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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 11-039

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### **1. Statutory Authority**

Section PSC 184.01 (2) states that nothing in ch. PSC 184 precludes the commission from “giving individual consideration to exceptional or unusual situations or, upon investigation, from establishing requirements for a utility or service that are different from those provided in this chapter.” This language appears to allow the commission to proceed as if there were no rule in place if it chose to do so, giving “individual consideration” (which is not defined) or applying different requirements for a utility or service under any circumstances that it could justify as “exceptional or unusual situations” or “upon an investigation” (also not defined.). It appears to allow variance from provisions of the rule that repeat statutory requirements.

The commission should ensure that statutory provisions allow for such variances from requirements that would otherwise apply and not rely solely on a rule provision to provide that authority. Further, the rule should specify the types of “exceptional or unusual situations” that would justify applying different requirements.

#### **2. Form, Style and Placement in Administrative Code**

a. The number of any section in the PSC series of the Administrative Code should be preceded by the initials “PSC.” This rule fails to observe this convention in several instances. [s. 1.03 (2) (b), Manual.]

b. In s. PSC 184.04 (1) (c), the term “*force majeure*” should be replaced with an English equivalent or with descriptive language expressing this idea more precisely. [s. 1.01 (1), Manual.]

c. Where multiple subunits of a section of the Administrative Code are affected by a single rule SECTION, the section number is not repeated for each subunit. See, for example, the treatment in this rule of s. PSC 185.12 (10e), (10m), and (10s). [s. 1.04 (2) (a) 4., Manual.]

d. In s. PSC 185.12 (20g), the exception to the exception (“unless otherwise specified by tariff”) to the definition of “residential customer” is substantive, and should be placed in the main text of the rule. [s. 1.01 (7) (b), Manual.] What is more, the exception to the exception conflicts with the definition of “commercial customer”. The definitions should specify that multi-family dwellings where three or more dwelling units are served by a single water meter are commercial customers; the substantive provisions of the rule would then authorize a water utility to provide a separate tariff for those customers or to include them in the residential tariff.

e. A rule section should be added at the end specifying the effective date of the rule.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. Where is the PSC’s Uniform System of Accounts laid out? A reference to this would make the definition of “plant”, in s. PSC 184.02 (6), more useful, and would help clarify subsequent provisions, as well.

b. In s. PSC 184.05 (a), the reference to s. PSC 184.03 should be to s. PSC 183.04.

c. Section PSC 185.85 (3) requires that audits be in a format specified by the PSC. This rule is where that format should be specified, and the form should be attached to the rule package when it comes to the Legislature for review. The same comment applies to s. PSC 185.97 (5). [s. 1.09 (2), Manual.]

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. As noted in comment 4. a., above, the term “plant” is defined in s. PSC 184.02 (6). However, in s. PSC 184 .02 (1), it is unclear what is meant by “a unit of plant or mains”. The wording seems awkward, but perhaps this is a term of art in the industry. If it is grammatically correct as stated, it might be helpful to define the phrase. Otherwise, for example, it appears that the word “an” should be inserted before “existing plant” in s. PSC 184.03 (2) (c). See also s. PSC 184.03 (5) (f) and review the entire rule for other occurrences of the word “plant” not preceded by an article.

b. In s. PSC 184.03 (2) (b), the phrase “an area” should be replaced by “a service area”.

c. In s. PSC 184.03 (3), what does “deregulation” refer to? Because the commonly understood meaning of this term does not make sense in this context, a definition for the term is needed.

d. In s. PSC 184.03 (4) (a) 7., if “sewer facilities” includes two things--pumping facilities and sewage treatment and disposal plants--the comma following “facilities” should be replaced by the word “or”. If it includes three things--pumping facilities, sewage treatment plants, and disposal plants, then the comma after “utilities” should be retained and the phrase “treatment and” should read “treatment, or”.

e. In s. PSC 184.03 (4) (b), the comma after “purchasing” should be deleted and a comma should be inserted after “par. (a)”.

f. In s. PSC 184.04 (3) (j), “other units of government” should be clarified to indicate whether it refers to other state agencies, local units of government, or both.

g. In s. PSC 184.05 (2), presumably the intent is that the application is considered approved if the commission takes no *final* action (i.e., an action to approve or deny the application) within 90 days of its notice of investigation. As written, the commission could notice a hearing on the application (a kind of action) and this 90-day deadline would have been met. Also, this provision should be rewritten in the active voice.

h. Chapter PSC 184, as affected by this rule, refers variously to “a person,” “a utility,” or “a person or utility.” In some cases, such as s. PSC 184.03 (1) and (2), the distinction is clear; in other cases it is not clear. For example, presumably s. PSC 184.04 (1) should refer to “person or utility”, since it applies to projects requiring PSC authorization under s. PSC 184.03, and since s. PSC 184.03 (1) applies to “any person”. It appears that s. PSC 184.04 (6) should also refer to “person or utility”. The entire chapter should be reviewed for correct use of these terms.

i. In s. PSC 184.06, it would be helpful to define “emergency”. The language in s. PSC 185.89 (2) (a) relating to emergency operations may be helpful.

j. Section PSC 185.12 (3m) should be revised to clarify that the numbers 1,000 and 4,000 are included, such as “...that has not fewer than 1,000 nor more than 4,000 service connections”.

k. Read strictly, the second sentence of the definition of “irrigation customer” in s. PSC 185.12 (10s) is not limited to irrigation and other outdoor uses. For example, it could include a water bottling plant. This could be clarified by inserting the phrase “that is used primarily for irrigation and other outdoor uses and” after “measuring water”. Also, the use of the word “may” is inappropriate in a definition--either the term includes the described entities or it does not. If there is discretion in application of the term, that should be dealt with in the main text of the rule.

l. Does the term “non-residential customer” in s. PSC 185.12 (12m) include irrigation customers, as the common meaning of the term would suggest? If not, this should be clarified; if it does, are there any customers (other than residential customers) that it does *not* include? If not, it would not seem necessary to define the term.

m. In s. PSC 185.12 (17m), the reference to “authority” in the term “public authority customer” could cause confusion, as the word “authority” refers to a set of quasi-governmental entities created by statute and delineated in s. 16.70 (2), Stats. Use of a different term should be

considered. Note that the definition of “agency” in s. 16.70 (1e), Stats., appears to cover the state-level entities that the rule is attempting to capture.

n. This rule would be an opportunity to replace the semicolons at the ends of s. PSC 185.21 (1) (a) to (h), as renumbered by this rule, with periods. The same applies with regard to s. PSC 185.33 (4), and possibly with regard to other sections. Also, while cleaning up s. PSC 185.33 (4), note that, in s. PSC 185.33 (4) (intro.), the word “should” should be replaced with “shall”. There likely are other format errors in the chapters affected by this rule that could be cleaned up.

o. There are two subsections numbered s. PSC 185.85 (3); the second, obviously, should be s. PSC 185.85 (4).

p. In the treatment clause to s. PSC 185.85 (in SECTION (17)), “recreated” should not have a hyphen. Also, in the rule text, “unaccounted-for” should be hyphenated, as it is in the analysis, since it is used as an adjective. In s. PSC 185.95, “cost effectiveness” should *not* be hyphenated, since it is used as a noun.

q. In s. PSC 185.85 (2) (d), what is “cost-effective”? How, and by whom, is cost effectiveness determined? These questions are only partially answered by subch. IX of ch. PSC 185. In s. 185.85 (2) (g), the phrase “, in accordance with sub. (3)” could be added after “audit”.

r. Is there a Class A of water utilities? Is it to this class that s. PSC 185.85 (4) (b) 1. applies? If so, that subdivision should say as much; if not, to whom does it apply? Also, if there is a Class A of water utilities, should s. PSC 185.85 (4) (d) include them?

s. The final use of the word “and” in s. PSC 185.85 (4) (d) should be replaced with “or”.

t. Does a water shortage curtailment plan under s. PSC 185.90 (2) require PSC approval before the applicability provision in s. PSC 185.90 (3) is effective, or will any plan supersede s. PSC 185.90? If approval is required, the rule should say so.

u. In s. PSC 185.90 (6), the word “ESSENTIAL” in the title is misspelled.

v. Section PSC 185.97 (1) (b) is superfluous, since a water utility may not implement *any* elements of a voluntary water conservation program without PSC approval. If sub. (1) (b) is eliminated, the “(a)” after the subsection title should be deleted.