

August 1, 2011

Comments Submitted Via ERF

Ms. Sandra J. Paske, Secretary to the Commission
Public Service Commission
P.O. Box 7854
Madison, WI 53707-7854

RE: Docket 1-AC-232; Proposed Revisions to PSC 184 and 185

Dear Ms. Paske:

These comments are filed on behalf of the Municipal Environmental Group - Water Division (MEG - Water). MEG - Water is an association of 58 municipal water utilities who have joined together to provide input on proposed laws and regulations that affect municipal water utilities. MEG - Water offers the following comments about the proposed revisions to PSC 184 and 185. These comments reflect the questions and comments MEG - Water members have raised with the proposal.

COMMENTS ON PSC 184

PSC 184.01(1). Scope.

This subsection states that this chapter applies to a person, except a governmental unit, who furnishes services by means of a sanitary sewerage system. It is unclear how this chapter would apply to such a person. The provisions in this chapter do not seem relevant to such a provider. The title of this chapter is also not applicable to these types of sewer systems.

PSC 184.02(9). Definitions.

a. The definition of "utility" includes a person, except a governmental unit, who furnishes services by means of a sanitary sewerage system. As noted above, it is unclear how this chapter applies to such a person.

b. If this chapter is applicable to a person, except a governmental unit, who furnishes services by means of a sanitary sewerage system, a definition of "sanitary sewerage system" should be added to clarify the extent of what is covered by this chapter. Would this cover a mobile home park or condominium development?

c. MEG - Water suggests that a definition for the term "project" or "facilities" be added. It should be clear that the requirements of this chapter do not apply to the purchase of movable equipment, like vehicles.

PSC 184.03(2). Activities requiring commission authorization; expansion, acquisition, and interconnection.

Subsection (2)(a) requires a utility to obtain PSC approval before constructing facilities in a municipality not currently served by the utility. Does this apply if no service will be provided in the new municipality? A utility may place utility facilities outside of its service area in order to more efficiently connect areas that are within its service area. Would PSC approval be required in that scenario?

PSC 184.03(3). Activities requiring commission authorization; sewer deregulation.

This subsection requires PSC approval before deregulating utility sewer facilities. The provisions of this chapter, however -- and in particular PSC 184.04 related to applications for commission authorization -- do not seem applicable to a PSC decision on deregulation. The title of this chapter also does not seem to be applicable to sewer deregulation. MEG - Water recommends that if sewer deregulation is to be addressed by rule, it be handled in a different chapter.

PSC 184.03(4). Activities requiring commission authorization; construction of facilities.

a. MEG - Water believes the \$25,000 threshold in sub. (4)(a) is low, especially for large utilities. The current version of PSC 184.03(2)(b) has a higher threshold of \$100,000 per project or 25% of existing investment shown in the corresponding plant account, whichever is less, for everything other than wells and other sources of supply. MEG - Water asks that the threshold be increased for large utilities. A \$25,000 project would not have a significant impact on ratepayers in a large utility.

b. Subsection (4)(a)6 refers to a "regional pipeline," but this term is not defined. MEG - Water asks that this term be defined so it is clear when PSC authorization must be obtained. Given the exemption in PSC 184.03(5)(a) for water mains within the utility's service area, it is assumed that, at a minimum, a regional pipeline must be located outside a utility's service area.

c. Subsection (4)(a)7 refers to sewer facilities. This has been confusing to MEG - Water members. MEG - Water recommends that this subsection be revised to read as follows:

"7. Sewer facilities, including any pumping facilities, sewage treatment and disposal plant, if the utility is a combined water and sewer public utility under s. 66.0819, Stats., or a person, except a government unit, who furnishes services by means of a sanitary sewerage system."

d. PSC 184.04(4)(b), as written, would appear to include projects that would otherwise be exempt under PSC 184.04(5). If the projects exempt under sub. (5) are not to be included under sub.(4)(b), MEG - Water suggests sub. (4)(b) be revised as follows:

(b) A utility shall obtain a certificate from the commission before constructing or purchasing, any water or sewer project and associated plant not identified in par. (a) or in sub. (5), if the project

cost exceeds \$250,000 or 25 percent of the utility's gross water or sewer operating revenue received during the previous calendar year, whichever is less.

e. Please clarify that PSC 184.04(4)(b) does not apply to the purchase of movable equipment, like vehicles. Some MEG - Water members have indicated that vehicle purchases in some years may exceed \$250,000.

PSC 184.03(5). Activities requiring commission authorization; exemptions.

a. MEG - Water supports the exemption from PSC approval for automated metering systems.

b. Subsection (5)(a) provides an exemption for water mains and sewer mains. The reference to sewer mains is confusing to MEG - Water members, when most sewers are not PSC regulated. MEG - Water recommends just referring to mains -- without specifying whether they are water or sewer mains.

c. Subsection (5)(d) provides an exemption for the replacement or repair of existing pumps, motors, or associated equipment. Please confirm that this would apply to existing motors and pumps that are part of chemical feed systems, in addition to motors and pumps used for conveying water.

d. Subsection (5)(e) provides an exemption for routine maintenance or repair to utility facilities, including buildings used for utility purposes. Please confirm that this exemption would apply to replacing windows and roofs on a utility building.

e. Subsection (5)(f) provides an exemption for replacement or repair of filtration media used in existing water treatment purification and disinfection facilities. Please confirm that this exemption would apply to the replacement of membranes at a membrane filtration plant.

PSC 184.04(1)(a). Applications for commission authorization; timing and cost increases.

a. Subsection (1)(a) requires a utility to submit the information required at least 90 days before beginning the project. This requirement is unnecessary. The utility's ability to begin the project should be based upon the receipt of PSC approval. If PSC approval can be received faster, or if the PSC acknowledges receipt and allows construction to proceed under PSC 184.05, the utility should be able to begin construction even if the application was submitted less than 90 days ago.

b. Subsection (1)(b) requires the utility to notify the PSC if the approved project is not completed within 2 years from the date of the authorization. However, in some cases, a utility may have obtained approval for construction of a project that is anticipated from the beginning to last for more than 2 years. If such approval was obtained, the utility should not be required to notify the PSC if construction is not completed within 2 years.

PSC 184.04(2). Applications for commission authorization; consultation.

This subsection applies to projects that require an environmental impact statement or environmental assessment. Based on MEG - Water's review of PSC 4, the only water project that would require an environmental assessment from the PSC would be the construction or replacement of a water pipeline or main that is eight inches or greater in nominal diameter and three or more miles long. Is this consistent with the Commission's view of the requirements of PSC 4?

PSC 184.04(3). Applications for commission authorization; contents of application.

Subsection (3)(k) requires that for a project under PSC 184.03(4), the utility must provide the PSC with information on any action the utility has taken to mitigate the need for the project. MEG - Water believes that this requirement for a utility to "mitigate" the need for a project is inapplicable to the majority of the projects identified in PSC 184.03(4). Only a limited number of construction projects relate to capacity issues. Other projects may relate to meeting DNR requirements, improving operations and efficiency, or system upgrades. "Mitigation" should have no bearing on these projects that are not capacity driven. If the mitigation requirement is to apply at all, it should only apply to PSC 184.03(4)(a)1 -- the installation of new groundwater wells, surface water intakes, or other sources of water supply.

MEG - Water also suggests that this requirement is unnecessary given that the utility already is required to provide (a) information supporting the purpose and necessity of the project; (b) an analysis and description of alternatives to the project; and (c) an analysis of the effect of the project on quality and reliability of service.

PSC 184.04(4). Applications for commission authorization; environmental review.

The first sentence of this subsection is very open-ended. It is unclear what information a utility would have to provide in order to meet the requirements of this subsection. Based on MEG - Water's review of PSC 4, the only water project that would be subject to PSC 4.10(1) or (2) would be the construction or replacement of a water pipeline or main that is eight inches or greater in nominal diameter and three or more miles long. If that is not the case, what other water projects would be covered, and what would need to be submitted in order to meet the requirements of this subsection?

PSC 184.04(5). Applications for commission authorization; grouping of projects.

MEG - Water supports retaining this option for submitting projects. If a utility submits a list of projects to the PSC in accordance with this subsection, would all the PSC procedures in PSC 184.05 apply? Will a notice of investigation or proceeding be issued? Will projects be reviewed on a project by project basis, or as a whole? Will specific PSC approval be granted?

COMMENTS ON PSC 185

PSC 185.12. Definitions.

MEG - Water supports adding definitions for the customer classes to this chapter. However, utilities still have questions about which customers go in which categories, especially as it applies to multi-family buildings. This is an issue that should be addressed with utilities in the future.

PSC 185.85. Water audits and water loss control.

a. Please confirm that water used in treatment and production processes is excluded from the definition of non-revenue water and is not counted as water entering the utility's distribution system for purposes of the calculation of the percentage of water loss in subsec. (4)(a).

b. Please confirm that if water used for street cleaning, fire protection, or other purposes is billed for, that volume of water is not included in the calculation of the percentage of water loss under subsec. (4)(a).

c. Subsections (4)(b) and (d) require action if a utility has (a) non-revenue water that exceeds 30%, or (b) water loss that exceeds 15% for a Class AB or C utility or 25% for a Class D utility.

MEG - Water is concerned about establishing regulatory requirements based on a utility's percentage of non-revenue water. To calculate a utility's percentage of non-revenue water, the amount of non-revenue water is the numerator, and the total amount of water entering the distribution system is the denominator.

In a wet year, a utility typically sells less water than in a dry year. This means that the denominator of the calculation in a wet year would be lower than in a dry year. If the amount of non-revenue water used in a year for things such as flushing mains, freeze prevention, and other authorized system uses, is the same, the numerator of the calculation would be the same in both years. However, the percentage of non-revenue water in the wet year would be higher than the percentage of non-revenue water in a dry year solely because less water was sold that year.

In the past, the PSC has treated percentage of water loss as an unofficial trigger for further investigation. There was no official regulatory impact from these numbers. No thresholds were codified. The proposed rules, however, would now codify these thresholds and require follow-up action. Turning these thresholds into codified limits with required actions raises concerns that utilities may change good operational practices so they can stay below the codified thresholds.

For example, in order to keep the percentage of non-revenue water down in a wet year when less water is being sold, a utility may choose to do less water main flushing in order to keep the

total amount of their non-revenue water down. This would be counterproductive to good utility management since it is in those wet years that the utility will have available water for flushing.

MEG - Water suggests that in order to address this concern, subsec. (4)(b) be revised to require a public utility to provide a written explanation of the reasons its percentage of non-revenue water, or percentage of water loss, exceeds the thresholds. If a utility has a good explanation for why its percentage of non-revenue water exceeds the threshold, the commission may decide no plan is required at this time. However, if after reviewing the written explanation, the commission is dissatisfied with the utility's explanation, the commission could require the public utility to submit a written water loss control plan.

d. Some MEG - Water members have indicated that water loss numbers may be significantly affected by burst water pipes. A MEG - Water member has commented on problems it faced with burst water pipes at homes in foreclosure. Properties are abandoned without the water utility being notified. The heat is disconnected, and pipes freeze and burst. Water runs for a long time before the utility is contacted. The meter typically freezes and breaks so there is no way the utility can know how much water was lost.

e. A number of MEG - Water members that are Class AB or C utilities are concerned that regulatory action is required at 15% water loss for their utilities, when the water loss allowed at Class D utilities before regulatory action is required is 25%. These utilities would like the threshold for Class AB and C utilities to also be set at 25%.

f. Subsection (4)(b) requires a utility to submit a water loss control plan to the PSC under certain conditions. Please confirm that this would apply on a going forward basis only, and that a utility is not required to submit a water loss control plan if it exceeded the listed conditions in a year prior to the year in which the rule is finally adopted.

g. Subsection (4)(d) authorizes the PSC to require a utility to conduct a leak detection survey if the utility exceeds certain conditions for three consecutive years. Please confirm that this would apply on a going forward basis only, and that no year prior to the year in which the rule is finally adopted will be included in the three year period.

PSC 185.89(3). Interruptions of service.

MEG - Water asks that the second sentence of subsection (3)(a) be revised to read as follows:

"If an interruption occurs, the public utility shall endeavor to re-establish service with the shortest possible delay, consistent with safety to its employees, customers, and the general public."

This change would return the utility's obligation to re-establish service to that currently required by PSC 185.87(1). MEG - Water is concerned that the new proposed language places a greater burden and obligation on utilities, and could be the basis of a lawsuit if service was not re-established "with the shortest possible delay."

PSC 185.90. Water supply shortage.

A definition of "curtail" or "curtailment" should be included. It should be clarified that things like a lawn sprinkling ban do not constitute a water curtailment program that would need to comply with this section.

PSC 185.96. Customer education requirements.

This section requires utilities to provide information on water conservation to customers on request. While some utilities may be well positioned to do this, other utilities are not. Since the Public Service Commission has a funded position that addresses water conservation, it would make sense to have the PSC include this information on its website, and only require utilities to provide a reference to the water conservation information on the PSC's website.

PSC 185; Subchapter IX - Water conservation and efficiency.

This new subchapter, and in particular PSC 185.97, provides requirements for a utility's administration or funding of a voluntary water conservation program. These requirements include the preparation of a net cost-effectiveness analysis, an application for PSC approval that requires the provision of substantial information, and the submission of an annual report which also requires substantial information. While these requirements may make sense for things like toilet rebate programs, they are much too onerous for things like public education programs, lawn sprinkling prohibitions, etc. Subjecting water conservation education programs, and other similar types of programs, to these requirements will likely result in fewer utilities being willing to undertake such voluntary water conservation programs.

MEG - Water urges that the requirements of PSC 185.97 be applied only to voluntary water conservation programs that provide rebates or other direct financial incentives to customers for water efficient products or services (see PSC 185.97(1)(b)). In order to accomplish this, MEG - Water suggests that the term "voluntary program" be replaced with the term "voluntary incentive program," and that the term "voluntary incentive program" be defined in PSC 185.95(2) as follows:

"Voluntary incentive program" means a water conservation program that provide rebates or other direct financial incentives to customers for water efficient products or services that a public utility voluntarily proposes for commission approval.

In PSC 185.97, the term "voluntary program" would be replaced with the term "voluntary incentive program." This would then result in having the requirements of PSC 185.97 apply to water conservation programs that provide rebates or other direct financial incentives to customers for water efficient products or services, but not apply to public education or other similar programs adopted to encourage water conservation.

In conclusion, MEG - Water appreciates this opportunity to submit these comments on the proposed rules. If the Commission would like to discuss these comments further, we would be happy to do so.

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Thank you for your consideration.

MUNICIPAL ENVIRONMENTAL GROUP
-- WATER DIVISION

/s/ Lawrie J. Kobza

Lawrie J. Kobza
Legal Counsel

cc: MEG - Water Members (via e-mail)

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