

# **PUBLIC SERVICE COMMISSION OF WISCONSIN**

## **Memorandum**

November 18, 2013

### **FOR COMMISSION AGENDA**

TO: The Commission

FROM: Justin Chasco  
Office of General Counsel

RE: Applications for Service and the Fair and Accurate Credit Transactions Act 1-AC-229

Clearinghouse Rule 13-039

Commission Consideration of Order Adopting Proposed Rules and Attached Legislative Packet

**Suggested Minute:** The Commission (approved/rejected/modified) a draft order adopting proposed rules and the associated report to the Legislature concerning the adoption of applications for service and the Fair and Accurate Credit Transactions Act, and directed Commission staff to make the necessary filings. If neither the Governor nor the legislative committees request changes to the rule, Commission staff is directed to change the title of the order to indicate that it is the adoption of a final rule and to make the additional required filings without further Commission action.

### **Introduction**

The rulemaking in this docket amends the Commission's rules that require utilities to require applications for service. The Commission approved a Statement of Scope in this docket on June 1, 2011. ([PSC REF#: 148989](#), [PSC REF#: 153611](#).) It was published in the June 14, 2011, *Wisconsin Administrative Register*.<sup>1</sup> ([PSC REF#: 149457](#).) A request for Economic Impact Analysis input was issued on November 29, 2012, with a deadline of December 21, 2012, for input. ([PSC REF#: 177547](#).) A Notice of Hearing was approved by the Commission at its

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<sup>1</sup> The Statement of Scope did not need approval from the Governor's office because it was submitted before the effective date of 2011 Wisconsin Act 21.

open meeting of June 21, 2013. ([PSC REF#: 186699](#), [PSC REF#: 186820](#).) It was published in the *Wisconsin Administrative Register* on July 14, 2013. ([PSC REF#: 187389](#).) A public hearing was held on July 29, 2013,<sup>2</sup> and a deadline of August 12, 2013, was set for written comments. ([PSC REF#: 188132](#).)

This rule harmonizes the requirements of the Fair and Accurate Credit Reporting Act (FACT) with the Commission's administrative rules on the provision of service by utilities. Specifically, the rule requires public utilities in Wisconsin to take steps to identify and mitigate identity theft risks by verifying the identity of applicants for service. Many Wisconsin utilities already use procedures consistent with the requirements of this rule. This rule permits utilities to require an applicant for service to provide initial identifying information. If an applicant for service refuses to provide identifying information or provides inadequate identifying information, the rule permits utilities to require additional identifying information as a pre-condition for establishing service. If an applicant for service fails to provide certain identifying information, the utility may refuse to provide service to the applicant.

### **Comments and Staff Response**

Several utilities and the Citizen's Utility Board submitted comments to the proposed rule. Some related comments Wisconsin Utilities Association (WUA) submitted in docket 1-AC-210 were included with the comments on this docket. *See* Key Background Documents list below. The Commission's staff response to those suggested changes, many of which do not involve significant policy decisions, are included in Attachment A3 to the Order and legislative report sent to the Commissioners separately. ([DL: 852915](#).) However, many utilities raised one issue of concern that requires a policy decision from the Commission.

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<sup>2</sup> No testimony was offered at this hearing.

As currently drafted, the proposed rules may have an impact upon municipal utilities who do not presently take applications for service. The current version of the rules requires all utilities to begin taking applications for service. Some of those comments interpreted the rule to require utilities to retroactively begin taking applications from their current customers. That result was not intended by Commission staff and that interpretation does not seem to be supported by the current text of the rule. However, those same comments and others also noted that even taking applications for service from customers may cause an administrative and cost burden on those utilities who do not currently require applications for service. The vast majority, if not all, such utilities are municipal water utilities. Many municipal water utilities consider the parcel of property to which service is delivered to be the customer. They send bills to “occupant.” If the bill is not paid, they do not follow the usual collection efforts and disconnection used by other utilities. Instead, municipal utilities can have unpaid utility balances applied to the tax rolls for that parcel of property.

Many of these utilities may technically be exempt from the federal FACT rules. FACT applies only to creditors, which can include utilities, but only if they meet certain criteria. One of those criteria is that the creditor must report debts owed to it to a credit bureau.<sup>3</sup> Because municipal water utilities are able to place past due amounts on the property tax roll, few rely upon credit bureaus and collection agencies to collect their debts. As a result, they are likely exempt from FACT. Those utilities would like to be exempt from the requirement that they take applications for service for new customers moving forward. Some suggest that the application rules only be applied to those that do applications.

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<sup>3</sup> 16 C.F.R. § 681.1(b)(4) (incorporating the definition of creditor from 15 U.S.C. § 1681m(e)(4)).

Commission staff believes that having uniformity in the rules is a worthwhile goal and that customers should have the same rights to identity theft protection whether they are served by a municipal utility or an investor-owned utility. Furthermore, there are several instances where customers would be better served if their utility knew their identity.

### **Commission Alternatives**

**Alternative One:** Approve the Order Adopting Proposed Rules and associated legislative packet, and direct Commission staff to make the necessary filings.

**Alternative Two:** Modify the Order Adopting Proposed Rules and/or associated legislative packet, and direct Commission staff to make the necessary filings of the modified documents.

**Alternative Three:** Return the rulemaking to Commission staff for additional work.

**Alternative Four:** End the rulemaking now with no further action.

JWC:hms:DL:00890358

#### Key Background Documents

[Order.docx - DL: 852915](#)

[Transcript - Hearing held July 29, 2013 - PSC REF#: 188132](#)

[CUB Comments and Appendices - PSC REF#: 189290](#)

[Municipal Environmental Group - Water Division Comments - PSC REF#: 188182](#)

[Comments of Milwaukee Water Works - PSC REF#: 189281](#)

[Comment on proposed changes related to Applications for Service and the Fair and Accurate Credit Transactions](#)

[Act - PSC REF#: 189038](#)

[Public Comment by KEITH MUELLER - PSC REF#: 188990](#)

[Public Comment by Randy Kerkman - PSC REF#: 188565](#)

[Public Comment by Chris Stempa - PSC REF#: 188661](#)

[Public Comment by Keith Haas General manager Racine Water Utility - PSC REF#: 188666](#)

[Public Comment by Tina Erickson - La Crosse Water Utility - PSC REF#: 189294](#)

[Public Comment by Peggy Steeno - City of Oshkosh Water Utility - PSC REF#: 189351](#)

[WUA gas rules comments.docx - DL: 853021](#)