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Not Sufficient Funds charges imposed by utilities for returned checks are not appropriately based on corresponding bank charges.

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Utilities which Impose Fees for Returned Checks should Base Fees on Actual Costs, not on Level of Bank Fees.

In 2023, Wisconsin Electric Power Company (WEPCO) proposed to substantially increase the fees it imposed on customers who paid their WEPCO bill with a check returned to the utility for insufficient funds. The Company proposed to charge an NSF fee of \$24, which was more than double the maximum charge it experienced from banks for checks returned as NSF.¹

WEPCO did not even attempt to cost-justify its NSF charge. Instead, the Company argued that the charge is structured to “deter future occurrences of submitting NSF payments.” However, when asked for its basis for concluding that the NSF charge serves such a deterrence function, it could provide no such information. It instead asserted in conclusory fashion that “it is standard knowledge that charging such fees will disincentivize future occurrence.” In opposing the increase, FSC witness Roger Colton asserted that “an unsupported conclusory assertion of what in the Company’s opinion is ‘standard knowledge’ is insufficient basis to support a utility charge.”

Low-Income Impacts

Walnut Way Conservation Corporation, a non-profit which provides energy assistance and weatherization investments to low-income households, objected to the proposed NSF fees,

¹ Ex.-PSC-DRR, Resp to KAN-2.57 (charges from bank range from \$1 to \$12).

arguing that they would exacerbate an already burdensome rate hike.

The increases that the utilities were seeking, Walnut Way argued, “will lead to significant changes in customers’ bills. If WEC’s increases are approved as proposed, electrical residential customers will pay \$1,825.80/year in 2026. Natural gas residential customers of WEPCO (using 817 therms) will pay \$855.90/year in 2026. Dual fuel customers will pay \$2,681.70 annually, or an average of more than \$223.00 per month by 2026. Residential customers of Wisconsin Gas (using 858 therms) will pay \$946.47/year in 2026, or a combination electric/gas bill of \$2,772.00 annually, more than \$230.00 per month for combined service.

The proposed increase, Walnut Wau noted, comes on the heels of the Commission’s 2022 approval of a 9.2% increase in WEPCO electricity revenue, 26.7% increase in WEPCO natural gas revenues, and 13.7% increase in revenues for Wisconsin Gas.

These rate increases will be acutely felt by low-income households in the utilities’ service areas, i.e. those with income at or below \$25,000. Low-income households constitute a substantial number of Wisconsinites, for whom even seemingly inconsequential increases in energy costs will impose a substantial burden. This is particularly true in today’s inflationary environment. As the U.S. Department of Labor reports, “consumers with different incomes experience inflation quite differently.” While low- and moderate-income customers are already spending a higher share of their household budget on household necessities, such as rent, food, and medical care, prices for fuel and utilities rose faster than the overall average of such necessities. Because lowest income households dedicate more of their overall spending to these costs,

their overall inflation rates grew faster than highest income households.

“Industry Standards”

WEPCO sought to bolster its proposed fees by a comparison which it made to “industry standards. . .of the most popular financial institutions.” According to Colton, however, such a comparison provides no support for the proposed NSF fee.

Late fees by financial institutions are not cost based, but rather represent a significant fraction of total income and profits. According to the Consumer Financial Protection Bureau, a federal consumer protection agency:

Banks with assets over \$1 billion have been required to report overdraft/NSF fee revenue in their call report data since 2015. For each of the five years from 2015 to 2019, the overdraft/NSF revenue reported by these banks totaled \$11-12 billion annually.²

Similarly, a 2023 study by the Federal Reserve Bank of St. Louis reported that “Collecting overdraft fees has proved very profitable for banks. In recent years, several of the nation’s largest banks have reported more than \$1 billion annually in overdraft fee income, while some smaller banks have recorded overdraft fee income exceeding 20% of earnings.”³

² CFPB (April 24, 2024). Overdraft/NSF Revenue in 2023 down more than 50% versus pre-pandemic levels, saving consumers over \$6 billion annually, CFPB Offices of Markets and Consumer Populations.

³ Michelle Clark Neely (March 2023). Is the Era of Overdraft Fees Over?, Federal Reserve Bank of St. Louis.

As is evident, fees such as the NSF fees cited by the Company in support of its assertion of the “standard knowledge” of their use as a deterrent, instead have historically been used as a substantial profit center.

Given that the Company is using the fees of these financial institutions as its “industry standards” of reasonableness, it is clear that in the utility regulatory context, the basis used by the Company for the fees is unreasonable. The utility’s NSF fee should be disapproved as lacking any foundation, let alone a cost-based foundation.

Commission Staff Concerns

The Staff of the Wisconsin Commission also expressed “concerns” about the Company’s proposal to increase its NSF fee to serve a “deterrent” function. According to the Staff:

by virtue of being charged a non-sufficient funds fee, it indicates a customer did not have enough money in their account to pay the entirety of their bill. Assessing a fee on customers already facing financial hardships may exacerbate their ability to pay their bill. Therefore, charging a rate that goes above the applicants’ administrative and other direct costs may create an additional financial burden on these customers, whereas charging a cost-based fee would have the benefit of the applicant recovering the costs of responding to non-sufficient funds situations while lessening (sic) the financial burden of customers that may be facing financial hardships.

Commission Decision

While the Wisconsin Commission did not approve elimination of the proposed NSF fee in its entirety, it did order a substantial reduction in

the fee to be imposed on consumers. It found that the utility should not be allowed to increase its NSF fee by an amount designed to serve a “deterrent” function.

According to the Wisconsin Commission:

eliminating the incremental difference component and setting the charge based on administrative cost plus the average financial institution fee provides a balanced and reasonable solution for the NSF charge structure. Therefore, the Commission finds it reasonable to eliminate the incremental deterrence component of the NSF charge and reconfigure the charge to consist of the administrative cost added to the average of the range of financial institution fees resulting in a rate of \$7.24.

Summary

Persons interested in obtaining more information about the level of insufficient funds fees charged by utilities can write:

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Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) provides economic, financial and regulatory consulting. The areas in which *FSC* has worked include energy law and economics, fair housing, local planning and zoning, energy efficiency planning, community economic development, poverty, regulatory economics, and public welfare policy.