

PUBLIC SERVICE COMMISSION OF WISCONSIN

Repeal of Unauthorized Rules Pursuant to Wis. Stat. § 227.26(4)

1-AC-261

Clearinghouse Rule No. 23-070

Pursuant to Wis. Stat. § 227.26(4)(b), the Public Service Commission of Wisconsin (Commission) petitions the Joint Committee for Review of Administrative Rules (JCRAR) to amend a portion of a rule the Commission has determined may be in conflict with 2021 Wisconsin Act 86 and therefore unauthorized.

ORDER ADOPTING FINAL RULE

This is an Order of the Public Service Commission of Wisconsin proposing to **amend** Wis. Admin. Code § PSC 185.61(1).

ANALYSIS PREPARED BY THE PUBLIC SERVICE OF WISCONSIN

A. Text of Rule

The proposed rule text is provided in Appendix A.

B. Statutory Authority

Wis. Stat. § 227.26(4)(b)

C. Explanation of Authority

Prior to 2021 Wisconsin Act 86, Wisconsin Statute § 196.49 required water utilities and combined water and sewer utilities to obtain a Certificate of Authority (CA) from the Commission for any type of meter installation, repair, or replacement. Wisconsin Admin. Code § PSC 184.03(4)(c) had an exception for “routine meter, repair, or replacement.”

2021 Wisconsin Act 86 revised Wis. Stat. § 196.49 and created 196.49(5g)(ar)1s. which added “installing, repairing, or replacing meters to measure service to customers” to the list of exceptions in which a water public utility or a combined water and sewer public utility does not need to obtain prior

approval from the Commission. This same Act also revised Wis. Admin. Code § PSC 184.03(4)(c) to exempt all meter installation, repair, or replacement not solely “routine” meter installation, repair, or replacement.

Wisconsin Stat. § 227.11(2)(a) sets forth parameters for an agency’s rulemaking authority stating an agency, “may promulgate rules interpreting provisions of any statute enforced or administered by the agency...but the rule is not valid if the rule exceeds the bounds of correct interpretation.”

D. Related Statutes or Rules

Wis. Admin. Code §§ PSC 184.03 and 185.61

E. Plain Language Analysis

The proposed rule amends PSC 185.61(1), relating to approval of flow meters. The Commission is only requesting to amend the last sentence of PSC 185.61(1) which requires water utilities and combined water and sewer utilities to obtain prior approval from the Commission for flow meters, including magnetic and ultrasonic meters. The first three sentences of PSC 185.61(1) relate to meter testing, accuracy, and standards. 2021 Wisconsin Act 86 did not impact the Commission’s authority related to meter accuracy and standards. Pursuant to Wis. Stat. § 196.16, the Commission has authority to establish reasonable rules, regulations, specifications, and standards to secure accuracy for all meters of a public utility.

2021 Wisconsin Act 86 created Wis. Stat. § 196.49(5g)(ar)1s. which exempted water utilities and combined water and sewer utilities from obtaining prior Commission approval for meter projects, including flow meters. While PSC 184.03(4)(c) was revised to exempt all meter installation, repair, or replacement, not just “routine” installation, repair, or replacement, PSC 185.61(1) was not revised as part of this legislation and still requires Commission approval for the type of meters, specifically flow meters (e.g. magnetic and ultrasonic meters). While Act 86 clearly eliminated the requirement for approval for the installation, repair, or replacement of meters through the Certification of Authority process, it also appears that the intent was to eliminate regulatory approval for all meter projects, including any approval

required as to the type of meter. The Commission respectfully submits that modifications to a portion of PSC 185.61(1) are needed to align with the intent of 2021 Wisconsin Act 86.

F. Agency Contact Person

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

Dated at Madison, Wisconsin, the 23rd day of May, 2024.

By the Commission:



Cru Stubley
Secretary to the Commission

DL: 02011900

Appendix A

TEXT OF PROPOSED RULE

Section 1. PSC 185.61 (1) is amended to read.

PSC 185.61 (1) METERS All meters used for measuring the quantity of water delivered to a customer shall be in good working condition. They shall be adequate in size and design for the type of service measured and shall be accurate to the standard specified in s. PSC 185.65. Cold water meters of the turbine type shall be used for metered service only where the actual flow rates fall entirely within the normal test flow limits of the meter. ~~Flow meters, including magnetic and ultrasonic meters, may be used for customer metering only with the specific approval of the commission.~~

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

(END OF TEXT OF RULE)