



725 Lois Drive
Sun Prairie, WI 53590
608-837-2263
www.meuw.org



350 Water Way
Plover, WI 54467
715-344-7778
www.wrwa.org



Municipal Environmental Group

P.O. Box 927
Madison, WI 53701
608-283-1788
www.megwater.org



122 W Washington Ave., Suite 300
Madison, WI 53703
www.lwm-info.org

2013 Wisconsin Act 274 Landlord-Tenant Delinquent Utility Bill Legislation Frequently Asked Questions

Municipal Electric Utilities of Wisconsin, Wisconsin Rural Water Association, Municipal Environmental Group – Water Division, and the League of Wisconsin Municipalities consulted with the Public Service Commission of Wisconsin to prepare this frequently asked questions document to educate our members on the impacts of 2013 Wisconsin Act 274 (Act 274). Act 274 revises the law applicable to residential tenants' delinquent utility charges, and it applies to all municipal public utilities. Act 274 preserves a municipal utility's ability to use tax roll collection tools for delinquent residential tenant utility charges, but establishes a few new requirements to do so. The revisions primarily appear as amendments or additions to Wis. Stat. § 66.0809 which applies to municipal public utility charges.

Most of the new requirements in Act 274 do not apply until Jan. 1, 2015; however, a few provisions go into effect immediately. The following FAQs provide guidance for municipal utilities to implement Act 274.

Q-1. The current tax roll process is working well for our utility. Why did our utility association advocate for these changes?

Nearly every legislative session since the mid 1990s has included proposed legislation that would eliminate a municipal utility's ability to use the property tax roll to collect delinquent residential tenant utility bills from the property owner. Act 274 is compromise legislation between the Wisconsin Realtors Association and several municipal utility stakeholder groups (MEUW, WRWA, MEG-Water, and LWM) designed to protect a municipal utility's ability to use the property tax roll to collect delinquent utility bills while giving municipal utilities and property owners additional tools to help limit delinquent residential tenant utility charges in the first place. Ultimately, we hope the compromise legislation eliminates the perpetual debate over the legitimacy of the tax roll process.

Q-2. What provisions in Act 274 are effective immediately?

The following provisions of Act 274 go into effect immediately:

1. Upon a property owner's request, a municipal utility must disclose whether a prospective residential tenant has outstanding past-due charges in that tenant's name in the utility's service territory; Wis. Stat. § 66.0809 (8).



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2. Utilities are no longer required to offer deferred payment agreements to customers who are residential tenants; Wis. Stat. § 66.0809 (9). See Q-9 and Q-10 for additional information.
3. Utilities may adopt application, deposit, disconnection, or collection rules that distinguish between whether a customer owns or leases a property; Wis. Stat. § 66.0809 (10). See Q-11 for additional information.
4. Utilities may, but do not have to, require an application for service from a prospective customer; Wis. Stat. § 66.0809 (7). This provision applies to residential and residential tenant customers. See Q-11 for additional information.

If you are a utility that does not collect residential tenant electric arrearages via the tax roll process, provision numbers two and three do not apply to your electric service business practices.

Q-3. Will Act 274 change my utility's current practice related to tax roll collection of delinquent residential tenant utility charges in 2014?

No. Act 274 does not require you to change your business practices related to the tax roll collection process in 2014. Your practices will change in fall 2015. We will provide specific guidance on changes to the tax roll process in summer 2015.

Q-4. What changes will be required in 2015?

Beginning in January 2015, if a landlord has notified the municipal utility that a residential tenant is responsible for the utility bill, a municipal utility will have to:

1. Send bills to the tenant in the tenant's own name and continue to send past-due notices if the landlord provides the municipal utility with the tenant's forwarding address within 21 days after the tenant leaves; Wis. Stat. § 66.0809 (5)(am).
2. Provide notice to the landlord of the residential tenant's past-due charges within 14 days after the charges become past due; Wis. Stat. § 66.0809(5)(b). A utility may comply with this 14-day notice electronically if the landlord has opted to receive electronic notices; Wis. Stat. § 66.0809(5)(c).



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3. Disconnect a residential tenant’s electric service if requested by the property owner; Wis. Stat. § 66.0809(5)(bm). The disconnection request can only be made 14 days after notification of the arrears, and the disconnection must be made according to existing rules and procedures of the Public Service Commission of Wisconsin (PSC). This provision does not apply if you do not collect residential tenant electric arrearages via the tax roll process.

Q-5. Do these provisions apply to all residential customers?

No. All provisions of Act 274 apply to residential tenant customers only, with one exception. The option of requiring service applications from prospective customers applies to residential and residential tenant customers.

Also, certain provisions in Act 274 only apply if the landlord notifies the municipal utility that the residential tenant is responsible for the payment of utility bills, and provides the utility with both the landlord’s and the responsible tenant’s name and address.

Q-6. Can a landlord require a tenant to be responsible for utility bills?

This is generally a contract issue between the landlord and the tenant. However, state law requires that if gas, electric or water service is measured jointly for two or more rental dwelling units, the owner must maintain the utility account in the name of the owner or the property manager; Wis. Stat. § 196.643(2).

Q-7. How do I provide information to a property owner about a prospective residential tenant’s outstanding past due charges if my utility tracks billing information by premise address rather than individual customer name?

You are only required to provide the owner of a rental dwelling unit with information that you have. If you do not have account information about a prospective residential tenant you have no information to provide to the property owner.

Q-8. Some of the provisions in the new law that allow us to distinguish between residential customers based on whether they own or lease seem discriminatory in nature. How is the utility protected from claims of discrimination?

Section 13 of Act 274 creates a new statute, Wis. Stat. §196.37 (5), that states “It is not unreasonable or unjustly discriminatory



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for a municipal public utility to adopt application, deposit, disconnection, or collection rules and practices that distinguish between customers based upon whether the customer owns or leases the property that is receiving utility service where the possibility exists for any unpaid bills of a tenant to become a lien on the property that is receiving utility service.”

These optional policies that distinguish between owners and renters are not discriminatory because the property owner bears the ultimate responsibility for residential tenant arrearages.

Q-9. Are we required to change our current practice of offering deferred payment agreements to residential tenants?

No. In fact, we encourage municipal utilities to continue the practice of offering deferred payment agreements to residential tenants that do not abuse the opportunity for deferred payment agreements.

Municipal utilities now have the option of discontinuing the practice of offering these agreements to residential tenants that take advantage of the system. However, as each utility’s tariff on file with the PSC currently contains service rules that require the utility to offer deferred payment agreements to residential customers, the PSC has advised that a utility would need to amend the service rules in its tariff if it intends to cease offering such agreements. The PSC encourages changes to these rules be filed separately from a rate case and notes that any rules or practices that result in an increase in rates or a decrease in service may require a public hearing.

We recommend that any changes to your deferred payment agreement rules provide guidance as to when an agreement will be offered.

A municipal public utility must still offer DPAs to all other residential customers, as required by the PSC rules for water, electric, and natural gas service contained in Wis. Admin. Code §§ PSC 185.35, PSC 113.0404, and PSC 134.063.

Q-10. We have a number of deferred payment agreements in place with residential tenants. Can our utility rescind these agreements?

The new law does not address this issue. We do not recommend rescinding a deferred payment agreement that a residential tenant is complying with.



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Q-11. Are we required to adopt application, deposit, disconnection, or collection rules and practices that distinguish between customers that own or rent a property that is receiving service from our utility?

No. Each utility may adopt policies that distinguish between owners and renters. However, any new application, deposit, disconnection and collection rules or practices adopted by a municipal public utility must be approved by the PSC and included in the utility's tariff on file with the PSC before the rule or practice can take effect. The PSC encourages changes to these rules or practices be filed separately from a rate case and notes that any rules or practices that result in an increase in rates or a decrease in service may require a public hearing.

Some utilities may find it beneficial to adopt rules or practices for residential tenants so that they have greater flexibility to manage these accounts.

For example, utilities could require larger deposits from residential tenant's and require them to pay a larger portion of the past due balance to avoid disconnection. Any new rules or practices should ensure that all residential tenant customers are treated consistently.

Q-12. Does a municipal electric utility have to disconnect a tenant's electric service if the landlord asks us to?

Yes, starting April 16, 2015, in most cases. Wisconsin Stat. § 66.0809(5)(bm), as created by Act 274, requires a municipal public utility to disconnect a tenant's electric service if, no earlier than 14 days after receiving notice of the past-due balance, the owner of the rental dwelling unit requests that the electric service be disconnected and the past-due charges are not paid.

However, a municipal electric utility still must follow all Commission rules related to disconnections, and the requirement to disconnect service only applies if the municipal public utility uses the tax roll process to collect unpaid electric charges. While this provision takes effect on January 1, 2015, the winter moratorium, which prohibits the disconnection of electric service if the disconnection would affect the primary heat source, still applies. Consequently, in most cases, this provision cannot be applied before April 16, 2015, when the winter moratorium ends.



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Q-13. Must a municipal utility disconnect a tenant’s water or gas service at the request of a landlord?

No. The landlord-requested disconnection provision does not apply to water or gas service. In fact, a utility may not disconnect water or gas service in order to knowingly assist a landlord in evicting a tenant. See Wis. Admin. Code §§ PSC 185.37(8)(g) and 134.062(6)(g).

Q-14. Can a property owner require us to disconnect their tenant’s electric service if we have a valid deferred payment agreement in place and the tenant is complying with the agreement?

No. If your utility has a valid deferred payment agreement in place with a residential tenant and the tenant is compliant, you are not permitted to disconnect the electric service. Wis. Stat. § 66.0809 (5)(bm) specifically states the disconnection must be consistent with “rules of the Public Service Commission relating to disconnection of service and subject to the procedural requirements under those rules...”

Q-15. Our utility does not collect residential tenant electric service arrearages via the tax roll process. Can a property owner require us to disconnect electric service?

No. A property owner cannot request disconnection of electric service if your utility does not place past-due electric balances on the tax roll.

ATTACHMENTS:

Act 274 Text

Act 274 Legislative Council Memo

PSC Memo – Act 274 Implementation

State of Wisconsin



2013 Senate Bill 517

Date of enactment: April 16, 2014
Date of publication*: April 17, 2014

2013 WISCONSIN ACT 274

AN ACT to repeal 62.69 (2) (g); to renumber and amend 66.0809 (3) and 66.0809 (5) (b) 1.; to consolidate, renumber and amend 66.0809 (5) (b) (intro.) and 2.; to amend 66.0809 (5) (c) and 66.0809 (5) (d); and to create 66.0809 (3m), 66.0809 (5) (bm), 66.0809 (7), 66.0809 (8), 66.0809 (9), 66.0809 (10) and 196.37 (5) of the statutes; relating to: collection of certain municipal utility arrearages and the provision of municipal utility service to tenants.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 62.69 (2) (g) of the statutes is repealed.

SECTION 2. 66.0809 (3) of the statutes is renumbered 66.0809 (3) (a) and amended to read:

66.0809 (3) (a) Except as provided in subs. (4) and (5), on October 15 in each year notice shall be given to the owner or occupant of all the lots or parcels of real estate to which utility service has been furnished prior to October 1 by a public utility operated by a town, city, or village and payment for which is owing and in arrears at the time of giving the notice. The department in charge of the utility shall furnish the treasurer with a list of the lots or parcels of real estate for which utility service charges are in arrears, and the notice shall be given by the treasurer, unless the governing body of the city, village, or town authorizes notice to be given directly by the department. The notice shall be in writing and shall state the amount of arrears, including any penalty assessed pursuant to the rules of the utility; that unless the amount is paid by November 1 a penalty of 10 percent of the amount of arrears will be added; and that unless the arrears, with any added penalty, are paid by November 15, the arrears and penalty will be levied as a tax against the lot or parcel of

real estate to which utility service was furnished and for which payment is delinquent. The notice may be served by delivery to either the owner or occupant personally, or by letter addressed to the owner or occupant at the post-office address of the lot or parcel of real estate.

(b) On November 16, the officer or department issuing the notice shall certify and file with the clerk a list of all lots or parcels of real estate, giving the legal description, for which notice of arrears was given under par. (a) and for which arrears remain unpaid, stating the amount of arrears and penalty. Each delinquent amount, including the penalty, becomes a lien upon the lot or parcel of real estate to which the utility service was furnished and payment for which is delinquent, and the clerk shall insert the delinquent amount and penalty as a tax against the lot or parcel of real estate.

(c) All proceedings in relation to the collection of general property taxes and to the return and sale of property for delinquent taxes apply to the tax under par. (b) if it is not paid within the time required by law for payment of taxes upon real estate.

(d) Under this subsection, if an arrearage is for utility service furnished and metered by the utility directly to a manufactured home or mobile home unit in a licensed manufactured and mobile home community, the notice shall be given to the owner of the manufactured home or

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

mobile home unit and the delinquent amount becomes a lien on the manufactured home or mobile home unit rather than a lien on the parcel of real estate on which the manufactured home or mobile home unit is located. A lien on a manufactured home or mobile home unit may be enforced using the procedures under s. 779.48 (2).

(e) This subsection does not apply to arrearages collected using the procedure under s. 66.0627.

(f) In this subsection, “metered” means the use of any method to ascertain the amount of service used or the use of a flat rate billing method.

SECTION 3. 66.0809 (3m) of the statutes is created to read:

66.0809 (3m) (a) If sub. (5) applies and a notice of arrears under sub. (3) (a) is given or past-due charges are certified to the comptroller under s. 62.69 (2) (f), on the date the notice of arrears is given, or the past-due charges are certified under s. 62.69 (2) (f), the municipality has a lien upon the assets of each tenant of a rental dwelling unit who is responsible for arrears in the amount of the arrears, including any penalty assessed pursuant to the rules of the utility.

(b) The department in charge of the utility shall provide a notice to each tenant against whom the municipality has a lien. The notice shall be in writing and shall state the amount of arrears including any penalty assessed pursuant to the rules of the utility, that the tenant is subject to a lien upon his or her assets for arrears for which he or she is responsible, that the lien will transfer to the owner of the rental dwelling unit if the owner pays the arrears, and that the lien will be enforceable upon the filing of the lien with the clerk of courts.

(c) If par. (a) applies, prior to December 17, the municipality shall file with the clerk of courts a list of tenants of rental dwelling units responsible for arrears and against whom the municipality continues to have a lien. No action to enforce a lien under par. (a) may be maintained unless a notice of lien is filed under this paragraph.

(d) If par. (a) applies and the owner of the rental dwelling unit has paid the municipality the amount provided in the notice of arrears given under sub. (3) (a), or certified to the comptroller under s. 62.69 (2) (f), or the amount placed as tax against the real estate under sub. (3) (b) or s. 62.69 (2) (f), the lien under par. (a) transfers to the owner of the rental dwelling unit and the municipality no longer has a lien against the tenant.

(e) An owner of a rental dwelling unit who has a lien under par. (d) may file a notice of lien with the clerk of court of the county in which the rental dwelling unit is located not more than 6 months after the date the lien arose under par. (a). The clerk of courts shall file and enter the notice of lien in the judgment and lien docket. No action to enforce a lien under par. (d) may be maintained unless a notice of lien is filed under this paragraph.

(f) Within 7 days after a lien established and filed under this subsection is satisfied, the lienholder shall file with the clerk of courts a notice of lien satisfaction.

SECTION 4. 66.0809 (5) (b) (intro.) and 2. of the statutes are consolidated, renumbered 66.0809 (5) (b) and amended to read:

66.0809 (5) (b) ~~If this subsection applies, a~~ A municipal public utility may use sub. (3) or, if s. 62.69 applies, s. 62.69 (2) (f), to collect arrearages incurred after the owner of a rental dwelling unit has provided the utility with written notice under par. (a) only if the municipality complies with at least one of the following: ~~2. In order to comply with this subdivision, if a customer who is a tenant has charges for water or electric service provided by the utility that are past due, the municipal public utility shall serve~~ 2. In order to comply with this subdivision, if a customer who is a tenant has charges for water or electric service provided by the utility that are past due, the municipal public utility shall serve notice of the past-due charges on the owner of the rental dwelling unit within 14 days of the date on which the tenant’s charges became past due. The municipal public utility shall serve notice in the manner provided in s. 801.14 (2).

SECTION 5. 66.0809 (5) (b) 1. of the statutes is renumbered 66.0809 (5) (am) and amended to read:

66.0809 (5) (am) ~~In order to comply with this subdivision, a~~ A municipal public utility shall send bills for water or electric service to a customer who is a tenant in the tenant’s own name. Each time that a municipal public utility notifies a customer who is a tenant that charges for water or electric service provided by the utility to the customer are past due for more than one billing cycle, the utility shall also serve a copy of the notice on the owner of the rental dwelling unit in the manner provided in s. 801.14 (2). If a customer who is a tenant vacates his or her rental dwelling unit, and the owner of the rental dwelling unit provides the municipal public utility, no later than 21 days after the date on which the tenant vacates the rental dwelling unit, with a written notice that contains a forwarding address for the tenant and the date that the tenant vacated the rental dwelling unit, the utility shall continue to send past-due notices to the customer at his or her forwarding address until the past-due charges are paid or until notice has been provided under sub. (3) (a) or the past-due charges have been certified to the comptroller under s. 62.69 (2) (f).

SECTION 6. 66.0809 (5) (bm) of the statutes is created to read:

66.0809 (5) (bm) No earlier than 14 days after receiving a notice under par. (b) of a tenant’s past-due charges for electric service, the owner of a rental dwelling unit may request that the municipal public utility terminate electric service to the rental dwelling unit. Except as provided under rules of the public service commission relating to disconnection of service and subject to the procedural requirements under those rules, unless all past-due charges are paid, the municipal utility shall terminate

electric service to the rental dwelling unit upon receipt of a request under this paragraph. This paragraph does not apply if a municipal public utility does not use the procedures under sub. (3) to collect the past-due charges.

SECTION 7. 66.0809 (5) (c) of the statutes is amended to read:

66.0809 (5) (c) A municipal public utility may demonstrate compliance with the notice requirements of par. (b) ~~1. or 2.~~ by providing evidence of having sent the notice by U.S. mail or, if the person receiving the notice has consented to receive notice in an electronic format, by providing evidence of having sent the notice in an electronic format.

SECTION 8. 66.0809 (5) (d) of the statutes is amended to read:

66.0809 (5) (d) If this subsection applies and a municipal public utility ~~is permitted~~ elects to collect arrearages under sub. (3) or s. 62.69 (2) (f), the municipal public utility shall provide all notices under sub. (3) or s. 62.69 (2) (f) to the tenant and to the owner of the property or a person designated by the owner.

SECTION 9. 66.0809 (7) of the statutes is created to read:

66.0809 (7) A municipal utility may require a prospective customer to submit an application for water or electric service.

SECTION 10. 66.0809 (8) of the statutes is created to read:

66.0809 (8) A municipal public utility shall disclose to the owner of a rental dwelling unit, upon the owner's request, whether a new or prospective tenant has outstanding past-due charges for utility service to that municipal public utility in that tenant's name at a different address.

SECTION 11. 66.0809 (9) of the statutes is created to read:

66.0809 (9) A municipal utility is not required to offer a customer who is a tenant at a rental dwelling unit a deferred payment agreement.

SECTION 12. 66.0809 (10) of the statutes is created to read:

66.0809 (10) A municipal utility may adopt application, deposit, disconnection, or collection rules and practices that distinguish between customers based upon whether the customer owns or leases the property that is receiving utility service where the possibility exists for any unpaid bills of a tenant to become a lien on the property that is receiving utility service.

SECTION 13. 196.37 (5) of the statutes is created to read:

196.37 (5) It is not unreasonable or unjustly discriminatory for a municipal public utility to adopt application, deposit, disconnection, or collection rules and practices that distinguish between customers based upon whether the customer owns or leases the property that is receiving utility service where the possibility exists for any unpaid bills of a tenant to become a lien on the property that is receiving utility service.

SECTION 14. Initial applicability.

(1) The treatment of sections 62.69 (2) (g) and 66.0809 (3) and (5) (b) (intro.), 1., and 2. of the statutes first applies to arrearages incurred on the effective date of this subsection.

(2) The treatment of section 66.0809 (3m) of the statutes first applies to a notice of arrears given on the effective date of this subsection.

SECTION 15. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 62.69 (2) (g) and 66.0809 (3), (3m), and (5) (b) (intro.), 1., and 2., (bm), (c), and (d) of the statutes and SECTION 14 (1) and (2) of this act take effect on the first day of the 9th month beginning after publication.



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Municipal Utilities' Tax Lien Bill Collection Powers and Their Application to Rental Properties

Among other differences, municipal utilities differ from other public utilities in that they may collect unpaid bills for utility service through a tax lien on the property served. This can create special problems for the owners of rental property. In the case where a tenant fails to pay for municipal utility service, the amount due becomes a lien on the property and, thus, the responsibility of the landlord. The statutes include provisions designed to assist landlords to avoid this situation.

MUNICIPAL UTILITY COLLECTION OF UNPAID BILLS VIA TAX LIENS

Municipally owned public utilities are authorized to collect unpaid charges for utility service by placing the charges on the tax rolls, as a lien on the property served. [s. 66.0809 (3), Stats.] By cross-reference, the same power is given to public inland lake protection and rehabilitation districts, town sanitary districts, municipal sewerage systems (other than storm water and surface water sewerage systems), metropolitan sewerage districts, and municipalities that receive sewerage services from the Milwaukee Metropolitan Sewerage District under contract.¹

The most common services to which this lien authority applies are municipal water and sewerage services, including storm water sewerage services. The power also applies to the 82 municipal electric utilities in Wisconsin, provided that two conditions are met: the municipality has enacted an ordinance authorizing the exercise of this power for the collection of unpaid municipal electric bills; and, in 1996, the municipality collected such bills as special charges, under the statutes that existed at that time.² It also applies to any municipal utility that provides natural gas or telecommunications service.

PROCEDURES

In order to have unpaid charges become a tax lien, a municipal utility must follow a procedure that begins with giving notice on October 15 of each year to the owner or occupant of each parcel of land to which service has been furnished and for which payment is in arrears. (This notice will be referred to in this Information Memorandum as "the October 15 notice".) The notice informs the owner or occupant

¹ The specific references are as follows: public inland lake protection and rehabilitation districts, s. 33.22 (3) (a), Stats.; town sanitary districts, s. 60.77 (5) (e), Stats.; municipal sewerage systems, s. 66.0821 (4) (d), Stats.; metropolitan sewerage districts, s. 200.13 (13), Stats.; and municipalities that receive sewerage services from the Milwaukee Metropolitan Sewerage District under contract, s. 200.55 (5) (d) 2., Stats.

² Section 66.60 (16), 1993 Stats., subsequently amended and renumbered s. 66.0627, Stats.

of the amount of arrearage and the ability of the utility to assess penalties and to collect the arrearages and penalties through the property tax system if the arrearages and penalties are not paid by November 15. On November 16, any overdue payments that remain in arrears become a lien upon the property and are collected by the municipality in the same manner as property taxes.

The procedures for a water utility of a first class city (i.e., the Milwaukee Water Works) differ from the procedures for other municipal utilities primarily in that no notice to the owner or occupant of the property is required and the unpaid charges become a lien on November 1, rather than November 15. [s. 62.69 (2) (f), Stats.]

TREATMENT OF MOBILE HOMES

In general, a lien for the collection of unpaid municipal utility bills is placed on the lot or parcel of real estate to which the utility service was furnished. However, if the utility service is delivered and metered directly to a mobile home in a licensed mobile home park, the amount of the unpaid bills and penalties becomes a lien on the mobile home itself, rather than on the underlying real estate. If the mobile home park owner owns both the real estate and the mobile home, there is no practical effect of this distinction. In the common situation in which the resident owns the mobile home unit and rents the lot from the mobile home park owner, however, this results in leaving the responsibility for the unpaid bill with the tenant.

ADDITIONAL PROCEDURES A LANDLORD MAY INVOKE

The use of tax liens on property to collect unpaid municipal utility and sewerage service charges does not distinguish between charges incurred by an owner occupant and those incurred by a tenant. Consequently, bills for utility or sewerage service provided by a municipality and incurred by a tenant can become a lien on the property of the landlord if they remain unpaid at the time that the tenant vacates the rental property and if the landlord is unable to compel the tenant to pay the outstanding utility bill.

A landlord can invoke additional procedures applicable to specific rental residential properties that the landlord identifies. Some provisions are designed to alert a landlord when unpaid bills are accumulating and to avert the problem. Others give landlords tools to identify potential tenants with a history of unpaid utility bills. Once invoked, a municipal utility is prohibited from collecting arrearages for service to the specific properties if it fails to comply with these procedures. The procedures apply explicitly to water and electric utilities and not to other municipal utility services (i.e., natural gas or telecommunications services). The procedures do not apply to town sanitary districts or public inland lake protection and rehabilitation districts that have sewerage connections serving fewer than 700 service addresses.³

INITIATION OF ADDITIONAL PROCEDURES

To initiate the procedures, the owner of a rental dwelling unit notifies the utility, in writing, of the name and address of the owner of the dwelling and of the tenant who is responsible for the payment of charges for utility service. If requested by the utility, the owner also provides the utility with a copy of the rental or lease agreement in which the tenant assumes responsibility for the payment of the utility

³ It is not entirely clear whether these procedures apply to billing for sewerage service. As defined, "utility" does not include a municipality that provides sewerage service (except as a combined municipal water and sewerage utility). The cross-references identified in the first part of this memorandum clearly extend the lien procedure to charges for municipal sewerage service. They could be read to extend the additional procedures for rental residential property to charges for municipal sewerage service, too, but attorneys practicing in this area have expressed conflicting opinions on this question. In practice, most municipal sewerage services observe the procedures.

charges. Because the landlord's notification to the utility is specific to individual utility customers, the municipal utility's obligations that flow from it apply only to those customers.

NOTICE PROCEDURES

Notice Procedures Applicable Through 2014

Under legislation enacted in 1996 (1995 Wisconsin Act 419), which remains in effect through 2014, the utility must follow one of two alternative notice procedures regarding any unpaid charges for utility service to a specified rental dwelling. The choice of the procedure that will be used is left to the utility.

Under the first alternative procedure, the utility must send bills to the tenant, in the tenant's own name (as opposed to sending bills to a street address or to "occupant," as is sometimes done for water service). The utility must provide the landlord with copies of any past due notices provided to the tenant for charges that are more than one billing cycle past due. If a tenant vacates the dwelling while utility charges are in arrears and the landlord provides the utility with a written notice containing the date the tenant vacated the rental dwelling unit and the tenant's forwarding address, the utility must continue to send past due notices to the tenant at the forwarding address until either the charges have been paid or the utility has started the procedure for collecting the charges as a tax lien.

Under the second alternative procedure, the utility is required to notify the landlord whenever charges for utility service provided to the tenant are past due. The notice must be provided within 14 days of the charges becoming past due. Under this alternative, there is no specific requirement that the utility send bills to the tenant in the tenant's own name or that the utility pursue collection of the charges from the tenant after the tenant has vacated the dwelling.

The statutes include specific requirements regarding how notices are provided by municipal utilities and how landlords must notify the utility of the identity of tenants who are responsible for utility bills.

The treatment of the Milwaukee Water Works is substantially the same as other municipal utilities. It differs in requiring a landlord to provide a sworn affidavit to the utility including the date the tenant vacated the premises, the tenant's forwarding address, and a meter reading reflecting the service for which the tenant is responsible. (In other municipalities, the property owner needs only to provide a written notice containing the date the tenant vacated the premises and the tenant's forwarding address.)

Notice Procedures Applicable Beginning January 1, 2015

Legislation enacted in 2014 (2013 Wisconsin Act 274), which takes effect January 1, 2015, replaces the option of two different notice procedures with a single procedure, as follows:

- A municipal utility must send bills for service to a customer who is a tenant in the tenant's own name.
- A municipal utility must provide notice to a landlord of a tenant's arrears within 14 days of the charges becoming past due.
- If the landlord notifies the utility that a tenant has vacated the dwelling while utility charges are in arrears and, within 21 days of the tenant vacating the dwelling, the landlord has provided the utility with a forwarding address for the tenant, the utility must continue to send past-due notices to the tenant at the forwarding address until either the charges have been paid or the utility has started the procedure for collecting the charges as a tax lien.

- A municipal utility must send the October 15 notice of a tax lien to the tenant and to the owner.

The statutes include specific requirements regarding how notices are provided to municipal utilities and how landlords must notify a utility of the identity of tenants who are responsible for utility bills.

Again, the requirements applicable to the Milwaukee Water Works are substantially the same as the requirements applicable to other municipal utilities. Because there is no October 15 notice in the Milwaukee Water Works' procedure, the steps triggered by that notice for other municipal utilities are triggered for the Milwaukee Water Works by certification of a lien on the property served, which occurs on November 1.⁴

LIEN AGAINST THE TENANT'S ASSETS

When a municipal utility provides the October 15 notice to a landlord and tenant, the municipality has a lien on the assets of the tenant in the amount of the arrears. If the landlord pays the amount of the arrears to the municipality, the lien transfers to the landlord. The lienholder (the municipality or the landlord) must file a notice of the lien with the clerk of courts before it may commence an action to enforce the lien and must file a notice of lien satisfaction with the clerk of courts when the lien is satisfied. Also, once filed, a record of the lien will be publicly available on the Consolidated Court Automation Program (CCAP) Internet site.

When a municipal utility provides the October 15 notice to a landlord and tenant, it must also provide a written notice to the tenant explaining the lien that has arisen on the tenant's assets.

This provision takes effect on January 1, 2015.

DISCONNECTION OF ELECTRIC SERVICE

Beginning 14 days after receiving a notice of a tenant's past-due charges for electric service, a landlord may request a municipal utility to disconnect electric service from the rental dwelling unit. Except as provided in rules of the Public Service Commission (PSC), relating to disconnection of service⁵, the municipal utility must then terminate electric service.

This provision also takes effect on January 1, 2015.

PROVISIONS APPLICABLE TO ALL RENTAL DWELLINGS

A number of other provisions of the statute governing municipal utility charges relate to municipal utility service to all rental dwellings and collection of unpaid bills for such service.

⁴ Prior to enactment of 2013 Wisconsin Act 274, the treatment of rental property by the Milwaukee Water Works was governed by a separate statute, s. 62.69 (2) (g). Act 274 repealed that paragraph, with the result that the Milwaukee Water Works is now governed by the same statute as other municipal utilities for this purpose.

⁵ PSC rules prohibit disconnection of electric utility service, for example, during the winter months, during heat emergencies, if disconnection of service will aggravate an existing medical or protective services emergency, if the customer is in compliance with a deferred payment agreement, and while a dispute over the amount of arrears is under investigation by the PSC. Procedural requirements in these rules relate to matters such as ensuring that the customer has adequate notice and opportunity to respond prior to losing service. [See subchs. III and IV of ch. PSC 113, Wis. Adm. Code.]

DISCLOSURE OF OUTSTANDING PAST-DUE CHARGES

Upon request of the owner of rental residential property, a municipal utility is required to disclose whether a new or prospective tenant has outstanding past-due charges for service provided by the utility in that tenant's name at a different address.

DEFERRED PAYMENT AGREEMENTS

PSC rules require that, before disconnecting service, a public utility must offer a deferred payment agreement to a residential customer who is behind in paying for utility service. [s. PSC 113.0404, Wis. Adm. Code.] Section 66.0809, Stats., specifies that a municipal utility is not required to offer a customer who is a tenant at a rental dwelling a deferred payment agreement.

STANDARD OF "UNREASONABLE OR UNJUSTLY DISCRIMINATORY"

A standard requirement of utility service is that a public utility may not adopt or enforce rules or procedures that are unreasonable or unjustly discriminatory. This principle is articulated in s. 196.37, Stats. However, that section includes a statement that it is not unreasonable or unjustly discriminatory for a municipal utility to adopt application, deposit, disconnection, or collection rules and practices that distinguish between customers based on whether the customer owns or leases the property that is receiving utility service and subject to a lien for unpaid utility bills. In addition, s. 66.0809 includes explicit authority for a municipal utility to adopt such rules and practices.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by David L. Lovell, Principal Analyst, on May 5, 2014.

WISCONSIN LEGISLATIVE COUNCIL

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536

Telephone: (608) 266-1304 • Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

<http://www.legis.state.wi.us/lc>

PUBLIC SERVICE COMMISSION OF WISCONSIN

Memorandum

May 6, 2014

TO: MEUW (Municipal Electric Utilities of Wisconsin)
Meg-Water (Municipal Environmental Group-Water Division)
WRWA (Wisconsin Rural Water Association)
LWM (League of Wisconsin Municipalities)

FROM: Cynthia Smith

RE: 2013 Wisconsin Act 274 Commission Implementation

The purpose of this memorandum is to briefly summarize how the Commission intends to implement the provisions of 2013 Wisconsin Act 274 (Act 274) that provide “[a] municipal utility may adopt application, deposit, disconnection or collection rules and practices that distinguish between customers based upon whether the customer owns or leases the property that is receiving utility service. . . .” Wis. Stat. § 66.0809(10).

Wisconsin Stat. § 196.19(2) provides that “[e]very public utility shall file with and as part of such schedule all rules and regulations that, in the judgment of the commission, in any manner affect the service or product.” Wisconsin Stat. § 196.20(1) provides:

The rate schedules of any public utility shall include all rules applicable to the rendition or discontinuance of the service to which the rates specified in the schedules are applicable. No change may be made by any public utility in its schedules except by filing the change as proposed with the commission. No change in any public utility rule which purports to curtail the obligation or undertaking of service of the public utility shall be effective without the written approval of the commission after hearing, except that the commission, by emergency order, may make the rule, as filed, effective from the date of the order, pending final approval of the rule after hearing.

Nothing in Act 274 changed these requirements.

Rules and practices that relate to applications, deposits, disconnection or collections affect the provision of utility service, and such rules and practices also curtail the obligation or

undertaking of service by the utility. These rules and practices are currently included in the tariffs utilities have filed with the Commission.

Utilities that decide to adopt new rules or practices, as now permitted under Act 274, will be required to file with and receive approval from the Commission for any new application, deposit, disconnection or collection rules and practices as part of the utility's tariff filed with the Commission. Because these changes "curtail the obligation or undertaking of service of the public utility," a hearing will be required before the Commission reviews and approves any proposed changes to these rules or practices.

Wisconsin Stat. § 196.03(1) requires that "a public utility shall furnish reasonably adequate service and facilities. The charge made by any public utility . . . or any service rendered or to be rendered in connection therewith shall be reasonable and just and every unjust or unreasonable charge for such service is prohibited and declared unlawful." Rules and practices related to the process or amount charged for an application, the amount of any deposits assessed, disconnection or reconnection charges, and any collection charges must therefore be reasonable and just. Upon application to the Commission for a change in rules or practices, the Commission will review the requested change to determine whether it is just and reasonable.

If you have further questions regarding the Commission's implementation of Act 274, please do not hesitate to contact me.

CS:00922936