

LOU JONES BREAKFAST CLUB PRESENTATION:
WE ENERGIES: THE END OF THE MORATORIUM AND RELATED ISSUES

I. Background

A. We Energies is a “public utility” as defined in Section 196.01(5) of the Wisconsin Statutes.

1. “Public utility” means, except as provided in par. (b), every corporation, company individual, association, their lessees, trustees or receivers appointed by any court, and every sanitary district, town, village or city that may own, operate, manage or control any toll bridge or all or 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.

B. Section 196.02 of the Wisconsin Statutes grants authority to the Public Service Commission (“PSC”) to “supervise and regulate every public utility” in the state of Wisconsin.

1. Mission: To Oversee and facilitate the efficient and fair provision of quality utility services in Wisconsin.

2. Part of carrying out that mission is Providing Fairness in transactions between utilities and their customers, other utilities, and other entities specifically provided protection by law.

-<https://psc.wi.gov/aboutUs/organization/mission.htm>

C. PSC regulations are contained in Chapters PSC 1-187 of the Wisconsin Administrative Code.

D. We Energies is the trade name for Wisconsin Electric Power Co. and Wisconsin Gas, LLC

1. Electric and Gas Utilities that functionally operate under the same brand.

2. For our purposes in the Eastern District of Wisconsin, We Energies provides gas and electric service throughout all of Milwaukee, Racine, Kenosha, Waukesha, Washington, and Ozaukee Counties, as well as portions of Walworth, Jefferson, Sheboygan, Outagamie, Calumet and Winnebago Counties, and others

-Service Map: <http://www.we-energies.com/home/ServiceMap.pdf>

E. Point being, the majority of your clients are going to have some form or relationship with We Energies, and receive electricity, natural gas service, and oftentimes both.

F. Approximately 8,400 customers filed bankruptcy both in 2015 and 2016.

II. The “Moratorium”

A. PSC 113: Service Rules for Electrical Utilities and PSC 134 Standards for Gas Service

B. Cold Weather Disconnection – PSC 113.0304 and PSC 134.0624

1. (2)(a) “This section applies to disconnections for nonpayment of utility service which provides the primary heat source or energy source affecting the primary heat source to residential dwelling units occurring during the period November 1 to April 15 in any year for all occupied residences.”

2. (4) “A utility may disconnect only those households whose gross quarterly incomes are above 250% of the federal income poverty guidelines and where health and safety would not be endangered because of the infirmities of age, developmental or mental disabilities or like infirmities incurred at any age or the frailties associated with being very young, if service were terminated or not restored.”

C. WE Energies Policy on Cold Weather Disconnection

1. We Energies is not required to reconnect any residential service that was disconnected prior to November 1.

2. They are required to personally visit any disconnected residential premise one time after November 1 to leave safety information and urge customers that are without service to make a payment, payment arrangements or seek Energy Assistance.

3. Disconnections only occur on residences that are confirmed vacant or for safety reasons.

D. Spring Disconnection

1. Reinstate Disconnection Rules For Remainder of Year – PSC 113.0301 and 134.062

- a. Disconnect notice goes on bill.
- b. We Energies will attempt to call customer.
- c. Customer has 20 days to pay or make arrangements before customer will be disconnected.
- d. If the customer has a prior disconnection, disconnection may occur as soon as 7 days after notice.
- e. If there is a separate disconnect notice due date on the disconnection notice, then the customer will be disconnected on the date stated on the notice.

2. Bankruptcy filing prior to spring disconnection

- a) We Energies receives notice from customers, attorneys and the court
- b) Verifies that bankruptcy has been filed through PACER
- c) If there is an active disconnection notice, it is immediately cancelled
- d) The customer account is stopped as of the filing date.
- e) A new account is set up for the date of filing and forward.

3. Alternatives to Bankruptcy filing (if filing solely to avoid disconnection)

- a) Has the customer called We Energies?
 - (1) The customer will receive the best offer simply by calling 800-842-4565; this is an automated phone line
 - (2) It will give options for down payments and length of time to pay bill.
 - (3) Also, if want to talk to a person 800-842-4565 weekdays, 7:00 AM to 6:00 PM
 - These hours will be extended when the moratorium ends to 8:00 AM-9:00 PM M-F and 8:00AM to 5:00 PM Saturday
- b) Is the customer eligible for Energy Assistance?
 - (1) Based on poverty guidelines for household size
 - (2) Run through each county's DHHS
 - (3) Milwaukee County Flyer in the materials

III. Reconnection, Bankruptcy and Deposits

A. Reconnection of Service

1. PSC 113.0303 and PSC 134.0623
2. Filing of Bankruptcy will Result in Reconnection
 - a) Next day reconnection
 - b) Your client can call the day of filing and set up appointment to reconnect for the next day.
 - c) Appointment is an all day appointment, 8:00 AM-8:00 PM.
 - d) The account-holder does not have to be the one available for the appointment, it can be any other member of the family who is 18 years or older.

B. Utility Service in Bankruptcy: (11 U.S.C. § 366)

1. (a) Except as provided in subsections (b) and (c) of this section, a utility may not alter, refuse or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.
2. (b) Such utility may alter, refuse or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

C. Deposits

1. Exceptions to Requirement of a Deposit.
 - a. We Energies checks the Debtor's account history to determine whether they have received energy assistance in the past 18 months. If the Debtor has received assistance, We Energies will not send a deposit letter.
 - b. If Debtor does not have pre-petition delinquency a deposit letter is not sent.
 - c. Relevant Decisions:
 - i. *In re Cannon*, 2008 WL 2553475: cites to PSC 113.0402(4)(b) for the rule that "a deposit under this section (Residential

Deposits) shall not be required if the customer provides the utility with information showing that his or her gross quarterly income is at or below 200% of the federal income poverty guidelines,” and holds that We Energies may not demand a deposit from a debtor whose income was below 200% of the poverty level.

ii. *In re Price:*

http://www.wieb.uscourts.gov/opinions/files/pdfs/In_re_Price_6-25-08.pdf

Court analysis of what is a reasonable deposit for that case, based upon – 1) time of year the case was filed – what post-petition services were that the deposit adequately assured payment of; 2) disconnection would occur in relatively short period of time and; 3) Debtor’s representation of what they could afford.

2. Deposit Letters

- a. Deposit letters are sent on all other accounts after bankruptcy is filed.
- b. The demand is sent as part of the regular billing cycle
 - i. For example, if debtor files on April 21 and their bill normally is sent out on May 1, the demand for deposit will be sent on May 1
 - ii. The debtor has 20 days from the day the bill is sent to pay the deposit.
 - iii. The deposit demanded is the sum of the two highest consecutive bills in the past twelve month.
 - iv. The debtor can request to spread out the deposit payment over as many as 3 months.
 - v. Deposits are returned after 12 months of on time payments in full. Clock starts after the deposit is paid in full.
 - vi. On a payment delinquency within 12 months, the clock starts over.
 - vii. Deposits do earn interest in the time they are held.
- c. If the debtor does not pay the deposit or make arrangements within the 20 days, then they will get a disconnection notice, only if the failure to make arrangements is not during the moratorium.

3. Excluding We Energies from the case does not work.

- a. Will still assess a deposit when they become aware of the filing.

- b. Sometimes are on schedules, but they do not receive notice. Again, will assess a deposit when they become aware of the filing.

IV. Post-Petition

- A. Post-petition accounts are treated like any other new account.
- B. In ch. 7, simply monitor for discharge of debtor.
- C. In ch. 13, file a claim for pre-petition arrearage and treat the post-petition account as a new account.

V. We Energies Main Concern is Fraud or Abuse of the System.

- A. Disconnection is a large stick to get habitual non-payers to pay.
 - 1. Only available 7 months of the year.
 - 2. There are people who attempt to file their bankruptcies to avoid disconnection through the summer and make it to the next moratorium.
 - 3. Huge issue with ch. 128's in 2008-10 because We Energies had a policy of not disconnecting during a ch. 128. In 2011, received a Milwaukee County circuit court ruling that disconnection was not prohibited in a chapter 128 – *In re: Joyce Smith*.
 - 4. From those years, there was a huge clean up of 100's of chapter 128's that had been allowed to languish in the system.
 - 5. That loophole has been closed and more commonly we see repeat bankruptcy filings, which:
 - a) Do not take long to be dismissed if not legitimately filed, comparatively.
 - b) Will obtain comfort orders allowing to proceed.
 - c) In extreme cases, We Energies has moved to ban people from filing bankruptcy.
 - 6. We Energies attempts to be fair while dealing with these issues of fraud and abuse and processing a large number of bankruptcies.
 - a) 8,400 customer bankruptcy filings in 2015 and 2014
 - b) Did not see a decrease last year.

7. Majority of questions can be answered through phone numbers above or 24-hour customer service.

- a) Phone: 800-242-9137 (24 Hours)
- b) Something Unusual, can call or e-mail:
 - 1. ahelminiak@ssblawsc.com
 - 2. (414)271-8833