

## **PUBLIC SERVICE COMMISSION OF WISCONSIN**

Natural Gas Public Utility Territorial Agreements

1-AC-245

Clearinghouse Rule No. 15-003

### **ORDER ADOPTING FINAL RULES**

The Public Service Commission of Wisconsin adopts an order to renumber and amend PSC 133.07 (1) and (3); amend PSC 133.03 (1) (intro.), (2) (b), (3) (a) (intro.) and (b), 133.07 (2) (title) and (2), and 133.08 (3) and (6) (d); and create 133.07 (1), (1m) (d), (2m), (3) (b), and (3) (b) (note) regarding natural gas territorial agreements.

### **REPORT TO THE LEGISLATURE**

The Report to the Legislature is included as Attachment A.

### **FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS**

The Fiscal Estimate and Economic Impact Analysis for this rulemaking are included as Attachment A1.

### **FINAL REGULATORY FLEXIBILITY ANALYSIS**

This rule will not affect small businesses. The s. 227.114 (12), Stats., definition of "small business" states that to be considered a small business, the business must not be dominant in its field. Since gas, electric and water utilities are monopolies in their service territories, they are dominant in their fields, and so, are not small businesses.

### **EFFECTIVE DATE**

These rules shall take effect on the first day of the month following publication in the *Wisconsin Administrative Register* as provided in s. 227.22 (2) (intro.), Stats.

## **CONTACT PEOPLE**

Questions regarding this matter should be directed to docket coordinator Adam Ingwell, at (608) 267-9197 or Adam.Ingwell@wisconsin.gov. Small business questions should be directed to Christine Swailes at (608) 266-8776 or Christine.Swailes@wisconsin.gov. Media questions should be directed to the Communications Director at (608) 266-9600. Hearing or speech impaired individuals may also use the commission's TTY number, if calling from Wisconsin (800) 251-8345, if calling from outside Wisconsin (608) 267-1479.

The commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this matter or who needs to obtain this document in a different format should contact the docket coordinator listed above.

## **REPORT TO THE LEGISLATURE**

### **A. TEXT OF THE RULE**

The text of the rule is included as Attachment A2.

### **B. PLAIN LANGUAGE ANALYSIS**

#### **1. Statutory Authority and Explanation of Authority**

This rule is authorized under ss. 196.02 (1) and (3), 196.50 (1) (am), and 227.11, Stats. Section 227.11 authorizes an agency to promulgate administrative rules. Section 196.02 (1) authorizes the Commission to do all things necessary and convenient to its jurisdiction. Section

196.02 (3) grants the Commission specific authority to promulgate rules. Section 196.50 (1) (am), as created by Act 300, specifically requires the Commission to develop rules in this matter.

Statutes Interpreted

This rule implement s. 196.50 (1), Stats.

Related Statutes or Rules

None.

2. Brief Summary of Proposed Rules

This rulemaking is being done to bring the commission's administrative rules relating to natural gas public utility territorial agreements into conformity with 2013 Wisconsin Act 300 (Act 300). Before Act 300, a natural gas utility could not provide service in a municipality already served by a different gas utility unless it received a certificate from the commission. Act 300 allows a gas utility to provide service in a municipality served by another gas utility without commission action, if: (1) the utilities have entered into a territorial agreement about which customers will be served by which utility, (2) the additional utility's service territory is adjacent to the municipality it now wants to serve, and (3) the additional utility will only serve a limited number of customers in the municipality it now wants to serve. The ½ mile and five additional customer limits are tests for ensuring that only a limited number of customers will be served.

3. Comparison with Existing or Proposed Federal Regulations

The commission is not aware of any existing or proposed federal legislation on this matter.

4. Comparison with Similar Rules in Adjacent States

The commission is not aware of any similar rules in surrounding states.

5. Summary of Factual Data and Analytical Methodologies Used

The commission has considered its experience with granting individual waivers to allow the type of limited agreements authorized under this rulemaking.

6. Effect on Small Business

This rule will not affect small businesses. The s. 227.114(12), Stats., definition of ‘small business’ states that to be considered a small business, the business must not be dominant in its field. Because electric, gas, and water utilities are monopolies in their service territories, they are dominant in their fields and, so, are not small businesses.

7. Agency Contact People

Questions regarding this matter should be directed to docket coordinator Adam Ingwell, at (608) 267-9197 or [Adam.Ingwell@wisconsin.gov](mailto:Adam.Ingwell@wisconsin.gov). Small business questions should be directed to Christine Swailes at (608) 266-8776 or [Christine.Swailes@wisconsin.gov](mailto:Christine.Swailes@wisconsin.gov). Media questions should be directed to the Communications Director at (608) 266-9600. Hearing or speech impaired individuals may also use the commission’s TTY number, if calling from Wisconsin (800) 251-8345, if calling from outside Wisconsin (608) 267-1479.

8. Accommodation

The commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs to receive this document in a different format should contact the docket coordinator, as indicated in the paragraph above, as soon as possible.

**C. FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS**

The Fiscal Estimate and Economic Impact Analysis for this rulemaking is included as Attachment A1.

**D. BASIS AND PURPOSE OF RULES**

This rulemaking is being done to bring the commission's administrative rules relating to natural gas public utility territorial agreements into conformity with 2013 Wisconsin Act 300 (Act 300). Before Act 300, a natural gas utility could not provide service in a municipality already served by a different gas utility unless it received a certificate from the commission. Act 300 allows a gas utility to provide service in a municipality served by another gas utility without commission action, if: (1) the utilities have entered into a territorial agreement about which customers will be served by which utility, (2) the additional utility's service territory is adjacent to the municipality it now wants to serve, and (3) the additional utility will only serve a limited number of customers in the municipality it now wants to serve.

**E. SUMMARY OF PUBLIC COMMENTS AND COMMISSION RESPONSES**

No one testified at the public hearing and no written comments were received.

**F. APPEARANCES AT PUBLIC HEARING**

Only commission staff appeared at the hearing.

**G. ANY CHANGES TO THE FISCAL ESTIMATE OR THE ANALYSIS UNDER s. 227.14(2), STATS.**

None.

**H. RESPONSE TO LEGISLATIVE COUNCIL COMMENTS**

A copy of the Legislative Council report is included as Attachment A3. Responses to the comments in that report are below:

1. (a) and (c) Agree. Change made. The commission has authority under s. 196.02 (1), Stats., to do all things necessary and convenient to its jurisdiction. Further, s. 196.50 (1) (am), Stats., contains one of the conditions that must be met for a limited waiver to be granted. That condition is that the gas utility provide service only to a limited number of customers in the municipality. These rule provisions contained tests for ensuring that only a limited number of customers will be served. This explanation has been added to the summary.

(b) Agree in part. This is not a new requirement, just acknowledgement that municipalities require authorization. The language has been changed to say that proof of authorization must be provided if such authorization is required by the municipality at issue.

4. Agree. Change made.

5. (a) Agree. Change made.

(b) Agree. Change made.

(c) Agree. Change made.

## I. MISCELLANEOUS DETERMINATIONS

The commission's Wisconsin Environmental Policy Act coordinator examined whether the rules will have an environmental impact and concluded that they will not. Commission staff also considered whether the rules will directly or substantially impact housing under s. 227.115, Stats., and concluded that they will not.

### TEXT OF THE RULES

**SECTION 1.** PSC 133.03 (1) (intro.), (2) (b) and (3) (a) (intro.) and (b) are amended to read:

**PSC 133.03 (1)** (intro.) CONSTRUCTION, INSTALLATION, OR USE. ~~A Except as provided in s. PSC 133.07 (2m),~~ a gas public utility shall obtain a certificate of authority before constructing, installing, or placing in operation any of the following:

(2) (b) Paragraph (a) does not apply when a gas public utility uses cylinders of gas in order to keep customers in service temporarily during repairs, replacements, or modifications to the gas distribution system.

(3) NOTIFICATION REQUIRED. (a) (intro.) Unless a gas public utility is required to obtain a certificate of authority, it shall notify the commission of any of the following projects using the notification procedure in par. (b):

(b) A gas public utility desiring to proceed with a project identified under par. (a) shall file a notification with the commission at least 15 days, or as soon as practicable, before it intends to begin construction of the project. The notification shall include a brief description and location of the project.

**SECTION 2.** PSC 133.07 (1) is renumbered 133.07 (1m), and 133.07 (1m) (a) to (c) (intro.) as renumbered are amended to read:

**PSC 133.07 (1m) FILING.**

(a) A gas public utility may enter into a general or limited territorial agreement with another gas public utility. A gas public utility that enters into a general territorial agreement shall file the

territorial agreement with the commission for review and approval. A gas public utility that enters into a limited territorial agreement shall file the territorial agreement with the commission but does not need to receive commission approval.

(b) A general territorial agreement does not grant a gas public utility authority to serve in a municipality.

(c) (intro.) A gas public utility which seeks approval of a general territorial agreement shall include in its filing all of the following:

**SECTION 3.** PSC 133.07 (1) is created to read:

**PSC 133.07 (1)** For purposes of this section:

(a) “General territorial agreement” means any territorial agreement other than a limited territorial agreement.

(b) “Limited territorial agreement” means a territorial agreement under s. 196.50 (1) (am) 1., Stats.

**SECTION 4.** PSC 133.07 (1m) (d) is created to read:

**PSC 133.07 (1m) (d)** A gas public utility shall file a signed limited territorial agreement with the commission. The utility shall include all of the following in its filing:

1. Identification of the commission action or docket that granted a gas public utility authority for providing service in the municipality affected by the agreement.
2. A detailed map and the legal description of the area covered by the limited territorial agreement, including a showing that the area to be served by the additional gas public utility is adjacent to a municipality that the additional gas public utility is already authorized to serve.
3. Identification of the number of additional customers to which the additional gas public utility will provide service.
4. A statement that none of the additional customers to be served are located more than  $\frac{1}{2}$  mile from an existing service territory boundary between the original and the additional gas public utilities.
5. An evaluation demonstrating the reasons for the territorial agreement, such as avoiding controversy over the area to be served by each gas public utility, avoiding duplication of facilities, or providing more efficient service.
6. Proof that the municipality involved has authorized the additional gas public utility's provision of service in the municipality, if such authorization is required.

**SECTION 5.** PSC 133.07 (2) (title) and (2) are amended to read:

**PSC 133.07 (2) (title) AUTHORITY TO SERVE UNDER A GENERAL TERRITORIAL AGREEMENT.**

- (a) 1. When one gas public utility is authorized by the commission to provide gas service in a municipality, and that utility has entered into a general territorial agreement with another gas public utility that does not have commission authorization to serve in the municipality, the additional utility shall apply for and receive from the commission a certificate under ss. 196.49 and 196.50, Stats., before it can provide gas utility service in the municipality.  
2. If the service area sought by one of the utilities covered by the general territorial agreement requires commission approval under this paragraph, that utility's filing for a certificate of authority shall include an evaluation demonstrating why provision of service by an additional utility in the municipality is needed.  
3. If a certificate of authority is granted, the certificate will specify the portions of the municipality in which the additional utility is authorized to serve. Any subsequent amendments to the general territorial agreement between the utilities will be considered under par. (b).
- (b) When 2 or more gas public utilities are authorized by the commission to provide gas service in a municipality, and the service area boundaries of the utilities are identified in a general territorial agreement, the authorized service areas may be modified without the need for the commission to issue amended or additional certificates of authority if the commission approves an amended general territorial agreement to which all affected gas public utilities are signatories. Commission approval of an amended general territorial agreement constitutes amended authorizations.
- (c) When more than 2 gas public utilities are authorized by the commission to provide gas service in a municipality, and the service area boundaries of some, but not all, of the utilities are identified in a general territorial agreement, the authorized service areas may be modified without the need for the commission to issue amended or additional certificates of authority if the commission approves an amended general territorial agreement after giving opportunity for the gas public utility not covered by the amended boundary agreement to object. If an objection is received, the commission may proceed with approving the amended general territorial agreement or may require the agreement signatories to apply for amended certificates of authority. Commission approval of an amended general territorial agreement constitutes amended authorizations.

**SECTION 6.** PSC 133.07 (2m) is created to read:

**PSC 133.07 (2m) AUTHORITY TO SERVE UNDER A LIMITED TERRITORIAL AGREEMENT.** (a) A gas public utility may provide service in a municipality served by another gas public utility without first obtaining a certificate from the commission to serve that municipality if all of the following apply:

1. The gas public utilities enter into a limited territorial agreement regarding areas to be served by each utility in the municipality.
2. The area to be served by the additional gas utility is adjacent to a municipality where the additional gas public utility is already authorized to serve.
3. The additional gas public utility will provide service to 5 or fewer additional customers in the municipality.
4. None of the additional customers to be served are located more than  $\frac{1}{2}$  mile from an existing service territory boundary between the original and the additional gas public utility.

(b) A gas public utility may not amend a limited territorial agreement. To expand the territory covered by a limited territorial agreement the utilities shall do one of the following:

1. If the additional territory meets the requirements of par. (a), then enter into a new limited territorial agreement covering the additional territory and file it under sub. (1) (d).
2. If the additional territory does not meet the requirements of par. (a), then enter into a general territorial agreement covering the additional territory and file a request for approval under sub. (1) (c).

**Note:** For example: if 2 utilities have an existing limited territorial agreement that covers a portion of their original service territory boundary and want to have an agreement that covers a different portion of their original service territory boundary, they may enter into a new limited territorial agreement that covers the new territory.

But, for example, if the existing limited territorial agreement covers a  $\frac{1}{2}$  mile wide strip east of their original service territory boundary and they want to have an agreement that covers a  $\frac{1}{2}$  mile strip that is east of the new service territory boundary created by the existing limited territorial agreement, they must enter into a general territorial agreement to cover the additional strip.

**SECTION 7.** PSC 133.07 (3) is renumbered 133.07 (3) (a), and amended to read:

**PSC 133.07 (3)** FILING DEADLINE. (a) Requests A gas public utility shall file a limited territorial agreement, a request for approval of a general territorial agreements shall be filed agreement, or an amended general territorial agreement with the commission, and receive approval when necessary, before the utilities provide service as permitted under the agreement. Amended territorial agreement shall be filed with the commission within 30 days after the date the amended agreement is signed and shall request commission approval of the proposed change.

**SECTION 8.** PSC 133.07 (3) (b) and (3) (b) (note) are created to read:

PSC133.07 (3) (b) A gas public utility shall file an amended general territorial agreement with the commission within 30 days after the date the amended agreement is signed and shall request commission approval of the proposed change.

**Note:** See sub. (2) (b) and the note that follows about amending limited territorial agreements.

**SECTION 9.** PSC 133.08 (3) and (6) (d) are amended to read:

**PSC 133.08 (3)** NEW AUTHORITY TO SERVE ANNEXED AREA. A gas public utility that is authorized to provide service in a municipality that annexes an area of another municipality shall apply for commission authorization under ss. 196.49 and 196.50, Stats., to provide service in an annexed area if another gas public utility is authorized to provide service in the municipality from which the area is annexed and is serving customers or has facilities in the annexed area. The commission shall determine which portions of the annexed area may be served by each utility.

**(6)(d)** If the service area sought by the gas public utility in the annexed area requires commission approval under s. 196.50, Stats., the filing shall include an evaluation demonstrating why provision of service by a second gas public utility in the municipality is needed.

**SECTION 10.** EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

