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FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-080

AN ORDER to create chapter Adm 43, relating to nonmunicipal electric utility public benefits fees.

Submitted by **DEPARTMENT OF ADMINISTRATION**

04-25-00 RECEIVED BY LEGISLATIVE COUNCIL.

05-19-00 REPORT SENT TO AGENCY.

RNS:JES;jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 00-080

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 September 1998.]

1. Statutory Authority

a. Section 16.957 (4), Stats., sets forth a number of requirements for establishing the amounts of public benefits fees. These requirements include that the amounts must be established by the department by rule, the fees must be set to raise the specified amount of revenue each year, based upon statutory formulas that include parameters that change by year, the fees may vary between classes of electric utility customers but must be uniform within a class, and each customer's fees may not exceed 3% of the total of every other charge for which the customer is billed over the specified approximately eight-year period. The rule does not conform with all of these requirements. For example, the amount of the fees are not set in the rule but in utility collection plans approved by the department. While the fees must, in general, be uniform within a class of customers served by a particular utility, the fees may vary between utilities for the same class of customers. Also, the 3% cap is implemented on a monthly basis by the utility collecting the fee rather than over the approximately eight-year period specified in the statute.

Based on conversations with department staff, it appears that this noncompliance is due to a variety of factors including conflicts between the statutory requirements and prohibitively high administrative expenses to directly implement the requirement. To craft a workable rule, the department's solution to this situation appears to be to forgo implementing some of the requirements, modifying others and deferring others to implementation by the utilities collecting the fees.

The department should review the entire rule to ensure that it has minimized the irreconcilable conflicts among statutory requirements in setting the amounts of the public benefits fees and provide in the analysis accompanying the rule a description of how the rule treats each statutory requirement so that a reader can determine the department's priorities in addressing these conflicts.

b. Under the rule, each nonmunicipal electric utility must collect public benefits fees from its residential and nonresidential customers. See, for example, s. Adm 43.07 (3). As defined in s. Adm 43.03 (14) and (16), the combination of customers who are "nonresidential customers" and "residential customers" may not equate to all of the customers of a nonmunicipal electric utility. As a result, some customers may not be subject to the public benefits fee. This is contrary to s. 16.957 (4) (a), Stats., which requires "each electric utility . . . shall charge *each* customer a public benefits fee . . ." [Emphasis added.] If the department plans on interpreting "nonresidential customers" to include all customers that are not "residential customers," then the definition of "nonresidential customer" should be clarified to either be customers that are not residential customers or expanded to include the other types of electric utility tariffs that establish other types of customer classes, such as street lighting.

c. Under s. 16.957 (2) (c) 4., Stats., the department's rules must require each electric utility to allow its customers to include voluntary contributions *with bill payments for electric service* to assist in funding one or more of the department's public benefit programs. Section Adm 43.10 (1) requires each electric utility to include with the annual public benefits report mailing an insert and return envelope for a customer to use to make a voluntary contribution to the department's programs. While the department appears to have the authority to require this insert and return envelope, the use of the insert and return envelope does not comply with the requirement in s. 16.957 (2) (c) 4., Stats., for the creation of a mechanism for a customer to make a contribution via the customer's bill payment to the utility.

2. Form, Style and Placement in Administrative Code

- a. The treatment clause for SECTION 1 should end with a colon rather than a period.
- b. All section titles in the rule should be written with an initial capital letter and in bold print, but not underscored. [See s. 1.05 (2) (b), Manual.]
- c. All subsection and paragraph numbering within the rule should be enclosed in parentheses, not brackets. [See s. 1.03 (3) and (4), Manual.]
- d. The definitions in s. Adm 43.03 which are identical to statutory definitions should use a consistent format. For example, s. Adm 43.03 (7) uses the phrase "has the meaning specified in" and s. Adm 43.03 (11) uses the phrase "has the meaning set forth in."
- e. The definition of "public benefits fee" in s. Adm 43.03 (15) includes the substantive phrase "and is identified as a non-taxable fixed charge on a customer's electric bill." Under the preferred drafting style, substantive provisions are not incorporated as part of a definition. [See s. 1.01 (7) (b), Manual.]

f. Once a rule defines a term, portions of the definition should not be repeated when the term is used in the text of the rule. This style was not followed, for example, in s. Adm 43.05 (1) where the phrase "to be collected from all electric providers" follows "aggregate public benefits fee" and repeats part of the definition of "aggregate public benefits fee" in s. Adm 43.03 (1).

g. In general, s. Adm 43.06 relates to the procedures the department will follow in allocating the public benefits fee to each nonmunicipal electric utility. Since s. Adm 43.06 (2) (e) does not relate to this allocation procedure, but instead to a process for a customer to seek relief from its nonmunicipal electric utility when its combined public benefits fees exceed \$750 in any month, it appears that par. (e) should be placed in a different section in the rule, such as s. Adm 43.07.

h. Section Adm 43.06 (2) (intro.) is not properly drafted as introductory material since it does not end in a colon and lead into the subunits that follow. [See s. 1.03 (8), Manual.] It should be numbered as par. (a) and the following paragraphs should be renumbered.

i. The department should consider placing the contents of s. Adm 43.09 (1) in multiple subsections. In addition to having provisions relating to the department's review of a nonmunicipal electric utility's administrative expenses, as indicated by the subsection title, this subsection also contains provisions relating to the process for a utility to request these expenses, the contents of the request, the treatment of approved expenses and the appeal of the department's determination of eligible expenses.

j. The preferred style for expressing a prohibition is to state "no nonmunicipal electric utility may . . ." or "a nonmunicipal electric utility may not . . ." This style was not followed in the second sentence in s. Adm 43.11 (4).

k. Notes may not include substantive requirements and are not part of the substantive provisions of the rule. [See s. 1.09 (1), Manual.] As such, the content of the note following s. Adm 43.12 (3) relating to implementation of the public benefits fee collection plan in fiscal year 2001 and modifying deadlines for these plans for fiscal year 2000, should be incorporated into the text of the rule.

3. Conflict With or Duplication of Existing Rules

Section 16.957 (4) (a), Stats., directs each nonmunicipal electric utility to charge each customer a public benefits fee in an amount established in the department's rules. Under s. 16.957 (4) (am), an electric utility must include a public benefits fee "in the fixed charges for electricity in a customer's bill." The definition of "public benefits fee" in s. Adm 43.03 (15) requires the fee to be identified as a "non-taxable fixed charge on a customer's electric bill." While a separate nontaxable fixed charge may not be consistent with the intent of s. 16.957 (4) (a), Stats., staff at the department report that the separate charge requirement was established to conform with the billing requirements established by the Public Service Commission in s. PSC 113.16 (1) and to enable a customer to compute the amount of taxes owed on a bill and the total

amount of a bill. Under s. PSC 113.16 (1), all charges, credits and taxes must be itemized on the bills provided by large investor-owned electric utilities to their customers.

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

a. Since the rule includes provisions relating to voluntary contributions to the department's public benefits programs and methods for determining the amounts of various factors in the "low-income need," the analysis accompanying the rule should include s. 16.957 (2) (c) 4. and 5., Stats., in the list of statutes authorizing rule-making.

b. The reference in the analysis to the rule interpreting s. 16.957, Stats., is unduly broad as this section includes the department's duties to create various public benefits programs and provisions relating to municipal electric utilities' and retail electric cooperatives' commitment to community programs, which are not addressed in the rule.

c. Section 16.957 (4) (b), Stats., directs the department to promulgate rules establishing the amount of public benefits fees in consultation with the Council on Utility Public Benefits. The analysis accompanying the rule should indicate that this consultation has taken place. If it has not, the department should consult with the council prior to promulgating the rule.

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

a. The analysis accompanying the rule needs to be more elaborate. It should contain sufficient details to enable the reader to understand the content of the rule, including the steps that will be followed to calculate a nonmunicipal electric utility customer's public benefits fee. See also comment 1. a.

b. The definition of "aggregate public benefits fee" in s. Adm 43.03 (1) is potentially confusing as this definition refers to "the total annual fee to be collected . . . from all electric providers." Since this definition is written with the collection language in the passive voice, it is not clear who is collecting this fee. If this phrase refers to the department collecting the fee, then the definition should be revised to reflect the fact that under s. 16.957 (5), Stats., the department does not collect a fee from electric providers that are retail electric cooperatives or municipal electric utilities unless the municipal utility or retail electric cooperative agrees to contribute part or all of the public benefits fees that it charges to the department's public benefits programs. If the phrase refers to the electric providers collecting the fee, then the definition should be revised to end with "by all electric providers."

c. The department should review its definition of "public benefits fee" in s. Adm 43.03 (15) to ensure that the rule uses this term consistently and that this use is consistent with the statutory use of the term. Subsection (15) defines the term to be the total amount that the department will collect from a nonmunicipal electric utility; that is, the sum of the fees that the utility collects from its residential and nonresidential customers. Section 16.957 (4) (a), (am) and (b), Stats., use the term to refer to the charge assessed an individual customer of a nonmunicipal electric utility. In the rule, the term is used sometimes in the collective sense, see ss. Adm 43.06 (2) (intro.) and 43.07 (1); sometimes as the individual fee, see s. Adm 43.06 (2)

(e) and the last sentence in s. Adm 43.07 (3); and sometimes in a way that it is not clear, see s. Adm 43.06 (2) (c) and (d).

d. A nonmunicipal electric utility must make monthly payments to the department of "the amount invoiced" by the department to the utility under s. Adm 43.08 (1). The amount that is invoiced is the public benefits fee that the department allocates to the utility under s. Adm 43.06 (2). Since the definition of "public benefits fee" in s. Adm 43.03 (15) includes the utility's portion of the aggregate public benefits fee plus the utility's *reasonable and prudent expenses*, as drafted, the department will be collecting each nonmunicipal electric utility's reasonable and prudent expenses rather than providing for the recovery of those expenses by these utilities. Is this the department's intent? If it is the department's intent, then the authority for the department collecting these expenses rather than allowing the utilities to recover these expenses is not apparent.

e. The rule contains a number of vague references to data sets compiled by either units within the department or by federal agencies. The department should review the entire rule and clarify these references so that a reader will know which specific data set is being used in the implementation of the particular provision in the rule. See, for example, ss. Adm 43.04 (1) to (3), 43.05 (2) and 43.06 (1).

f. The department should review the calculations called for in the rule to ensure that the time periods covered in the calculations clearly correspond to the periods in the formulas in s. 16.957, Stats., used to calculate public benefits fees. For example, the computation of "low-income need percentage" under s. 16.957 (1) (o), Stats., requires the computation of the "low-income need" in fiscal year 1998-99. It is not clear how specification of the "most current data available" in s. Adm 43.04 (1) to (3) used to calculate low-income need under the rule relates to low-income need in fiscal year 1998-99. Also, the specification of which data will be used would be clearer if rather than using references such as to the "most current data available" or "most recently published data," as in ss. Adm 43.04 (3) and 43.05 (2), the rule relates the date of the data to the schedule for the development of a given fiscal year's aggregate public benefits fee and nonmunicipal electric utility public benefits fees under ss. Adm 43.05 (1) and 43.06 (2).

g. As drafted, the department will be using two different counts of nonmunicipal electric utility customers in calculations under the rule. The department will use energy information administration data to allocate the aggregate public benefits fee between the portion to be collected from residential customers and the portion to be collected from nonresidential customers under s. Adm 43.05 (3). The department will use federal energy regulatory commission data to determine the residential and nonresidential components of the public benefits fee to be invoiced to each nonmunicipal electric utility under s. Adm 43.06 (2). Is it the department's intent to use two potentially different counts of the same customers?

h. If the department makes an adjustment to an estimated residential or nonresidential component or the public benefits fee that the department intends to invoice a nonmunicipal electric utility under s. Adm 43.06 (2) (c) or (d), that results in a shortfall in total revenues, the rule is not clear how the total revenues from public benefits fees required under s. 16.957 (4) (c) 1. and 3. will be maintained.

i. The purpose of the use of “may” rather than “shall” in the third sentence of s. Adm 43.08 (3) (a) is not clear. The use of “may” implies that, if the amount collected in a fiscal year is less than the amount invoiced by the department, the amount under-collected does not have to be added to the amount to be collected for the succeeding year. What happens if a nonmunicipal electric utility does not include the amount under-collected in the amount to be collected in the succeeding fiscal year? If “may” is used to allow for payment of uncollected fees initially paid by a utility and subsequently reimbursed to the utility under s. Adm 43.08 (4), then sub. (3) (a) should be clarified to specify the mechanism by which uncollected fees are originally paid.

j. In s. Adm 43.08 (3) (c), “the” before “s. Adm 43.12” should be deleted. Also, a period should be placed at the end of this paragraph.

k. The reference to “(t)his cost” in the last sentence of s. Adm 43.08 (4) is vague. Does the department mean the amount recorded as an accounts receivable, the amount recognized as uncollectible or either amount?

l. The department should revise the first sentence in s. Adm 43.09 (1) to clarify the reference to “. . . expenses incurred in the collection . . . of its public benefits fee collection plan”

m. In interpreting what constitutes reasonable and prudent expenses that a nonmunicipal electric utility may recover in complying with ch. Adm 43, the department provides in s. Adm 43.09 (1) one specific criterion relating to whether the expenses are recovered by a utility in a current tariff. If the department intends to apply other criteria in determining what constitutes a reasonable and prudent expense, such as a limit based on a portion of the fees collected by a utility, the department should consider amending s. Adm 43.09 to provide more specific guidance in its interpretation of this term.

n. Section Adm 43.09 (2) directs a nonmunicipal electric utility to “provide all necessary documentation” of reasonable and prudent expenses that it seeks to recover. If the department intends this documentation to include other specific elements in addition to the actual cost for the previous calendar year specified in s. Adm 43.09 (1), the rule should clarify what constitutes “necessary documentation” and identify this additional documentation. If the department intends to provide flexibility to these utilities in the documentation of their reasonable and prudent expenses, s. Adm 43.09 (2) should be rewritten to state “A nonmunicipal electric utility shall document reasonable and prudent expenses”

o. Section Adm 43.10 (1) directs each electric utility to provide an opportunity for its residential and nonresidential customers to make voluntary contributions to the department’s public benefits programs by including an insert and return envelope with the mailing containing the annual public benefits report. This subsection does not indicate who is to prepare or pay for the insert and return envelope. If the department intends to require each electric utility to prepare and pay for these items, the department should review s. Adm 43.09 to ensure that the reasonable and prudent expenses include these costs. As drafted, it appears that s. Adm 43.09 only applies to reasonable and prudent expenses in the administration of the public benefits fee collection plan which relates to the collection of required public benefits fees.

p. The reference to the "fund administered by the department" in s. Adm 43.10 (2) is vague. Does the department mean the utility public benefits fund?

q. The reference in s. Adm 43.11 (2) to a nonmunicipal electric utility's financial report including "details of the application of its public benefits fee collection plan" is vague. What details, in addition to those specified in sub. (2), is the department seeking in a financial report?

r. In the second sentence in s. Adm 43.12 (1), "or modification" should be inserted after "denial" to be consistent with the first sentence in this subsection.

s. In s. Adm 43.12 (3), "the secretary's" should be inserted before "designee."

PROPOSED ORDER OF THE DEPARTMENT OF ADMINISTRATION

The Wisconsin Department of Administration proposes an order to create chapter Adm 43 of the Wisconsin Administrative Code, relating to Non-municipal Electric Utility Public Benefits Fees.

Analysis Prepared by the Department of Administration:

Statutory Authority: ss. 16.004 (1) and 16.957(4)(b), Stats.

Statutes Interpreted: ss. 16.957, et seq.

Under s. 16.957(4)(b), Stats., the Department of Administration is required to promulgate rules establishing the amount of public benefits fees to be collected by certain electric utilities from their customers. These fees are to be paid to the Department in order to fund low-income assistance energy conservation and efficiency, and renewable resource programs statewide. The proposed rule establishes fees that may vary by class of customer, but will be uniform within each class.

Initial Regulatory Flexibility Analysis:

1. Types of small businesses that will be affected by the rule:

Small businesses that receive metered electric service from one of the twelve listed electric providers will be obligated to pay a public benefits fee. The public benefits fee will be included in each electric bill, and shall not exceed the lesser of three percent of the charges for electric service or \$750 per meter per month.

Consolidated Water Power Company	Dahlberg Light & Power Company
Madison Gas & Electric Company	North Central Power Company, Inc.
Northern States Power Company	Northwestern Wisconsin Electric Co.
Pioneer Power & Light Company	Superior Water Light & Power Co.
Wisconsin Electric Power Company	Wisconsin Power & Light Company
Wisconsin Public Service Corporation	Westfield Milling & Electric Light Co.

The U.S. Small Business Administration (SBA) estimate in 1998 that about 98 percent of the 120,000 businesses with employees in Wisconsin were small businesses (fewer than 500 employees) and about 220,000 self-employed persons. Accounting for some overlap, the SBA estimated that there were 337,600 small businesses in Wisconsin in 1998. The twelve electric providers served about 85 percent of all Wisconsin businesses in 1998 according to the Energy Information Administration. Therefore, nearly 287,000 small businesses will be affected by this rule.

2. Reporting, bookkeeping, and other procedures required for compliance with the rule.

None. The fee will show as a fixed charge on the electric bill.

3. Types of professional skills necessary for compliance with the rule:

None.

TEXT OF RULE:

SECTION 1: Adm 43 is created to read.

Chapter Adm 43

Non-municipal Electric Utility Public Benefits Fee

Adm 43.01 Authority. Sections 16.004[1] and 16.957[4][b], Stats., authorize the department to promulgate rules for non-municipal electric utility public benefits fees.

Adm 43.02 Purpose. The purposes of this chapter are to establish the public benefits fee to be collected by each non-municipal electric utility from its customers, and to provide procedures for collecting that fee.

Adm 43.03 Definitions. In this chapter:

- [1] "Aggregate public benefits fee" means the total annual fee to be collected under s. 16.957[4] and [5], Stats., from all electric providers.
- [2] "Commission" means the public service commission.
- [3] "Customer" means the party billed for electric services.
- [4] "Customer class" means any grouping of electric customers in the state that is billed for electric service under the same tariff that has been approved by the Commission.
- [5] "Department" means the department of administration.
- [6] "Electric provider" has the meaning specified in s. 16.957[1][f], Stats.
- [7] "Electric utility" has the meaning specified in s. 16.957[1][g], Stats.
- [8] "Fiscal year" means the period beginning on July 1 and ending on June 30.
- [9] "Fixed charge" means a fixed amount within an electric tariff that is charged periodically to a customer without regard to energy demand or consumption.
- [10] "Low-income household" has the meaning set forth in s.16.957[1][m], Stats.
- [11] "Low-income need" has the meaning set forth in s.16.957[1][n], Stats.

[12] "Municipal utility" has the meaning specified in s. 16.957[1][q], Stats.

[13] "Non-municipal electric utility" means any electric utility that is not a municipal utility.

[14] "Non-residential customer" means any customer in this state that receives metered electric services under a commercial or industrial tariff and that is assessed a fixed customer charge at the meter's location.

[15] "Public benefits fee" means that portion of the aggregate public benefits fee, plus reasonable and prudent expenses, that is approved and annually allocated by the department to an individual non-municipal electric utility to be collected from its customers and is identified as a non-taxable fixed charge on a customer's electric bill.

[16] "Residential customer" means any customer in this state that receives metered electric services under a residential or farm tariff.

[17] "Retail electric cooperative" has the meaning specified in s. 16.957[1][t], Stats.

[18] "Tariff" means a rate schedule and general terms and conditions under which electric service is supplied.

Adm 43.04 Estimating low-income need data. The department shall estimate the data required to compute the low-income need as directed in s. 16.957 (2)(c) 5., Stats., by the following means:

[1] Total low-income energy bill data shall be estimated by totaling all home energy bills of all low-income households as shown by the most current data available from the department's bureau of energy.

[2] Average annual income of low-income household data shall be estimated by averaging the annual income of all households at or below 150 percent of the poverty threshold as shown by the most current data available from the United States census bureau or the department's demographic services section.

[3] The number of low-income households shall be estimated by totaling the number of households at or below 150 percent of the poverty threshold as shown by the most current data available from the United States census bureau or the department's demographic services section.

Adm 43.05 Establishing the aggregate public benefits fee. [1] Annually on or before March 1 the department shall determine, in accordance with s. 16.957 (4) and (5), Stats., the aggregate public benefits fee to be collected from all electric providers for the following fiscal year.

[2] When establishing the aggregate public benefits fee, the department shall determine the number of residential and non-residential customers served by each electric provider based on the most recently published data from the

energy information administration of the U.S. department of energy or any similar published data that the department determines to be reliable.

[3] After establishing the aggregate public benefits fee, the department, using the computations provided in s. 16.957[4][c] and [5], Stats., shall determine the portion of the aggregate public benefits fee that the non-municipal electric utilities shall collect each fiscal year. The department shall allocate 70% of this portion to be collected from residential customers and 30% to be collected from non-residential customers.

Adm 43.06 Allocating the public benefits fee. [1] The department shall determine the number of residential and non-residential customers for each non-municipal electric utility based upon the most recent available data from the annual report of major utilities, licensees and others filed with the federal energy regulatory commission, or similar sources as determined by the department.

[2] The department shall calculate the public benefits fee to be invoiced to each non-municipal electric utility by determining a residential component and a non-residential component and adding them together.

[a] An estimate of the residential component shall be made by calculating each non-municipal electric utility's percentage of the total number of residential customers served by all non-municipal electric utilities. This percentage shall be multiplied by the amount allocated to all residential customers under s. Adm 43.05(3).

[b] An estimate of the non-residential component shall be made by calculating each non-municipal electric utility's percentage of total non-residential customers served by all non-municipal electric utilities. This percentage shall be multiplied by the amount allocated to all non-residential customers under s. Adm 43.05(3).

[c] In cooperation with the non-municipal electric utilities, the department may adjust the estimated residential component to minimize any inequities resulting from the application of the restrictions in s. 16.957[4][c]3, Stats., in order to produce a more uniform public benefits fee.

[d] In cooperation with the non-municipal electric utilities, the department may adjust the estimated non-residential component to minimize any inequities resulting from the application of the restrictions in s. 16.957[4][c]3, Stats., in order to produce a more uniform public benefits fee.

[e] A customer that pays one or more bills to a single non-municipal electric utility for meters located within that utility's service territory, may present documentation to and request relief from that non-municipal electric utility if the public benefits fees paid by the customer within that utility's service territory, when aggregated by the customer, exceed \$750 in any month. The non-municipal electric utility shall rebate that portion of the public benefits fee that exceeds \$750 in any month. Any amount so rebated to a customer under

this provision shall be treated as an under-collection for purposes of s. Adm 43.08 (3).

[3] The department shall provide all calculations and related information in writing to each non-municipal electric utility in the form of a single annual invoice on or before March 1 of each fiscal year. This documentation shall include an itemization of the residential and non-residential components based on the proportions prescribed in s. 16.957[4][b]2., Stats.

Adm 43.07 Collecting the public benefits fee. [1] COLLECTION PLAN. On or before April 1, each individual non-municipal electric utility shall submit a collection plan and supporting documentation to the department for collecting the following fiscal year's public benefits fee. The collection plan shall be based on the calculation and related information provided by the department under s. Adm 43.06.

[2] CHARGES BILLED. All charges relating to the cost of supplying electric service to a residential or non-residential customer shall constitute the basis for calculating the limit on customer billing increases specified in s. 16.957[4][c]3., Stats.

[3] EQUITABLE ALLOCATION. Each non-municipal electric utility shall submit documentation with its public benefits fee collection plan that demonstrates that the amount it intends to bill its residential and non-residential customers for public benefits fees equitably allocates the amount constituting the residential portion among its residential customer classes, and the amount constituting the non-residential portion among its non-residential customer classes. The amount of the public benefits fee billed to customers may vary between customer classes, but shall be uniform within a customer class, except for variations due to the requirements of s. 16.957[4][c]3., Stats.

[4] DEPARTMENT REVIEW. On or before May 1, the department shall approve, modify, or deny each proposed collection plan and notify each non-municipal electric utility accordingly. The department shall provide reasons for a denial or modification in writing. A non-municipal electric utility may protest a denial or modification of its collection plan under the procedures set forth in s. Adm 43.12.

[5] PLAN IMPLEMENTATION. Each non-municipal electric utility shall implement an approved or modified public benefits fee collection plan at the start of the first monthly or periodic billing cycle of the following fiscal year. A modified collection plan shall be implemented even if a protest has been filed under s. Adm 43.12.

[6] DEPARTMENT DENIAL. [a] If the department denies a proposed public benefits fee collection plan, the non-municipal electric utility shall resubmit a collection plan to the department on or before May 15 for the department's approval even if a protest has been filed under s. Adm 43.12. A resubmitted

collection plan must address all comments and suggestions provided by the department in its denial.

[b] If the department denies a resubmitted collection plan, the non-municipal electric utility shall collaborate with the department to prepare a collection plan acceptable to the department. If the parties are unable to reach an agreement on or before June 1, the department shall issue a collection plan for the non-municipal electric utility to implement the following fiscal year.

Adm 43.08 Payment and reconciliation of the public benefits fee. [1]

PAYMENT DUE DATES. Each non-municipal electric utility shall make equal monthly payments to the department of the amount invoiced, no later than the 15th day of each month. The first payment of each fiscal year is due on the 15th day of the second full month of the fiscal year.

[2] **LATE PAYMENTS.** Payments received after the 15th day of each month shall be assessed interest at the rate required by the commission for customer deposits for residential service set forth in s. PSC 113.131[9][b].

[3] **RECONCILIATION OF COLLECTED FEES.** [a] Each non-municipal electric utility shall include a reconciliation statement for the preceding fiscal year with its proposed public benefits fee collection plan under s. Adm 43.07. If the amount collected is greater than the amount invoiced by the department, the amount of over-collection shall be subtracted from the amount to be collected in the succeeding fiscal year. If the amount collected is less than the amount invoiced by the department, the amount under-collected may be added to the amount to be collected for the succeeding fiscal year. Each non-municipal electric utility shall account for any variation in its collections, working capital costs, and reasonable expenses when establishing its public benefits fee collection plan for the succeeding fiscal year.

[b] Once in any fiscal year, a non-municipal electric utility may submit a written request to the department to adjust its public benefits fee collection plan. The request shall contain the current amount that has been over-collected or under-collected and the amount that is forecasted to be over-collected or under-collected for the remainder of the fiscal year, the reasons for the differences and the non-municipal utility's proposed adjustments to its approved public benefits fee collection plan. The department shall indicate its approval or disapproval of the proposed adjustments in writing within 30 days of receipt of the request. The non-municipal electric utility may implement the collection plan adjustment immediately upon department approval. If the department does not approve a collection plan adjustment, the affected non-municipal electric utility may protest under procedures set forth in s. Adm 43.12.

[c] The department shall adjust the amount to be collected by a non-municipal electric utility effective on the beginning of the fiscal year for which the collection plan was submitted, upon a successful appeal filed under the s. Adm 43.12

[4] ACCOUNTS RECEIVABLE AND UNCOLLECTIBLE ACCOUNTS. A non-municipal electric utility's reconciliation statement may include an estimation of the uncollectible amount of its preceding year's public benefits fee that is recorded as an accounts receivable. A non-municipal electric utility's reconciliation statement may also include an estimated amount of its public benefits fee that was recorded in a previous fiscal year as accounts receivable and has been subsequently recognized as uncollectible. This cost may be included in a request for reasonable and prudent expenses in s. Adm. 43.09.

[5] RECORDS. Each non-municipal electric utility shall maintain accurate records that allow the amount billed to and the amount collected from its residential and non-residential customers in each fiscal year to be measured against the amount that the department invoiced the non-municipal electric utility. The records shall be organized by customer class for residential customers and non-residential customers.

Adm 43.09 Requesting approval for reasonable and prudent expenses. [1] DEPARTMENT REVIEW. A non-municipal electric utility requesting recovery of reasonable and prudent expenses incurred in the collection and administration of its public benefits fee collection plan, shall submit a request for approval to the department on or before February 15. The request shall include actual costs for the previous calendar year. The department shall determine the amount of reasonable and prudent expenses that may be recovered and shall notify the non-municipal electric utility in writing of that amount on or before March 15. The department shall deny expenses that are recovered by a non-municipal electric utility in a current tariff. The non-municipal electric utility may include approved expenses in its public benefits fee collection plan for the following fiscal year. A non-municipal electric utility may appeal a denial of expenses under the procedures set forth in s. Adm 43.12.

[2] DOCUMENTATION. A non-municipal electric utility shall provide all necessary documentation of reasonable and prudent expenses it seeks to include in the public benefits fee.

Adm 43.10 Voluntary contributions. [1] ANNUAL OPPORTUNITY. At least annually, each electric utility shall provide its residential and non-residential customers an opportunity to make voluntary contributions to the trust fund established under s. 25.96, Stats., to fund their choice of programs established in ss. 16.957[2][a] and [b]1., Stats. An electric utility shall provide the opportunity for its residential and non-residential customers to make such voluntary contributions by including an insert and return envelope in the mailing containing the annual public benefits report required by s. 16.957[4][am], Stats. Each electric utility may provide opportunities for its residential and non-residential customers to make voluntary contributions to an energy assistance fund administered by the electric utility at other times and by other methods.

[2] DESIGNEE FOR RECEIPT. The department may provide a designee to receive voluntary contributions from an electric utility's customers. Each electric utility shall forward any voluntary contributions it receives for the fund administered by the department to the department or its designee. The department's designee shall receive, process and keep records of all voluntary contributions.

Adm 43.11 Reports and annual statements. [1] INITIAL ANNOUNCEMENT. The department shall prepare an initial announcement of the public benefits fee program to be included by each non-municipal electric utility with its first bill in which the fee is included. Upon prior written approval by the department, a non-municipal electric utility may modify the text in order to fit within the constraints of the utility's billing system capabilities.

[2] FINANCIAL REPORT. No later than 60 days after the end of each fiscal year, each non-municipal electric utility shall submit to the department a complete financial report of its public benefits fee. The report shall include a complete explanation of the collection reconciliation and the balance as of the end of the fiscal year, details of the application of its public benefits fee collection plan, the amount collected by customer class, and any other matter the department determines necessary.

[3] DEPARTMENT STATEMENT. The department shall provide each non-municipal electric utility with an annual statement within 120 days of the end of each fiscal year identifying the total annual amount of the public benefits fee collected by each non-municipal electric utility, and describing the programs for which the public benefits fees were used.

[4] NON-MUNICIPAL ELECTRIC UTILITY STATEMENT. Each non-municipal electric utility shall distribute the department's annual statement to each of its residential and non-residential customers. A non-municipal electric utility shall not be required to provide an individual customer the specific amount of public benefits fees assessed to that customer when it distributes the department's annual statement.

Adm 43.12 Appeals. [1] RIGHT TO PROTEST. A non-municipal electric utility that disputes the department's denial or modification of its proposed public benefits fee collection plan, the denial of an expense request, or the denial of a reconciliation statement may protest to the department. The non-municipal electric utility shall serve the protest in writing on the administrator of the department's division of energy and public benefits within 15 days of the receipt of the department's denial of the proposed public benefits fee collection plan under s. Adm 43.07, the reconciliation statement under s. Adm 43.08, or the expense claim under s. Adm 43.09.

[2] AUTHORITY TO RESOLVE PROTESTS. The administrator of the department's division of energy and public benefits shall have the authority to settle and resolve any protest brought under this subsection. If the protest is

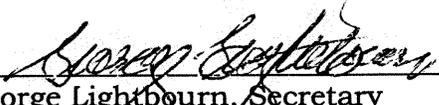
not resolved by mutual agreement, the division administrator shall promptly issue a written decision to the protesting utility.

[3] APPEAL. A protesting utility may appeal the decision of the division administrator by alleging a violation of statute or a provision of this chapter to the secretary of the department within 30 calendar days of issuance of the administrator's decision. The secretary or designee shall take necessary action to settle and resolve the appeal and shall promptly issue a decision in writing which shall be mailed or otherwise served on the protestor.

Note: Implementation of the public benefits fee collection plan shall begin in fiscal year 2001. For fiscal year 2000, the department may, at its discretion, modify any deadlines contained in this rule upon notification to appropriate parties.

This rule shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Dated: 4-24-00


George Lightbourn, Secretary
Department of Administration

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR

GEORGE LIGHTBOURN
SECRETARY



AUG 14 2000

Office of the Secretary
Post Office Box 7864
Madison, WI 53707-7864
Voice (608) 266-1741
Fax (608) 267-3842
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August 1, 2000

Honorable Fred Risser, President
Wisconsin Senate
220 South, State Capitol
Madison, WI 53702

Honorable Scott Jensen, Speaker
Wisconsin Assembly
211 West, State Capitol
Madison, WI 53702

Dear Senator Risser and Representative Jensen:

RE: Clearinghouse Rule No. 00-080

Enclosed in final draft form is Chapter Adm 43, Wis. Adm. Code, relating to the Wisconsin Utility Public Benefits Program. The fiscal estimate is also attached.

A copy of the Legislative Council Rules Clearinghouse Report is enclosed. All of the comments of the Clearinghouse have been addressed or incorporated into the rule. A public hearing was held on the rule on June 16, 2000, in Madison. The names of the persons who appeared at the hearing are provided on the enclosed hearing registration forms.

Also enclosed is a transcript of the hearing and copies of the written comments received by the Department in response to the proposed rule. The final enclosure is a summary of all the comments received by the Department and the Department's response to those comments. This document explains the modifications made to the proposed rule as a result of the comments received by the Department.

We request submittal of the rule to the appropriate standing committees for review.

Sincerely,


George Lightbourn
Secretary

cc: Revisor of Statutes
Joint Committee on Review of Administrative Rules

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

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PROPOSED ORDER OF THE DEPARTMENT OF ADMINISTRATION

The Wisconsin Department of Administration proposes an order to create chapter Adm 43 of the Wisconsin Administrative Code, relating to Non-municipal Electric Utility Public Benefits Fees.

Analysis Prepared by the Department of Administration:

Statutory Authority: ss. 16.004 (1), 16.957(2)(c) 4. and 5., and (4)(b), Stats.

Statutes Interpreted: ss. 16.957(2)(c) 4. and 5., and (4), Stats.

1999 Wisconsin Act 9 included major provisions relating to aspects of electric utility regulation, commonly referred to as "Reliability 2000." That legislation created a new statutory framework within which public benefit programs relating to low-income energy assistance and energy conservation and renewable energy are continued and expanded. Under ss. 16.957(2)(c) and (4)(b), Stats., the Department of Administration is directed to promulgate rules setting fees to be collected by utilities from their customers, and establishing requirements and procedures related to those low-income and energy conservation programs. This rule provides mechanisms for setting, collecting, and reporting the fees, and related matters.

Section Adm 43.03 provides three definitions in particular that notably effect the workings of the rule and help avoid confusion between various funding amounts and levels addressed by the rule. The total revenue needed to fund the public benefit initiative is determined using a formula that includes funds to be collected by municipal and non-municipal utilities and retail electric cooperatives. However, the statute directs that the Department's rule address only those revenues collected by non-municipal electric utilities. In effect, revenues collected by municipal utilities and retail cooperatives are backed-out of the public benefits need formula to arrive at the specific amount to be collected by non-municipal electric utilities from their customers.

The "public benefits program funding level" is defined as the total amount of funds to be collected by all electric providers—municipal utilities, retail electric cooperatives and non-municipal electric utilities. The "amount invoiced" means each non-municipal electric utility's portion of the public benefits program funding level which each must collect from their own customers. Finally, the "public benefits fee" is that portion of each non-municipal electric utility's amount invoiced that is apportioned to and collected from each of its customers. This fee may include an amount representing reasonable and prudent expenses approved by the Department, which a non-municipal electric utility may seek to recover under the statute. Two other pertinent definitions include "residential customer" and "non-residential customer," which are defined in terms of metered electric services under a particular type of tariff. (Essentially, one meter = one customer.) This follows standard electric industry practice in this state including, for rate purposes, that of the Public Service Commission.

Section Adm 43.04 provides methods by which the low-income "component" of the public benefits program funding level is determined. This section also

details the specific sources of information that the Department will use in order to estimate total low-income energy bills in Wisconsin, and the total number and annual average income of low-income households under section 16.957(2)(c) 5., Stats.

Section Adm 43.05 specifically establishes the public benefits program funding level. This is done annually on or before each March 1st for the following fiscal year. Using the most recent data available on or before that date from either the Energy Information Administration of the U.S. Department of Energy or similarly published data, the Department determines the number of residential and non-residential customers served by electric utilities. Using the formulas provided in sections 16.957(4)(c) and (5), Stats., the Department determines the portion of the overall funding level that non-municipal electric utilities are responsible to collect annually. Of this amount, the Department allocates 70% to be collected from residential customers and 30% to be collected from non-residential customers as required by section 16.957(4)(b) 2., Stats.

Section Adm 43.06 allocates the amount of the public benefits program funding level for which all non-municipal electric utilities are responsible to collect among each individual non-municipal electric utility. This apportionment to each utility is the "amount invoiced" and is based upon the number of residential and non-residential customers each non-municipal electric utility has in proportion to the collective total. This is done by simply comparing the ratio of an individual non-municipal electric utility's number of residential and non-residential customers, respectively, to the total number of residential and non-residential customers of all non-municipal electric utilities, respectively.

Paragraphs (2)(d) and (e) provide a mechanism for the Department to adjust the residential or non-residential components in order to minimize any inequities which may result from the 3% maximum bill increase restriction of section 16.957(4)(c) 3., Stats., in order to produce a uniform fee. This adjustment may be necessary because of an internal statutory conflict. Section 16.957(4)(b)(intro.), Stats., allows fees to vary between classes of customers, but requires them to be uniform within each class. All residential customers, for example, must pay the same amount. However, the 3% bill increase restriction ("cap") has the potential to cause certain residential customers to pay unequal fees. If the fee set by the Department is too high, many customers will reach an amount equal to 3% of their bills before reaching the set fee, resulting in a corresponding amount of under-collection. (For example, a utility has 100 customers, each with a monthly bill of \$30.00. Each customer will cap out at \$0.90 (3%). If the fee is set at \$1.00, the utility will under-collect \$.10 per customer, or \$10.00 that month.) If the fee is not set appropriately, customers with higher bills--who can thus pay more in absolute dollars before they cap out--would normally be burdened with making up any shortfall due to the cap by paying a higher amount. But since this is not allowed under the statute, the rule provides for a cooperative computation procedure between the Department and the utilities to set a low and uniform fee.

Taken together, sections Adm 43.05 and 43.06 set up this cooperative computation through an annual iterative process whereby a base fee is chosen, with which all the utilities calculate whether they will reach the amount they are responsible to collect, how many customers would cap out under that

amount, and how large a collection deficit or surplus, if any, would result. After many such fee iterations by the utilities, the Department has determined that the fee for the first year of the program will be approximately \$1.50.

Incidentally, according to data provided by the state's non-municipal electric utilities consulted in developing this rule, the 3% cap will apply primarily, if not exclusively, to residential customers. Non-residential customers are not likely to ever reach the 3% cap because of the higher amount of their bills. In any case, there is an absolute statutory \$750 maximum on any bill increase.

Section Adm 43.07 provides for the implementation of the collection of public benefits fees from non-municipal electric utility customers. The fee collection process will begin in fiscal year 2001. Using the calculations and related information provided to them by the Department under section Adm 43.06, on or before March 1st each individual non-municipal electric utility must submit a collection plan and related documentation for collecting the amounts invoiced. The collection plan may also provide for recovering reasonable and prudent expenses from the customer through the fee.

Section Adm 43.07(3) provides that the public benefits fee must be identified on each customer's electric bill as a "non-taxable fixed charge." Although this may appear inconsistent with the intent of section 16.957(4)(a), Stats., this is intended to comply with the billing requirements established by the Public Service Commission in s. PSC 113.16(1), under which a customer is to be able to compute the amount of taxes owed on a bill. It also identifies to customers that sales taxes do not apply to this charge. (Some non-municipal electric utilities have a fixed charge line item, which is subject to sales taxes.) Each non-municipal electric utility must also demonstrate that its public benefits fee collection plan equitably allocates the amount for which it is responsible to collect from its residential customers among its residential customer classes, and must make a similar demonstration regarding its non-residential customer classes.

Section Adm 43.07(5) acknowledges that some customers have multiple meters within one utility's service area on which they must pay multiple public benefits fees. These customers may request relief from the utility if its multiple fees, when aggregated, exceeds the \$750 statutory cap of section 16.957(4)(c) 3., Stats. This request waives only that amount exceeding \$750. Any amount thus rebated by a utility would be treated as an under collection by the utility for purposes of reconciliation in section Adm 43.08. (In practical terms, only non-residential customers will ever be affected by the \$750 bill increase restriction.)

Under ss. Adm 43.07(6) through (8), the Department will approve, modify or deny a proposed collection plan and set procedures for a utility to resubmit any plan that is originally modified or denied. A modified or denied collection plan may be appealed through a process provided in section Adm 43.12. An approved or modified plan must be implemented by the utility at the start of the first monthly or periodic billing cycle of the following fiscal year. If a plan is under appeal on June 1st, the Department will issue a collection plan which the utility must implement on that date regardless of the appeal's status.

Section Adm 43.08 provides for payment and reconciliation of the public benefit fees. Under this section, utilities will make monthly payments to the Department by the 15th of each month, with late payments being assessed interest at the rate required by the Public Service Commission in section PSC 113.131(9)(b). The reconciliation process provides that if the total amount of public benefits fees collected by a utility is greater than the amount it was responsible for collecting (plus approved reasonable and prudent expenses), that amount of over-collection will be subtracted from the total amount required to be collected by that utility in the following fiscal year. If the amount collected is less than required, that amount may be added to the amount to be collected in the following year. A non-municipal electric utility may, once in a fiscal year, request an adjustment to its collection plan in an attempt to avoid over- or under-collection. Subsection Adm 43.08(3)(c) allows a utility to request a waiver from the Department of the obligation of any amount under-collected due to either the 3% or \$750 bill increase restriction. This waiver may be used to avoid placing the fee burden on corporate shareholders. Section Adm 43.08 also provides for including uncollectible accounts in recoverable reasonable and prudent expenses under s. Adm 43.09.

Section Adm 43.09 addresses the recovery of allowed reasonable and prudent expenses. A utility may request recovery for the expenses it incurred in the development and implementation of the public benefits fee collection plan. The request must be submitted to the Department by February 15th with appropriate documentation in order to be included in the fee billed to its customers. A utility will recover approved costs from the fees it collected from its customers, before forwarding to the Department the amount it was invoiced.

Section Adm 43.10 provides for voluntary contributions to be made by a residential or non-residential customer to the Public Benefits Trust Fund in order to fund their choice of programs established under the public benefits legislation. Section 16.957(2)(c) 4., Stats., requires voluntary contributions to be paid with a customer's bill payments. This statute is somewhat in conflict with itself because it clearly provides that the rule "may" require the utility to provide space on an electric bill for a contribution. The Department has chosen to allow a utility to do this annually through an insert and return envelope included in the annual public benefits report that the Department must provide to each customer. The utilities consulted observed that the expense of creating a monthly collection mechanism could, in fact, exceed the amount normally collected in a voluntary program. In addition, many smaller utilities would have to change their present one page, postcard-billing format to a larger, multiple page format, increasing expenses, thereby increasing their customers' bills. The rule promotes fiscal responsibility by only requiring it on an annual basis.

Section Adm 43.11 concerns the initial announcement of the public benefits fee program to be included with the first billing, the required financial reports from the non-municipal electric utilities sixty days after the end of each fiscal year, and the Department's annual statement which identifies the total amount of fees collected and describing the programs for which those fees were utilized.

Finally, s. Adm 43.12 sets forth an appeals process for non-municipal electric utility collection plans that were either denied or modified by the Department.

The process is internal through the Department, beginning with the Administrator of the Division of Energy and Public Benefits, then on to the Department Secretary or his or her designee.

Initial Regulatory Flexibility Analysis:

1. Types of small businesses that will be affected by the rule:

Small businesses that receive metered electric service from one of the twelve listed electric providers will be obligated to pay a public benefits fee. The public benefits fee will be included in each electric bill, and shall not exceed the lesser of three percent of the charges for electric service or \$750 per company per month.

Consolidated Water Power Company	Dahlberg Light & Power Company
Madison Gas & Electric Company	North Central Power Company, Inc.
Northern States Power Company	Northwestern Wisconsin Electric Co.
Pioneer Power & Light Company	Superior Water Light & Power Co.
Wisconsin Electric Power Company	Wisconsin Power & Light Company
Wisconsin Public Service Corporation	Westfield Milling & Electric Light Co.

The U.S. Small Business Administration (SBA) estimated in 1998 that about 98 percent of the 120,000 businesses with employees in Wisconsin were small businesses (defined for the purpose of this rule as fewer than 500 employees) and about 220,000 persons were self-employed. Accounting for some overlap, the SBA estimated there were 337,600 small businesses in Wisconsin in 1998. About 85 percent of Wisconsin small businesses were served by the twelve electric providers in 1998 according to the Energy Information Administration. Therefore, nearly 287,000 small businesses will be affected by this rule.

2. Reasons for failing to include in the rule any of the methods specified in s. 227.114(2), Stats.:

The rule will have no specific affect on small businesses. The public benefits fee will appear as a fixed charge on the electric bill but the fee itself is imposed on all electric utility customers by s. 16.957(4), Stats. The rule does not establish any compliance or reporting requirements, or performance standards for small businesses.

3. Summary of issues raised by small businesses during the hearing of the rule, any changes in proposed rule as a result of alternatives suggested by small businesses and the reasons for rejecting any alternatives suggested by small businesses:

Issue: The public benefits rule will not be uniform for some companies if separately metered billboards are assessed the fee.

Response: Equating one meter with one customer is the standard electric utility practice in Wisconsin, and is even utilized by the Public Service Commission. Fees are subject to a 3% or \$750 maximum bill increase restriction by statute. Industry figures indicate that the average monthly billboard electric bill is between \$20 and \$46, so that the cap will translate to a

fee of between \$0.60 and \$1.38 per month. The rule treats companies with multiple billboards the same as companies owning multiple sites such as restaurants or gas station chains. However, the rule does provide for waiving or rebating of fees paid in excess of \$750 when aggregating multiple meters owned by a small business in a utility's service area. [Section Adm 43.08(3)(c), Stats.]

4. Reporting, bookkeeping, and other procedures required for compliance with the rule:

None.

5. Nature and cost of other measures and investments that will be required for compliance with the rule:

None.

6. Additional cost, if any, to the agency of administering or enforcing a rule which includes any of the methods specified under s. 227.114(2), Stats.:

None.

7. Impact on public health, safety and welfare, if any, caused by including in the rule any of the methods specified under s. 227.114(2), Stats.:

None.

TEXT OF RULE:

SECTION 1. Adm 43 is created to read:

Chapter Adm 43

Non-municipal Electric Utility Public Benefits Fee

Adm 43.01 Authority. Sections 16.004(1) and 16.957(4)(b), Stats., authorize the department to promulgate rules for non-municipal electric utility public benefits fees.

Adm 43.02 Purpose. The purposes of this chapter are to establish the public benefits fee to be collected by each non-municipal electric utility from its customers, and to provide procedures for collecting that fee.

Adm 43.03 Definitions. In this chapter:

- (1) "Amount invoiced" means that portion of the public benefits program funding level that is approved and allocated annually by the department to each non-municipal electric utility to be collected from its customers.
- (2) "Commission" means the public service commission.
- (3) "Customer" means the party billed for electric services.
- (4) "Customer class" means any grouping of electric customers in the state that is billed for electric service under the same tariff that has been approved by the Commission.
- (5) "Department" means the department of administration.
- (6) "Electric provider" has the meaning specified in s. 16.957(1)(f), Stats.
- (7) "Electric utility" has the meaning specified in s. 16.957(1)(g), Stats.
- (8) "Fiscal year" means the period beginning on July 1 and ending on June 30.
- (9) "Fixed charge" means a fixed amount within an electric tariff that is charged periodically to a customer without regard to energy demand or consumption.
- (10) "Low-income household" has the meaning set forth in s. 16.957(1)(m), Stats.
- (11) "Low-income need" has the meaning set forth in s. 16.957(1)(n), Stats.
- (12) "Municipal utility" has the meaning specified in s. 16.957(1)(q), Stats.

- (13) "Non-municipal electric utility" means any electric utility that is not a municipal utility.
- (14) "Non-residential customer" means any customer in this state that receives metered electric services under a commercial or industrial tariff and that is assessed a fixed customer charge at the meter's location.
- (15) "Public benefits fee" means that portion of the amount invoiced that a non-municipal electric utility allocates to and collects from a customer, and may include approved reasonable and prudent expenses.
- (16) "Public benefits program funding level" means the total funds to be collected by all electric providers annually under s. 16.957(4) and (5), Stats.
- (17) "Residential customer" means any customer in this state that receives metered electric services under a residential or farm tariff.
- (18) "Retail electric cooperative" has the meaning specified in s. 16.957(1)(t), Stats.
- (19) "Tariff" means a rate schedule and general terms and conditions under which electric service is supplied.

Adm 43.04 Estimating low-income need data. The department shall estimate the data required to compute the low-income need annually as directed in s. 16.957 (2)(c) 5., Stats., by the following means:

- (1) Total low-income energy bill data shall be estimated by totaling all home energy bills of all low-income households as shown by the most recent data available on or before March 1 from the department's bureau of energy.
- (2) Average annual income of low-income household data shall be estimated by averaging the annual income of all households at or below 150 percent of the poverty threshold as shown by the most recent data available on or before March 1 from the U.S. census bureau or the department's demographic services section.
- (3) The number of low-income households shall be estimated by totaling the number of households at or below 150 percent of the poverty threshold as shown by the most recent data available on or before March 1 from the U.S. census bureau or the department's demographic services section.

Adm 43.05 Establishing the public benefits program funding level. (1) Annually on or before March 1 the department shall determine, in accordance with s. 16.957 (4) and (5), Stats., the public benefits program funding level for the following fiscal year.

- (2) When establishing the public benefits program funding level, the department shall determine the number of residential and non-residential customers served by each electric provider based on the most recent data

available on or before March 1 from the energy information administration of the U.S. department of energy or any similar published data that the department determines to be reliable.

(3) After establishing the public benefits program funding level, the department, using the formulas provided in s. 16.957(4)(c) and (5), Stats., shall determine the portion of the public benefits program funding level that the non-municipal electric utilities shall collect each fiscal year. The department shall allocate 70% of this portion to be collected from residential customers and 30% to be collected from non-residential customers.

Adm 43.06 Allocating the amount invoiced. (1) The department shall annually determine the number of residential and non-residential customers for each non-municipal electric utility based upon the most recent data available on or before March 1 from the annual report of major utilities, licensees and others filed with the federal energy regulatory commission, or similar sources as determined by the department.

(2)(a) The department shall calculate the amount invoiced by determining a residential component and a non-residential component and adding those components together.

(b) The residential component shall be estimated by calculating each non-municipal electric utility's percentage of the total number of residential customers served by all non-municipal electric utilities. This percentage shall be multiplied by the amount allocated to all residential customers under s. Adm 43.05(3).

(c) The non-residential component shall be estimated by calculating each non-municipal electric utility's percentage of total non-residential customers served by all non-municipal electric utilities. This percentage shall be multiplied by the amount allocated to all non-residential customers under s. Adm 43.05(3).

(d) In cooperation with the non-municipal electric utilities, the department may adjust the estimated residential component to minimize any inequities resulting from the application of the restrictions in s. 16.957(4)(c) 3., Stats., in order to produce a more uniform public benefits fee. The adjustment process may change the amount of the residential component allocated to a non-municipal electric utility, but shall not change the total residential component.

(e) In cooperation with the non-municipal electric utilities, the department may adjust the estimated non-residential component to minimize any inequities resulting from the application of the restrictions in s. 16.957(4)(c) 3., Stats., in order to produce a more uniform public benefits fee. The adjustment process may change the amount of the non-residential component allocated to a non-municipal electric utility, but shall not change the total non-residential component.

(3) The department shall provide all calculations and related information in writing to each non-municipal electric utility in the form of a single annual invoice on or before March 1. This documentation shall include an itemization

of the residential and non-residential components based on the proportions prescribed in s. 16.957[4][b]2., Stats.

Adm 43.07 Collecting the public benefits fee. (1) IMPLEMENTATION.

Implementation of the public benefits fee collection plan shall begin in fiscal year 2001. The department may, at its discretion, modify any deadlines contained in this rule upon notification to the appropriate affected parties.

(2) COLLECTION PLAN. On or before April 1, each individual non-municipal electric utility shall submit a collection plan and supporting documentation to the department for collecting the following fiscal year's amount invoiced and for recovering reasonable and prudent expenses. The public benefits fee collection plan shall be based on the calculations and related information provided by the department under s. Adm 43.06. Each non-municipal electric utility shall submit documentation that demonstrates its implementation plan and a budget of expenses necessary to comply with the requirements in s. Adm 43.09.

(3) CHARGES BILLED. Each customer bill that includes a public benefits fee shall identify the public benefits fee as a "non-taxable fixed charge." All charges relating to the cost of supplying electric service to a residential or non-residential customer shall constitute the basis for calculating the limit on customer bill increases specified in s. 16.957(4)(c)3., Stats.

(4) EQUITABLE ALLOCATION. Each non-municipal electric utility shall submit documentation with its public benefits fee collection plan that demonstrates that the amounts of the public benefits fee it intends to bill its residential and non-residential customers equitably allocates the amount constituting the residential component among its residential customer classes, and the amount constituting the non-residential component among its non-residential customer classes. The amount of the public benefits fee may vary between customer classes, but shall be uniform within a customer class, except for variations due to the maximum bill increase restrictions in s. 16.957(4)(c)3., Stats.

(5) REQUEST FOR REBATE. A customer that pays one or more bills to a single non-municipal electric utility for meters located within that utility's service territory, may present documentation to and request relief from that non-municipal electric utility if the public benefits fees paid by the customer within that utility's service territory, when aggregated by the customer, exceed \$750 in any month. The non-municipal electric utility shall rebate that portion of the public benefits fee that exceeds \$750 in any month. Any amount so rebated to a customer under this provision shall be treated as an under-collection for purposes of s. Adm 43.08 (3).

(6) DEPARTMENT REVIEW. On or before May 1, the department shall approve, modify, or deny each proposed collection plan and notify each non-municipal electric utility accordingly. The department shall provide reasons for a denial or modification in writing. A non-municipal electric utility may protest a denial or modification of its collection plan under the procedures set forth in s. Adm 43.12.

(7) PLAN IMPLEMENTATION. Each non-municipal electric utility shall implement an approved or modified public benefits fee collection plan at the start of the first monthly or periodic billing cycle of the following fiscal year. A modified collection plan shall be implemented even if a protest has been filed under s. Adm 43.12.

(8) DEPARTMENT DENIAL. (a) If the department denies a proposed public benefits fee collection plan, the non-municipal electric utility shall resubmit a collection plan to the department on or before May 15 for the department's approval even if a protest has been filed under s. Adm 43.12. A resubmitted collection plan must address all comments and suggestions provided by the department in its denial.

(b) If the department denies a resubmitted collection plan, the non-municipal electric utility shall collaborate with the department to prepare a collection plan acceptable to the department. If the parties are unable to reach an agreement on or before June 1, the department shall issue a collection plan for the non-municipal electric utility to implement the following fiscal year.

Adm 43.08 Payment and reconciliation of the public benefits fee. (1)

PAYMENT DUE DATES. Each non-municipal electric utility shall make equal monthly payments to the department of the amount invoiced, no later than the 15th day of each month. The first payment of each fiscal year is due on the 15th day of the second full month of the fiscal year.

(2) LATE PAYMENTS. Payments received after the 15th day of each month shall be assessed interest at the rate required by the commission for customer deposits for residential service set forth in s. PSC 113.131(9)(b).

[3] RECONCILIATION OF COLLECTED FEES. (a) Each non-municipal electric utility shall include a reconciliation statement for the preceding fiscal year with its proposed public benefits fee collection plan under s. Adm 43.07. If the total amount of public benefits fees collected is greater than the amount invoiced plus the total reasonable and prudent expenses approved by the department, the amount of over-collection shall be subtracted from the total amount of public benefits fees to be collected by the non-municipal electric utility in the succeeding fiscal year. If the total amount of public benefits fees collected is less than the amount invoiced plus the total reasonable and prudent expenses approved by the department, the amount under-collected may be added to the total amount of public benefits fees to be collected by the non-municipal electric utility for the succeeding fiscal year. Each non-municipal electric utility shall account for any variation in its collections, working capital costs, and reasonable and prudent expenses when establishing its public benefits fee collection plan for the succeeding fiscal year.

(b) Once in any fiscal year, a non-municipal electric utility may submit a written request to the department to adjust its public benefits fee collection plan. The request shall contain the current amount that has been over-collected or under-collected and the amount that is forecasted to be over-collected or under-collected for the remainder of the fiscal year, the reasons for the differences and the non-municipal electric utility's proposed adjustments to its approved public

benefits fee collection plan. The department shall indicate its approval or disapproval of the proposed adjustments in writing within 30 days of receipt of the request. The non-municipal electric utility may implement the collection plan adjustment immediately upon department approval. If the department does not approve a collection plan adjustment, the affected non-municipal electric utility may protest under procedures set forth in s. Adm 43.12.

(c) A non-municipal electric utility that has under-collected the amount invoiced in the previous fiscal year due to the restrictions of s. 16.957(4)(c) 3., Stats., may submit with its reconciliation of collected fees a written request for a waiver of the obligation in s. Adm 43.08(3)(a) to add the amount under-collected to the total amount of fees to be collected in the succeeding fiscal year.

(d) The department shall adjust a non-municipal electric utility's public benefits fee collection plan effective on the beginning of the fiscal year for which the collection plan was submitted, upon a successful appeal filed under s. Adm 43.12.

(4) ACCOUNTS RECEIVABLE AND UNCOLLECTIBLE ACCOUNTS. A non-municipal electric utility's reconciliation statement may include an estimation of the uncollected amount of its preceding year's public benefits fee that is recorded as an accounts receivable. A non-municipal electric utility's reconciliation statement may also include an estimated amount of its public benefits fee that was recorded in a previous fiscal year as accounts receivable and has been subsequently recognized as uncollectible revenues. The cost of uncollectible revenues may be included in a request for reasonable and prudent expenses in s. Adm. 43.09.

(5) RECORDS. Each non-municipal electric utility shall maintain accurate records that allow the amount billed to and the amount collected from its residential and non-residential customers in each fiscal year to be measured against the amount invoiced, plus the total reasonable and prudent expenses approved by the department. The records shall be organized by customer class for residential customers and non-residential customers.

Adm 43.09 Requesting approval for reasonable and prudent expenses. (1) A non-municipal electric utility may request recovery of reasonable and prudent expenses incurred in the development and implementation of its public benefits fee collection plan. The request shall be submitted in writing to the department for approval on or before February 15. The request shall include an accounting of actual costs for the previous calendar year. The non-municipal electric utility may include approved expenses in its public benefits fee collection plan for the following fiscal year.

(2) The department shall determine the amount of reasonable and prudent expenses that may be recovered and shall notify the non-municipal electric utility in writing of that amount on or before March 15.

(3) Requests for expenses that are recovered by a non-municipal electric utility in a current tariff shall be denied.

(4) A non-municipal electric utility may appeal a denial of expenses under the procedures set forth in s. Adm 43.12.

(5) A non-municipal electric utility shall document all reasonable and prudent expenses it seeks to include in the public benefits fee.

Adm 43.10 Voluntary contributions. (1) ANNUAL OPPORTUNITY. At least annually, each electric utility shall provide its residential and non-residential customers an opportunity to make voluntary contributions to the trust fund established under s. 25.96, Stats., to fund their choice of programs established in ss. 16.957(2)(a) and (b)1., Stats. An electric utility shall provide the opportunity for its residential and non-residential customers to make such voluntary contributions by including an insert and return envelope in the mailing containing the annual public benefits report required by s. 16.957(4)(am), Stats. Each electric utility may provide opportunities for its residential and non-residential customers to make voluntary contributions to an energy assistance fund administered by the electric utility at other times and by other methods.

(2) DESIGNEE FOR RECEIPT. The department may provide a designee to receive voluntary contributions from an electric utility's customers. Each electric utility shall forward to the department or its designee any voluntary contributions it receives for the utility public benefits fund. The department's designee shall receive, process and keep records of all voluntary contributions.

Adm 43.11 Reports and annual statements. (1) INITIAL ANNOUNCEMENT. The department shall prepare an initial announcement of the public benefits fee program to be included by each non-municipal electric utility with its first bill in which the fee is included. Upon prior written approval by the department, a non-municipal electric utility may modify the text in order to fit within the constraints of the utility's billing system capabilities.

(2) FINANCIAL REPORT. No later than 60 days after the end of each fiscal year, each non-municipal electric utility shall submit to the department a complete financial report of its public benefits fees. The report shall include a complete explanation of the collection reconciliation and the balance as of the end of the fiscal year, an assessment of the implementation of its public benefits fee collection plan, the amount collected by customer class, and any other matter the department determines necessary.

(3) DEPARTMENT STATEMENT. The department shall provide each non-municipal electric utility with an annual statement within 120 days of the end of each fiscal year identifying the total amount of the annual amount invoiced to each non-municipal electric utility, and describing the programs for which the public benefits fees were used.

(4) NON-MUNICIPAL ELECTRIC UTILITY STATEMENT. Each non-municipal electric utility shall distribute the department's annual statement to each of its residential and non-residential customers. No non-municipal electric utility may be required to provide an individual customer the specific amount of public

benefits fees assessed to that customer when it distributes the department's annual statement.

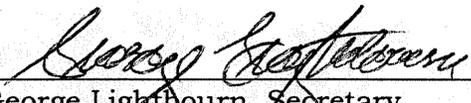
Adm 43.12 Appeals. (1) RIGHT TO PROTEST. A non-municipal electric utility that disputes the department's denial or modification of its proposed public benefits fee collection plan, the denial of an expense request, or the denial of a reconciliation statement may protest to the department. The non-municipal electric utility shall serve the protest in writing on the administrator of the department's division of energy and public benefits within 15 days of the receipt of the department's denial or modification of the proposed public benefits fee collection plan under s. Adm 43.07, the reconciliation statement under s. Adm 43.08, or the expense claim under s. Adm 43.09.

(2) AUTHORITY TO RESOLVE PROTESTS. The administrator of the department's division of energy and public benefits shall have the authority to settle and resolve any protest brought under this subsection. If the protest is not resolved by mutual agreement, the division administrator shall promptly issue a written decision to the protesting utility.

(3) APPEAL. A protesting utility may appeal the decision of the division administrator by alleging a violation of statute or a provision of this chapter to the secretary of the department within 30 calendar days of issuance of the administrator's decision. The secretary or secretary's designee shall take necessary action to settle and resolve the appeal and shall promptly issue a decision in writing which shall be mailed or otherwise served on the protesting utility.

This rule shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Dated: 8-3-00


George Lighthorn, Secretary
Department of Administration

FISCAL ESTIMATE FORM

1999 Session

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

LRB #

INTRODUCTION #

Admin. Rule # Dept of Admin Chap 43

Subject
Non-municipal Electric Utility Public Benefits Fee

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive
 - Mandatory
- 2. Decrease Costs
 - Permissive
 - Mandatory

- 3. Increase Revenues
 - Permissive
 - Mandatory
- 4. Decrease Revenues
 - Permissive
 - Mandatory

5. Types of Local Governmental Units Affected:
- Towns
 - Villages
 - Cities
 - Counties
 - Others _____
 - School Districts
 - WTCS Districts

Fund Sources Affected

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

The administrative rule proposes to establish the procedures for public benefits fees, which will be collected from non-municipal electric utility companies. A total of \$44 million annually is expected to be collected which will distributed among non-municipal electric utilities, municipal utilities and retail electric cooperatives according to computations provided in 16.975 stats. The department will then review plans by the utilities to collect such fees from residential and non-residential customers. The department is reviewing staffing requirements for the program and what cost may be associated with those requirements.

Long-Range Fiscal Implications:

Ongoing costs for the duration of the program.

Prepared By: / Phone # / Agency Name
Richard Wagner/ 608-266-0653 /DOA

Authorized Signature / Telephone No.
Chuck McDowell/ 608-267-3836

Date
4/11/00

**WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING**

**CHAPTER ADM 43
Non-Municipal Electric Utility Public Benefits Fees
June 16, 2000
9:00 a.m.**

REGISTRATION

NAME: George Edgar

ADDRESS: 211 S. Paterson, Third Floor
Madison, WI. 53703

PHONE: 608-249-9322 x170

REPRESENTING: Wisconsin Energy Conservation Corp.

Please check applicable statement(s):

- Appearing in favor.
- Appearing in opposition.
- Appearing for informational purposes.
- I wish to testify.

**WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING**

**CHAPTER ADM 43
Non-Municipal Electric Utility Public Benefits Fees
June 16, 2000
9:00 a.m.**

REGISTRATION

NAME: BEAR Zelenak

ADDRESS: _____

PHONE: 608 294 1178

REPRESENTING: NSP

Please check applicable statement(s):

- () Appearing in favor.
- () Appearing in opposition.
- (/) Appearing for informational purposes.
- (X) I wish to testify.

**WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING**

**CHAPTER ADM 43
Non-Municipal Electric Utility Public Benefits Fees
June 16, 2000
9:00 a.m.**

REGISTRATION

NAME: Janet Swardby

ADDRESS: 44 East Mifflin Suite 101
Madison WI 53703

PHONE: 286-9599 or 286-0204

REPRESENTING: Outdoor Advertising Association
Wisconsin

Please check applicable statement(s):

- () Appearing in favor.
- (X) Appearing in opposition.
- () Appearing for informational purposes.
- (X) I wish to testify.

**WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING**

**CHAPTER ADM 43
Non-Municipal Electric Utility Public Benefits Fees
June 16, 2000
9:00 a.m.**

REGISTRATION

NAME: MARC NIELSEN

ADDRESS: P O BOX 192

MADISON WI 53701-0192

PHONE: 608-252-3945

REPRESENTING: ALLIANT ENERGY

Please check applicable statement(s):

- (X) Appearing in favor.
- () Appearing in opposition.
- () Appearing for informational purposes.
- (X) I wish to testify.

**WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING**

**CHAPTER ADM 43
Non-Municipal Electric Utility Public Benefits Fees
June 16, 2000
9:00 a.m.**

REGISTRATION

NAME: GREGORY BOLCOM

ADDRESS: Madison Gas & Electric Company
P O Box 1231 Madison, WI 53701-1231

PHONE: 608/252-4748

REPRESENTING: Madison Gas & Electric Company

Please check applicable statement(s):

- () Appearing in favor.
- () Appearing in opposition.
- () Appearing for informational purposes.
- (X) I wish to testify.

**WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING**

**CHAPTER ADM 43
Non-Municipal Electric Utility Public Benefits Fees
June 16, 2000
9:00 a.m.**

REGISTRATION

NAME: WILLIAM L. BOURBONNAIS

ADDRESS: 700 N. ADAMS

GREEN BAY, WI 54307-9002

PHONE: 920 433-1573

REPRESENTING: WISCONSIN PUBLIC SERVICE CORP

Please check applicable statement(s):

() Appearing in favor.

() Appearing in opposition.

Appearing for informational purposes.

I wish to testify.

**WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING**

**CHAPTER ADM 43
Non-Municipal Electric Utility Public Benefits Fees
June 16, 2000
9:00 a.m.**

REGISTRATION

NAME: REGINALD FAUSINE

ADDRESS: WIS. RAPIDS, WIS.

PHONE: 715-422-3144

REPRESENTING: CONSOLIDATED WATER POWER COMPANY

Please check applicable statement(s):

- Appearing in favor.
- Appearing in opposition.
- Appearing for informational purposes.
- I wish to testify.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR

GEORGE LIGHTBOURN
SECRETARY



Office of the Secretary
Post Office Box 7
Madison, WI 53707-7
Voice (608) 266-1
Fax (608) 267-3
TTY (608) 267-9

Department of Administration
Division of Energy

PUBLIC HEARING ON UTILITY PUBLIC BENEFITS

Department of Administration Building
101 East Wilson Street
St. Croix Room, First Floor

June 16, 2000
9:00 A.M. – 11:00 A.M.

Administration Rule 43

Mr. Mark Saunders called the meeting to order at 9:00 A.M. He welcomed everyone for attending and gave the introductory remarks:

The Department of Administration has set this time and place for a public hearing under ss. 16.004(1), 16.957(4)(b) and 227.11(2)(a), of the Wisconsin Statutes, in order to consider the creation of rules relating to Utility Public Benefits Fees. My name is Mark Saunders and I'm the Deputy Legal Counsel for the Department of Administration. With me is Pat Meier, Director of the Bureau of Energy in the Department of Administration.

Notice of this public hearing and proposed rule adoption was published in the May 31, 2000, issue of the Wisconsin Administrative Register. In addition, copies of the rule and notice were made available to interested parties. Also, on June 2, 2000, copies were hand-delivered to the Press Boxes located in Room 235, Southwest in the State Capitol Building

The proposed rule creates Chapter Adm 43 of the Wisconsin Administrative Code, entitled "Non-Municipal Utility Public Benefits Fees." Pursuant to s. 16.957(4)(b), of the Statutes, the Department of Administration is required to promulgate rules establishing the amount of public benefits fees to be collected by certain electric utilities from their customers. These fees are to be paid to the UPB Fund administered by the Department in order to fund statewide programs for low-income assistance, energy conservation and efficiency, and renewable resources. The proposed rule establishes fees that may vary by class of customer, but will be uniform within each class. The rule also establishes procedures for the collection, adjustment and reporting of the fees, for voluntary contributions to the Fund, and an appeals process.

The purpose of today's hearing is to give all interested persons or their representatives an opportunity to present facts, views or arguments regarding proposed Adm 43. In addition to today's testimony, the department will accept written comments or questions received by Friday, June 30, 2000. Please direct written comments to Donna Sorenson, Department of Administration, 101 East Wilson Street, P.O. Box 7864, Madison, Wisconsin 53707.

June 19, 2000

Page 2 of 6

Section 227.18(3) of the Statutes requires that all persons present at this hearing have an opportunity to present their arguments and comments to the agency officer responsible for promulgating these rules; that is, the Secretary of the Department of Administration. The Secretary has determined that argument to him should be made in writing rather than orally. Consequently, a transcript of this hearing, along with your written comments will be provided to him prior to final promulgation of this rule.

The proposed rule was submitted to the Wisconsin Legislative Council Rules Clearinghouse on April 25, 2000 for its review, analysis and recommendations. The Legislative Council issued its report on the proposed rule on May 19, 2000. Based on the suggestions from the Rules Clearinghouse, and your oral and written comments and suggestions, the Department of Administration will consider amending the rule before forwarding it to the presiding officers of each house of the legislature for final promulgation.

The statutes also require that the UPB Rule be promulgated as an emergency rule. Upon the advice and request of the Council on Utility Public Benefits, the Department of Administration has delayed that process in order to consider incorporating your comments and suggestions and those from the Rules Clearinghouse as well.

So for those of you who have inquired, there are no emergency rules in effect.

There are appearance slips in the back for you to fill out. You are not required to do so, unless you want to testify. But we would like to maintain a record of attendees, and you can simply register your position--for, against or neutral--without having to testify. I'll go through the appearance slips to see who wants to give testimony on the rule. When I call you, please state your name, who you are representing and if you are testifying in favor or in opposition to the proposed rule. In the interest of time, I ask that you try to limit your comments to a reasonable amount.

One final note, the UPB rules are being proposed in 3 parts for practical reasons. The hearing for the Chapter 44 proposed rule, which deals with energy conservation and renewable resources programs, is set for 11:00. The hearing for Chapter 45, which deals with low income assistance is at Noon today. However, if you are here to testify on Chapter 43 and either 44 or 45, then by all means feel free to combine your testimony during this hearing session.

Thank you.

Gregory A. Bollom, Madison Gas & Electric (MG&E):

Good morning, my name is Gregory Bollom, I am Assistant Vice-President of Electric Marketing for Madison Gas & Electric Company. Thank you for the opportunity to testify today. Madison Gas and Electric supports Chap Adm 43, of the Wisconsin Administrative Code, the non-municipal electric utility public benefits fee rule as currently drafted. We strongly urge that Department Of Administration (DOA) and the Legislature not to make some of the changes recommended by the Legislative Council Staff Rules Clearinghouse.

Specifically

1. The three (3%) percent cap should not be implemented over the entire eight-year period as recommended by the Rules Clearinghouse. But rather on a monthly basis as currently written in the rule. If the rule is changed, MG&E will be required to keep track of fees billed

on an individual customer account for an eight-year period and only after eight years determine if the customer was overcharged. This is completely unworkable. MG&E has a significant portion of its customer population that changes addresses annually due to the heavy student population in our service territory. Many of these students do not remain customers of MG&E for eight years. The most equitable way to ensure that no customer pays a Public Benefits fee in excess of 3% of all other charges on their bill, is to check the amount on a monthly basis.

2. The DOA staff did not error in excluding un-metered services from the definition of non-residential customers. Applying the Public Benefits fee to metered service is the most equitable way to define a customer and the most practical way to apply the charge.

To put this issue in context, most un-metered service is left un-metered because the cost of metering far exceed the cost of the energy used. Most un-metered services are for public streetlights, private overhead lights, and municipal defense sirens. For example, a 100 watt high pressured sodium lamp on MG&E's customer owned lighting rate pays \$3.42 a month. While it is possible to add 3% or .10 cents per month to the bill for Public Benefits, the added complication for this very small charge makes no sense. In addition, customers taking service on un-metered rates are also taking service on standard metered tariffs for the majority of their electric use. They will be paying Public Benefits fees on that portion of their usage. The rule that is drafted by DOA represents a very reasonable and equitable solution to application of the charges.

3. The third issue is the use of a separate bill insert and return envelope for the voluntary customer contributions to Public Benefits. The Rules Clearinghouse recommends that the check-off should be placed directly on the customer's bill, so that contributions can be made directly through the customers bill payment to the utility. MG&E has no way to segregate money collected from its customers. We currently maintain our accounts receivable on a total basis and do not allocate partial payments even between electric and gas bills. If we are required to place a check-off on the customers bill to allow voluntary contributions we will need to develop a new customer billing system, complete with new accounting rules, accounts receivable rules, bill stock etc.

The total Public Benefits fees that MG&E must collect from it's customers is only a little over \$2.5 million dollars, we will very likely spend more than that, to rebuild our customer billing and accounting systems if we are required to put a check-off on the bill. Since we are allowed to recover these expenses from our customers and they count against the 3% cap, we could effectively eliminate over an entire year of Public Benefits funding simply to implement the voluntary check-off. Again, to put things in perspective, MG&E currently has a voluntary program and it generates less than \$50,000 a year to our own energy fund. It makes absolutely no sense to spend millions of dollars to change our billing systems in the hope of generating only thousands of dollars of contributions. The separate billing insert and envelope proposed in the currently rules is the most cost effective way to achieve the goals of Act 9.

The rules as drafted and included with the notice for this hearing today, represent the most equitable and cost effective method for implementing the collection of Public Benefits fees. They represent many months of work balancing the goals of Act 9 with the practical

requirements of the utilities to collect fees from their customers. MG&E strongly supports the adoption of the rules as currently drafted. Thank you.

(Written comments will be sent in prior to June 30.)

William L. Bourbonnais, Wisconsin Public Service Corporation (WPSC)

My name is William Bourbonnais, WPSC, Manager of Rates and Economic Evaluation. WPSC does thank you for the opportunity to speak at this hearing. We in general are supportive of the fee rule as developed. WPSC was an active participant in the development of that rule. To save time, I can indicate that I agree with the testimony of Mr. Bollom, in regards to issues that he brought up,

- The 3% cap on a monthly basis,
- Un-metered services being excluded from the fee
- Separate bill insert mechanism that was developed in the fee rule.

The only concern that WPSC has in regard to the fee rule as developed is that it will not provide uniform residential fees across the State. The program that will be administrated by the Wisconsin DOA is a Statewide program and it appears to us that having residential customers in different parts of the State paying significantly different fees for this rule, is not consistent and appropriate. WPSC because of it's low rates, and because of the low usage of many of it's customers will have customers paying at least twice what other customers will be paying in several areas, including the Milwaukee and Madison areas. We do not believe that this an appropriate discrimination or indifference for our customers. Thank you.

(Written testimony will be submitted by June 30.)

Janet Swamby, Outdoor Advertisers Association of Wisconsin

Hi, my name is Janet Swamby, I am the Executive Director of the Outdoor Advertisers Association of Wisconsin (OAAW.) The OAAW is a statewide trade association apprised of more than 20 companies that own and offer advertising space on billboards across Wisconsin. The companies, which are members, own between 15 and 1000 sign structures apiece. It has come to the attention of the OAAW that the implementation of this Adm Rule will adversely impact its member companies. The OAAW supports the law that establishes a fee, which is to be collected from customers of an electric utilities in order to fund low-income assistance, energy conservation and renewable resource programs. The law also states, however, that the fee may vary by class of customers, but will be uniform within each class. Unfortunately, the mechanism that has been described to me for collection of the fee will not be uniform. The proposed mechanism specifically unfairly targets outdoor advertising companies. OAAW members will be paying much more as fees when compared to other business that consume comparable amounts of electricity.

According to a representative of DOA, the expected average residential electric customer in the state will be charged \$1.60 per month as the energy conservation fee. The average commercial customer will be charged between \$3-4 dollars each month. I surveyed ten members of our association and learned that these ten companies owned 1682 illuminated billboards. Each of these billboards has it's own electric meters. The average monthly bill for each of these electric meters runs from \$15 to \$50 dollars a month. If \$3 dollars would be charged for each electric meter, each month, the total payment to the State from these ten companies would be more than \$60,500 annually. It is however, my understanding that there

is a limitation for small consumers of electricity. This limitation being that no customer will pay no more than 3% of the electric bill each month as the proposed energy conservation fee. Even under this scenario, OAAW members will be paying excessive fees. The largest company, with 511 billboards will be paying \$681 a month towards this new fee, comparable business will be paying \$4. The smallest billboard company, with 25 billboards in Wisconsin, will be paying \$22 a month towards the fee, and this small billboard company will be paying more than five times what another comparable commercial business will be paying each month.

There is a second limitation on the fees that can be collected from one electric customer, that is that no one customer will have to pay more than \$750 a month. Interestingly, even the largest billboard company in the State will be paying more than \$750, with 511 meters on its 511 billboards. Even if this large company exceeded the \$750 fees paid, it would not meet the criteria for this special exception, because this company pays six different utilities each month. In fact, of the ten billboard companies I surveyed, each company pays between three and 30 electric companies each month.

I hope that DOA will recognize that the proposed mechanism or structure for collecting this new energy conservation fee is not uniform within classes of customers. The OAAW pay multiple electric utilities and have literally hundreds of different meters on hundreds of billboards. Each of the meters register minimal consumption of electricity each month, far less electricity than the smallest electric commercial customers who will be paying \$3 to \$4 dollars for this new fee every month. If the rule goes forward without adjustment to address this unfairness, the OAAW companies of Wisconsin will be paying within five and 100 times more in energy conservation fees than comparable commercial customers. The OAAW respectfully request that the DOA make an adjustment in the rule to address this violation of uniformity, and the OAAW stands ready to work with the department to determine a mechanism or structure of payment for commercial customers that will be fair to all involved. Thank you for your consideration of this request.

(Written comments submitted at this time.)

Mark Nielson, Allient Energy

Good morning, my name is Mark Nielson, I represent Allient Energy of Wisconsin Power and Light Company. We are testifying in support of the rule as drafted today. Mr. Bollom's statement in regards to his position on his issues, are our exactly our position on these issues as well. We have prepared a six page written testimony to submit to you for further consideration. Thank you.

Anyone else present wish to testify? Any other slips to testify?

Brian R. Zelenak, Northern States Power (NSP)

To testify in support of Adm 43. NSP is in the process of finalizing our written comments that we will provide by June 30 in support of the rules as written.

Mark Saunders:

9:30 A.M.

We are scheduled to be here for two hours. What we will do is keep the hearing open for another 15 minutes, after which we will adjourn. You are welcome to wait.

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9:45 A.M.

Officially, back on the record to make note that no one new has come forward to testify so we will adjourn Adm 43 Public Hearing.

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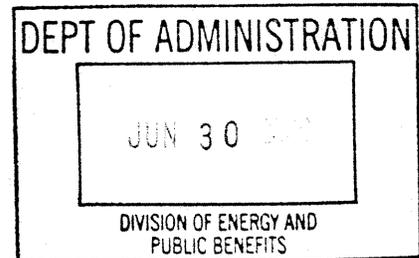


TIM HOVEN

STATE REPRESENTATIVE ♦ SIXTIETH ASSEMBLY DISTRICT

June 30, 2000

Mr. John Marx, Administrator
Division of Energy and Public Benefits – DOA
101 East Wilson Street, 6th Floor
Madison, WI 53707



Dear Mr. Marx:

Please consider this letter my official written comments to the Department of Administration (DOA) regarding the creation of Chapter Adm 43 of the Wisconsin Administrative Code relating to non-municipal electric utility public benefits fees.

As you know, I have serious concerns about the DOA's proposed method of collecting public benefit fees from residential customers. Despite the statutory requirements of the law, it was my understanding and intent when the legislature approved the new public benefits program that a flat fee of no more than a \$1.13 per month would be charged to all residential customers.

Under the DOA's proposed rule that would charge residential customers a fee amounting to 3% of their total electric bill, roughly 40% of the state's residential customers would pay more than \$1.13 per month. Some customers would be forced to pay nearly \$5.00 a month. I find that unacceptable.

When the *Electric Reliability 2000* legislation originally came through the Assembly Utilities Committee, as Chairman, I successfully coordinated an effort to delete all increases in public benefits spending included in the bill. While I grudgingly accepted the inclusion of public benefits spending increases in the 1999-2001 state budget, I did so with the understanding that all residential customers would pay an identical flat fee.

That being said, I believe the DOA should modify its proposed rule regarding non-municipal electric utility public benefits so that all consumers are charged a flat fee of no more than \$1.13 per month. If not, I will take appropriate action during the legislative review period to make sure the necessary modifications are made.

Thank you for your thoughtful and immediate attention to this matter.

Sincerely,

Timothy T. Hoven
State Representative
60th Assembly District

TTH:mew

cc: Secretary George Lightbourn, DOA



Wisconsin Electric
231 W. Michigan
P.O. Box 2046
Milwaukee, WI 53201-2046
Phone 414 221-2345

Wisconsin Electric's Comments Regarding the Public Benefits Fee Rule; Adm. 43

Thank you very much for the opportunity to provides comments on this rule.

Introduction:

Wisconsin Electric has been a member of a DOA-led workgroup in providing input in the development of these rules. For the past several months, this diverse group has worked diligently with the DOA in drafting this rule. While the rule is not perfect as pointed out by the Legislative Council staff, Wisconsin Electric feels that the rule, as written, is the best way to achieve a workable rule that meets the statutory intent.

Therefore, Wisconsin Electric supports the draft rule on public benefits as currently proposed by the Department of Administration.

1. The Legislative Council Clearinghouse report states that the rule does not conform with Wis. Stats. 16.957(4) which requires that the fees are to be set in the rule.

The flexibility for the utilities to set the fee in their collection plans is the only cost-effective way for the utilities to implement the fee under the law. If the fee was set by rule, it could require the utility to reprogram its billing system. It would create double-paged bills, added postage fees and lead to inefficiencies in collection. As a result, the