

MUNICIPAL UTILITY* LAW UPDATE

*Electric and Broadband
Utilities

Anita T. Gallucci,
Partner
608.283.1770
agallucci@boardmanclark.com



1 S. Pinckney St., Suite 410
PO Box 927
Madison, WI 53701
boardmanclark.com

Municipal Electric Update



Wisconsin's MEUs

- 82 municipally owned electric systems
- Smallest – Merrillan (427 customers)
- Largest – Manitowoc (17,785 customers)
- Youngest – Centuria (1946)
- Oldest – New Richmond (1890)
- WI is one of 5 states to fully regulate MEUs

TERRITORIAL DISPUTES

WPSC v. Kaukauna, 6690-DR-109 (Sep. 25, 2014)

ISSUE

Does WPSC have the right to supply station power to the Fox Energy Center (“FEC”) once it purchased the plant despite a territorial agreement, which, prior to the purchase, gave Kaukauna the right to serve the facility at retail?

PSCW's RULING

Yes. The Agreement doesn't waive or modify **WPSC's right to remotely provide station power** because:

- (1) Agreement only sets a boundary and doesn't reference station power
- (2) FEC not owned by WPSC when Agreement was executed
- (3) WPSC won't need to build new lines to serve FEC with station power

2004 Territorial Agreement

- Establishes a boundary line (east side is KU's; west side is WPSC's)
- Specific exceptions are set out in the Agreement, allowing each party to retain existing customers on other party's side of boundary line
- FEC was built by an IPP and KU had always provided station power to the facility

2004 Territorial Agreement

Territorial Agreement's *Retention of Rights Provision*

Except as specifically set forth herein, this Agreement does not modify or limit the legal rights of either party, including but not limited to KU's right under Chapter 197 of the Wisconsin Statutes. **KU and WPSC may exercise all rights not inconsistent with this Agreement.**

BACKGROUND FACTS

- WPSC buys FEC in March 2013
- In May, WPSC informs KU of its desire to self-supply station power remotely
- KU declines to add FEC to the exceptions list
- WPSC seeks declaratory ruling from PSCW

PSCW REASONING

WPSC has the right to self-supply
station power under Wis. Stat.
§196.495(3)

PSCW REASONING

Wis. Stat. §196.495(3) provides:

“[n]othing in this section shall preclude any
public utility . . . from extending electric
service to its own property or facilities for
resale.”

PSCW REASONING

WPSC didn't lose the right to self-supply because the Territorial Agreement doesn't reference § 196.495(3) nor does it say anything about station power

PSCW REASONING

Parties couldn't have anticipated that WPSC would buy FCE, so they had no reason to address station power in the Agreement

PSCW REASONING

The anti-duplication policy behind Wis. Stat. § 196.495 is not offended if WPSC serves because WPSC won't have to build any new facilities to serve FEC

Pole Attachment Rate Complaint

Time Warner/Charter v. Oconomowoc 4340-EI-100

17

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ISSUE

- Fair allocation of pole costs as between cable company and electric utility ratepayers
- Cable Companies want FCC allocation
- Oconomowoc uses a 60/40 allocation:
 - Single rate = 40%
 - Double rate = 20% per attacher
 - Triple rate = 13% per attacher

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FCC CABLE RATE

Net Cost of a Bare Pole x .074 =
Rates from \$3 to \$5

MUNICIPAL EXEMPTION

Poles owned by municipal utilities are exempt from:

- federal pole attachment statute, 47 USC § 224
- FCC's pole attachment rate regulations

WIS. STAT. § 196.04(2)

“Transmission equipment and property” means any conduit, subway, **pole**, tower, transmission wire, or other equipment on, over, or under any right-of-way owned or controlled by a political subdivision, street, or highway.

WIS. STAT. § 196.04(2)

If there is a failure to agree upon the use of transmission equipment and property . . . or the conditions or compensation for the use, The commission shall prescribe reasonable conditions and compensation for the use of the transmission equipment and property

Municipal Broadband Update

23

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Municipal CLECs/ATUs

- 26 “Active” Muni CLECs
 - Reedsburg & Sun Prairie became CLECs on 1/29/2000
 - Reedsburg provides “triple play” via FTTH (1 gig symmetrical). First gigabit city in WI
 - Richland Center provides open access
 - Others provide dark fiber leasing services or wireless broadband

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Federal Preemption

- Yesterday, FCC voted on proposal that would preempt state laws that prohibit or impede municipal broadband projects
- Tennessee and North Carolina municipalities petitioned the FCC
- Commissioner Wheeler invoked FCC authority to remove barriers that prevent broadband investment and competition

Wisconsin's Broadband Laws

Cable System Costs - Wis. Stat. § 66.0420(12)

Muni Cable operator can't require nonsubscribers to pay system costs, except for

- PEG channels
- Debt service on public improvement bonds
- In areas where there's no other broadband providers nor likely to be any broadband providers

Wisconsin's Broadband Laws

Muni Telco Pricing— Wis. Stat. § 196.204 (2m)

Muni telco rate must reflect equivalent charges for all **taxes, pole rentals, rights-of-way, licenses,** and **similar costs** that are incurred by nongovernmental telecommunications utilities.

Wisconsin's Broadband Laws

Public Hearing and Report -Wis. Stat. § 66.0422

Before authorizing construction or operation of a broadband facility, muni must:

- Hold a public hearing
- Prepare a Report
- Release the Report 30 days before the public hearing

Municipal ROW Update

29

Milwaukee Streetcar 5-DR-109 (August 29, 2014)

30

PSCW Holding:

Any **current** or **future municipal regulations** as defined by Wis. Stat. § 182.017(1g)(bm) of the City that require the ATU Petitioners or the Intervening Utilities to pay any amount [of] modification or relocation costs to accommodate the Streetcar Project, including without limitation Milw. Ord. § 115-22 and Resolution #110372, are **unreasonable** and **void**, as applied to an urban rail transit project such as the Streetcar Project, pursuant to Wis. Stat. §§ 182.017(8) and 196.58(4).

31

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QUESTIONS

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1 S. Pinckney St., Suite 410
PO Box 927
Madison, WI 53701
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