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Public Service Commission of Wisconsin
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PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Municipal Electric Utilities of Wisconsin to Open a Docket to Consider Pre-Approval of Criteria Related to the Implementation of Wis. Stat. § 66.0809(9) Relating to a Deferred Payment Agreement to a Residential Customer who is a Tenant

5-EI-152

Final Decision

This is the Final Decision in the application of Municipal Electric Utilities of Wisconsin (MEUW) to open a docket to consider pre-approval of criteria related to the implementation of Wis. Stat. § 66.0809(9) relating to a deferred payment agreement to a residential customer who is a tenant. At its open meeting of July 2, 2014, the Commission opened a docket to consider pre-approval of the criteria submitted by MEUW ([PSC REF#: 209876](#)), and at its open meeting of August 14, 2014, the Commission considered the criteria submitted by MEUW. The criteria are modified and pre-approved. Before a specific municipal utility seeks to implement these modified and approved criteria, the utility shall modify its existing tariff, file with and seek Commission approval of the revision, and hold a hearing regarding the revisions before the Commission approves the change.

Introduction

Effective April 18, 2014, 2013 Wisconsin Act 274 (Act 274) created differing standards for municipal utilities in providing service, depending on whether the utility service is provided to a customer at an owner-occupied property or a rental dwelling unit. Among other provisions, Act 274 created Wis. Stat. § 66.0809(9) which states that “[a] municipal utility is not required to offer a customer who is a tenant at a rental dwelling unit a deferred payment agreement.”

Current Commission rules require all utilities to offer a deferred payment agreement to residential customers, regardless of whether the utility is municipally owned or investor-owned, or whether the customer is a tenant or owner of the property being provided with service.¹ In addition, Wis. Stat. § 196.19(2) provides that “[e]very public utility shall file with and as part of such schedule all rules and regulations that, in the judgment of the commission, in any manner affect the service or product” Current utility tariffs on file with the Commission generally include provisions indicating the utilities will follow existing regulations in offering deferred payment agreements to customers, without any differentiation of whether the customer owns the property or is a tenant at a rental dwelling unit.

The application, filed by MEUW on June 16, 2014, included four proposed criteria for pre-approval by the Commission under which municipal utilities shall decline to offer a deferred payment agreement to residential tenants. ([PSC REF#: 206409.](#)) MEUW argued that pre-approval of the criteria would help “streamline the approval process” and “promote uniformity across municipal utilities.” ([PSC REF#: 206409.](#))

The four criteria proposed by MEUW under which a municipal utility shall decline to offer a deferred payment agreement to a residential tenant are as follows:

1. The residential tenant has greater than \$100 of account arrearages that are more than 90 days past due.
2. The residential tenant has defaulted on a deferred payment agreement in the past 12 months.

¹ The Commission has opened a rulemaking docket to conform the provisions of Wis. Admin. Code chs. PSC 113, 134 and 185 to Act 274. *See* docket 1-AC-247.

3. The residential tenant is responsible for account arrearages that were placed on any property owner's tax bill in the utility's service territory in the past 24 months.

4. The residential tenant has a balance that accrued during the winter moratorium that is more than 80 days past due.

Findings of Fact

1. MEUW is a trade association representing Wisconsin's 82 municipally owned electric utilities, each of which is a public utility as defined in Wis. Stat. § 196.01(5).

2. Rules relating to deferred payment agreements affect the service provided by a public utility.

3. Current utility tariffs on file with the Commission generally include provisions indicating utilities will follow existing regulations in offering deferred payment agreements to customers.

4. Declining to offer a deferred payment agreement to residential customers who are tenants would be a curtailment of the obligation or undertaking of service by a public utility.

Conclusions of Law

The Commission has jurisdiction to act on this application under Wis. Stat. §§ 196.02(1), 196.03(1), 196.19(2), 196.22, 196.37(5) and 196.60(3); and Wis. Admin. Code §§ PSC 113.0404(1), PSC 134.063(1) and 185.38(1).

Opinion

On June 16, 2014, MEUW submitted an application for the Commission to open a docket to consider pre-approval of criteria related to the implementation of Wis. Stat. § 66.0809(9). ([PSC REF#: 206409.](#)) As created by Act 274, Wis. Stat. § 66.0809(9) provides that “[a] municipal utility is not required to offer a customer who is a tenant at a rental dwelling unit a deferred payment agreement.”

Wisconsin Stat. § 196.19(2) provides that “[e]very public utility shall file with and as part of such schedule all rules and regulations that, in the judgment of the commission, in any manner affect the service or product” Current utility tariffs on file with the Commission generally include provisions indicating the utilities will follow existing regulations in offering deferred payment agreements to customers, without any differentiation of whether the customer owns the property or is a tenant at a rental dwelling unit.²

A municipal utility that decides to exercise its new authority under Wis. Stat. § 66.0809(9) shall be required to file and receive approval to modify its tariff to reflect this change in the law and to establish the criteria the municipal utility will use to determine whether a residential tenant will be granted or denied a deferred payment agreement. The utility must modify its existing tariff whether it seeks to adopt the criteria proposed by MEUW, seeks to

² While Act 274 created Wis. Stat. § 196.37(5) which provides, “[i]t is not unreasonable or unjustly discriminatory for a municipal public utility to adopt application, deposit, disconnection, or collection rules and practices that distinguish between customers based upon whether the customer owns or leases the property that is receiving utility service where the possibility exists for any unpaid bills of a tenant to become a lien on the property that is receiving utility service.” Wisconsin Stat. § 196.60(3) provides that if “a public utility gives an unreasonable preference or advantage to any person or subjects any person to any unreasonable prejudice or disadvantage, the public utility shall be deemed guilty of unjust discrimination.” Therefore, while it is not considered unjustly discriminatory for a municipal utility to treat customers who are residential tenants differently from property owners, the law still requires nondiscriminatory treatment of similarly situated customers (*i.e.*, treat all customers who are tenants the same).

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decline deferred payment agreements to all customers who are tenants at rental dwelling units, or seeks to propose alternative criteria for approval. In order to modify an existing tariff, Wis. Stat. § 196.20(1) provides:

The rate schedules of any public utility shall include all rules applicable to the rendition or discontinuance of the service to which the rates specified in the schedules are applicable. No change may be made by any public utility in its schedules except by filing the change as proposed with the commission. No change in any public utility rule which purports to curtail the obligation or undertaking of service of the public utility shall be effective without the written approval of the commission after hearing, except that the commission, by emergency order, may make the rule, as filed, effective from the date of the order, pending final approval of the rule after hearing.

Declining to offer a deferred payment agreement to residential customers who are tenants in some or all situations would “curtail the obligation or undertaking of service of the public utility.” Therefore, a hearing shall be required before the Commission may review and approve any proposed changes to the utility’s tariff.

In addition, Wisconsin Stat. § 196.03(1) requires that “a public utility shall furnish reasonably adequate service and facilities. The charge made by any public utility . . . or any service rendered or to be rendered in connection therewith shall be reasonable and just and every unjust or unreasonable charge for such service is prohibited and declared unlawful.” Therefore, rules and practices related to the circumstances under which a municipal utility may decline to offer a deferred payment agreement to a tenant must be just and reasonable.

MEUW submitted four criteria for pre-approval by the Commission under which a municipal utility shall decline to offer a deferred payment agreement to a residential tenant. ([PSC REF#: 206409.](#)) While electric municipal utilities generally bill customers on a

monthly basis, many municipal water utilities bill as infrequently as quarterly or every 6 months. However, municipal water utilities that bill less frequently may seek to adopt the same criteria.

In addition, some municipal utilities currently misunderstand that a deferred payment agreement consists of two distinct components: (1) payment of a reasonable amount of the outstanding bill; and (2) installments on the remaining outstanding balance. Some utilities mistakenly refer to payment extensions, or other agreements not meeting the definition of a deferred payment agreement, as a deferred payment agreement. Such misunderstandings may result in municipal utilities declining to offer a deferred payment agreement when an extension or other agreement was provided to the customer within the previous 12 months.

Therefore, the four criteria are modified as follows:

1. The residential tenant has greater than \$100 of account arrearages that are more than 90 days past due for utilities that bill monthly, or for utilities that do not bill monthly, has greater than \$100 of account arrearages that are past due for more than two billing cycles.
2. The tenant has defaulted on a deferred payment agreement in the past 12 months. This criteria only applies to deferred payment agreements and not to other types of payment extensions or agreements.
3. The residential tenant is responsible for account arrearages that were placed on any property owner's tax bill in the utility's service territory in the past 24 months.
4. The residential tenant has a balance that accrued during the winter moratorium that is more than 80 days past due.

Order

1. The four criteria proposed by MEUW under which a municipal utility shall decline to offer a deferred payment agreement to a residential tenant are pre-approved, as modified.

2. A municipal utility seeking to decline offering deferred payment agreements to customers who are tenants must file and receive approval to modify its tariff to reflect this change.

3. A hearing is required before the Commission reviews and approves any proposed changes to the utility's tariff.

4. Authority to approve changes to a utility's tariff consistent with the criteria in this Final Decision is delegated to the Administrator of the Division of Water, Compliance and Consumer Affairs.

5. This Final Decision is effective one day after the date of service.

6. Jurisdiction is retained.

Dated at Madison, Wisconsin, this 3rd day of September, 2014.

By the Commission:



Sandra J. Paske
Secretary to the Commission

ADC:pc DL:00941426

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.³ 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

³ See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.