interconnection rules developed by the PSC. [s. 196.496 (1), Stats.]

Distributed generation resources such as solar panels may be owned by the party on whose property they are located or by a third-party that manages the installation and ongoing operation of the facility in exchange for a fee paid by the property owner. However, third parties providing such service may be considered to be acting as a public utility without authorization, in violation of Wisconsin law.

In October 2017, the Wisconsin Solar Energy Industries Association requested that the PSC make a declaratory ruling regarding whether certain third-party solar services are considered to be “public utility” services that may be provided only by a public utility. In December 2017, the PSC refused to do so, stating that “the question...raises significant public policy considerations that the Commission believes are better left for the Legislature’s determination...” [Final Order in PSC Docket 9300-DR-102.]

Transmission

Authority over electric transmission is shared by the PSC, the Federal Energy Regulatory Commission (FERC), and the Midcontinent Independent System Operator (MISO), which is a regional transmission organization (RTO) authorized by the FERC to plan and oversee the construction and operation of transmission facilities within a region that includes all or part of 15 states, including Wisconsin, and one Canadian province.

Over the past 25 years, Wisconsin and the federal government have encouraged regional planning and operation of transmission facilities in order to enhance system reliability and foster competition in the electric industry. In the late 1990s, the federal government encouraged utilities to form and join RTOs which would, among other functions, coordinate a regional planning process for new transmission facilities.

During the same period, Wisconsin provided incentives for electric utilities and cooperatives in the eastern part of the state to transfer ownership of their transmission facilities to the American Transmission Company (ATC), although in western Wisconsin,

Xcel Energy and Dairyland Power Cooperative did not transfer their facilities. Wisconsin law also required ATC and any other transmission-owning utility or cooperative to join MISO and transfer operational control of transmission facilities to MISO. [1997 Wisconsin Act 204; 1999 Wisconsin Act 9; FERC Order 2000.]

Wisconsin law requires MISO to ensure that each transmission facility under its control in Wisconsin is planned and constructed as part of a single system. It also requires that, if MISO determines that there is a need for additional transmission facilities in Wisconsin, MISO must order a utility to construct them. [s. 196.485 (1) (c) and (3) (b), Stats.]

Once a plan for a new transmission facility, such as a high-voltage line, is approved by MISO, it must also be approved by the PSC before it may be constructed. [ss. 196.49 and 196.491 (3), Stats.]

The rates that transmission utilities charge other utilities for transmission service are set by MISO with the approval of FERC. Utilities that pay the charges then include the payments in their operating costs that they document when requesting the PSC's approval of the rates they charge their retail customers for electric service.

Distribution

Only public utilities and cooperatives may provide distribution service in Wisconsin. Public utilities that provide distribution service are subject to the general system of public utility regulation described earlier in this chapter, which generally addresses the main issues involved with distribution service.

STATE ENERGY POLICY

The state energy policy, set forth in s. 1.12, Stats., is comprised of five parts, including a requirement that state agencies and local governmental units investigate and consider the maximum conservation of energy resources as an important factor when making any major decision that would significantly affect energy usage.

The energy policy establishes the following three goals relating to the generation and use of energy:

(1) reducing the ratio of energy consumption to economic activity in the state; (2) basing new capacity for electric generation on renewable energy resources, to the extent feasible; and (3) increasing the forested area of the state in order to ensure a future supply of wood fuel and reduce atmospheric carbon dioxide.

The statutes include a priority list for state agencies and local governments to consider for meeting the energy demands of energy users

The five-part state energy policy is designated to guide the state in decisions affecting its own energy use and regulatory actions affecting others' energy use.

in the state. [s. 1.12 (4), Stats.] To the extent cost-effective and technically feasible, the options must be considered in the following order:

- Energy conservation and efficiency.
- Noncombustible renewable energy resources.
- Combustible renewable energy resources.
- Advanced nuclear energy using a reactor design or amended reactor design approval after December 31, 2010, by the U.S. Nuclear Regulatory Commission.
- Nonrenewable combustible energy resources, in the following order listed:
 - Natural gas.
 - Oil or coal with a sulfur content of less than 1%.
 - All other carbon-based fuels.

The state energy policy includes directives to state agencies and local governmental units requiring them to prioritize energy conservation and efficiency and a list of the types of corridors to be prioritized when siting new electric transmission lines.

The energy policies in s. 1.12, Stats., apply only to state and local governments. The policies do not dictate the outcome of any individual agency decision. An agency’s compliance with the policies is reflected in the process the agency uses in reaching decisions, as well as the overall pattern of the agency’s decisions.

Conservation and Renewable Energy Programs

“Focus on Energy”

The state’s principal conservation and renewable energy program is known as the Focus on Energy program. Under this program, all investor-owned electric and gas utilities are required to collectively fund and contract for the administration of statewide energy efficiency and renewable resource programs. Each utility must spend an amount equal to 1.2% of its annual operating revenue derived from retail sales for these programs. The PSC is directed to oversee the programs, set goals and priorities, establish program design standards, and coordinate all energy efficiency and renewable resource programs. [s. 196.374, Stats.]

Program activities include educating energy users regarding opportunities to save money through reducing their energy use and providing technical and financial assistance for energy users to purchase efficient appliances, lighting, and mechanical equipment; to weatherize their homes; to increase the efficiency of industrial processes; and to install renewable energy systems.

Focus on Energy is the state’s principal conservation and renewable energy program.

The statutes give municipal electric utilities and electric cooperatives the option of either joining the Focus on Energy program or conducting what are termed “commitment to community” programs, in which the utility or cooperative provides a program similar to Focus on Energy to its customers or members. [s. 196.374 (7), Stats.]

Renewable Portfolio Standard

A renewable portfolio standard (RPS) is a requirement that electric power suppliers include a specified amount of generation capacity that is derived from renewable resources in their electric supply portfolios. Electric power suppliers may comply with the standard by generating electricity from renewable sources, buying electricity from another generator that uses renewable sources, or buying credits from another supplier that has generated or bought more electricity from renewable sources than required to meet the standard. [s. 196.378, Stats.]

An RPS requires suppliers of electric power to include a specified amount of power from renewable resources in their portfolio of electric supply.

The statutes prescribe a unique RPS for each electric supplier that is based on the supplier’s portfolio from the years 2001 to 2003. [s. 196.378 (2) (a) 2., Stats.] The statutes contain a statewide goal that approximately 10% of electric sales be derived from renewable resources by 2015. [s. 196.378 (2) (a) 1., Stats.] PSC staff report that all electric providers are in compliance with their obligations under the RPS, and that the statewide goal has been met.

Tax Incentives for Renewable Energy

Solar and wind energy systems are exempt from the property tax and the following are exempt from the sales and use taxes:

- Biomass that is used for fuel sold for residential use.
- Any residue that results from the harvesting of timber or the production of wood products that is used as fuel in a business activity.
- Certain equipment that generates energy from wind, sunlight, or agricultural waste, and electricity or energy produced by such equipment.

Tax exemptions encourage the use of renewable resources by reducing the cost.

[ss. 70.111 (18), 77.54 (30) (a) 1m. and 4., and 77.54 (56) (a), Stats.]

Low-Income Energy Programs

For information regarding Home Energy Plus, including where to apply for assistance, see:
www.homeenergyplus.wi.gov

DOA administers low-income energy assistance programs under the program name Home Energy Plus. The state funds the programs with federal funds and fees collected by electric and natural gas utilities that are remitted to the state. The programs are implemented by contract agencies at

the county level. The programs offer a variety of services, including direct bill payment assistance for some customers who are unable to make full payments and early intervention programs to identify and assist customers in danger of falling behind in bill payments. The programs also provide financial assistance for the installation of insulation and other energy conservation measures in the homes of low-income families to reduce the total energy needs of the homes, thereby making energy more affordable for those families. In addition, the programs provide emergency furnace repair or replacement assistance. [s. 16.957, Stats.]

ADDITIONAL REFERENCES

1. Information Memoranda prepared by Legislative Council staff, available at <http://www.legis.wisconsin.gov/lc>:
 - *Overview of Wisconsin's Public Utility Regulatory System*, IM-2017-01.
 - *Regulation of Telecommunications Services*, IM-2011-07.
 - *Municipal Regulation of Wind Energy Systems (2009 Wisconsin Act 40)*, IM-2009-05.
 - *The New Law Relating to State-Issued Franchises for Video Service Providers*, IM-2008-01.
 - *2005 Wisconsin Act 141: Energy Efficiency, Renewable Energy, and Energy Policy*, IM-2006-01.
 - *Customer-Owned Electric Generation: Opportunities for Customers, Challenges for Utilities*, IM-2015-07.
2. Low-Income Energy Programs: <http://homeenergyplus.wi.gov>.
3. Other:
 - Wisconsin PSC: <http://psc.wi.gov>.
 - FERC: <http://www.ferc.gov/>.
 - FCC: <http://www.fcc.gov/>.
 - Federal Energy Information Administration: <http://www.eia.doe.gov/>.

GLOSSARY

CA: Certificate of Authority.

CPCN: Certificate of Public Convenience and Necessity.

FCC: Federal Communications Commission.

FERC: Federal Energy Regulatory Commission.

IPP: Independent power producer.

MISO: Midcontinent independent system operator.

NRC: Nuclear Regulatory Commission.

PSC: Public Service Commission.

RPS: Renewable portfolio standard.

RTO: Regional Transmission Organization.

TEACH Program: Technology for Educational Achievement Program.

USF: Universal Service Fund.

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