PUBLIC SERVICE COMMISSION OF WISCONSIN
Memorandum

October 3, 2022

TO: The Commission

FROM: Kristy Nieto, Administrator
Tara Kiley, Deputy Administrator
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RE: 5-UI-120
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
Review of Remaining Delegations of Authority and Order Points Relating to Low-Income DPAs, Municipal DPAs, Medical Emergencies, Disconnection Plans, Waiver of Credit Card Convenience Fees, Waiver of Certain Tariff Provisions, and Meter Testing Deadlines

Suggested Minute: The Commission reviewed information related to the remaining order points in this investigation and (took/did not take) action consistent with its discussion.

Background

As part of the ongoing 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 in this docket, the Commission, in its December 22, 2021 Supplemental Order on Residential Disconnections – Fifth, discontinued the requirement that utilities submit quarterly reporting on arrears and collection information, and information regarding the utilities’ plans for communicating with customers about collections and arrears management, and the financial impacts of the utilities’ arrears. The purpose of this memorandum is to provide the Commission with an update relating to the remaining active order points in this investigation. This memorandum requests Commission direction to either maintain as active or to discontinue any of
the remaining order points, which relate to: low-income Deferred Payment Agreement (DPA) offers, waivers for municipal utilities of their service rules related to DPAs for residential tenants, medical emergency determinations by utilities, disconnection plan filing requirements, waiver of credit card convenience fees, waiver of certain tariff provisions, and the extension of meter reading waivers.

**Low-Income Residential DPA Offers**

Wisconsin Admin. Code §§ PSC 113.0404, PSC 134.063, and PSC 185.38 provide that electric, natural gas and water public utilities must offer DPAs to residential customers who are not able to pay their bill in full, before disconnecting service for nonpayment. These provisions require that every DPA established due to the customer's inability to pay the outstanding bill in full shall provide that service will not be discontinued if the customer makes a reasonable down payment on the outstanding balance and agrees to pay the remainder of the outstanding balance in installments.

In its April 5, 2021 Supplemental Order on Residential Disconnection – Fourth, the Commission found:

Utilities shall, until further order of the Commission, offer a DPA to any low-income residential customer who is unable to pay a bill in full, prior to disconnecting service for nonpayment, including in situations in which the terms of the previous DPA were unfulfilled, without limitation. Pursuant to the requirements of the Wisconsin Administrative Code, a down payment required of a customer in any case must be reasonable and based on the customer’s ability to pay and circumstances, and the DPA is not considered established until down payment has been made. Also pursuant to the Wisconsin Admin. Code, any residential customer may file a complaint with the Commission if the customer is unable to enter into a satisfactory DPA with the utility. A municipal utility is not required to offer a subsequent DPA prior to transferring an amount to the tax roll in cases in which the terms of the previous DPA were unfulfilled and there has not been a significant change in ability to pay. *(PSC REF#: 408377.)*
In addition, the Commission emphasized the utilities’ requirement to remain flexible when working with customers to establish a reasonable DPA prior to disconnection, in adherence to the requirements of Wis. Admin. Code §§ PSC 113.0404, PSC 134.063, and PSC 185.38 as they relate to a customer’s ability to pay.

The relevant order point in the April 5, 2021 Supplemental Order on Residential Disconnection – Fourth requires a utility to renegotiate a DPA with a low-income residential customer without limitation. If the Commission discontinues this order point, a utility may continue to renegotiate DPAs without limitation, but would no longer be required to do so. If a customer were to default on a DPA, with no significant change in ability to pay since the defaulted DPA was established, a utility would have the option to require payment in full of the outstanding balance in order to avoid disconnection. If service were to be disconnected, the customer would be entitled to make a down payment to enter into a DPA for reconnection.

Aside from the 5-UI-120 investigation requirement to allow a low-income customer to make a payment to enter into a DPA without limitation, there are a number of other utility requirements that help low-income customers, and all customers, to manage arrearages. There are also some utilities in the state that take voluntary actions in addition to the required ones.

Utilities are required to offer DPAs with down payment amounts and installment payments that are based on a customer’s individual circumstances. In addition, utilities may also offer innovative payment plans or additionally flexible DPAs. The required quarterly reporting utility data from the 3rd quarter of 2021, reported to the Commission as part of this investigation, showed that the majority of utilities were requiring less than 50 percent of the arrears to be paid as a down payment in order for the customer to establish a DPA, regardless of whether the
customer was low-income. Commission staff have learned that utilities have shifted to offering DPAs with more flexible terms and down payment amounts in general due to overall favorable outcomes and customer relations. (PSC REF#: 427408 at 13.) In addition, some utilities began offering the ability for customers to apply for a DPA electronically and in certain instances to self-establish the terms of the DPA within certain parameters (known as “name your down payment” DPAs). This shift is consistent with the requirement in Wis. Admin. Code §§ PSC 113.0404(3), 134.063(3) and 185.38(3) that utilities take into account individual customer circumstances when negotiating a DPA.

In addition to offering DPAs and making customers aware of the financial assistance resources available to assist with the payment of utility bills, some utilities have also implemented new Arrears Management Programs, through which residential customers have increased opportunities and options to reduce their arrears balances. (PSC REF#: 406511). In addition, the state’s investor-owned utilities with at least 15,000 customers are required to provide to the Commission annually a detailed household economic burden index analysis evaluating energy (electric and/or natural gas) and residential water utility customer bills as percentages of household income. Some, but not all, of the investor-owned utilities operate voluntary energy efficiency programs, on top of the Focus on Energy program, providing additional energy savings incentives to low-income customers.

Energy Assistance Updates

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1 The Commission, in its Supplemental Order on Residential Disconnections -- Fifth, ceased to require quarterly reporting in this docket as of December 22, 2021. Therefore, the quarterly report pertaining to the third quarter of 2021 is the most recent data related to utility down payment levels. The Commission, beginning with the utility 2021 annual reports, included items in annual reporting related to arrears levels, disconnection numbers and tax roll collections.
Commission staff continue to work with the staff at the Department of Administration’s (DOA) Division of Energy Housing and Community Resources (DEHCR) on status and opportunities related to the Wisconsin Home Energy Assistance Program (WHEAP).

DEHCR expects approximately $100 million for Wisconsin’s Annual Low Home Energy Assistance Program Income (LIHEAP) award for 2022, in addition to the $1.3 million received in fiscal year 2022 from the Bipartisan Infrastructure Bill. Wisconsin will receive another $1.3 million in fiscal year 2023 and each year after that until fiscal year 2026. The bill includes an additional $100 million nationally for LIHEAP each year for fiscal years 2022 through 2026 for a total of $500 million nationally. In addition to the additional funding, DEHCR expects an increase in Energy Assistance applications.

In September 2022, Gov. Tony Evers announced an additional $16.6 million investment including $13.6 million for the WHEAP for heating assistance and $3 million for the Keep Wisconsin Warm/Cool Fund for crisis energy assistance.

The Low-Income Household Water Assistance Program (LIHWAP) began operating nationally on September 1, 2021, and Wisconsin began distributing benefits on November 10, 2021. LIHWAP is a federally funded program available to States in which grants are applied to water and wastewater utility bills, similarity to how LIHEAP distributes funds to be applied to customers’ electric and natural gas bills. However, unlike LIHEAP, LIHWAP is a temporary program that does not have ongoing statutory authorization or appropriation beyond December 31, 2023. LIHWAP is an emergency crisis program that focuses primarily on paying arrears in order to restore disconnected water services or prevent disconnection of water service and does

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2 Data provided by WI DOA, DEHCR.
not focus on proactive bill support or arrears management. Additional LIHEAP, and Wisconsin Emergency Rental Assistance funds are temporarily available to Wisconsinites.

While these programs are helping customers statewide who are facing economic difficulties while also facing rising energy cost concerns, the overall level of assistance available for utility bills is lower than it was in 2021 when utilities through WHEAP were able to apply an additional cumulative amount of $123.1 million to arrears balances through the American Rescue Plan Act (ARPA) funding. In addition, over the 2022 summer season, some utilities in the state began to increase DPA down payment requirements for customers, and many utility customers in the state do not have access to a utility that offers an AMP or other voluntary program.

Should the Commission decide to lift the requirement for utilities to offer a DPA to any low-income residential customer who is unable to pay a bill in full, prior to disconnecting service, including in situations in which the terms of the previous DPA were unfulfilled without limitation, the utilities will continue to be required to follow the procedures in Wis. Admin. Code §§ PSC 113.0404, PSC 134.063 and PSC 185.38 and to offer at least one DPA before disconnecting a customer’s service for nonpayment. In addition to the requirement of offering at least one DPA, the procedures mentioned above require utilities to take into consideration a customer’s ability to pay their bill and negotiate an additional DPA when a customer has experienced a significant change in ability to pay. Should the Commission decide to continue the requirement on the other hand, low-income customers would still be required to make a payment to the utility in order to enter into the offered DPA and avoid disconnection of service. The winter moratorium on disconnections begins on November 1, 2022, at which time public
utilities are no longer permitted to disconnect heat providing service for nonpayment. The last
day of the moratorium is April 15 of each year.

Commission Alternatives – Low-Income DPA Offers

**Alternative One:** Discontinue, as of November 1, 2022 or some other date selected by
the Commission, the temporary requirement that utilities offer a DPA to any low-income
residential customer who is unable to pay a bill in full, prior to disconnecting service for
nonpayment, including in situations in which the terms of the previous DPA were unfulfilled,
without limitation.

**Alternative Two:** Continue, until further notice by the Commission, the requirement
that utilities offer a DPA to any low-income residential customer who is unable to pay a bill in
full, prior to disconnecting service for nonpayment, including in situations in which the terms of
the previous DPA were unfulfilled, without limitation.

Municipal Utility DPA Rules for Residential Tenants

In its April 5, 2021, Supplemental Order on Residential Disconnection – Fourth, (PSC
REF#: 408377), the tariffs of municipal utilities were temporarily altered by the Commission, to
provide that, notwithstanding any provisions of the tariff to the contrary, the municipal utility
may choose to offer a DPA to a customer who is a tenant at a rental dwelling unit.

Although municipal utilities in Wisconsin are not required to offer a DPA to a customer
who is a tenant in a residential dwelling unit,⁴ as part of the effort to provide additional
flexibility and encourage customer payment, the Commission found it reasonable to allow any
utility seeking to offer a DPA to residential tenants the ability to do so, non-discriminatorily,

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⁴ 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.”
without restrictions, even if the municipal utility’s tariff contained language to the contrary. The Commission found that the provisions of Wis. Admin. Code chs. PSC 113, 134, and 185 procedures for DPAs apply, except that the availability of agreements shall not be limited to certain customers. Therefore, to comply with the foregoing provisions, a public utility may apply these provisions, but must make such agreements available to any of its customers unable to pay a bill in full.

Should the Commission decide to lift the authorization that temporarily alters the tariffs of municipal utilities to provide that, notwithstanding any provision of the tariff to the contrary, the municipality may choose to offer a DPA to a customer who is a tenant at a rental dwelling unit, municipal utilities’ tariffs would revert back and the municipal utilities would continue to offer or not offer a DPA to a customer who is a tenant in a rental dwelling unit based on the language in the utilities’ tariffs. The utilities would continue to be required to follow the procedures in Wisconsin Admin. Code §§ PSC 113.0404, PSC 134.063, and PSC 185.38 in offering a customer a DPA.

**Commission Alternatives - Municipal Utility DPA Rules for Residential Tenants:**

**Alternative One:** Discontinue, as of November 1, 2022 or some other date selected by the Commission, the temporarily altering of tariffs of municipal utilities to provide that municipal utilities may choose to offer a DPA to a customer who is a tenant at a rental dwelling unit.

**Alternative Two:** Continue, until further notice by the Commission, to temporarily alter tariffs of municipal utilities to provide that, notwithstanding any provisions of the tariff to the contrary, municipal utilities may choose to offer a DPA to customer who is a tenant at a rental dwelling unit.
**Medical Emergencies**

In its June 26, 2020 Supplemental Order – Second, (PSC REF#: 392763) the Commission clarified that a positive COVID-19 test of a customer or a member of a customer’s household shall 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. The Commission found this clarification of the medical extension necessary to minimize any doubt as to whether a positive test qualifies for such an extension.⁵

The Commission may wish to consider lifting the automatic designation of a medical emergency for a positive COVID-19 test given the availability of the tools now available to prevent severe COVID-19 infection and given the relaxing of social isolation requirements provided by the CDC. This change would mean a utility would make a case-by-case determination as to whether a COVID-19 infection in a household constitutes an emergency and therefore an extension.

Alternatively, the Commission may wish to maintain the automatic designation, until further notice by the Commission, in light of the continued public health guidelines recommending that a person with a positive COVID-19 test stay at home for at least 5 full days.

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⁵ The 21-day medical extension rules for gas and water service in the Wis. Admin. Code provide that a utility shall postpone the disconnection of service, or reconnect the service if disconnected, for 21 days to enable the occupant to arrange for payment, if the occupant produces a licensed Wisconsin physician's statement or notice from a public health, social services or law enforcement official which identifies the medical or protective services emergency and specifies the period of time during which disconnection will aggravate the circumstances. During this extension of service, the utility and occupant shall work together to develop resources and make reasonable payment arrangements in order to continue the service on a permanent basis. The postponement may be extended by renewal of the statement or notice if there is evidence of reasonable communication between the utility and occupant in attempting to make arrangements for payment. Wis. Admin. Code §§ PSC 134.062(11)(a) and PSC 185.37(10)(b). The medical extension rules for electric provide the same requirements, but for a period of up to 21 days. Wis. Admin. Code § PSC 113.0301(13)(a).
and isolate from others in their home. A person may end their isolation after five days, if after five days, a person is fever-free for 24 hours without medication, and a person’s symptoms are improving, or if a person never had symptoms. The Commission may find that a potential disconnection of service while a member of a household is infected with COVID-19 would result in an inability for the individual to follow public health recommendations in place to minimize spread of infection, and may therefore wish to maintain the designation in order to minimize any doubt.

Should the Commission lift the automatic designation of a medical emergency for a positive COVID-19 test documented by a medical provider for the purposes of a 21-day extension for service, utilities would still be required to continue to follow the code requirements related to a medical emergency based on the occupant producing a licensed Wisconsin physician's statement or notice from a public health, social services, or law enforcement official which identifies the medical or protective services emergency and specifies the period of time during which disconnection shall aggravate the circumstances.

**Commission Alternatives - Medical Emergencies**

**Alternative One:** Discontinue, as of November 1, 2022 or some other date selected by the Commission, the temporary requirement that a positive COVID-19 test shall automatically be considered a medical emergency for the purposes of the 21-day extension of service.

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Alternative Two: Continue, until further notice by the Commission, the temporary requirement that a positive COVID-19 test shall automatically be considered a medical emergency for the purposes of the 21-day extension of service.

Disconnection Plans

In its April 5, 2021, Supplemental Order on Residential Disconnection – Fourth, (PSC REF#: 408377) the Commission lifted the temporary moratorium on disconnections and further ordered all utilities seeking to disconnect service for nonpayment after April 15, 2021, to file a disconnection plan with the Commission. As of June 29, 2022, 395 electric, gas and water utilities filed disconnection plans with the Commission. Any disconnection plan filings or updated disconnection plan filings shall be filed with the Commission at least five business days prior to implementing the changes sought in the updated plan.

Should the Commission decide to discontinue the temporary requirement for utilities to file a disconnection plan and disconnection plan updates with the Commission prior to disconnection for nonpayment, utilities will still be required to follow the provisions in Wis. Admin. Code chapters PSC 113, PSC 134, and PSC 185 pertaining to disconnection procedures for non-payment. Additionally, should the Commission decide to no longer require utilities to file a disconnection plan and updated disconnection plans with the Commission as of November 1, 2022; electric, water, and gas utility residential disconnections would be limited by the winter moratorium on disconnections for nonpayment, in general, to those for which the utility service does not impact the home’s heat source.7 Also, utilities will continue to be required to provide

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7 While the winter moratorium on disconnection and refusal of residential heating service begins annually on November 1 pursuant to Wis. Admin. Code §§ PSC 113.0304, 134.0624, and 185.37, non-heating service may continue to be subject to disconnection as provided in Wis. Admin. Code §§ PSC 113.0301, 134.062, and 185.37.
the total number of residential disconnections notices issued and the total number of residential
disconnections for the year as part of the annual report filed with the Commission.

Should the Commission wish to maintain the requirement for utilities to file
disconnection plans prior to disconnecting service for nonpayment, utilities would likely start to
file those plans in early spring, at least 5 days prior to the end of the winter moratorium, in order
to have authorization to disconnect service for nonpayment after April 15, 2023.
Commission Alternatives – Disconnection of Plans

**Alternative One:** Discontinue, as of November 1, 2022 or some other date selected by the Commission, the temporary requirement to file disconnection plans and disconnection plan updates prior to disconnecting customers for non-payment.

**Alternative Two:** Continue, until further notice by the Commission, the temporary requirement to file disconnection plans and disconnection plan updates prior to disconnecting customers for non-payment.

**Waiver of Credit Card Convenience Fees**

Commission staff developed and implemented a simplified process for evaluating utility requests for a temporary tariff provision to waive credit card convenience fees for customers. Between March 24, 2020 and April 21, 2020, a total of fifteen municipal water utilities, four municipal electric utilities, and one investor owned electric and gas utility submitted applications to the Commission. On December 23, 2020, the Commission extended its authorization to allow utilities to waive credit card convenience fees until further order of the Commission in its Supplemental Order – Third, Order Point 7. ([PSC REF#: 402137.](#)) Since then, one municipal electric and water utility has rescinded its waiver of credit card fees. ([PSC REF#: 413557.](#))

Waived fees for credit card payments provided relief and convenience to customers at the height of the pandemic as social distancing was a vital step to protecting public health. Since the Commission’s Supplemental Order – Third, obstacles to submitting payment have eased as social distancing requirements have been removed and many utility business offices have reopened to the public. Many utilities may still find benefit in continuing to waive the credit card convenience fees for customers as they find it encourages customer payments.
Prior to the Commission’s actions in Docket 5-UI-120, investor-owned utilities that wished to accept credit card payments for utility service without charging a credit card processing fee to the customer would request to recover the costs of credit card processing fees in their operations and maintenance (O&M) budgets in their next rate proceeding. Municipal utilities who wished to do the same could also request this in their next rate proceeding. Additionally, municipal utilities that wish to stop directly assessing customers credit card processing fees immediately without a tariff change were able to do so, but no recovery of these costs would be allowed in their O&M budget until the utilities’ next rate proceeding. In this instance, a utility would use its surplus to cover credit card processing costs. Any deferral of credit card processing fee costs authorized under Docket 5-AF-105 ended on December 31, 2021, with utilities having until December 31, 2023 to request recovery of these costs. Should the Commission rescind its authorization to allow utilities to waive credit card convenience fees, utilities will still retain their ability to waive these fees through these preexisting processes.

**Commission Alternatives – Waiver of Credit Card Convenience Fees**

**Alternative One:** Discontinue, as of November 1, 2022 or some other date selected by the Commission, the authorization of the temporary tariff provisions allowing utilities to waive credit card convenience fees. Require utilities to address the recovery of the costs of credit card processing fees in accordance with the Order for Docket 5-AF-105.

**Alternative Two:** Continue, until further notice by the Commission, authorization of the temporary tariff provisions allowing utilities to waive credit card convenience fees.
Waiver of Certain Tariff Provisions

The Commission has not received any requests for temporary waivers of tariff provisions under the delegated authority granted in the Commission’s March 24, 2020 Order. In the Commission’s Supplemental Order – Third, Order Point 8, delegation of authority to the Division Administrators to approve, deny, or elevate as appropriate requests for temporary waivers of certain tariff provisions, was extended until further order of the Commission.


Alternative One: Discontinue, as of November 1, 2022 or some other date selected by the Commission, the order provision delegating authority to the Division Administrators to approve, deny, or elevate as appropriate requests for temporary waivers of certain tariff provisions.

Alternative Two: Continue, until further notice by the Commission, the order provision delegating authority to the Division Administrators to approve, deny, or elevate as appropriate requests for temporary waivers of certain tariff provisions.

Extension of Meter Testing Deadlines

Under delegated authority in the Commission’s March 24, 2020 Order, Division Administrators in the Division of Water Utility Regulation and Analysis (DWURA) and the Division of Energy Regulation and Analysis (DERA) extended annual report filing deadlines, deadlines related to rate orders and applications, and numerous requests from water and natural gas utilities to extend the requirements for periodic meter testing and replacement for the calendar year 2020 to December 31, 2021. As of December 31, 2021, one water utility has requested an extension of the requirements of periodic meter testing and replacement that has not yet been approved. (PSC REF#: 435005.)
Wisconsin Admin. Code §§ PSC 185.76, PSC 185.761, and PSC 134.30 require utilities to complete periodic testing of customer meters. Completion of water and natural gas testing requires the utility staff to enter a customer’s home. The applicants made their requests for extensions of meter testing deadlines to protect the health of customers and staff due to the ongoing community spread of COVID-19. Some water utilities indicated that they may have difficulty meeting meter testing and replacement requirements in 2022 as well, and some requested an extension as late as 2024 to complete their scheduled work.

The Commission’s action to delegate decisions on COVID-19 related utility deadline tolling and extension requests beyond December 31, 2020 helped to provide flexibility to utilities in their ongoing efforts to protect customers and staff during the COVID-19 pandemic. It appears most utilities that wished to take advantage of the ability to request a deadline extension through this simplified process have already done so in 2020 and 2021. Providing a deadline by which any remaining utilities requiring such a deadline extension may request one may be sufficient to capture any outstanding requests.

**Commission Alternative – Extension of Meter Testing Deadlines**

**Alternative One:** Discontinue, as of November 1, 2022 or some other date selected by the Commission, the delegation to grant deadline tolling and extension requests.

**Alternative Two:** Continue, until further notice by the Commission, the delegation to grant deadline tolling and extension requests.