

SERVICE DATE Jun 26, 2020
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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 - SECOND

This is the Commission's second Supplemental Order regarding the Commission's own motion to ensure safe reliable and affordable access to utility services during the declared public health emergency for COVID-19.

Background

In response to Governor Evers' declaration of a public health emergency due to COVID-19, the Commission issued an Order on March 24, 2020, temporarily altering the tariffs of all Wisconsin public utilities until further order of the Commission. ([PSC REF#: 386373](#).) The Commission issued the Order to prevent injury to the business and interests of the people and the public utilities of the state, pursuant to the Commission's authority under Wis. Stat. §§ 196.02(1) and 196.70, and Wis. Admin. Code §§ PSC 113.01(2), PSC 134.01(2), and PSC 185.11(4). On June 1, 2020, the Commission supplemented the order with further clarifications through the issuance of the Commission's Supplemental Order – First. ([PSC REF#: 390567](#)).

The Commission instructed staff to gather information and report back on each temporary tariff alteration so as to make a determination regarding the duration, conclusion, or unwinding of each part of the Commission's order of March 24, 2020, or the Commission's Supplemental Order – First ([PSC REF#: 390567](#)). The Commission issued a data request on May 8, 2020, soliciting relevant data and information from stakeholders with responses due by May 15, 2020

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([PSC REF#: 389134](#)), and directed staff to report to the Commission no later than June 1, 2020 ([PSC REF#: 390567](#)).

Twenty-six organizations submitted responses to this data request. Commission staff summarized and analyzed the responses in a memorandum to the Commission dated June 2, 2020. ([PSC REF#: 391627](#)). The Commission discussed this matter at its open meeting of June 11, 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 and also has discretion to determine when circumstances no longer warrant the temporary tariff alterations. In making such alterations, the Commission also exercises its discretion under Wis. Admin. 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.”

The Commission finds that its determination of when to lift the temporary tariff modifications should be based on information regarding the effects of those orders as well as on the information regarding the economic and public health conditions facing utilities and customers. The Commission solicited this information from all interested persons and public utilities, received input from 26 organizations, and instructed the Commission staff to analyze the information. Based on the information received and Commission staff’s analysis, the

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Commission determines that it is reasonable to address the lifting of each temporary provision on an individual basis, as appropriate.

Responses to the Commission's request for information support the Commission's decision to lift each temporary provision on a case-by-case basis. The most common utility response to the Commission's unwinding of these temporary tariff provisions recommended providing a 30-60 day window for utilities to communicate with customers prior to disconnection. Utilities cited concern for a range of issues that each require consideration, such as establishing a Deferred Payment Agreement (DPA) prior to the start of the upcoming winter moratorium, assisting customers with financial resources, and managing uncollectible accounts.

The responses received by the Commission recognized that the economy will not immediately return to normal, and the Commission's decision must balance the financial health of a utility with the best option for ensuring the provision of essential services to customers. Superior Water, Light and Power (SWL&P) noted a need to balance customer, community, and utility employee health with stakeholder needs like affordability, reliability, and overall financial health of the utility. ([PSC REF#: 389555](#)). Northern States Power Company – Wisconsin (NSPW) indicated the decision should balance the need for these temporary requirements against the cost of maintaining the requirement measured by the size of the deferral balances. ([PSC REF#: 389523](#)).

The Commission finds that it is reasonable to begin lifting some of these temporary tariff provisions, and that the timing for lifting each provision must be individually determined in order to appropriately balance the particular interests involved. In making each determination,

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the Commission notes the date of and basis for the lifting of the Safer at Home Order¹ and takes into consideration balancing the financial stability of the utility with the economic stability, health and safety of utility customers. Based on the information received, and the Commission staff's analysis, the Commission orders the following with regard to each of the following temporary tariff provisions:

Disconnection or Refusal of Service

The Commission determines that a reasonable balance for both utilities and customers is to lift the temporary prohibition against disconnecting or refusing service and allow utilities to issue disconnection notices on July 15, 2020, with a minimum 10-day window so that the first date of disconnection would occur on or after July 25, 2020. Under normal circumstances, utilities may, but are not required to, disconnect service for nonpayment pursuant to the requirements of the Wisconsin Administrative Code. Therefore, a utility may commence issuing disconnection notices on July 15, 2020, or it may roll out a phased approach based on thresholds as required by operational conditions and constraints, as long as the approach is nondiscriminatory.

The Commission's decision coincides with the prevalent utility response to lift this temporary provision within 30 to 60 days following the expiration of the Public Health Emergency or Safer at Home order. Overall, utilities noted a concern for balancing customer safety with utility collections. The utilities that disconnect service for nonpayment supported a non-discriminatory phased approach to disconnection. Specifically, Wisconsin Electric Power

¹ The public health emergency declared by the Governor under Executive Order #72 automatically expired on May 11, 2020, 60 days after it was declared, and the Safer at Home order was lifted on May 13, 2020. https://docs.legis.wisconsin.gov/misc/lc/issue_briefs/2020/covid_19/ib_orders_sm_2020_17_04

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Company and Wisconsin Gas, LLC (We Energies) and Wisconsin Public Service Corporation (WPSC) suggested issuing a 30-day disconnection notice on July 1, with the first available disconnection date occurring on July 31, as one way to give customers additional time to prepare for service disconnections, as opposed to the required 10-day notice. ([PSC REF#: 389578](#)). Meanwhile, many of the water utilities who responded do not disconnect service for non-payment.

The Commission clarifies that utilities must also allow a 21-day medical extension of service² when a customer or a member of the customer's household has tested positive for COVID-19. A positive COVID-19 test of a customer or member of a customer's household shall automatically be considered a medical emergency for the purpose of a 21-day medical extension of service (even if the customer has had an extension for another medical reason), and the 21-day medical extension must be extended if the customer, or a person in the household, is still under a COVID-19 quarantine at the end of the original 21-day period, as documented by a medical provider. The Commission finds this clarification of the medical extension necessary to minimize any doubt as to whether a positive test qualifies for such an extension.

Refusal of Service for Failure to Provide Documentation of Residency or Identity

The Commission finds it reasonable to lift this provision as follows. With regard to an existing customer who has failed to provide documentation of residency and identity, a utility may send a disconnection notice beginning on July 15, 2020, and may disconnect service beginning on July 25, 2020. With regard to a new customer requesting service, a utility may

² The Wisconsin Administrative Code provides for 21-day medical extensions of service in Wis. Admin. Code §§ PSC 113.0301(13)(a), PSC 134.062(11)(a), and PSC 185.37(10)(b).

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refuse service for failure to provide documentation of residency and identity beginning on July 25, 2020.

The Commission's decision to lift this temporary provision is consistent with the Commission's decision to lift the general prohibition on disconnections with the first available date for disconnection or refusal of service occurring on July 25, 2020. Utilities reported that the temporary requirement had relatively low impact on customers and did not have notable or material effect on utilities. However, some utilities noted the potential for identity theft and increased arrears could be of concern. Specifically, MG&E stated the importance of being able to require such documentation to lower the risk of identity theft and fraudulent applications. ([PSC REF#: 389561](#)).

Commissioner Nowak dissented. Commissioner Nowak would have authorized a utility to refuse service for a new customer beginning on the effective date of this order.

Deposits

The Commission finds it reasonable to lift this temporary requirement effective July 31, 2020. The Commission determines that continuing this temporary provision until the end of July will provide customers with time to become aware of the lifting of the provision and bring past due balances to their accounts current to avoid being required to make a deposit.

The Commission bases its decision, in part, on information received from utilities. Many utilities recommended lifting this temporary requirement consistent with the Safer at Home Order, or within 30 days thereafter. Whereas, other utilities supported prolonged restrictions on deposits, as it would be beneficial to customers who are coping with the financial hardship because of the public health emergency, and would pose minimal financial impact to the utility.

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For example, We Energies and WPSC proposed the suspension of customer deposits remain in place until July 31, 2020 to provide relief to customers who are struggling with the financial impacts of COVID-19. ([PSC REF#: 389578](#)).

Late Payment Fees

The Commission finds it reasonable to lift this temporary provision effective July 15, 2020. Late fees imposed after this provision is lifted may only be assessed on amounts incurred on or after July 15, 2020. The Commission further finds it reasonable to provide that, beginning July 15, 2020, utilities may elect to continue to waive late fees in a non-discriminatory manner until December 31, 2020, notwithstanding any tariff provision to the contrary. Utilities that elect to continue to waive late fees shall notify the Commission of their plans for waiving fees.

Lifting this provision in this manner accommodates the diverse interests and concerns expressed by utilities in response to the Commission's data request, and customers. Several utilities advocated for reinstating late payment fees along with the Safer at Home order being lifted, and others suggesting a window of 30 to 60 days following the lifting of the Safer at Home order. Many of the utility responses indicated a concern for lost revenue, which would ultimately be passed on to ratepayers.

Landlord Requested Termination of Municipal Electric Services

The Commission finds it reasonable to lift this temporary provision effective July 25, 2020, consistent with the first available date the Commission sets for utilities to disconnect service for nonpayment. The termination of this provision ends the Commission's tracking of this requested activity.

Credit Card Convenience Fees

The Commission finds it reasonable to lift this temporary provision as follows. Utilities that have received authorization to waive credit card convenience fees through the process set forth in the Commission's order of March 24, 2020 in this docket shall resume charging such fees effective December 31, 2020, except that such utilities may choose to resume charging such fees at an earlier date upon submission of a request to the Commission.

The Commission bases its determination on the fact that due to continuing social distancing and economic impacts of COVID-19, credit card payment may continue to provide some relief and convenience to customers in the upcoming months. This determination allows utilities that opted into temporarily waiving credit cards fees to continue to do so for these reasons. It poses minimal impact to the IOUs and is not applicable to municipal utilities. Municipal utilities already have the option to stop direct assessing credit card processing fees to customers without a tariff change, but the recovery of these costs would not be allowed until the utility's next rate proceeding. While SWL&P and WP&L already recover credit card processing fee costs in their operations and maintenance (O&M) budgets, and therefore did not file a waiver. MG&E ([PSC REF#: 389561](#)) was the only IOU to submit an applications for a temporary tariff provision to waive credit card convenience fees for customers.

Issuance of Securities

The Commission declines to take any action to modify the authority that the Commission has delegated to approve the issuance of securities through the orders in this docket. The Commission's determination addresses the utilities' request that the Commission remain flexible, as the full extent of the economic impact of the public health emergency on customers and,

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therefore, utilities is still largely unknown. As utilities have more time to assess the full effect of the public health emergency on the utility's financial health, the option to request an issuance of securities to address cash flow challenges may be essential. The Commission's decision provides for future authorizations for the issuance of securities upon utility request.

Expedited Process for Considering Waivers of Certain Tariff Provisions

The Commission finds it reasonable to lift this temporary provision effective December 31, 2020. Providing an expedited process for utilities to obtain permission to waive certain provisions of the tariff is beneficial to customers without posing a negative impact to the utility. The Commission's decision is consistent with the recommendation from a large number of utilities to provide waiver requests on a case-by-case basis through the end of 2020, should an applicable need arise. Many of the IOUs, including NSPW ([PSC REF#: 389523](#)) SWL&P ([PSC REF#: 389555](#)), WP&L ([PSC REF#: 389577](#)), Manitowoc Public Utilities (MPU) ([PSC REF#: 389586](#)) We Energies and WPSC ([PSC REF#: 389578](#)) supported an extension of waiver requests.

Deferred Payment Agreements

The Commission finds it reasonable to lift the temporary provisions relating to DPAs effective August 15, 2020. A utility must offer a DPA to any customer unable to pay their bill in full until August 15, 2020. Following that effective date, a utility may decline to offer a subsequent DPA or initiate a process to disconnect service if applicable without offering a subsequent DPA, unless a residential customer has had a significant change in ability to pay since the previous, defaulted DPA was established. Pursuant to the specific requirements and procedures established in the Wisconsin Administrative Code regarding DPAs, if a residential

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customer has not defaulted on a DPA, the utility shall offer a DPA. As of August 15, 2020, utilities may, but will no longer be required, to offer DPAs to commercial customers.

The Commission bases its decision of August 15, 2020 on a date 30 days after the first date that a utility may issue a disconnection notice, to allow both customers and utilities time to negotiate and establish a DPA. Several utilities provided information that it would be beneficial for this requirement stay in place for 30 days following the reinstatement of disconnections for nonpayment, to allow customers in danger of disconnection to enroll in a DPA, and mitigate the ultimate deferred financial impact. We Energies and WPSC ([PSC REF#: 389578](#)) supported keeping this temporary requirement in place for 30 days after disconnections are reinstated. Moreover, a utility may maintain a policy to offer DPAs without limit, to any or all customer classes. The DPA rules in the Wisconsin Administrative Code do not preclude a utility from establishing DPAs with customers in any case. Therefore, utilities may continue to offer DPAs to customers beyond the minimum requirement of one agreement prior to disconnection.

Deferred Payment Agreements – Municipal Tenant DPA Tariffs

The Commission determines that tenant DPAs should follow the same timeline as described for DPAs above, lifting this temporary provision as of August 15, 2020. On August 15, 2020, each municipal utility must offer or deny DPAs to residential tenants pursuant to the service rules in its tariff. Some municipal utilities have elected to establish tariff language limiting the utilities' ability to offer DPAs to residential customers who are tenants pursuant to the utilities ability to limit this option under Wis. Stat. § 66.0809(9).³ The Commission chooses

³ Wisconsin Stat. § 66.0809(9) provides “A municipal utility is not required to offer a customer who is a tenant at a rental dwelling unit a deferred payment agreement. Notwithstanding, ss. 196.03, 196.19, 196.20, 196.22, 196.37, and 196.60, a determination by a municipal utility to offer or not offer a deferred payment agreement does not require approval, and is not subject to disapproval, by the public service commission.”

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to lift this provision related to municipal DPA tariffs for residential tenants consistent with the date established for general DPAs.

Extension of Regulatory Filing Deadlines

The Commission's Supplemental Order – First ([PSC REF#: 390567](#)) delegated authority to Division Administrators to grant deadline tolling and extension requests, except under circumstances that would compromise public safety or provision of essential service, in which case Administrator would elevate to the full Commission. The Commission finds it reasonable to lift this temporary provision effective as of December 31, 2020.

Required Reporting

The Commission directs utilities to file a disconnection plan with Commission Consumer Affairs staff at least five business days prior to implementing their plans. The disconnection plan must include the amount(s) past due that will trigger the issuance of a disconnection notice, DPA requirements, the amount(s) required to be paid to avoid disconnection of service, and the number of customers who would be subject to disconnection under these thresholds. The Commission finds it necessary to continue this reporting as it may inform future orders.

ORDER

1. Order point #2 of the March 24, 2020 Order, as modified by Order point # 4 of the Supplemental Order – First in this docket is lifted to allow utilities to issue disconnection notices beginning on July 15, 2020, so that the first available date disconnection of service for nonpayment may occur will be at least 10 days later on or after July 25, 2020.

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2. A positive COVID-19 test of a customer or a member of a customer's household shall automatically be considered a medical emergency for the purposes of a 21-day medical extension of service (even if the customer has had an extension for another medical reason), and the 21-day extension must be extended if the customer, or a person in the household, is still under a COVID-19 quarantine at the end of the original 21-day period, as documented by a medical provider.
3. Order point #3 of the March 24, 2020 Order in this docket is lifted as follows. With regard to an existing customer who has failed to provide documentation of residency and identity, a utility may send a disconnection notice beginning on July 15, 2020, with the first available date for disconnection of service at least 10 days later on or after July 25, 2020. With regard to new customers seeking to establish service, the first date on which a utility may refuse a new request for service for failure to provide this documentation is July 25, 2020.
4. Order point #6 of the March 24, 2020 Order in this docket, that no utility may require a deposit or other guarantee as a condition of new service, is lifted effective July 31, 2020.
5. Order point #5 of the March 24, 2020 Order in this docket is lifted effective July 15, 2020. Beginning on July 15, 2020, utilities may elect to continue to waive late fees in a non-discriminatory manner until December 31, 2020, notwithstanding any tariff provision to the contrary. Utilities that elect to continue to waive late fees shall notify the Commission of their plans for waiving fees. Late fees may be assessed only on amounts incurred on or after July 15, 2020.

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6. Order point #8 of the March 24, 2020 Order in this docket, the reporting requirement for landlord requested termination of service, is lifted effective July 25, 2020.
7. Order point #8 and other provisions of the March 24, 2020 Order in this docket authorizing utilities to waive credit card convenience fees, is lifted effective December 31, 2020. Utilities that choose to resume charging such fees at an earlier date may do so upon submission and approval of a request to the Commission.
8. Order point #3 of the Supplemental Order – First in this docket, delegation of authority to the Division Administrators to approve, deny, or elevate as appropriate requests for temporary waivers of certain tariff provisions, is lifted effective December 31, 2020.
9. Order point #4 of the March 24, 2020 Order as modified by the Supplemental Order – First in this docket, the requirement to offer a deferred payment agreement regardless of customer class, if the customer is unable to pay a bill in full, is lifted effective August 15, 2020.
10. On August 15, 2020, each municipal utility must offer or deny DPAs to residential tenants pursuant to the service rules in its tariff.
11. Order point #2 of the Supplemental Order – First in this docket, delegating authority to the Division Administrators to grant deadline tolling and extension requests, is lifted effective December 31, 2020.
12. Utilities who plan to disconnect customers for non-payment shall file a plan with the Commission’s Bureau of Consumer Affairs at least five business days prior to implementing their plans. This filing shall include: the amount(s) past due that will trigger the issuance of a disconnection notice, DPA requirements, the amount(s) required

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to be paid to avoid disconnection of service, and an estimate as to the number of customers that may be subject to disconnection under the plan.

13. Except as modified by this Supplemental Order – Second, all other terms and conditions of the Commission’s March 24, 2020 Order and its Supplemental Order – First remain in full force and effect.

14. This Order is effective one day after the date of service.

15. Jurisdiction is retained.

Dated at Madison, Wisconsin, the 26th day of June, 2020.

By the Commission:

A handwritten signature in black ink that reads "Steffany Powell Coker". The signature is written in a cursive style with a large initial 'S'.

Steffany Powell Coker
Secretary to the Commission

SPC:KN:TP:BR:LF:kle DL:01746074

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.⁴ 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

⁴ See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.