Overview of Changes at the Public Service Commission of Wisconsin

February 27, 2015

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Chief Legal Counsel
Public Service Commission of Wisconsin

AGENDA

• What’s New
  – Organizational Structure, Operations, Personnel
  – Status of PSC 2 rewrite
• Hot topics in 2014 and what to watch for in 2015
  – Rate Cases
  – Distributed Generation
  – Construction
  – Focus on Energy
  – Municipal Utility Issues
New Faces

• Three governor-appointed commissioners serve staggered, six-year terms.
  – Commissioner Eric Callisto’s term expires March 1
  – Mike Huebsch appointed to fill this vacancy

• New EAs

New Roles

• March 1 opportunity to appoint Chairperson who serves two year term
  – Commissioner Nowak appointed to be Chairperson
  – Bob Seitz, Executive Assistant to Chairperson

• Jeff Ripp, Administrator, Gas and Energy Division
New Staff

- Personnel transactions have increased
  - 2013 16 FTEs and 2 LTEs
  - 2014 13 FTEs and 5 LTEs

- So far in 2015
  - Hired 11 FTEs and 3 LTEs (2 additional LTEs will start in March)
  - Likely additional 11 or so additional positions, including assistant administrator, WEPA coordinator, State broadband director, engineers, auditors, rate analysts and others

Practice and Procedures

- Wis. Admin. Code ch. PSC 2
  - Status
  - Overview of some proposed changes
    - Use of filing guidelines instead of long PCM
    - Computation of time to conform to Wis. Stat. §990.001(4)
    - Updating filing and service requirements in light of ERF
    - Notice to customers regarding rate increases
    - Confidential handling requirements
    - Discovery
Hot Topics

- Rate Cases
- Distributed Generation
  - Distributed generation (DG) refers to electricity that is produced at or near the point where it is used. Distributed solar energy can be located on rooftops or ground-mounted, and is typically connected to the local utility distribution grid.
    - Personal consumption
    - Net metering—selling what you don’t use back to the utility
  - Challenges it presents for the utility and the regulators
    - Rate design
    - Is it a public utility

What’s New in Rate Cases

- Recent change made effective this test year as to how IOUs structure gas and electric rates
- Overview of ratemaking process
- Overview of types of costs recovered in rate case
  - Fixed costs
  - Variable costs
- Traditional model collected more of the revenue from variable energy charges on a Kwh charge
- Entire rate design must recover the test-year rev req
  - What isn’t recovered in fixed is recovered in variable
What’s New in Rate Cases

• 2 general categories of service provided by utility
  – Reliable and adequate energy service 100% of time
    • Fixed costs associated with that (plants, poles, wires, meters) doesn’t change with usage
  – Electricity itself
• Goal in ratemaking is to provide accurate price signals of the actual cost of providing service and electricity

What’s New in Rate Cases

• Reasons for change
  – Increase facilities charge to move it closer to the fixed costs of the utility for connecting to grid, meter costs, billing and other costs that don’t vary with usage
  – If fixed cost too low, customer receives incorrect price signal that the cost to provide access to the electric system is lower than it actually is
What’s New in Rate Cases

• What changes looked like
  – 5-UR-107 WEPCO ($9 to $16)
  – 3270-UR-120 MGE ($10 to $19)
  – 6690-UR-123 ($19, $25, $40 for residential, small single phase commercial, and three-phase customers, respectively)
• MGE Community Conversation (letter to customers)

• Municipal Utilities following suit
  – Whitehall, 6490-ER-106 ($8 to $16 single phase; $18 to $26 three phase)

Distributed Generation

• Tariff Changes (past and present)
  – System size (20kW, 100kW, 300kW)
    • Renew Lawsuits (WEPCO and WPSC)
  – Buyback rate (LMP plus avoided cost of transmission)
    • Renew Lawsuit (WEPCO)
  – Netting structure-monthly vs. annual
    • Renew Lawsuit (WPSC)
  – Charges (facilities charge, demand charge)
Distributed Generation

• “Public Utility”?  
  – Owns, operates, manages or controls “any part of a plant or equipment within the state, for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for the public” Wis. Stat. § 196.01(5)

• Third-party ownership

Distributed Generation

• City of Sun Prairie v. PSC, 37 Wis. 2d 96 (1967)
• Cawker v. Meyer, 147 Wis. 320 (1911)
Construction

- New Generation
  - Last several years, little new generation capacity has been brought into service
    - Decommissioning of Kewaunee nuclear plant
    - Pending retirement of several smaller and older coal facilities
  - 2016 – 2019 combined need for additional contracts and/or generation of 200-600 MW for some Wisconsin utilities
    - Alliant: considering building or purchasing a power plant, converting current one, or purchasing power from another source

- New Generation
  - WPSC Fox Energy Center 3, Docket 6690-CE-202
    - 1/21/15 application
      - 400 MW natural gas combined cycle
      - WPSC-owned land in Village of Wrightstown in proposed location (2 options) on the boundary of existing Fox Energy Center
      - $517 million
      - Planned in service date December, 2018
    - Application not yet deemed complete
Construction

• Natural Gas Extensions
  – WCL case, 6650-CG-233
    • Certificate of authority to construct a natural gas transmission lateral from Viking interstate pipeline to the city of Tomah (74 miles)
    • Authority to provide natural gas service to municipalities in project area
    • Additional capacity needed to serve existing load and potential new load
      – Accuracy of load growth projections

• Natural Gas Facilities
  – Oakdale, 6680-CG-154
    • Sand mines requesting extension, and potential additional residential and commercial customers
    • 22.5 miles, $4,625,799
    • Reopened, significantly larger anticipated load
      – Larger pipes
      – New route
      – $17.2 million
    • Approved subject to conditions
Local and Regional Reliability Issues

• Transmission
  – 3 Pending CPCNs before the Commission for action this year
    • 5-CE-142 – Badger Coulee
      – Holmen to Madison, 160-180 miles, $540-$580 million
    • 137-CE-166 – Bay Lake
      – Appleton to Morgan, 50 miles, $300-$327 million
    • 137-CE-176 – Branch River
      – New substation in Manitowoc county, interconnection in Sheboygan and Forest Junction, $41-$46 million

Local and Regional Reliability Issues

• Presque Isle Power Plant (PIPP)
  – Background/History
    • SSR Unit needed for reliability
    • Who pays to run this unit?
      – Pro Rata, ATC footprint?
        » No, said FERC in July 2014 Order, 148 FERC ¶ 61,071 and reaffirmed in Feb. 19, 2015 Order, 150 FERC ¶ 61,104
      – Those of benefit should pay
        » How determined?
        » What does that mean for Wisconsin ratepayers
Focus on Energy

• Wis. Stat. § 196.374(2) energy utilities collectively establish and fund statewide energy efficiency program.

• Commission charged with its oversight
  – maximize coordination of program delivery, including coordination between programs, low-income weatherization programs, renewable resource programs and other energy efficiency or renewable resource programs. The commission shall cooperate with the department of natural resources to ensure coordination of energy efficiency and renewable resource programs with air quality programs and to maximize and document the air quality improvement benefits that can be realized from energy efficiency and renewable resource programs.

• Indep. Evaluation: 2013 program achieved 3.41 benefit cost ratio

Focus on Energy

• Wis. Stat. 196.374(3)(b)1
  – At least every 4 years, after notice and opportunity to be heard, the commission shall, by order, evaluate the energy efficiency and renewable resource programs under sub. (2) (a) 1., (b) 1. and 2., and (c) and ordered programs and set or revise goals, priorities, and measurable targets for the programs. The commission shall give priority to programs that moderate the growth in electric and natural gas demand and usage, facilitate markets and assist market providers to achieve higher levels of energy efficiency, promote energy reliability and adequacy, avoid adverse environmental impacts from the use of energy, and promote rural economic development.

• Quadrennial Planning Process II (2015-2018) completed
  – Sept. 5, 2014 and Nov. 21, 2014 Final Decisions (Docket 5-FE-100)
Focus on Energy

• Highlights from Quad Planning
  – Established fairly aggressive energy and demand goals
    • Need for additional research before deciding whether appropriate to differentiate incentives for on-peak and off-peak energy
  – Free-ridership
  – Water/Energy
    • Count energy savings from water
  – Building codes
  – Carbon—continue to use the program to better position WI to cost-effectively meet any federal carbon standards

Focus on Energy

• Renewables
  – $5 million for incentives (with $450,000 allocated to prescriptive incentives) and $10 million for revolving loan program
  – Report back to Commission before mid-2016
  – Incentive and loan cannot equal more than 50% of project cost
  – Eliminate Group 1 and Group 1 percentage split
Frozen Laterals

- Wis. Admin. Code § 185.88
- Utility required to place its laterals at such depth to protect from freezing
- Utility may request customer permit stream of water to run to prevent freezing provided bill adjustment given
- Responsibility for first thaw of customer’s lateral on utility. Thereafter customer may have to pay if certain conditions met
2013 Wisconsin Act 274

• 2013 Wisconsin Act 274 – Enacted April 16, 2014

• Made various changes to tax roll provisions and permits utilities to adopt rules and practices that distinguish between customers who own or rent property

• The Commission has opened a rulemaking docket to conform the provisions of Wis. Admin. Code chs. PSC 113, 134 and 185 to Act 274. Docket No.1-AC-247
2013 Wisconsin Act 274

• Major provisions:
  – Changes to the tax roll process
  – Disconnection of electric (not water) at the request of property owner, in some situations
  – Disclose to the property owner whether a new or prospective tenant has past-due charges
  – Municipal utility not required to offer DPA to tenants
  – Municipal utility may adopt different application, deposit, disconnection or application rules for customer who are tenants

Act 274 Overview

• Wisconsin State Statute § 66.0809(3) requires municipalities to place delinquent water bills on the tax roll as a lien against the property that was furnished with utility service. Electric bills can only be transferred if the utility has enacted an ordinance to do so.
• The transfer of arrears to the tax roll is a municipal process required by state law. The Commission does not regulate municipalities and only has limited jurisdiction over the tax roll processes.
• Utility may not transfer arrearages being paid through a DPA. If default, then past due balance may be transferred
Changes to Tax Roll Process

- Many changes apply only when a landlord has notified the utility in writing that a tenant is responsible for utility charges.
- Requires the utilities to notify landlords of tenant past due bills within 14 days. MEG-Water issued a memo in November to assist utilities in complying with this requirement. http://origin.library.constantcontact.com/download/get/file/1103106318118-262/Kobza+Memo+on+Act+274+Landlord+Notice.pdf
- Creates a new lien process whereby the municipal utility will have a lien against a tenant's assets that must be transferred to the landlord if the landlord pays the arrears. MEUW, WWA, MEG-Water and WRWA are currently developing information to assist utilities in managing this process.

Request for Pre-Approval of DPA Criteria

- A municipal utility must amend the service rules in its tariff prior to enforcing any rules in conflict with existing regulations or tariff language

- The Commission received a request to consider pre-approval of criteria related to when a municipal utility would not offer a DPA to a residential customer who is a tenant
Commission Review

• The Commission opened a docket (Docket No. 5-EI-152) and accepted comments on the proposed DPA criteria

• Comments were received from MEUW, MEG-Water, the League of Wisconsin Municipalities and Wisconsin Rural Water Association

Pre-Approved Criteria

• One or more of the criteria may be adopted by a municipal utility.

• A municipal utility will not offer a DPA if:
  1. The residential tenant has greater than $100 of account arrearages that are more than 90 days past due for utilities that bill monthly, or for utilities that do not bill monthly, has greater than $100 of account arrearages that are past due for more than two billing cycles;
Pre-Approved Criteria (cont.)

2. The residential tenant has defaulted on a deferred payment agreement in the past 12 months. This criteria only applies to deferred payment agreements and not to other types of payment extensions or agreements;

3. The residential tenant is responsible for account arrearages that were placed on any property owner’s tax bill in the utility’s service territory in the past 24 months; or

4. The residential tenant has a balance that accrued during the winter moratorium that is more than 80 days past due.

Streamlined Process

- A municipal utility must file and receive approval to modify its tariff prior to declining to offer DPAs to tenants

- Changes may be approved by Administrator of DWCCA

- A hearing is required before the Commission reviews and approves the changes
Use of Municipal Rights of Way

- Utility may use ROW and such use can be regulated by municipal regulation
  - Regulations must be reasonable
    - PSC ch. 130
  - PSC hears complaints about reasonableness/unreasonableness

PSC Contact Information

- Phone:
  - General Inquiries: 1-888-816-3831
  - Consumer Affairs: 1-800-225-7729
- Web Site: http://psc.wi.gov/
- Facebook: http://www.facebook.com/PSCWisconsin
- Twitter: http://twitter.com/PSCWisconsin
- Address: 610 N. Whitney Way
  Madison, WI 53707
- Email: PSCRECS@wisconsin.gov
Broadband Subscriptions in Wisconsin (> 200 Kbps) Source: FCC 477 Forms
Wireless Broadband Access in Wisconsin, as of June 30, 2014

Access defined by 4 mbps download/1 mbps upload

Access defined by 25 mbps download/3 mbps upload

Wireline Broadband Access in Wisconsin, as of June 30, 2014

Access defined by 4 mbps download/1 mbps upload

Access defined by 25 mbps download/3 mbps upload
Updated LinkWISCONSIN Initiative Website – www.link.wisconsin.gov
Telecommunications Law Update

- Judd A. Genda
- Axley Brynelson, LLP
- www.axley.com

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Telecommunications Law Update

- Net Neutrality – What is it and why does it matter?
- Regulation of Broadband Internet Access – Good vs. Evil (Depends on your interests)
- Nationwide Inter-carrier Compensation Litigation – Why now?
Net Neutrality – What is it?

- A catch phrase coined for the “Open Internet”
- The FCC defines the "Open Internet" as “the Internet as we know it. It's open because it uses free, publicly available standards that anyone can access and build to, and it treats all traffic that flows across the network in roughly the same way.”

Net Neutrality – What is it?

Net Neutrality/Open Internet – is the principle that Internet Service Providers should permit access to all legal content and applications on an equal basis, without:

- favoring or blocking some sources
- charging content providers for speedier delivery of their content on "fast lanes"
- deliberately slowing content from content providers that may compete with the ISP
Net Neutrality – Why does it matter?

• Consumers should have access to all lawful content (no blocking content)

• ISPs should not be able to pick favorites by allowing certain content providers to purchase fast lanes while other content providers are stuck in slow lanes

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Net Neutrality – Why does it matter?

• Competition
  – Established content provider (e.g., Netflix) vs. Start-up content provider (e.g., Webflix)
  – Large ISPs (e.g., Comcast) vs. Small ISPs (e.g., the local telephone company)

• Investment

• Innovation

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Regulation of Broadband Internet Access

• The FCC has previously classified Broadband Internet Access as an “Information Service” not a “telecommunications service”

• As such, Broadband Internet Access is not subject to Title II regulation under the Telecommunications Act, which is the regulation applied to telephone companies

• Generally, regulation of the Internet has been characterized as a “hands-off” approach

Regulation of Broadband Internet Access

• In December 2010 the FCC released its Open Internet Order which established high-level rules to protect Internet openness:
  – Transparency
  – No blocking
  – No unreasonable discrimination

• The FCC relied on the authority granted the FCC under § 706(a) of the Telecommunications Act
Regulation of Broadband Internet Access

**Transparency** -- Fixed and mobile broadband providers must disclose the network management practices, performance characteristics, and terms and conditions of their broadband services.

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Regulation of Broadband Internet Access

**No blocking** -- Fixed broadband providers may not block lawful content, applications, services, or non-harmful devices; mobile broadband providers may not block lawful websites, or block applications that compete with their voice or video telephony services.

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Regulation of Broadband Internet Access

No unreasonable discrimination -- Fixed broadband providers may not unreasonably discriminate in transmitting lawful network traffic.

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Regulation of Broadband Internet Access

- On January 14, 2014, the United States Court of Appeals for the District of Columbia Circuit in Verizon v. FCC upheld the transparency rule, but vacated the no-blocking and no-unreasonable discrimination rules
- The court invited the FCC to act to preserve a free and open Internet

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Regulation of Broadband Internet Access

• On May 15, 2015, the FCC launched a rulemaking seeking public comment on how best to protect and promote an open Internet. The Notice of Proposed Rulemaking posed a wide array of questions to elicit a broad range of input from everyone impacted by the Internet, from consumers and small businesses to internet service providers and start-ups

• Millions of consumers commented

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Regulation of Broadband Internet Access

• On November 10, 2014, President Obama urged the FCC to set strict rules to ensure net neutrality (an open internet)

• President Obama favored reclassifying Broadband Internet Access so that it would be regulated under Title II of the Telecommunications Act – the regulation applied to telephone companies

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Regulation of Broadband Internet Access

• On February 26, 2015, the FCC at its open meeting voted to regulate Broadband Internet Access as a public utility under Title II of the Telecommunications Act

• The vote was 3 to 2 along party lines

• The Order which has not yet been issued is in excess of 300 pages

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Regulation of Broadband Internet Access

• Chairman Tom Wheeler said the FCC was using “all the tools in our toolbox to protect innovators and consumers”

• The new rules are intended to ensure that no content is blocked and that the Internet is not divided into pay-to-play fast lanes for Internet and media companies that can afford it and slow lanes for everyone else

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Regulation of Broadband Internet Access

- Mobile data service for smartphones and tablets, in addition to wired lines, is being placed under the new rules
- The order also includes provisions to protect consumer privacy and to ensure that Internet service is available for people with disabilities and in remote areas

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Regulation of Broadband Internet Access

- Those that believe Title II regulation of the Internet is **GOOD** would say:
  - Ensures net neutrality (an open Internet)
  - Promotes fair competition
  - Protects consumers

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Regulation of Broadband Internet Access

• Those that believe Title II regulation of the Internet is **EVIL** would say:
  
  – Imposes unnecessary regulation
  – Does not solve the problem
  – Increases consumer costs
  – Stifles innovation and investment

Regulation of Broadband Internet Access

• Who supports Title II regulation:
  
  – The President
  – Democrats
  – Consumer interest groups

• Who does not support Title II regulation:
  
  – Republicans
  – Internet Service Providers
Regulation of Broadband Internet Access

- What is next?
  - Congress may act
  - Legal challenges

Inter-carrier Compensation Litigation

- Sprint and Verizon (in their capacity as long distance carriers) have filed approx. 60 federal lawsuits across the country
- More than 400 defendants have been named in these lawsuits
- 3 Wisconsin lawsuits
Inter-carrier Compensation Litigation

- The lawsuits seek a refund of access charges paid by Sprint and Verizon to local exchange carriers (i.e., local telephone companies)

- Access charges are the fees that a local exchange carrier charges long distance carriers to gain access to the local exchange carrier’s customers

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Inter-carrier Compensation Litigation

- The FCC Established the IntraMTA Rule in 1996

- The “IntraMTA Rule” provides that a local exchange carrier cannot charge a CMRS provider (i.e., a wireless provider) access charges related to a call between their end user customers if the call originates and terminated within a pre-described geographic territory known as a Major Trading Area (MTA)

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Inter-carrier Compensation Litigation

- In 2014 Sprint and Verizon sought to expand the scope of the IntraMTA Rule
- Sprint and Verizon contend that the IntraMTA Rule also prohibits a local exchange carrier from charging a long distance carrier access charges when the long distance carrier transports an IntraMTA call between a local exchange carrier and a CMRS provider

Inter-carrier Compensation Litigation

- The local exchange carrier defendants contend that Sprint and Verizon seek to impermissibly extend the scope of the “IntraMTA Rule” which is intended to only apply to compensation as between CMRS providers and local exchange carriers
- Some of the defendants have filed a Petition for Declaratory Ruling with the FCC seeking clarification
Inter-carrier Compensation Litigation

The local exchange carriers also contend that Sprint and Verizon are barred from recovery because for more than 18 years Sprint and Verizon have paid access charges in relation to the exact type of calls that they now contend are not subject to access charges.

Inter-carrier Compensation Litigation

- The lawsuits have been consolidated as part of multidistrict litigation in the Northern District of Texas
- It may be years before the court reaches a decision
Questions?

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Major IOU Electric and Natural Gas Rate and Fuel Cases

- All five of the major IOUs were in for a rate case in 2014
  - Different paths in terms of procedure and resolution of issues
  - Large amount of public participation via PSC website public comment form, written comments, and public hearings
    - Rate design and solar issues were motivators
Major IOU Electric and Natural Gas Rate and Fuel Cases

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<th>Service Provider</th>
<th>Electric</th>
<th>Natural Gas</th>
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<td>WPL Rate – 6680-UR-119</td>
<td>↔ '15 &amp; '16</td>
<td>↓ 2.75%</td>
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<td>WPSC Rate – 6690-UR-123</td>
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<td>↓ 4.3%</td>
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<td>WEPCO/WG Rate – 5-UR-107 (2015)</td>
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<td>↑ 3.76%</td>
<td>↓ 1.98%</td>
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<td>NSPW Rate – 4220-UR-120</td>
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WPSC Customer Charges

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<td>Fixed Charge (per mo.)</td>
<td>$10.40</td>
<td>$25.00</td>
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<tr>
<td>Energy Charge (per kWh)</td>
<td>11.3 ¢</td>
<td>10.2 ¢</td>
<td>10.3 ¢</td>
</tr>
</tbody>
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WEPCO Rate Design Modifications

- Increased residential and small business monthly customer charge from $9.13 to $16.00
- Multiple changes to distributed generation tariffs
- Adds a $3.794 per month charge on each kilowatt of small intermittent distributed generation.

MGE Rate Design Modifications

- Monthly Customer Charge increased from $10.44 to $19.00
- No additional changes at this time.
Major IOU Electric and Natural Gas Rate and Fuel Cases

- PSC decided that customer charges should better align with “fixed costs of providing service.”

- PSC declined, at this time, to adopt a specific definition of “fixed costs,” and it did not endorse any particular cost of service study (COSS) approach.

Electric & Gas Construction Cases

Valley Conversion – 6630-CU-101 / 6650-CG-235
West Central Lateral – 6650-CG-233
Columbia SCR – 5-CE-143

Valley Power Plant
Image Source: We Energies
Quadrennial Planning Process II

- 5-FE-100 - Set the goals, priorities, and measurable targets for Focus on Energy for the 2015 to 2018 planning period

- Notable Outcomes:
  - New revolving loan program for renewables added to grant program
  - Energy savings remain primary goal
  - Energy-Water Nexus

To be continued...

Cases to be decided in the upcoming months include:

- Badger Coulee Transmission – 5-CE-142
- Bay Lake Transmission – 137-CE-166
- WEC acquisition of Integrys – 9400-YO-100
- ERGS fuel flexibility and coal storage – 5-CE-145
Questions?

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Federal Energy Law Update

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Congressional Legislation

• Of the 21 bills proposed in the current (114th) Congress, only one (the Keystone XL Pipeline Approval Act) has passed both houses of Congress
• President Obama vetoed the bill on February 24, 2015
Areas of Congressional Interest

- Crude oil exports
  - Chairperson of the Senate Committee on Energy and Natural Resources Lisa Murkowski (R-AK) has expressed interest in relaxing regulations
- Action on energy efficiency
  - Continued work on Shaheen-Portman bill that failed in Senate last fall
- Yucca Mountain
  - Recent report (applauded by Chairperson Murkowski) suggests Mountain is capable of compliance with NRC for foreseeable future

Areas of Presidential Interest

- In February, the President announced a Clean Energy Investment Initiative at the Department of Energy summit which seeks to achieve $2 billion of private sector investment in solutions to climate change
- In January, the President announced a goal to cut methane emissions by 40-45 percent from 2012 levels by 2015
Recent Federal Decisions

- **South Carolina Public Service Authority v. FERC**, 762 F.3d 41 (D.C. Cir. 2014)
  - Upheld FERC Order 1000 regarding regional planning and development for transmission facilities.
  - Basis for competition for transmission project.

- **Electric Power Supply Ass’n v. FERC**, 753 F.3d 216 (D.C. Cir. 2014)
  - In 2-1 opinion, vacated FERC’s final rule on compensation for demand response resources in wholesale energy markets
  - Majority held rule was indirect regulation of retail electric market
  - FERC’s petition for review filed with Supreme Court on January 15, 2015
Recent Federal Decisions

• Metropolitan Edison Co. v. Penn. Pub. Util. Comm’n, 767 F.3d 335 (3rd Cir. 2014)
  – Split panel affirmed a district court order dismissing public utilities’ complaint against state regulatory agency.
  – The majority held that plaintiffs were barred by issue preclusion from seeking to overturn in federal court a commonwealth court of appeals decision that upheld the agency’s ruling to deny rate recovery of $250 million wholesale “line loss” charges.

Recent Federal Decisions

• Illinois Commerce Comm’n v. FERC, 756 F.3d 556 (7th Cir. 2014)
  – Five years ago, Judge Posner remanded a FERC order that allocated the cost of high-voltage transmission across all of PJM without any consideration of principles of cost causation.
  – The case returned with basically the same allocation in place (a region-wide post-stamp cost allocation which Posner dubs “FERC-speak”) and no additional satisfactory explanation.
  – Once again Judge Posner remanded the order.
FERC Update

• *Public Service Comm’n of Wisconsin v. MISO*, Docket Nos. EL14-34-0001 (Feb. 19, 2015) (order on reh’g)
  - FERC reaffirmed PSCW complaint order finding MISO’s SSR *pro-rata* cost allocation to be unreasonable
  - MISO directed to file a new study method to identify entities that benefit from SSR generation

FERC Update

• *Transmission Customers v. MISO*, Docket No. EL14-12
  - Large commercial and industrial customers’ complaint alleging that the ROE for MISO transmission owners is too high
  - Asking FERC to reduce transmission owners’ ROE to 9.15%, to cap debt-equity ratio to no more than 50% equity, and to eliminate ROE adders for ITC Transmission and Michigan Electric Transmission Co.
  - Matter set for hearing
FERC Update

- *MISO Transmission Owners v. FERC*, No. 14-2153, et al. (7th Cir. filed 5/23/2014)

Recent Major Utility Air Cases

  - Court upheld EPA’s consideration of cost in CSAPR and upheld EPA’s FIP process

  - Court held that once a source is required to obtain a PSD or Title V permit for conventional pollutants, EPA can require BACT for GHGs
Upcoming Major Utility Air Cases

• **National Mining Ass’n v. EPA**, No. 14-49 (U.S.)
  - Appeal from D.C. Circuit’s 2014 decision on the Utility MACT in *White Stallion Energy Center v. EPA*, 748 F.3d 1222
  - Scheduled for oral argument March 25, 2015
  - Issue: EPA’s authority to consider costs in deciding to regulate mercury pollution from power plants

EPA Major Regulatory Actions

• **Clean Power Plan**
  - Proposed 111(b) rule for new power plants
  - Proposed 111(d) rule for existing power plants
    • Comment period ended Dec. 1, 2014
    • Proposal has already attracted legal challenges
    • EPA plans to finalize in June 2015

• **Coal Ash Regulations**
  - Finalized on Dec. 19, 2014
  - Establishes technical requirements for landfills and surface impoundments accepting coal ash under RCRA
Thank You
MUNICIPAL UTILITY* 
LAW UPDATE 

*Electric and Broadband Utilities

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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

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
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

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
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

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

QUESTIONS
Wisconsin Water Utilities

- 583 public water utilities in Wisconsin
  - 78 are Class AB utilities serving 4,000 or more customers
  - 140 are Class C utilities serving from 1,000 to 4,000 customers
  - 365 are Class D utilities serving fewer than 1,000 customers
- 6 are private or investor-owned systems
  - Rest are municipally owned
PSC Regulation of Water Utilities

- PSC jurisdiction to “supervise and regulate every public utility in this state and to do all things necessary and convenient to its jurisdiction.” Sec. 196.02(1)
- Water utility falls within the definition of a “public utility” under Sec. 196.01(5)(a).
- PSC has “original and concurrent jurisdiction with municipalities” to regulate service of public utilities within a municipality. Sec. 196.58(5)

Infrastructure Maintenance

- PSC reviews utility’s ongoing investment in facility maintenance as part of rate case
- Milwaukee Water Rate Case, PSC Docket 3270-WR-108
  - Issue: “Is MWW water main replacement program reasonable?”
  - Issue raised and pursued by PSC Staff
Milwaukee Main Replacements

- MWW proposal
  - 15 miles of main replacements per year
  - Cost approx. $1 Million/mile of main
  - Use cash financing

- PSC Staff
  - Rate of proposed main replacement not sufficient
  - PSC could require more detailed study
  - PSC could authorize a lower ROR, or make a certain ROR contingent on meeting certain requirements

PSC Main Replacement Decision

- MWW must hire an independent consultant to do a main replacement study
- Every 6 months, MWW must report to the PSC regarding the condition of MWW’s mains
- MWW must report to the PSC regarding progress of main replacement program
Going Forward: PSC Review of Infrastructure Maintenance

- PSC may review a utility’s plan for sufficient ongoing investment in facility maintenance
  - Reporting details on water main inventory (feet, size, age, materials) to be required as part of annual report
  - PSC may review utility’s ongoing investment in facility maintenance as part of rate case; expect questions
  - Utility needs to be prepared to demonstrate utility’s capital replacement program is reasonable

Construction of Facilities

- PSC approval necessary: Sec. 196.49(3)
- Standards: May deny CPCN if:
  - Project will substantially impair the efficiency of the utility’s service
  - Project will provide facilities unreasonably in excess of the probable future requirements
  - Project when in operation, will add to the cost of service without proportionately increasing the value or available quantity of service
New Facilities & Large Customers

- Concern:
  - Financial capacity/ability to repay loan where utility sales dependent on a large customer
  - Increase in water rates could drive industry to use less or look for alternative source
  - Impact if industry closes (Brokaw as an example)
- How does this fit with CPCN criteria?

Village of Lena

- Water service to 249 customers
- 90% of water used by Saputo cheese plant
- Radium removal treatment system required at cost of $3.7 million ($2.7M loan after grants)
- PSC construction approval sought
- Concern: Village is bearing a disproportionate share of the financial risk for the project without a financial guarantee that its largest customer would stay on the system
  - If Saputo closed, rates would increase by 545%
CPCN for Village of Lena

- While “possible” that Saputo could close, record does not demonstrate that it is “probable” at this time
- PSC says since Saputo is an existing water customer, it does not have the authority to compel Saputo to negotiate a water use agreement with Lena
- PSC grants CPCN for project on a 2-1 vote
  - PSC Docket: 3120-CW-101
- Water supply agreement subsequently entered into by Lena and Saputo
  - Saputo to pay minimum quarterly loan payment of 90%

Changing Water Demand Declining Sales

Source: PSC’s 2014 Wisconsin Water Fact Sheet
Declining Individual Water Use

Residential Service Volume per Customer (statewide average)

Source: PSC’s 2014 Wisconsin Water Fact Sheet

Declining Variability in Use?

- Comparison of average use to peak use
- How to know?
  - Water utilities usually don’t have metered max day and max hour information for its customers
  - Traditionally use industry standards or what was approved in last rate case
## Demand Ratios in WI

### 10 Largest WI Cities

<table>
<thead>
<tr>
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<th></th>
<th></th>
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<tbody>
<tr>
<td>Milwaukee</td>
<td>2.25</td>
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<td>1.60</td>
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<tr>
<td>Madison</td>
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<td>Green Bay</td>
<td>3.10</td>
<td>2.60</td>
<td>1.80</td>
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<tr>
<td>Kenosha</td>
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<td>2.25</td>
<td>1.50</td>
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<td>Racine</td>
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<td>1.50</td>
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<tr>
<td>Appleton</td>
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<td>2.75</td>
<td>1.80</td>
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<tr>
<td>Eau Claire</td>
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<tr>
<td>Janesville</td>
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### AMI Meters & Availability of Demand Information

- City of Madison installation of AMI meters
- Availability of daily and hour information for customers
- Ability to document changes in customer usage
- Ability to calculate demand ratios for customer classes
Madison’s Proposed Changes in Retail Demand Ratios

<table>
<thead>
<tr>
<th>Customer Class</th>
<th>Max Day Ratio - 2011</th>
<th>Max Day Ratio - Proposed</th>
<th>Max Hour Ratio - 2011</th>
<th>Max Hour Ratio - Proposed</th>
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</thead>
<tbody>
<tr>
<td>Residential</td>
<td>2.40</td>
<td>1.77</td>
<td>4.40</td>
<td>3.20</td>
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<tr>
<td>Multi-Family</td>
<td>2.20</td>
<td>1.66</td>
<td>4.00</td>
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<tr>
<td>Commercial</td>
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<td>4.00</td>
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<tr>
<td>Industrial</td>
<td>2.00</td>
<td>1.73</td>
<td>3.00</td>
<td>2.93</td>
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<td>Public Authority</td>
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<td>Fitchburg</td>
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</table>

Going Forward: Impact of AMI Metering

- AMI data may result in changes in demand ratios which would result in changes in the allocation of costs among customer classes
- Residential classes may see lower rate increases
- Public authority class may see higher rate increases
- May also see more customer classes created for water utilities
Retail Rates & Unique Customers

- PSC Docket 9300-SI-115, Sewer Complaint of Fox River Fiber Company
- Principle of cost averaging is unreasonable when developing rates for unique customers who utilize dedicated infrastructure and whose use can be readily measured
- Reasonable to develop individualized rate for such customers
- Looking forward: Expect more requests for individualized rates

Wholesale Customers and Differential ROR in WI

- 28 wholesale suppliers in WI
- In the past, the PSC has approved differential RORs for retail and wholesale customers for 3 utilities
  - Racine, Oak Creek, Milwaukee
  - Kenosha’s request for a differential ROR was denied
  - In Milwaukee’s 2014 rate case, its request for a 1% differential ROR was denied
PSC Rationale in Milwaukee Case

- Wholesale customers did not pose any additional risk to MWW that would justify a differential ROR
- Excess capacity not caused by wholesale customers
- Wholesale customers help pay for excess capacity
- In the future, full Commission must consider any case where a differential ROR is requested
- 2-1 Decision (Commissioner Callisto dissents)

Looking forward

- Supplier has a high burden to get Commission to approve differential ROR

Winter Operations & Protection of Utility Facilities

- Last winter exceptionally cold and unprecedented number of frozen water laterals
- Water laterals run from the street to the customer’s property. Utility owns up to the curb stop, the customer owns the lateral into the home
- Some utilities request customers to run water to keep the water from freezing in the lateral
- If customer fails or refuses to run water and the lateral freezes, what happens?
Winter Operations & Protection of Utility Facilities

- Utility cannot require a customer to run a stream of water “to protect utility-owned property from damage”
  - PSC Docket 3480-CC-152312
- If the water froze in the utility owned portion of the lateral, the utility is responsible for the cost of thawing utility owned facilities, even if the utility issued a run water order and the customer failed to comply

Questions?

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  - lkobza@boardmanclark.com
Today’s Agenda

Technologies of today and tomorrow – a few examples

What opportunities and challenges do those technologies bring?

How are state public utility commissions responding to those opportunities and challenges?

Will the regulatory compact be a thing of the past?

Or are states rallying to protect that compact?
The Technology - Examples

1. **Generation:**
   - Cost-effective DG

2. **Demand Side Management:**
   - Consumerization
   - Demand Response

3. **Storage:**
   - Increased efficiency

The Challenges - Examples

**Public Infrastructure**
1. Ensuring continuation of safe, reliable and affordable public infrastructure but with diminishing revenues.
2. Accommodate emerging technologies

**Private Infrastructure**
1. Ensuring DER do not harm public infrastructure
2. Eliminate market barriers
Distributed Generation

DG: Canary in the Coal Mine

High Electric Rates
Highly Efficient Renewable Fuels
“San Diego Gas and Electric: If you’re not prepared for the change, it’s too late.”

Hawaii – Feb 25 2015
Distributed Generation

“Google is making its biggest play ever bet on renewable energy.”

Source: Tracking the Sun VII, LBNL, Sept 2014
“With Onsite Biogas and Fuel Cells, Microsoft Data Center Says NO to the Grid”
DG: The Opportunity and the Challenge

The Opportunities:
• Drive down electricity costs for the consumer.
• Increase resiliency.
• Increase sustainability of the generation fleet

The Challenges:
• Utility has little control over when/where it is installed
• Reduction in load may cause reduction in revenues
• How can the incumbent utility continue to maintain the grid within declining revenues?

Threshold Regulatory Questions

Will there continue to be a natural monopoly?
• Where in the world?
• When in time?

If yes.....

will the regulatory framework continue to provide the utility with both the obligations and requirements of a monopoly (regulatory compact)?
The Monopoly Boundaries

What functions will be protected as a monopoly?

What functions will be opened to competition?

The Last Natural Monopoly: 
.....................................The Distribution Grid

NY and MA are at the forefront of defining the distribution utility.

NY PSC – the Distribution System Operator with extensive distribution system planning.

MA DPU – 10 year distribution grid modernization plan.
How can we ensure sufficient revenues for safe, reliable and affordable infrastructure?

**Three Methods That Are Currently Popular:**

1. Decoupling
2. Lost Revenue Adjustment Mechanisms
3. Incentive Rates

Often used together or in combination with other tools.

---

**Incentive Rates**

Three Types of Performance Based Ratemaking:

1. Rate Caps
2. Revenue Caps
3. Benchmarking

MN and Xcel are investigating this option.
Other Examples of Bolstering the Remaining Monopoly:

**Increasing revenues** – moving away from Cost of Service Rates
- Services priced by value
- Fee based services

**Decreasing costs** – examples
- Load Shifting – reduce peak, through mandatory TOU rates
- Increase efficiency of the delivery system
- Targeted DSM to obviate need for new infrastructure
- Eliminate meters through internet portal?

*Demand Side Management*

*Load Shifting*
“What If Your Electric Utility Acted More Like Amazon.Com or Netflix?”

Demand Response

It Works!
Time Varying Rates

They work!

Customer Data –
The Battle of the Century

Will the distribution utility be required to standardize and share customer data?

If so, only in an aggregated format?

What about customer specific data?

Should customers have to opt-in or opt-out customer data sharing?

Can customers opt to install their own metering devices if it provides accurate billing information for the utility?

Specific dockets on this issue in: MN and IL.
Storage

The Holy Grail

“Bill Gates and Other Business Leaders Urge U.S. to Increase Energy Research”

The New York Times
Where are We Headed?

Change is Inevitable

- Controlled Change Soon
- Or
- Uncontrolled Change
Taking No Action Is a Decision

- Utilities Cannot Attract Capital
- Declining Public Infrastructure
- Low-Income Customers – Unserved
- Stranded Assets
Different Paths for Different Regions

Utilities: focus on
• Capital intensive and
• Critical infrastructure

Regulations: focus on
• Removing market barriers
• Safety, reliability and sustainability of public infrastructure

The Future

.......................is here.