



Public Service Commission of Wisconsin

Phil Montgomery, Chairperson
Eric Callisto, Commissioner
Ellen Nowak, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

May 5, 2014

Re: Application of Wis. Admin. Code § PSC 185.88, Frozen
Laterals.

5-LO-103

Dear Sir or Madame:

With the extreme cold temperatures experienced in 2013 and 2014, the Public Service Commission of Wisconsin (Commission) has received a significant increase in the number of inquiries relating to the utility's and/or the customer's responsibilities in connection with frozen water laterals. The purpose of this letter is to provide interested persons with the opinion of the Chief Legal Counsel to the Commission regarding the interpretation of the relevant code provisions, including Wis. Admin. Code § PSC 185.88.

Utility plant and utility-owned facilities must be designed and constructed to conform to good standard engineering practice, and the requirements of Wis. Admin. Code ch. PSC 185, federal, state, and local regulations. Wisconsin Admin. Code § PSC 185.52(2)(a) requires a utility to place its laterals at such depth or otherwise protected so as to prevent freezing. The utility may request that a customer permit a stream of water to flow to prevent freezing of the service or main because of some deficiency in the utility's portion of facilities, provided the utility adjusts the bill for excess consumption which results. Wis. Admin. Code § PSC 185.35(7). Wisconsin Admin. Code § PSC 185.88(1) places the initial responsibility of the first thaw of a customer's lateral upon the utility. However, if certain requirements identified in Wis. Admin. Code § PSC 185.88 are met, a customer may have to pay to thaw the customer's lateral. This rule provides:

PSC 185.88 Frozen laterals

- (1) Thawing of a customer's lateral shall be at the utility's expense if:
 - (a) The freeze-up is a direct result of a utility disconnect and the disconnection occurs during a time when conditions are such that freeze-up could reasonably be expected to occur or;
 - (b) The customer's portion of lateral is electrically conductive and:
 1. It is the first thaw for the customer at the location and;
 2. The utility has not provided the customer with seasonal notice of the corrective actions to be taken for a known condition.

(2) Lateral thawing shall be at the customer's expense if:

(a) The customer's lateral is not electrically conductive and the freeze-up is not a direct result of a utility disconnect as set forth in sub. (1)(a) or;

(b) The customer neglected to provide or maintain proper insulation or protection for the lateral according to standard accepted practice, or specific utility instructions on, for example, the required depth of burial needed to prevent freezing, or;

(c) The utility advises the customer of the corrective measures to be taken and the customer does not follow the utility's advice. (See s. PSC 185.35(7) for bill adjustment where a utility requests a customer to let water flow to prevent freezing), or;

(d) If the utility disconnects for a dangerous condition.

Pursuant to this rule, a customer may have to pay the costs associated with thawing the customer's lateral where the customer's portion of the lateral is electrically conductive and the utility has provided the customer with a "seasonal notice of the corrective actions to be taken for a known condition."

Due to the extreme cold temperatures experienced in November and December 2013 and January 2014, some utilities determined that their facilities, as well as some or all customer laterals, were at risk of freezing. As a result, many utilities directed some of their customers who were at particular risk to run water to minimize freezing.

The Consumer Affairs division of the Commission has received numerous questions regarding the circumstances under which a customer might be responsible for the costs associated with thawing frozen mains and laterals, especially where the customer was directed to run water, but failed to do so.

Where a utility has specifically informed each customer via mail or door tag (as opposed to a general announcement) that the customer's laterals were at particular risk of freezing (known condition) and advised the customer of the corrective measures to be taken (running water at utility expense), then it is the Chief Legal Counsel's opinion that the utility has provided "seasonal notice" in accordance with Wis. Admin. Code § PSC 185.88(1)(b)(2). For customers who received such seasonal notice and failed to run water as directed, those customers may be responsible for the costs associated with thawing the customer's lateral. However, the customer's responsibility relates only to the customer's lateral and not to utility-owned facilities.

An important and fundamental canon of construction is to interpret statutes and rules giving proper consideration to the context in which the words are used. *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110 (interpret statutes “not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.”) When all of the provisions of Wis. Admin. Code § PSC 185.88 are read together, it is the Chief Legal Counsel’s opinion that the term “lateral” as used therein, refers only to the customer’s lateral. Wisconsin Admin. Code § PSC 185.88(1) refers to “customer’s lateral” and “customer’s portion of lateral.” While Wis. Admin. Code § PSC 185.88(2) uses the more general phrase “lateral thawing,” when read in context with Wis. Admin. Code § PSC 185.88(1), the obligations imposed relate only to the customer’s lateral. Further, reading Wis. Admin. Code § PSC 185.88(2) in its entirety further supports this interpretation. Subsection (2)(a) refers specifically to the “customer’s lateral.” Subsections (2)(b) and (c) impose obligations on the customer which can only be fulfilled if applied to the customer’s portion of the lateral.

Therefore, it is also the Chief Legal Counsel’s opinion that a utility may not use the provisions of Wis. Admin. Code § PSC 185.88 as a means to shift to individual customers the costs of thawing utility-owned facilities. The cost-shifting provisions apply only to the customer’s laterals. If a customer received a seasonal notice of a known condition as described above and failed to run water as directed which caused the utility main or portion of the lateral to freeze, the costs to thaw would be those of the utility—not the individual customer. The costs of thawing utility-owned facilities, like other repair, replacement, and maintenance costs for any utility-owned facilities, are to be socialized among all customers.

This opinion is intended to provide guidance and is not a Commission decision. Any Commission decision will be based upon the specific facts presented and the record developed as part of any Commission investigation, proceeding, or other review.

Sincerely,



Cynthia Smith
Chief Legal Counsel