



Public Service Commission of Wisconsin

Rebecca Cameron Valcq, Chairperson
Ellen Nowak, Commissioner
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**PSC Testimony on SB 316/AB 300 – Changes to the Approval Process
for Lead Service Line Financial Assistance Programs
Senate Committee on Utilities, Technology and Telecommunications
August 26, 2021**

Chairman Bradley and committee members, my name is Matt Sweeney and I am the Public and External Affairs Director at the Public Service Commission (Commission). Today I am here to testify on behalf of Commission Chairperson, Rebecca Cameron Valcq. Thank you for the opportunity to testify on Senate Bill 316 (SB 316) and Assembly Bill 300 (AB 300), which make changes to the Commission's approval of water utilities' financial assistance programs for replacing privately owned lead service lines.

As you may know, 2017 Wisconsin Act 137 (Act 137) established the process for Commission review of utility applications creating financial assistance programs for replacing privately owned lead service lines (LSLs). I want to thank Senator Cowles and the utility committees for their leadership on this previous legislation, which provides utilities with an additional tool for addressing the difficult task of removing both the utility-owned and customer-owned sides of service lines containing lead. Since enactment of Act 137, the Commission has authorized financial assistance programs for eight utilities. These programs will result in the removal of an estimated 14,250 customer owned LSLs. Commission staff worked with a number of these communities to help them optimize use of both DNR and utility customer funding.

Under the current review processes for LSL financial assistance programs and water utility construction projects, Commission staff send a data request to a utility when its application is incomplete stating that staff is reviewing the utility's application and needs additional information to process the application. The requirement in this bill for the Commission to make a determination that an application is incomplete would work well with our existing processes and would help provide more regular feedback to utility staff. By setting clear expectations and standards, these revisions could help improve applications the Commission receives.

I would also like to comment on the SB 316/AB 300 requirement that the Commission issue a notice to open a docket for a Certificate of Authority or LSL application within 90 days of the Commission staff completeness determination for cases without a hearing, and within 180 days of the Commission staff completeness determination for those cases with a hearing. Given the need for approval from the Commission of notices, and the legal and practical scheduling requirements necessary for complying with the open meetings law, prior statutory time limitations have not set a specific number of days upon which the Commission must issue a notice opening a docket in these cases. Instead of establishing a timeframe at the beginning of

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a case for a notice to be issued, the statutes typically establish a date by which final action by the Commission must take place.

We are appreciative that the bill authors incorporated into the substitute amendment an approach that is consistent with other statutory requirements and does not present conflicts with scheduling or open meetings requirements.

I want to thank Senator Cowles and Representative Thiesfeldt for working with us to address our technical concerns through the substitute amendment. As amended, Chairperson Valcq is eagerly inclined to support the bill. The Commission welcomes the opportunity to enhance the transparency and efficiency of our construction and LSL financial assistance review processes. Having a common understanding of where an application stands benefits everyone – utility staff, Commission staff, and most importantly, utility customers.

On behalf of Chairperson Valcq, I thank the committee for consideration of SB 316 and AB 300 and urge your support and adoption of the substitute amendment.

Thank you.

Testimony on 2021 Senate Bill 316

Senator Robert Cowles
Senate Committee on Utilities, Technology and Telecommunications
August 26th, 2021

Thank you, Chairman Bradley and Committee Members, for holding a hearing and allowing me to testify on 2021 Senate Bill 316. This bill establishes timelines for action by the PSC on water utility applications.

Under current law, before engaging in construction projects that aren't directly exempt or before implementing a lead service line (LSL) replacement program, water utilities must apply to the Public Service Commission of Wisconsin (PSC) for approval. In 2018, just short of 50 applications for a construction project, which is known as a certificate of authority, were filed by water utilities, and an additional three applications for LSL replacement programs were also filed that year.

This PSC approval process can not only be costly, but it can be timely lasting months or even a full construction season. One of the longest delays in this process may not even take place while the request is being formally considered by the Commissioners after their first vote in the process to open the Notice of Investigation (NOI), but rather it's the waiting time that's lapsed between submitting an application and having the NOI opened. Looking at the eight LSL applications that have been approved since 2017 Act 137 was signed into law, applicants have waited an average of 136 days between submitting an application and having the NOI opened. That compares to an average of just 79 days between the opening of the NOI and a decision by the Commission.

On average, the applicants were waiting 84 days from submitting their LSL application to even receive a data request for more information from the PSC. These requests were fulfilled in less than two weeks on average, only to wait an extra nearly 40 days on average before the NOI was opened. The worst delays are exemplified by Fond du Lac, which waited 152 days from submitting their application before receiving a data request from PSC, and Kaukauna, which fulfilled a data request then waited 211 days for the NOI to be opened.

This information on delays faced in the LSL replacement program can be translated to certificate of authority applications where there are additional examples of costly delays faced awaiting the NOI. These delays could be prevented, as numerous examples of timely review, data requests, and NOI openings also exist.

That's why 2021 Senate Bill 316 looks to put a stop to these unnecessary delays by requiring that the PSC either request data or determine that an application is complete within 45 days of receiving an application for a certificate of authority or LSL replacement program. If a data request is filed by the PSC, all of the information missing must be listed, and then the PSC has another 30 days of review upon receipt of the data request response. The provisions created in this bill largely mimic statutes for the certificates of public convenience and necessity statutes which require similar PSC action within 30 days for major electric utility projects.

This bill was amended by Senate Substitute Amendment 1 at the request of the PSC to remove a requirement that an NOI is opened within 14 days of an application being determined complete. It was pointed out that this at times may have presented issues as the NOI opening requires a meeting with a quorum of Commissioners,

which may not always be able to be convened within 14 days. The intent of the bill is maintained in the amendment by requiring that final action is taken within 90 days or 180 days of an application being determined complete, depending on whether a hearing was held. This closely aligns with some current law requirements where an application must have final action within 90 days or 180 days of the NOI opening, depending on whether a hearing was held, but instead aligns this timeframe with the application being determined complete.

Senate Bill 316 does not impact rate cases or any opportunities for public comments. Instead, this bill recognizes that the responsibilities placed upon local water utilities can make it a hard enough job without the delays faced in the water utility regulatory process. In short, SB 316 simply provides the certainty to water utility leaders that their applications will be given the attention they need and deserve so our local water utilities can continue doing what they're best at: providing their customers with clean, drinkable water out of the tap.

The companion to Senate Bill 316, Assembly Bill 300, has already passed the Assembly Committee on Energy and Utilities 15-0 on June 3rd and passed the full Assembly on a voice vote on June 22nd.

Time Tracker for LSL Applications

Updated March 17th, 2021

Applications Approved (8):

- Kenosha (2820-LS-100) applied April 3, 2018, and approved August 16, 2018.
- Manitowoc (3320-LS-100) applied September 11, 2018, and approved March 7, 2019.
- Menasha (3560-LS-100) applied October 22, 2018, and approved May 15, 2019.
- Fond du Lac (2010-LS-100) applied August 16, 2019, and approved March 19, 2020.
- Sun Prairie (5810-LS-100) applied October 8, 2019, and approved March 19, 2020.
- Green Bay (2350-LS-100) applied November 14, 2019, and approved May 21, 2020.
- Kaukauna (2800-LS-100) applied April 24, 2019, and approved May 28, 2020.
- Sheboygan (5370-LS-100) applied October 30, 2019, and approved June 18, 2020.

Approval Times (Application to Commissioner Approval):

- Kenosha: 135 Days
- Menasha: 205 Days
- Sun Prairie: 163 Days
- Kaukauna: 400 Days
- Manitowoc: 177 Days
- Fond du Lac: 216 Days
- Green Bay: 189 Days
- Sheboygan: 232 Days

AVERAGE: 214.6 Days

Legal Requirements:

- s. 196.372 (3) (b), Wis. Stats.
 - “Upon receipt of a complete application, the commission shall investigate the application. The investigation may be with or without public hearing. If the commission conducts a public hearing, the public hearing shall be upon such notice as the commission may require.”
- s. 196.372 (3) (c), Wis. Stats.
 - “If a hearing is held on an application, the commission shall take final action on the application within 180 days after the commission issues a notice of hearing on the application. The chairperson of the commission may extend the time period for an additional 180 days for good cause. If the commission fails to take final action within the initial 180-day period, or the extended 180-day time period, the commission is considered to have granted its approval.”
- s. 196.372 (3) (d), Wis. Stats.
 - “If a hearing is not held on an application, the commission shall take final action on the application within 90 days after the commission issues a notice opening a docket on the application. The chairperson of the commission may extend the time period for an additional 90 days for good cause. If the commission fails to take final action within the initial 90-day period, or the extended 90-day time period, the commission is considered to have granted its approval.”

Timeline of LSL Applications

Utility Name	Application Date	Notice of Investigation (NOI) Date	Approval by Commission	Notice of Final Decision	Days from Application to NOI	Days from NOI to Commission Approval	Days from Application to Final Approval
Kenosha	04/03/18	06/07/18	08/16/18	08/31/18	65 Days	70 Days	150 Days
Manitowoc	09/11/18	12/20/18	03/07/19	03/19/19	100 Days	77 Days	189 Days
Menasha	10/22/18	02/21/19	05/15/19	06/06/19	123 Days	83 Days	229 Days
Kaukauna	04/24/19	02/13/20	05/28/20	06/25/20	295 Days	105 Days	428 Days
Fond du Lac	08/16/19	02/13/20	03/19/20	05/12/20	181 Days	35 Days	270 Days
Sun Prairie	10/08/19	02/13/20	03/19/20	05/12/20	128 Days	35 Days	217 Days
Sheboygan	10/30/19	02/13/20	06/18/20	07/23/20	106 Days	126 Days	267 Days
Green Bay	11/14/19	02/13/20	05/21/20	06/11/20	91 Days	98 Days	210 Days
<i>Average</i>					<i>136.1 Days</i>	<i>78.6 Days</i>	<i>245.0 Days</i>

Timelines of Pre-NOI Questions and Responses

Utility Name	Application Date	Data Request from PSC	Utility Response	Notice of Investigation (NOI) Date	Days from Application to Data Request	Days from Response to NOI
Kenosha	04/03/18	05/03/18	05/18/18	06/07/18	30 Days	20 Days
Manitowoc	09/11/18	11/08/18	11/26/18	12/20/18	58 Days	24 Days
Menasha	10/22/18	12/21/18	01/04/19	02/21/19	60 Days	48 Days
Kaukauna	04/24/19	07/03/19	07/17/19	02/13/20	70 Days	211 Days
Fond du Lac	08/16/19	01/15/20	01/24/20	02/13/20	152 Days	20 Days
Sun Prairie	10/08/19	02/06/20	02/19/20	02/13/20	121 Days	- 6 Days
Sheboygan	10/30/19	01/27/20	02/07/20	02/13/20	89 Days	6 Days
Green Bay	11/14/19	02/12/20	02/21/20	02/13/20	90 Days	- 8 Days
<i>Average</i>					<i>83.8 Days</i>	<i>39.4 Days</i>

* Longer than 45 Days → 9 of 16 Periods (56.3%)



Waukesha Water Utility

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August 23, 2021

Chairman Julian Bradley
State of Wisconsin Senate Committee on Utilities, Technology and Telecommunications
Room 323 South
State Capitol
PO Box 7882
Madison, WI 53707

RE: Assembly Bill 300

Honorable Chair and Committee Members:

Assembly Bill 300 is an Act to renumber 196.49 (5r) (a); and to create 196.372 (3) (am) and 196.49 (5r) (ad) of the statutes; Relating to: deadlines for certain Public Service Commission actions after a water public utility application for certificate of authority or approval of lead service line financial assistance is filed.

The City of Waukesha Water Utility fully supports AB300. For any Utility that is in the process of completing a Capital Improvement project that requires Public Service Commission (PSC) approval, it is important for the review of the project to be completed in a timely fashion. That requires prompt responses from both the PSC as well as the party requesting the approval. This is especially important when the project plans to utilize funding sources that have deadlines that need to be met. Having some certainty in the scheduling for certificate of authority from the PSC would be very beneficial to Utility's across the state.

Delays also increase the cost of the project due to construction cost inflation which tends to outpace the consumer price index.

Thank you for your time and attention to this very important matter. Please contact me at (262) 409-4440 if you have any questions or would like any further information.

Sincerely,

Daniel S. Duchniak, P.E.
General Manager



Green Bay Water Utility

General Manager Nancy Quirk, P.E.

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To: 2021 Senate Committee on Utilities, Technology and Telecommunications
Senator Julian Bradley (Chair)
Senator Roger Roth (Vice-Chair)
Senator Van H Wanggaard
Senator Brad Pfaff
Senator Jeff Smith

From: Green Bay Water Utility

Date: August 26, 2021

RE: Senate Bill 316-Deadlines for Certain Public Service Commission Actions After a Water Public Utility Application for Certificate of Authority or Approval of Leads Service Line Financial Assistance is Filed

Honorable Chairman Bradley and Distinguished Committee Members:

Thank you for your dedication to Wisconsin's safe drinking water. I have proudly served Wisconsin water utilities as a professional engineer and leader for more than 33 years—and was recently appointed to the EPA's National Drinking Water Advisory Council. As General Manager for Green Bay Water Utility, I appreciate the challenge before you to make the rules that guide a critical workforce during difficult circumstances.

Our utility proudly received recognition on national news headlines for being the first Wisconsin water utility to voluntarily remove all lead services, which we accomplished from 2016 to 2020. The challenges we faced largely came down to funding: relying on the Safe Drinking Water Act Principal Loan Forgiveness Program, a City of Green Bay excess sales tax from Lambeau Field, and most notably (for the sake of this letter) the *Leading on Lead Act* (Senate Bill 48) signed in 2018.

Our utility and customers deeply appreciated this much-needed solution to replacing all private lead services without the total funding to do so. However, as you'll see by the timeline below, we were pinched by the painstaking eight-month PSC approval process. Green Bay Water Utility expected the process to be complete within 90 days and even initiated a pre-application conference call with PSC and DNR, ensuring we had all expectations established to fulfill every aspect of their application. When you look at the timeline below, ask yourself: why would this have taken eight months to get the PSC's approval when public health was at stake? By the way, our records show we paid the PSC \$6,758.76 in 2020 for their review of our application for lead funding for our utility customers.

TIMELINE

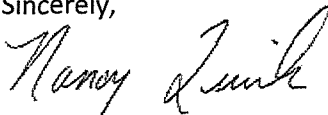
- November 14, 2019: Green Bay Water Utility officially files PSC application
- January 9, 2020: 57 days passes with no word from PSC; GBWU notes five pending cases, with one utility still pending after 261 days

- February 11, 2020: Concern growing, still-pending GBWU sent a letter of urgency to PSC with construction season just three months away
- April 21, 2020: application still pending. Five words are changed to update to a related city ordinance which should have had no impact on GBWU's PSC application; however, the change prompts PSC staff to tell the PSC commission they need an extension
- On May 7, 2020: the PSC commission grants PSC staff an extension with the GBWU application
- May 13, 2020: Sen. Cowles is made aware of this delay, realizing the start of construction season, and sends a letter of urgency to PSC about the GBWU application
- May 21, 2020: PSC commission approves GBWU application
- June 11, 2020: PSC issues final approval of GBWU application
- July 20, 2020: PSC approves tariffs with construction season more than halfway over. **We were not able to begin work until this day.**

Committee, utilities are called to be servants of public health. Habitual delays by the PSC plague Wisconsin's drinking water industry as a whole, not just GBWU—but when lead service replacements are at stake, this type of delay is all the more unacceptable. Please support Assembly Bill 300 for the sake of utilities trying to do right by their customers by replacing toxic lead pipes on a reasonable timeline.

Thank you for your consideration in support for SB316.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Quirk".

Nancy Quirk, P.E.
General Manager
Green Bay Water Utility