

**PUBLIC SERVICE COMMISSION OF WISCONSIN**

Investigation on the Commission's Own Motion to Ensure Safe, Reliable and Affordable Access to Utility Services During Declared Public Health Emergency for COVID-19

5-UI-120

**SUPPLEMENTAL ORDER ON RESIDENTIAL DISCONNECTION – THIRD**

This is the Order staying until April 15, 2021, the date on which a utility's authorization to disconnect or refuse residential service for nonpayment takes effect.

**Background**

In its September 29, 2020, Supplemental Order on Residential Disconnection - Second, the Commission stayed until November 1, 2020, the date on which a utility's authority to disconnect residential customers for nonpayment would take effect. ([PSC REF#: 397476](#)). The Commission ordered water utilities seeking to disconnect residential (non-heating) service after November 1, 2020, to file a disconnection plan with the Commission by October 9, 2020. The Commission further ordered all utilities to submit monthly reporting information regarding arrears and collection actions, including plans for communicating with customers about collections and arrears management, and the financial impacts of the utility's arrears.

Commission staff reviewed utility disconnection plans, monthly reporting data, and other available data related to the economic and public health concerns and conditions facing utilities and customers since the issuance of the Commission's Supplemental Order on Residential Disconnection – Second, as summarized in the Commission staff's memorandum of October 19, 2020. ([PSC REF#: 398906](#)). The Commission discussed this matter at its open meeting of October 22, 2020.

### **Opinion**

The Commission has jurisdiction under Wis. Stat. § 196.02(1) to regulate every public utility in this state and to do all things necessary and convenient to its jurisdiction. Wisconsin Stat. § 196.70 authorizes the Commission to temporarily alter or amend any existing rates, schedules, or orders. The Commission has discretion to determine when circumstances no longer warrant the temporary tariff alterations, and to prescribe for how long the order will be in effect. Wis. Stat. §§ 196.40 and 196.70(2). In making such alterations, the Commission also exercises its discretion under Wis. Adm. Code §§ PSC 113.01(2), PSC 134.01(2), and PSC 185.11(4) to adopt requirements that are greater, lesser, or different from the requirements otherwise applicable under the administrative code, based upon considerations relating to “exceptional or unusual situations.”

### **Disconnection and Refusal of Service**

At its Open Meeting of October 22, 2020, the Commission reviewed disconnection plans and available data related to economic and public health concerns facing utilities and customers. Eighty-three water utilities submitted disconnection plans seeking to disconnect an estimated 2,513 residential customers for nonpayment in November 2020. The Commission notes that COVID-19 cases have increased substantially in Wisconsin. According to the Wisconsin Department of Health Services (DHS), as of Friday, October 16, 2020, the average number of cases confirmed per day over the last seven days was 3,052. Water service forms the foundation for basic hygiene practices, including hand washing, needed to prevent the spread of disease and support overall human health. Electricity and gas services in homes allow residents to stay in their homes and abide by social distancing guidelines to avoid increased spread of COVID-19.

Therefore, the Commission finds that on November 1, 2020, the risk posed to residential customers and their communities by way of removing those customers' access to the services needed to abide by hygiene standards and "social distancing" guidelines will be of such a serious nature that prohibiting disconnection will continue to be necessary to prevent injury to the interests of the people. Further, the Commission finds that allowing utilities' authority to disconnect residential (non-heating) service for nonpayment to take effect on November 1, 2020 would not be just and reasonable. As public health experts continue to promote social distancing and shelter at home guidelines, the public, including low-income residents who are unable to pay their utility bills at this time, needs access to essential utility service.

The Commission has a duty to use its authority to prescribe how long its emergency Order under Wis. Stat. § 196.70 is in effect for the purpose of ensuring that it remains in effect for the time necessary, to protect the business and interests of the people and public utilities of the state. Wis. Stat. § 196.70(2). Based on the health information submitted to the Commission, and the anticipated ongoing need for hygiene practices, social distancing, telework, distance education, and telehealth, the Commission finds that the relevant circumstances justify prohibiting utilities from disconnecting residential service for nonpayment until April 15, 2021.

The information presented to the Commission provides no indication that either the COVID-19 pandemic or the associated need for these utility services will subside before that time. Rather, the Commission finds, based on the information presented, that the most effective way to expedite the end of the high COVID-19 prevalence in Wisconsin is to ensure that all customers have the utility services needed to abide by public health recommendations for containing the spread of the disease. Therefore, the Commission finds it reasonable to stay until

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April 15, 2021, the date on which a utility's authority to disconnect or refuse service to a residential customer for nonpayment takes effect.

Due to the unprecedented and evolving nature of the COVID-19 pandemic, the Commission finds it reasonable to keep this docket open and continue to collect and analyze data. Information provided by utilities has been critical in informing the Commission's discussions and actions in this docket, as it continues to monitor developments in the ever-evolving public health crisis. As part of collecting the information that the Commission needs to appropriately exercise its authority, the Commission finds it reasonable to order utilities that seek to disconnect residential service after April 15, 2021, to, prior to disconnection, file a disconnection plan with the Commission, including the amount(s) past due that will trigger the issuance of a disconnection notice, deferred payment agreement requirements, the amount(s) required to be paid to avoid disconnection service, and an estimate as to the number of customers that may be subject to disconnection under the plan. This information is necessary in order for the Commission to assess the potential effects of authorizing utilities to refuse or disconnect service.

Commissioner Nowak dissents.

### **Frequency of Reporting**

To further streamline reporting for utilities, the Commission finds it reasonable to extend the reporting period to quarterly, and directs staff to align the reporting in this docket with the reporting in the 5-AF-105 docket.

### **Voluntary Waiver of Late Fees**

The Commission expects those customers who can pay their bills to continue to do so in a timely manner and notes that overall utility arrears have begun to decrease since August 31, 2020. The Commission strongly urges customers unable to pay bills to establish a Deferred Payment Agreement (DPA) with their utility and apply for energy assistance as available in order to avoid incurring a large debt and eventually experiencing disconnection.

Utilities will continue to perform outreach to customers regarding DPAs, energy assistance, and other related issues and resources. Additionally, some utilities have demonstrated continued flexibility with customers by waiving late fees during the public health emergency, and extending additionally flexible DPA terms, including low down payments and longer repayment terms. If customers cannot reach an agreement with their utility, they are encouraged to contact the Commission.

Regarding a utility's ability to waive its filed late payment charges for a period extending beyond December 31, 2020, the Commission finds it reasonable to grant a waiver of a utility's requirement to assess late payment charges pursuant to its rates until April 15, 2021, upon the utility's notification to the Commission, in this docket, of its intent to waive the charges until a specific date.

### **Utility Customer Assistance, Collections Policy, and Arrearage Management Plans**

Commission staff continues to work with utilities to conduct planning related to the methods, programs, and procedures utilities might provide, pilot, or otherwise enhance in order to assist customers in light of the extraordinary challenges posed to customers by the COVID-19 pandemic and associated economic, health, and social conditions. In its September 29, 2020

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Supplemental Order on Residential Disconnection – Second ([PSC REF#: 397476](#)), the Commission ordered all utilities to submit a comprehensive plan to the Commission by January 15, 2021, as to how each utility proposes to address the financial impacts of arrears.

The Commission finds it reasonable to direct staff to solicit and report back by March 11, 2021, on additional comments from utilities and other stakeholders on utility customer assistance, collections policy, and arrearage management plans, in addition to the comprehensive plans utilities must submit by January 15, 2021.

### **Order**

1. The date on which a utility's authorization to disconnect or refuse residential service for nonpayment, subject to conditions, takes effect is stayed until April 15, 2021.
2. Utilities that seek to disconnect residential service after April 15, 2021, shall, prior to disconnection, file a disconnection plan with the Commission. The disconnection plan shall be in a format provided by the Commission and include the amount(s) past due that will trigger the issuance of a disconnection notice, deferred payment agreement requirements, the amount(s) required to be paid to avoid disconnection service and an estimate as to the number of customers that may be subject to disconnection under the plan. The plan shall be filed no later than February 15, 2021.
3. All utilities shall supply reporting quarterly, in a format provided by Commission staff, on arrears and collection information, information regarding the utility's plans for communicating with customers about collections and arrears management, and the financial impacts of the utility's arrears.

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4. Utilities may elect to continue to waive late fees in a non-discriminatory manner until April 15, 2021, provided the utility files notification with the Commission under this docket of its intent to continue to waive such fees.
5. The Commission directs staff to solicit additional comments from utilities and other stakeholders on utility customer assistance, collections policy, and arrearage management plans, in addition to the comprehensive plans utilities must submit by January 15, 2021.
6. This order takes effect immediately upon service.
7. Jurisdiction is retained.

**Dissent**

Commissioner Nowak dissents and writes separately (see attached).

Dated at Madison, Wisconsin, the 29<sup>th</sup> day of October, 2020.

By the Commission:



Steffany Powell Coker  
Secretary to the Commission

SPC:KN:MD:DS:BR:LF:kle DL:01771022

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN  
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**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE  
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE  
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

*PETITION FOR REHEARING*

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

*PETITION FOR JUDICIAL REVIEW*

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.<sup>1</sup> The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013

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<sup>1</sup> See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.



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### **DISSENT OF COMMISSIONER ELLEN NOWAK**

I write to again dissent on the Commission's decision to again extend the moratorium on disconnections for nonpayment. As I predicted in my previous dissent in this proceeding, the Commission has now created a situation where ratepayers will have been free from an obligation to pay utility bills for 18 months. This bad public policy is certain to lead to rate increases that disproportionately harm the very ratepayers that the majority on this Commission says they want to protect.

The job of a regulator is to provide balance between the interests of the ratepayers and financial health of the utility. Today's decision provides no such balance. Putting at risk the cash flow to utilities and then intimating that shareholders may have to absorb some of the customer arrearages is not balance. In what other industry does government ask business to provide a service without just compensation? This Commission has long had a reputation for being a constructive regulatory environment in financial markets. This decision places that positive designation at risk.

As I have repeatedly said, targeted solutions, many which already exist, can help ratepayers who are struggling. A blanket ban on disconnections ignores existing programs and sets up problems down the road.

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Finally, extending the moratorium for a period much longer than specified in the Wisconsin Administrative Code and potentially now including water utilities borders on improper rulemaking by this Commission. If such a broad and long-term public policy is to be made, it should be done through the proper administrative rulemaking process.

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