

SERVICE DATE Sep 10, 2024
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PUBLIC SERVICE COMMISSION OF WISCONSIN

Complaint of City of Kaukauna against Heart of the Valley
Metropolitan Sewerage District Concerning Sewer Rates

9300-SI-126

FINAL DECISION

This is the Final Decision in the investigation to consider the April 4, 2023 sewer complaint (Complaint) by City of Kaukauna (Kaukauna or Complainant) filed with the Public Service Commission of Wisconsin (Commission) against Heart of the Valley Metropolitan Sewerage District (HOVMSD or Respondent) under Wis. Stat. § 66.0821(5). ([PSC REF#: 463518.](#))

The Commission finds that Kaukauna is a “user” of the sewerage services at issue in the complaint pursuant to Wis. Stat. § 66.0821(5)(a), and the Commission has jurisdiction to investigate the complaint. The Commission determines that HOVMSD’s volumetric rate is neither unreasonable nor unjustly discriminatory as evaluated with regard to the volume of Kaukauna’s wastewater that enters the interceptor.¹ The Commission also determines that the cost allocation methodology adopted by HOVMSD for its interceptor project is neither unreasonable nor unjustly discriminatory as evaluated with regard to the portion of HOVMSD’s interceptor used by Kaukauna. HOVMSD’s rates are neither unreasonable nor unjustly discriminatory as applied to Kaukauna with regard to the cost-of-service principles identified in Wis. Stat. § 200.13(3)(b). Finally, the Commission found it reasonable to assess HOVMSD for all Commission expenses associated with the proceeding in this docket.

¹ Commissioner Nieto dissents on this finding for the reasons set forth in the attached dissent.

Introduction

On April 4, 2023, Kaukauna filed a Complaint with the Commission against HOVMSD under Wis. Stat. § 66.0821(5)(a). The Complaint alleges that HOVMSD’s cost allocation method for a planned \$21.5 million interceptor improvement project is unreasonable and unjustly discriminatory. Claim One of the Complaint states that “HOVMSD’s volumetric rate is unreasonable and unjustly discriminatory as applied to Kaukauna because it fails to account for the fact that over 25 percent of Kaukauna’s wastewater does not enter HOVMSD’s interceptor.” Claim Two states that “HOVMSD’s adopted cost allocation methodology for its interceptor project is unreasonable and unjustly discriminatory as applied to Kaukauna because Kaukauna uses only a small portion of HOVMSD’s interceptor.” Claim Three states that “HOVMSD’s rates violate Wis. Stat. § 200.13(3)(b) as they are not based on the cost of service rendered.” Kaukauna requested that the Commission investigate HOVMSD’s rates, hold a hearing, find that HOVMSD’s rates are unreasonable in violation of Wis. Stat. § 66.0821, and fix reasonable, non-discriminatory rates. ([PSC REF#: 463518](#).)

HOVMSD filed a timely answer to the Complaint on May 8, 2023. HOVMSD’s answer to the Complaint denied the allegations made in Claim One, Claim Two, and Claim Three and asked the Commission to dismiss the complaint and bill Kaukauna for all the Commission’s expenses related to this proceeding. ([PSC REF#: 467472](#).) At its open meeting of June 1, 2023, the Commission directed Commission staff to open a docket and issue a Notice of Investigation. ([PSC REF#: 469504](#).) On July 12, 2023, Commission staff issued two data requests, one each to the Complainant and Respondent. ([PSC REF#: 472634](#), [PSC REF#: 472635](#).) The Complainant provided answers to the data requests from Commission staff on July 26, 2023

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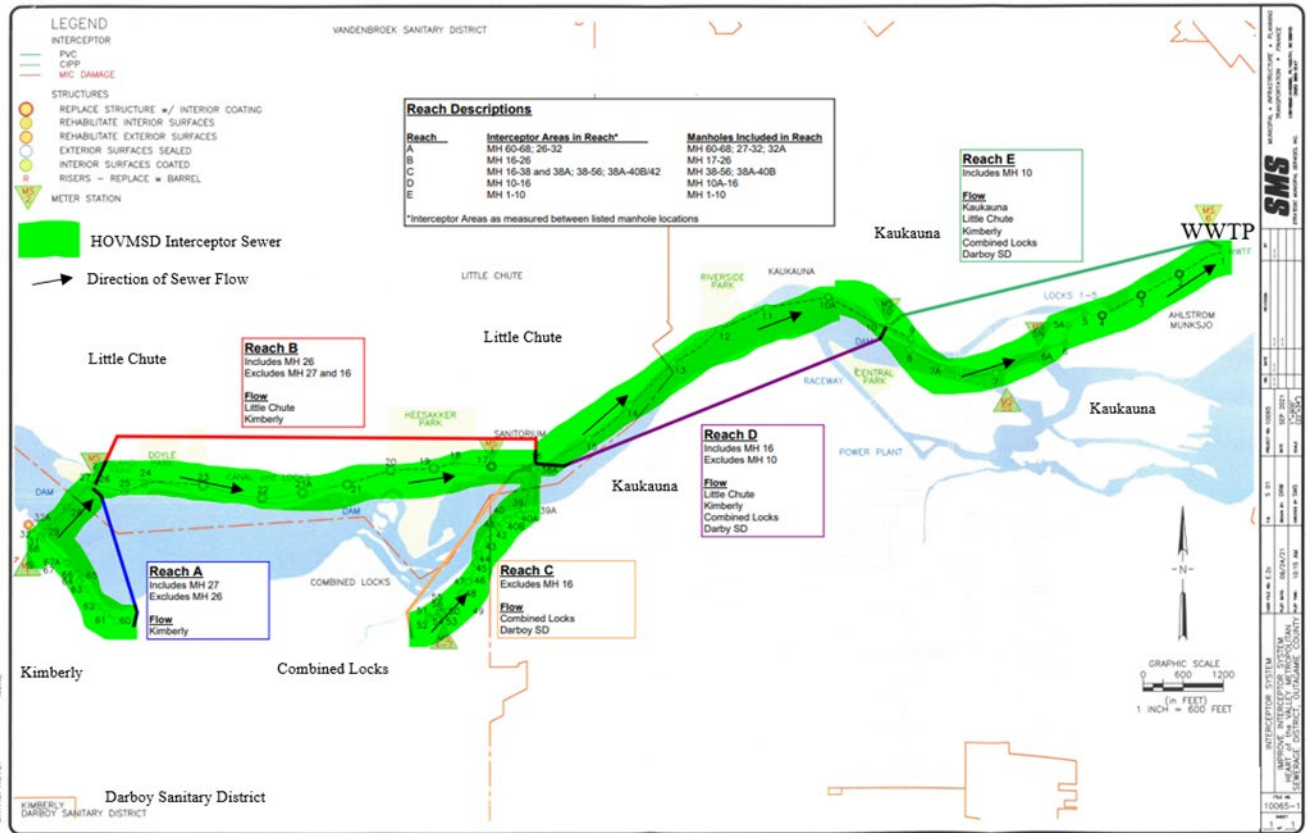
([PSC REF#: 473813](#), [PSC REF#: 473814](#)) and on August 1, 2023 ([PSC REF#: 474309](#)).

HOVMSD provided answers to a data request from Commission staff on July 26, 2023. ([PSC REF#: 473841](#).) Pursuant to due notice, the Commission held virtual public and technical hearings on February 21, 2024, that included the opportunity to submit written comments through the Commission’s web site or at the hearing, or to testify at the public hearing. The Commission considered this matter at its open meeting of June 13, 2024. Appendix A lists the parties for purposes of review under Wis. Stat. §§ 227.47 and 227.53.

Background

HOVMSD was formed in 1974 and owns a regional wastewater system that includes approximately 5.5 miles of sewer interceptor and a wastewater treatment plant (WWTP). HOVMSD constructed the sewer interceptor in the 1970s. HOVMSD provides wastewater treatment to five municipal wastewater utilities: Village of Kimberly (Kimberly), Darboy Sanitary District (Darboy), Village of Little Chute (Little Chute), Village of Combined Locks (Combined Locks), and Kaukauna. Each of these five utilities bills its own customers and owns its own wastewater collection system that discharges into HOVMSD’s sewer interceptor. Figure 1 shows how sewage flows, from Kimberly in the west to Kaukauna in the east, through the 5.5-mile-long sewer interceptor, and into the WWTP. The Complaint separated the sewer interceptor into five “reaches” (A, B, C, D, and E) based on the source of the wastewater flowing into that portion of the interceptor. Currently, Kaukauna’s wastewater flows only through Reach E and then into the WWTP. It is worth noting that while Reach D does not currently receive sewerage from Kaukauna, much of it is located within the Kaukauna city limits and could be modified to receive Kaukauna sewerage in the future. ([PSC REF#: 463518](#).)

Figure 1. HOVMSD Interceptor Reach Map



The initial construction of the 5.5-mile sewer interceptor cost approximately \$6.3 million, and HOVMSD allocated the costs to the member utilities using the “reach” method. The “reach” method allocated the interceptor costs to each member utility in proportion to the length of the interceptor that conveyed each member’s sewerage. Kaukauna was allocated 11.4 percent of the initial capital cost to construct the 5.5-mile sewer interceptor using the “reach” method. (The Darboy Sanitary District is not listed in the table because it was not a user of the interceptor at that time.) ([PSC REF#: 463518.](#)) Table 1 shows the percentage of the initial capital cost to construct the 5.5-mile sewer interceptor, allocated to each member utility using the “reach” method.

Table 1. HOVMSD 1979 Cost Allocation Method Based on the “Reach” Method

Member Utility	Share of Interceptor Capital Costs
Kaukauna	11.4 %
Combined Locks	14.3 %
Little Chute	31.6 %
Kimberly	42.6 %

In 1979, Combined Locks, Little Chute, and Kimberly filed a complaint with the Commission, in docket 9300-SR-3, stating that the “reach” method was unreasonable. They proposed allocating project costs based on the volume of flow generated by each member utility as measured at the WWTP. In 1980, the Commission denied the complaint and found the “reach” method to be reasonable with the exception that capital costs associated with excess capacity attributable to potential future customers must be allocated based on each member utility’s uniform flow volume as a percent of the total flow volume. ([PSC REF#: 475329.](#))

HOVMSD now plans to install a liner inside portions of the 5.5-mile interceptor and to make improvements to manholes in order to extend the interceptor’s useful life by another 50 years. HOVMSD’s design engineer estimated that this project will cost \$21.5 million. At its meeting on March 2, 2021, the HOVMSD Commission voted four to one to allocate the project cost to the five member utilities based on the volume of flow generated by each member utility as measured at the WWTP. Kaukauna was the only member to vote against allocating costs by member volume at the WWTP. Based on HOVMSD’s cost allocation method, the Complainant estimated that Kaukauna’s share of the project will be \$7.7 million, or 35.8 percent of the total cost, as shown in Table 2. ([PSC REF#: 463518.](#))

Table 2. HOVMSD 2021 Cost Allocation Method Based on Volume of Flow at the WWTP

Member Utility	Share of Interceptor Improvement Costs
Kaukauna	35.8 %
Combined Locks	5.9 %
Little Chute	35.0 %
Kimberly	8.9 %
Darboy	14.4 %

Kaukauna considered the proposed interceptor improvements as major capital investments which significantly extend the assets’ useful life. As such, Kaukauna asserted that the costs should be allocated using the “reach” method, like it was allocated for the initial construction. Kaukauna estimated that its share of the project based on the “reach” method would be \$1.9 million, or 9.2 percent of the total cost, as shown in Table 3. ([PSC REF#: 463518.](#))

Table 3. Kaukauna’s 2022 Cost Allocation Method Based on the “Reach” Method

Member Utility	Share of Interceptor Improvement Costs
Kaukauna	9.2 %
Combined Locks	6.7 %
Little Chute	52.3 %
Kimberly	15.4 %
Darboy	16.4 %

In response, HOVMSD claimed that the proposed interceptor work is a maintenance project, and as such, the cost should be allocated to the five member utilities based on the volume of flow generated by each member utility as measured at the WWTP. The Respondent’s consultant, Trilogy Consulting, LLC (Trilogy), determined that a volumetric cost allocation method was “a reasonable approach based on standard industry practice, past precedent for

interceptor maintenance costs, and the absence of an agreement among the municipal customers regarding cost sharing.” Trilogy stated that Wisconsin Statutes and Administrative Code do not specify how costs should be allocated. Trilogy also stated, “Absent an agreement that requires cost sharing for interceptor replacement or rehabilitation, which is unusual, such costs are typically recovered through uniform user charge rates.” ([PSC REF#: 467472.](#))

Findings of Fact

1. HOVMSD is a metropolitan sewerage district organized under Wis. Stat. ch. 200.
2. HOVMSD is a municipality pursuant to Wis. Stat. § 66.0821(1)(a).
3. Kaukauna, Kimberly, Little Chute, Combined Locks, and Darboy are municipalities as defined under Wis. Stat. § 66.0821(1)(a).
4. Kaukauna, Kimberly, Little Chute, Combined Locks, and Darboy are municipal members of HOVMSD.
5. Kaukauna, Kimberly, Little Chute, Combined Locks, and Darboy each own and operate a sewer collector system pursuant to Subchapter VIII of Wis. Stat. ch. 66; each collector system transports wastewater from homes, businesses, and industries in the respective municipality to HOVMSD’s interceptor and WWTP.
6. The project consists of installing a liner inside portions of the 5.5-mile interceptor and improvements to manholes at an estimated total cost \$21.5 million.
7. HOVMSD has allocated the costs of the project to its municipal members based on the volume of flow generated by each municipal member as measured at the WWTP.
8. HOVMSD’s volumetric rate is neither unreasonable nor unjustly discriminatory as evaluated with regards to the volume of Kaukauna’s wastewater that enters the interceptor.

9. HOVMSD's volumetric rate is neither unreasonable nor unjustly discriminatory as evaluated with regards to the portion of HOVMSD's interceptor used by Kaukauna.

10. HOVMSD's volumetric rate does not violate Wis. Stat. § 200.13(3)(b).

Conclusions of Law

1. The Commission has jurisdiction under Wis. Stat. § 66.0821(5) to review the reasonableness of HOVMSD's rates, rules and practices, and by order fix reasonable rates, rules and practices and make any other order respecting the complaint that is just and reasonable.

2. The Commission also has jurisdiction under Wis. Stat. §§ 196.02, 196.395 and 196.40 to impose any term, condition, or requirement necessary to protect the public interest.

3. Kaukauna is a user of the service provided by HOVMSD and is entitled to bring a complaint pursuant to Wis. Stat. § 66.0821(5)(a).

4. Pursuant to Wis. Stat. § 66.0821(5)(a) and Wis. Stat. § 196.85(1), it is appropriate to assess all Commission expenses attributable to this proceeding to HOVMSD.

Opinion

Kaukauna filed a complaint with the Commission, pursuant to Wis. Stat. § 66.0821(5)(a), arguing that specific rates, rules, and practices of HOVMSD are unreasonable. The Commission has authority under Wis. Stat. § 66.0821(5)(a) to review the reasonableness of a sewer utility's rates, rules, and practices. Wisconsin Stat. § 66.0821(5)(a) provides:

(a) If a user of a service complains to the public service commission that rates, rules and practices are unreasonable or unjustly discriminatory, . . . the public service commission shall investigate the Complaint. If there appears to be sufficient cause for the complaint, the commission shall set the matter for a public hearing upon 10 days' notice to the complainant and the town, village or city. After the hearing, if the public service commission determines that the rates, rules or practices complained of are unreasonable or unjustly discriminatory, it shall determine and by order fix reasonable rates, rules and practices and may make

any other order respecting the complaint that is just and reasonable . . . The proceedings under this paragraph are governed, to the extent applicable, by ss. 196.26 to 196.40 . . . the commission shall bill any expense of the commission attributable to a proceeding under this paragraph to the town, village or city under s. 196.85 (1).

The threshold determination before the Commission is whether Kaukauna has demonstrated that HOVMSD's rates, rules, and practices are unreasonable or unjustly discriminatory, as applied to Kaukauna. The Commission is charged with deciding whether a disputed rate, rule, or practice is unreasonable or unjustly discriminatory, not whether the method used is the best or the fairest method or whether the disputed rate is the same as the Commission would have established. *Brookfield v. Milwaukee Sewerage District*, 141 Wis. 2d 10, 14, 414 N.W.2d 308 (Ct. App. 1987). The standard of review in sewerage complaints pursuant to Wis. Stat. § 66.0821(5)(a) has been previously explained by the Commission, in recognition of the "legislature granting sewerage system ratemaking authority to the local municipality," to consist of discretion and a degree of deference to the municipality. *See* Final Order, *In re American Mobile Home Communities*, docket 9300-SI-102 (Wis. PSC 2005) 2005 WL 589332; *see also* [PSC REF#: 200761](#). Under this standard of review, the Commission "does not choose or ascertain an ideal or even a preferred method of ratemaking, but rather makes an affirmative determination that the disputed rate is unreasonable." ([PSC REF#: 200761](#).) This does not mean that the Commission automatically approves of any rate set by a municipality, including a metropolitan sewerage district, but that the reasonableness standard puts the responsibility on the complainant to clearly demonstrate the unreasonableness of the rate, rule or practice at issue. *See id.*

In determining whether a rate, rule, or practice is unreasonable or unjustly discriminatory

and determining a reasonable rate, the Commission uses its experience, technical competence, and specialized knowledge to determine the credibility of each witness and the persuasiveness of the highly technical evidence presented on each issue. “The determination of whether [] charges are unreasonable or unjustly discriminatory calls for a value judgment” and “rate setting is an area in which the commission has special expertise.” 141 Wis. 2d at 15.

The Complaint is separated into five issues that will be addressed separately.

Issue 1: Does the Commission have jurisdiction over the complaint pursuant to Wis. Stat. § 66.0821(5)(a)?

Wisconsin Stat. § 66.0821(5)(a) states, “If a user of a service complains to the public service commission that rates, rules and practices are unreasonable or unjustly discriminatory . . . complains that rates are inadequate, the public service commission shall investigate the complaint.” HOVMSD alleged that Kaukauna is not a “user” as used in Wis. Stat. § 66.0821(5)(a). HOVMSD stated that the term “user” is not defined in Wis. Stat. § 66.0821(5)(a), and that a “user” is the end user, namely the person or entity receiving sewerage service. ([PSC REF#: 493424](#).) HOVMSD further argues that, for metropolitan sewerage districts including first class cities, a “user” is defined as “any owner or occupant of a building or lot that is located within the sewerage service area and is furnished with sewerage service.” *See id.* (citing Wis. Stat. § 200.21(12)).² HOVMSD points out that Wis. Stat. § 66.0821(4)(a) states that “[s]ervice charges made by a metropolitan sewerage district to any town, village or city shall be levied by the town, village or city against the individual sewer system users within the corporate limits of the municipality, and the municipality shall collect the charges and promptly remit them to the metropolitan sewer district.” This, it argues, bolsters its position that City of Kaukauna is not a

² Notably, however, HOVMSD does not include a first class city. *See* Wis. Stat. § 62.05(1). Further, City of Kaukauna does present evidence that they do, in fact, own municipal buildings within the service area.

user pursuant to Wis. Stat. § 66.0821(5)(a)—that the users are City of Kaukauna’s sewer customers to whom costs from HOVMSD are passed onto through sewerage rates—and, thus, the Commission does not have jurisdiction over the complaint. *Id.* at 14-15. Kimberly and Little Chute joined the position of HOVMSD. ([PSC REF#: 504098.](#))

Wisconsin Stat. § 66.0821(4)(a), in the sentence before the one cited above by HOVMSD, states that a “municipality may establish sewerage service charges in an amount to meet all or part of the requirements for the construction, reconstruction, improvement, extension, operation, maintenance, repair, and depreciation of the sewerage system, and for the payment of all or part of the principal and interest of any indebtedness incurred for those purposes” Wisconsin Stat. § 66.0821(1)(a) defines “municipality” as including a metropolitan sewerage district. Wisconsin Stat. § 66.0821(4)(b) states that “[f]or the purpose of making equitable charges for all services rendered by the sanitary sewerage system to the municipality or to citizens, corporations and other users, the property benefited by the system may be classified, taking into consideration the volume of water, including surface or drain waters, the character of the sewage or waste and the nature of the use made of the sewerage system” (emphasis added). Immediately following Wis. Stat. § 66.0821(4)’s mandates regarding equitable charges is the Commission’s authority to review complaints regarding “*a user of a service complain[ing] to the public service commission that rates, rules and practices are unreasonable or unjustly discriminatory.*” Here, notably, the “debt allocation” at issue appears to be a “sewerage service charge” under Wis. Stat. § 66.0821(4)(a), and, thus, there does not appear to be any dispute as to its classification as a “rate, rule, or practice.”³ Rates, rules, and practices include service charges. *Wm. H. Heineman Creameries*,

³ The parties do argue whether the “debt allocation” levied by HOVMSD, as assigned to City of Kaukauna, can be defined as a “rate,” with HOVMSD arguing that they are not setting rates—that the individual municipal members,

Inc. v. Vill. of Kewaskum, Washington Cty., 275 Wis. 636, 639, 82 N.W.2d 902 (1957). The only issue, then, in dispute is whether City of Kaukauna is a “user” of a “service” pursuant to Wis. Stat. § 66.0821(5)(a).

Kaukauna argues that it is a “user of the service” of HOVMSD and is entitled to bring a complaint pursuant to Wis. Stat. § 66.0821(5)(a), noting that HOVMSD’s Sewer Use and User Charge Ordinance recognizes each Municipal Customer as a “District Customer” and “User” of HOVMSD’s services. ([PSC REF#: 491926.](#)) Kaukauna alleged that “it has long been recognized that a municipality may be a “user of the service” of another municipality.” (citing *City of Kaukauna v. Public Service Commission*, 271 Wis. 516, 74 N.W.2d 335 (1956)). Kaukauna further alleged that “just as the Villages of Combined Locks, Little Chute, and Kimberly filed a complaint with the Commission in 1979 as customers of HOVMSD [], Kaukauna now files its complaint as a customer of HOVMSD.” ([PSC REF#: 493431.](#))

In *City of Kaukauna v. Public Service Commission*, a contractual dispute over sewerage rates between the city of Kaukauna and the village of Combined Locks came before the Commission under its complaint jurisdiction. 271 Wis. at 518. The city of Kaukauna alleged that the village of Combined Locks was not a “user of a service” provided by the city of Kaukauna pursuant to Wis. Stat. § 66.0821(5)(a).⁴ *See id.* The Supreme Court of Wisconsin found that:

such as City of Kaukauna, are the ones that set rates for their customers when such debt allocation costs are passed through to them. However, such an argument seems to ignore that “rules” and “practices” are still within the Commission’s complaint jurisdiction. The Commission has previously limited the definition of “practice” to include only such practices that are likely to impact rates in some way—however, in the present docket, no party disputes that such debt allocation is a sewerage service charge pursuant to Wis. Stat. § 66.0821(4)(a), nor do they dispute that such a service charge is passed through, in rates, to City of Kaukauna’s individual sewer customers. This means that such a service charge is still likely a “practice” under Wis. Stat. § 66.0821(5)(a).

⁴ The statute at issue in *City of Kaukauna v. Public Service Commission* was Wis. Stat. § 66.076(9), since renumbered to Wis. Stat. § 66.0821(5)(a).

It is our opinion that Combined Locks has been a user of the service if for no other reason than that, as the Commission found, the sewage from the public buildings of the village is delivered into the system. There is, however, a firmer basis for the conclusion. The inhabitants of the two municipalities are the members of and compose the corporations. In a sense, they are the principals who can act only by use of the respective municipalities and through their officers. When the municipality contracts, it contracts for them. The rights defined in the contract are the rights of the inhabitants of Combined Locks. The agreement is the result of negotiations between the people of the two municipalities represented by their respective officers and was made, not for the entity known as a municipality, but for them and, of course, they are the users of the service.

See id. Kaukauna’s ability to act on behalf of its customers, by maintaining an action in which those customers are surely defined as “users of a service,” is also, perhaps, the only way in which such a service charge as is at issue can be challenged at all. The Commission has previously relied on the *City of Kaukauna* case in interpreting whether an entity was a “user” of the services of a sewerage district previously—finding in docket number 9300-SI-115 that a metropolitan sewerage district is a municipality, and that a limited liability company that discharged wastewater into the sewerage district system was a “user” under the Supreme Court’s *City of Kaukauna* decision. ([PSC REF#: 200761.](#))

City of Brookfield v. Milwaukee Metropolitan Sewerage Dist. makes clear that the avenue by which such sewerage service charges must be challenged is filing a complaint with the Commission pursuant to Wis. Stat. § 66.0821(5)(a). *See* 171 Wis. 2d 400, 417-419, 491 N.W.2d 484 (1992). The Supreme Court of Wisconsin explained in *City of Brookfield* that:

Giving effect to the statutes and the PSC's expertise in rate setting, our cases acknowledge that the PSC has “exclusive jurisdiction over complaints alleging unreasonable or discriminatory sewer rates.” *Kimberly-Clark Corp. v. Public Service Comm.*, 110 Wis.2d 455, 461, 329 N.W.2d 143 (1983) (“pursuant to [statute, the forerunner of sec. 66.912(5)], the PSC has exclusive jurisdiction over complaints alleging unreasonable or discriminatory sewerage charges.”); *Williams v. City of Madison*, 15 Wis.2d 430, 441, 442, 113 N.W.2d 395 (1962) (“jurisdiction to determine this issue of discriminatory charges is vested in

the public service commission, not this court.”); *W.H. Heinemann Creameries v. Kewaskum*, 275 Wis. 636, 640, 82 N.W.2d 902 (1956) (“we are not here concerned with the amount of the questioned assessment because the legislature has constituted the public service commission as the exclusive tribunal to pass on that issue.”).

171 Wis. 2d at 418-419. Notably, *City of Brookfield* involved a sewerage district changing how it would charge municipal members for capital costs it incurred, and the Court holding that the Commission had jurisdiction under Wis. Stat. § 66.0821(5)(a) implies that the City of Brookfield was a “user of a service” pursuant to Wis. Stat. § 66.0821(5)(a).

The Commission finds that Kaukauna is a “user” of the sewerage services at issue in the complaint pursuant to Wis. Stat. § 66.0821(5)(a), and the Commission has jurisdiction to investigate the complaint. ([PSC REF#: 506819.](#))

Issue 2: Pursuant to Wis. Stat. § 66.0821(5)(a), is HOVMSD’s volumetric rate unreasonable and unjustly discriminatory as applied to Kaukauna because Kaukauna alleges that HOVMSD’s rates fail to account for the fact that over 25 percent of Kaukauna’s wastewater does not enter the interceptor?

Kaukauna has five metering stations that measure its total wastewater flow. It stated that the wastewater entering Meter Stations 5N, 5S, and 10 flows through HOVMSD’s interceptor. It claimed that flows from Meter Stations 6 and 9 do not enter the interceptor but are conveyed through Kaukauna-owned force mains to the WWTP influent chamber by way of Special Manhole 1. Kaukauna claimed that this flow represents approximately 25 percent of Kaukauna’s annual wastewater discharge, which equates to approximately \$1.4 million in allocated project costs. Kaukauna claimed that this cost should not be billed to Kaukauna because the flows from Meter Stations 6 and 9 do not enter, nor benefit from, the interceptor project.

([PSC REF#: 491900.](#))

HOVMSD claimed that flows from Meter Station 6 and 9 enter Special Manhole 1,

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which was built as part of the HOVMSD interceptor system and will be rehabilitated as part of the proposed interceptor project. Therefore, HOVMSD argued that all of Kaukauna's annual wastewater flow enters the HOVMSD interceptor system and should be included when computing its share of the project cost. ([PSC REF#: 489442.](#)) Kimberly and Little Chute joined the position of HOVMSD. ([PSC REF#: 504098.](#))

The Commission, in evaluating this issue, finds that Special Manhole 1 is part of the interceptor system project scope and, thus, will be improved as part of this project. The Commission finds that the inceptor is a mutually dependent system and that all members rely on the system as a whole. As such, it is not unreasonable for the volume of flow entering the WWTP from Special Manhole 1 to be considered in HOVMSD's volumetric rate.

The Commission determines that HOVMSD's volumetric rate is neither unreasonable nor unjustly discriminatory as evaluated with regards to the volume of Kaukauna's wastewater that enters the interceptor. ([PSC REF#: 506819.](#))

Commissioner Nieto dissents and writes separately (see attached).

Issue 3: Under Wis. Stat. § 66.0821(5)(a), is HOVMSD's adopted cost allocation methodology for its interceptor project unreasonable and unjustly discriminatory as applied to Kaukauna because Kaukauna alleges that it uses only a small portion of HOVMSD's interceptor?

HOVMSD's interceptor serves five member utilities: Kimberly, Darboy, Little Chute, Combined Locks, and Kaukauna. HOVMSD utilized the "reach" method when it allocated the original cost of the interceptor to each member utility. The "reach" method allocated the interceptor costs in proportion to the length of the interceptor that conveyed each member's sewerage to the WWTP. In its prior order dated October 2, 1980, responding to a past complaint, the Commission found that the "reach" method was a reasonable method for

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allocating the interceptor's capital costs.

Kaukauna claimed that the "reach" method is the best method to allocate the cost of the proposed \$21.5 million liner project because the liner project represents a major reconstruction that will extend the useful life of the interceptor by another 50 years. ([PSC REF#: 491902.](#))

Kaukauna claimed that it does not benefit from the upstream interceptor like other customers. It uses only approximately one mile of the 5.5-mile interceptor, while the other four municipal members rely on two to three times that amount of interceptor pipe. ([PSC REF#: 490645.](#))

Kaukauna claimed that it would be able to keep discharging sewerage into the WWTP even if the interceptor failed upstream of its five manholes. During such a pipe failure, Kaukauna claimed that it could plug the interceptor upstream of its five metering stations, thus facilitating repair work while Kaukauna continues to utilize the interceptor. ([PSC REF#: 490641.](#))

Kaukauna calculated that if the project were allocated based on the "reach" method, then its share of the project would be approximately \$1.9 million, or 9.2 percent of the total project cost. If the project cost is allocated to the five member utilities based on the "volume" method, then Kaukauna's share of the project would be approximately \$7.7 million, or 35.8 percent of the total project cost. ([PSC REF#: 491923.](#)) Kaukauna claimed that HOVMSD's volumetric method is unreasonable and unjustly discriminatory because Kaukauna's share of interceptor project costs is 3.5 times more than it would be under a methodology based on cost-of-service principles. Kaukauna alleges that HOVMSD assigned a disproportionate amount of conveyance costs to Kaukauna compared to each municipality's measured use of the interceptor.

HOVMSD claimed that if the interceptor failed upstream of Kaukauna's five manholes, then it would fill with river water. The entire interceptor and WWTP would have to be taken

offline to prevent raw sewage from discharging into the Fox River. The system would fail, which would prevent Kaukauna's wastewater from entering the HOVMSD interceptor system and being treated at the plant. Based on these assumptions, HOVMSD argued that the proposed liner project would directly benefit Kaukauna by preventing such a catastrophe from happening. ([PSC REF#: 489442.](#)) HOVMSD completed a review of the cost allocation methods used on pipeline projects in Wisconsin and found that it is more common to allocate such costs using the "volume" method than the "reach" method. ([PSC REF#: 492040.](#)) Kimberly and Little Chute joined the position of HOVMSD. ([PSC REF#: 504098.](#))

In 1980, the Commission stated that HOVMSD's decision to allocate debt for interceptor construction by reach was a reasonable method but not the only reasonable method. Volumetric debt allocation for projects like HOVMSD's cured-in-place pipe (CIPP) rehabilitation is standard in Wisconsin. Kaukauna admitted that it benefits from upstream interceptor improvements, and Kaukauna can connect to the interceptor upstream. The Commission finds that the interceptor is one system and that all members rely on the system as a whole, it is a mutually dependent system.

The Commission finds that the cost allocation methodology adopted by HOVMSD for its interceptor project is neither unreasonable nor unjustly discriminatory as evaluated with regard to the portion of HOVMSD's interceptor used by Kaukauna. ([PSC REF#: 506819.](#))

Issue 4: Under Wis. Stat. § 66.0821(5)(a), are HOVMSD's rates, rules, or practices unreasonable and unjustly discriminatory as applied to Kaukauna because HOVMSD's rates violate Wis. Stat. § 200.13(3)(b)?

Wisconsin Stat. § 200.13(3)(b) states, "[t]he district may charge to the state, county or municipality the cost of service rendered to any state institution, county or municipality" where

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“district” is defined in Wis. Stat. § 200.01(3) as a “metropolitan sewerage district,” and “municipality” is defined in Wis. Stat. § 200.01(4) as a “town, village, city or county.”

Kaukauna claimed that HOVMSD’s proposed cost allocation method to pay for the sewer interceptor relining project violates Wis. Stat. § 200.13(3)(b) because it charges all five member utilities based on volume of flow entering the WWTP, but the method does not consider the length of the interceptor that each utility uses. ([PSC REF#: 491923.](#)) Essentially, Kaukauna claimed that HOVMSD’s volumetric rate, as a means to recover the costs of the proposed interceptor improvements, does not accurately reflect the cost of service rendered to Kaukauna. ([PSC REF#: 463518.](#))

HOVMSD claimed that Kaukauna’s proximity to the WWTP does not mean that Kaukauna receives a different type, level, or class of service from HOVMSD’s interceptor than the other four municipal members. HOVMSD noted that Kaukauna uses this same volume-based cost allocation method to charge its retail sewer customers. ([PSC REF#: 493424.](#)) HOVMSD states that it has the authority to implement volumetric funding methodology for interceptor operation and maintenance costs pursuant to Wis. Stat. § 200.59. ([PSC REF#: 467472.](#)) HOVMSD states that all municipal members receive the same service: their wastewater systems discharge into HOVMSD’s interceptor, which transports wastewater to the WWTF for treatment and that Kaukauna does not receive a different level of service from HOVMSD’s interceptor because it is geographically closer to the WWTF than other municipalities. Kimberly and Little Chute joined the position of HOVMSD. ([PSC REF#: 504098.](#))

Wisconsin Stat. § 200.13(3)(b) does not itself create a cause of action by which the Commission has jurisdiction to open a docket. However, a complaint within the bounds of the Commission's complaint jurisdiction under Wis. Stat. § 66.0821(5)(a) regarding rates, rules, and/or practices could be informed by or based upon the requirements of Wis. Stat. § 200.13(3)(b). Rates, rules, and practices include service charges, which Wis. Stat. § 200.13(3)(b) authorizes. *Wm. H. Heineman Creameries, Inc. v. Vill. of Kewaskum, Washington Cty.*, 275 Wis. 636, 639, 82 N.W.2d 902 (1957).

It should be noted, however, that Wis. Stat. §§ 200.01 through 200.15 are located in subchapter I, titled "Districts Generally," and Wis. Stat. §§ 200.21 through 200.65 are located in subchapter II, titled "Districts Including 1st Class Cities." Thus, references to Chapter 200.21 and above, such as HOVMSD's reference to Wis. Stat. § 200.59, are inapplicable to this proceeding as HOVMSD does not contain a 1st class city. As Wis. Stat. § 66.0821(4) is also applicable to the present proceeding, and such definitions of permissible costs of service charges are outlined in that statute, the Commission finds that Wis. Stat. § 66.0821(4) informs its determinations as to the reasonableness of said service charges under Wis. Stat. § 200.13(3)(b) and, in turn, Wis. Stat. § 66.0821(5)(a).

The Commission finds that Wis. Stat. § 200.13(3)(b) does not create a separate cause of action in this proceeding and instead is simply informative to its overall reasonableness determinations regarding HOVMSD's volumetric rate at issue. The Commission finds that HOVMSD's rates are neither unreasonable nor unjustly discriminatory as applied to Kaukauna with regard to the cost-of-service principles identified in Wis. Stat. § 200.13(3)(b). ([PSC REF#: 506819.](#))

Issue 5: How should the Commission bill the Commission expenses attributable to this proceeding?

Wisconsin Stat. § 66.0821(5)(a) states that, “[e]xcept as provided in pars. (e) and (f), the [C]ommission shall bill any expense of the [C]ommission attributable to a proceeding under this paragraph to the town, village or city under s. 196.85(1).” In this instance, “town, village or city” refers to the Respondent to the filed complaint, or HOVMSD. However, Wis. Stat. § 66.0821(5)(f)(2)(a) states:

2. The public service commission may bill a complainant for any expense of the commission attributable to a proceeding under par. (a) as follows:
 - a. If the commission determines in the proceeding that the rates, rules, or practices that are the subject of the complaint are not unreasonable, unjustly discriminatory, or inadequate, the commission may require the complainant to pay all or a portion, as determined by the commission, of the expenses.

As the Commission has found that the rates, rules, or practices that were the subject of the complaint were not unreasonable, unjustly discriminatory or inadequate, the Commission has the discretion to require the Complainant to pay all or a portion of the Commission’s expenses. As the complaint was brought in good faith and was not frivolous, the Commission declines to exercise this discretion and instead finds it reasonable to assess HOVMSD for all of the Commission expenses associated with the proceeding in this docket. ([PSC REF#: 506819.](#))

Order

1. The Commission finds that Kaukauna is a “user” of the sewerage services at issue in the complaint pursuant to Wis. Stat. § 66.0821(5)(a), and that the Commission has jurisdiction to investigate the complaint.
2. The cost allocation methodology adopted by HOVMSD for its interceptor project is neither unreasonable nor unjustly discriminatory.

Docket 9300-SI-126

3. It is reasonable to assess HOVMSD for all Commission expenses associated with the proceeding in this docket.

4. This Final Decision takes effect one day after the date of service.

5. Jurisdiction is retained.

Dissent

Commissioner Nieto dissents and writes separately.

Dated at Madison, Wisconsin, the 10th day of September, 2024.

By the Commission:

A handwritten signature in black ink, appearing to read 'Cru Stubley', with a long horizontal flourish extending to the right.

Cru Stubley
Secretary to the Commission

CS:SPK:kr1:kle DL:00941827

Attachments: Notice of Rights
Appendix A
Commissioner Nieto Dissent

PUBLIC SERVICE COMMISSION OF WISCONSIN
4822 Madison Yards Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.⁵ The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013

⁵ See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

APPENDIX A

CONTACT LIST FOR SERVICE BY PARTIES

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PUBLIC SERVICE COMMISSION OF WISCONSIN

Complaint of City of Kaukauna against Heart of the Valley Metropolitan
Sewerage District Concerning Sewer Rates

9300-SI-126

DISSENT OF COMMISSIONER KRISTY NIETO

I write separately to briefly explain my dissenting position from the Commission decision to dismiss the complaint of City of Kaukauna (Kaukauna) against Heart of the Valley Metropolitan Sewerage District (HOVMSD) concerning sewer rates.

I would have ordered this matter be set for hearing to determine reasonable rates, rules and practices for HOVMSD and its members pursuant to Wis. Stat. § 66.0821(5)(a).

Kaukauna provided substantial evidence that 25 percent of its wastewater enters directly into the influent chamber. Kaukauna showed that the influent chamber is not a part of HOVMSD's conveyance facilities but rather part of HOVMSD's Wastewater Treatment Plant (WWTP) facilities.¹ HOVMSD based its uniform volumetric cost allocation approach on an assertion that all five users receive the same service, *conveyance*,² then unreasonably included wastewater volumes that are *not conveyed* in calculating the proportionate share of responsibility for the Interceptor Project among the users.

HOVMSD used a uniform rate to allocate responsibility for the Interceptor Project costs on a volumetric basis, asserting that all five users receive conveyance and generally take part in the benefits of a shared, interdependent system. In allocating costs, HOVMSD did not rely upon:

- measured concentrations;
- distance, geography, or terrain;

¹ Direct-COK-Neumeier-r: 4-6 ([PSC REF#: 491900](#)); Ex.-COK-Neumeier-02r: III-12, diagram PFD1 ([PSC REF#: 491906](#))

² Direct-HOVMSD-DeMaster-r: p. 6-7 ([PSC REF#: 492040](#))

- measured volumes passing through specific segments of the interceptor; or
- measured volumes passing through the interceptor vs. entering the influent chamber.

I did not find substantial evidence that any one aspect of this approach was unreasonable *per se*. I can understand my colleagues' views regarding this matter. I respect their analysis and the proper care they took to grant deference to HOVMSD.

In my view, Kaukauna's proportion of the project costs under the uniform volumetric method already skewed towards the high end of the of the range of reasonableness, even if HOVMSD had *not* taken the volume entering the influent chamber into its calculation, and even *with* due deference granted. HOVMSD had a full range of options but did not rely upon readily available cost information at a number of key decision points in the rate setting process, to the cost of one customer. HOVMSD eschewed cost-based rate differentials in favor of a uniform rate for services it regarded as "the same," based on a broad classification of a conveyance class. Again, this "rate uniformity beyond the limits justified by the advantages of simple rate structures"³ may or may not be unjustly discriminatory in and of itself.

I find substantial evidence, however, that the use of a uniform volumetric rate, when taken together with the decision to include in the allocation wastewater volumes not entering the interceptor, but directly entering only the influent chamber or WWTP, resulted in unreasonable and unjustly discriminatory rates, and respectfully dissent.

DL:02027592

³ See Bonbright, James C. Principles of Public Utility Rates, 1961, p. 125, cited in Ex.-COK-Stannard-02r:10.