

What municipal utilities need to know about bankruptcy practices



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As utility revenues come under pressure from delayed and missed customer payments, municipal utilities in Wisconsin are increasingly attentive to broader economic and financial trends that can affect customer solvency. Bankruptcy filings nationwide have been trending upward in recent reporting periods, with total filings increasing by more than 13% year-over-year through March 31, 2025.¹ Nationally, there were 542,529 total bankruptcy cases in the year ending June 30, 2025, with Chapter 7 filings accounting for over 330,000 of those cases and more than 8,400 Chapter 11 filings.² These figures reflect sustained financial pressure on both residential and commercial utility customers.

Within Wisconsin specifically, bankruptcy data from the U.S. Bankruptcy Court for the Eastern District of Wisconsin shows continued activity across both individual and business cases, including regular monthly Chapter 7 and occasional Chapter 11 filings throughout 2025,³ underscoring the very real potential for municipal utilities to encounter insolvent customers entering bankruptcy.

Rules for Commercial and Nonresidential Deposits

Wisconsin's regulatory framework provides municipal utilities with tools to manage risk and secure payment for utility service. Under the Public Service Commission of Wisconsin (PSCW) rules, utilities may require deposits from commercial accounts as a condition of providing service:

- Electric utilities may impose commercial and farm deposits pursuant to Wis. Admin. Code, § PSC 113.0403, authorizing deposits based on factors like credit history and risk of nonpayment.
- Water utilities serving non-residential accounts likewise may require security deposits under § PSC 185.361, allowing utilities to obtain financial assurances ahead of service initiation or continuation.

These deposit authorities enable municipal utilities to obtain security in advance that can mitigate the impact of subsequent customer defaults — a particularly salient point for larger nonresidential customers whose financial instability may precede or presage potential bankruptcy filings.

Forms of Guarantee and the Intersection with the Bankruptcy Code

Section 366 of the Bankruptcy Code is meant to balance utility providers' general right to refuse to do business with a debtor post-petition and a debtor's need for utility ser-

vice. Congress attempted to strike this balance by protecting debtors from utility shutoffs for the first few weeks after filing, but also giving utility providers a special right to "adequate assurance" of future payment while a bankruptcy case is pending.

Historically, prior to enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act (BACPA) in 2005, bankruptcy courts frequently considered a debtor's pre-petition history of timely utility payments in assessing what constituted adequate assurance of payment. For example:

- In *In re Best Products Co.*, 203 B.R. 51 (Bankr. E.D. Va. 1996), a bankruptcy court accepted a deposit equating to one-half of an average monthly bill as adequate assurance where the debtor had regularly paid utility charges and had no pre-petition default.
- In *In re 499 W. Warren Street Associates Ltd. Partnership*, 138 B.R. 363 (Bankr. N.D.N.Y. 1991), a court approved a deposit equal to one month's average billing based on the debtor's solvency and expected ability to meet post-petition obligations.
- In *In re Spencer*, 218 B.R. 290 (Bankr. W.D.N.Y. 1998), where prepetition defaults were part of the record, a two-month average billing deposit was upheld as adequate assurance.

These pre-BACPA decisions reflected a flexible judicial inquiry into a debtor's payment history and prospects for future payment.

The landscape shifted significantly post-BACPA with the adoption of 11 U.S.C. § 366(c). In Chapter 11 cases, under Section 366(c)(3)(B)(ii), bankruptcy courts are prohibited from considering *pre-petition* timely payment history in determining whether a utility's requested adequate assurance of payment is reasonable. This statutory bar means that even customers with historically reliable payment patterns cannot rely on that history to forestall additional security requirements post-petition.

Post-BACPA cases emphasize that if a Chapter 11 debtor fails to provide adequate assurance within 30 days of filing, the utility may alter, refuse, or discontinue service. 11 U.S.C. § 366(c)(2). While courts can, upon notice and hearing, modify a utility's demand for assurance, they may not weigh pre-petition security absence, prior timely payments, or the availability of an administrative expense priority in determining what constitutes adequate assurance. In Chapter 11 cases, utilities may also use security deposits provided before the petition date to satisfy delinquencies without separate notice or court order.

Adequate assurance is not the same as an absolute guarantee of payment. But utility providers are empowered to demand what they believe is adequate

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^[1] <https://www.uscourts.gov/data-news/data-tables/2025/06/30/bankruptcy-filings/f>

^[2] <https://www.uscourts.gov/data-news/data-tables/2025/06/30/bankruptcy-filings/f>

^[3] <https://www.wieba.uscourts.gov/bankruptcystatistics/2filing>

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assurance where a debtor is at risk of defaulting on its payment obligations. Moreover, provision of adequate assurance does not prevent a utility from terminating service to the debtor or the estate if post-petition payments for utility services are not made after the statutory waiting period. Such a termination must follow the procedure prescribed under non-bankruptcy law for the disconnection of utility service.

For municipal utilities, this statutory framework underscores that adequate

assurance is evaluated independently of past payment practices, focusing instead on the security necessary to protect the utility from the ongoing service risk.

Offsets, Letters of Credit, and Security Instruments

Municipal utilities commonly obtain letters of credit, cash deposits, surety bonds, or similar guarantees. Under Section 366(c) (4) a utility may recover or set off against a security deposit provided prepetition without notice or court order. This provision can be particularly valuable to municipal utilities in addressing post-petition delinquencies while retaining rights to adequate assurance going forward.

In sum, the bankruptcy code provides mechanisms to protect municipal electric and water utilities for post-petition payments. Before a petition is filed, municipal utilities with commercial customers with payment issues should obtain deposits or guarantees consistent with PSCW rules. These protections remain intact even if the customer subsequently files a bankruptcy petition. ●

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