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Senate Bill 14

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1985 Wisconsin Act 79

AN ACT to amend 184.01 (2) and 196.01 (5); and to create 20.155 (1) (h), 196.795 and 196.84 of the statutes, relating to the formation of holding companies by certain public utilities and the regulation of certain holding companies by the public service commission, granting rule-making authority and making an appropriation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Findings and purpose. The legislature finds that:

(1) The managements of several large nontelecommunications public utilities operating within this state have indicated an intent to reorganize the public utilities into public utility holding companies, in which the public utilities would be subsidiaries, for the purpose of acquiring and investing in nonutility business activities.

(2) The opportunity for nontelecommunications public utilities to reorganize to form holding companies to conduct nonutility business activities currently exists because of limited future utility reinvestment requirements and the need to achieve an appropriate level of common equity in utility capital structures to ensure reasonable rates for consumers.

(3) The state has a legitimate interest in regulating the structure of nontelecommunications public utilities and their holding companies to ensure the ability of the public utilities to continue to provide safe, reliable and reasonably priced service to consumers.

(4) The maintenance of a financially healthy nontelecommunications public utility is contingent

upon the maintenance of an economically healthy service area.

(5) The public interest and the interest of investors and consumers can be benefited if public utility holding companies, in the service territories of their public utility affiliates or in this state:

(a) Conduct substantial business activities.

(b) Attract new businesses.

(c) Expand existing businesses.

(d) Provide investment capital for new business ventures.

(e) Otherwise directly or indirectly promote employment and commerce.

(6) Utility consumers and investors benefit when a nontelecommunications public utility reduces the cost or increases the reliability of utility service through such means as conservation and renewable energy or businesses functionally related to the provision of utility service.

(7) The public interest and the interest of investors and consumers can be protected if:

(a) Transactions between a public utility in a public utility holding company system and the holding company or its nonutility affiliates are subject to public

service commission approval and regulation to assure that reasonable prices are charged and costs properly allocated.

(b) The nonutility activities of the public utility holding company system do not substantially lessen competition, do not tend to create a monopoly or restrain trade and do not constitute an unfair business practice.

(c) The public utility activities of a nontelecommunications public utility in a public utility holding company system remain subject to public service commission jurisdiction and regulation.

(d) The activities of the public utility holding company system do not cause any materially detrimental effect on the public utility's rates for or reliability of utility service to the public, cost of capital or ability to raise capital.

(e) The public service commission has access to the books and records of the public utility holding company system to the extent relevant for the commission to regulate any public utility in the system.

(f) The provision of reliable and reasonably priced public utility service remains the predominant business of a public utility holding company system.

(8) It is appropriate for this state, in its regulation of public utilities which participate in holding companies, to recognize the differences between utilities according to the type of service provided.

SECTION 2. 20.155 (1) (h) of the statutes is created to read:

20.155 (1) (h) *Holding company regulation.* All moneys received by the commission under s. 196.84, for the regulation of holding companies under s. 196.795.

SECTION 3. 184.01 (2) of the statutes is amended to read:

184.01 (2) "Public service corporation" means and embraces every corporation, except municipalities and other political subdivisions, which is a public utility as defined in s. 196.01, and every corporation which is a railroad as defined in s. 195.02, but shall not include a public utility corporation receiving an annual gross revenue of less than \$1,000 for the calendar year next preceding the issuance of any securities by it. "Public service corporation" includes a holding company, as defined under s. 196.795 (1) (h), which is a public utility, as defined under s. 196.01 (5). "Public service corporation" does not include any other holding company unless the holding company was formed after the effective date of this act ... [revisor inserts date], and unless the commission has determined, under s. 196.795 (7) (a), that each nonutility affiliate, as defined under s. 196.795 (1) (i), does not and cannot reasonably be expected to do at least one of the items specified in s. 196.795 (7) (a). "Public service corporation" does not include a company, as defined in s. 196.795 (1) (f), which owns, operates, manages or controls a telecommunications public utility, as defined in s. 196.795 (1) (p), unless such company also owns,

operates, manages or controls a public utility which is not a telecommunications public utility or unless such company is a telecommunications public utility.

SECTION 4. 196.01 (5) of the statutes is amended to read:

196.01 (5) "Public utility" means 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 conveyance of telephone messages, for the receiving, transmitting or delivery of messages by telegraph, or for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for the public. "Public utility" does not include a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power or water to its members only. "Public utility" includes any person engaged in the transmission or delivery of natural gas for compensation within this state by means of pipes or mains and any person, except a governmental unit, who furnishes services by means of a sewerage system either directly or indirectly to or for the public. "Public utility" does not include a holding company, as defined in s. 196.795 (1) (h), unless the holding company furnishes, directly to the public, telephone, telegraph or sewer service, heat, light, water or power or, by means of pipes or mains, natural gas. "Public utility" does not include any company, as defined in s. 196.795 (1) (f), which owns, operates, manages or controls a telecommunications public utility, as defined in s. 196.795 (1) (p), unless the company furnishes, directly to the public, telephone, telegraph or sewer service, heat, light, water or power or, by means of pipes or mains, natural gas.

SECTION 5. 196.795 of the statutes is created to read:

196.795 Public utility holding companies. (1) DEFINITIONS. In this section:

(a) "Affiliated interest" has the meaning given under s. 196.52 (1).

(b) "Appliance" means any equipment used directly for cooking, drying, water tempering, space heating, space cooling or space ventilation. "Appliance" does not include equipment or devices which monitor or control the primary energy supply or source for any equipment used directly for cooking, drying, water tempering, space heating, space cooling or space ventilation.

(c) "Beneficial owner" means, with respect to a security, any person who in any way has the unconditional power to vote or receive the economic gains or losses of the security. "Beneficial owner" does not mean, with respect to a security, any person, including but not limited to any of the following, holding the security for another person:

1. The trustee of a qualified employe plan.

2. The trustee of a stock purchase plan or a dividend reinvestment plan.

3. A pledgee.

4. A nominee.

5. A broker or an agent.

6. An underwriter for the first 40 days following acquisition of securities from an issuer if the securities are held in the underwriter's own account.

(e) "Commercial building" means any building which is used primarily for carrying out any business, including but not limited to a nonprofit business, and any building which is used primarily for the manufacture or production of products, raw materials or agricultural commodities.

(f) "Company" means any partnership, corporation, joint-stock company, business trust or organized group of persons, whether incorporated or not, and any receiver, trustee or other liquidator of a partnership, association, joint-stock company, business trust or organized group of persons. "Company" does not include a municipality or other political subdivision.

(g) "Form a holding company" means any of the following:

1. As a beneficial owner, to take, hold or acquire 5% or more of the outstanding voting securities of a public utility with the unconditional power to vote those securities.

2. To exchange or convert 50% or more of the outstanding voting securities of a public utility, other than a municipality or other political subdivision, for or into the voting securities of a company organized, created, appointed or formed by or at the direction of the public utility or of a subsidiary of such company.

(h) 1. "Holding company" means any of the following:

a. Any company which, in any chain of successive ownership, directly or indirectly as a beneficial owner, owns, controls or holds 5% or more of the outstanding voting securities of a public utility, with the unconditional power to vote such securities.

b. Any person which the commission determines, after investigation and hearing, directly or indirectly, exercises, alone or under an arrangement or understanding with one or more persons, such a controlling interest over the management or policies of a public utility as to make it necessary or appropriate in the public interest or for the protection of the utility's consumers or investors that such person be subject to this section.

2. "Holding company", except for purposes of s. 196.795 (11) (b), does not mean any company which owns, operates, manages or controls a telecommunications public utility, unless such company also owns, operates, manages or controls a public utility which is not a telecommunications public utility.

(i) "Holding company system" means a holding company and any public utility with which the holding company is an affiliated interest and any company

which is an affiliated interest with such public utility and any other company more than 5% of whose ownership interest is owned directly or indirectly in any chain of successive ownership by such public utility or by such company which is an affiliated interest with such public utility.

(j) "Nonutility affiliate" means a company in a holding company system which is not a public utility.

(k) "Person" means an individual or company.

(L) "Public utility affiliate" means a company which is in a holding company system and which is a public utility.

(Lm) "Public utility affiliate employe" means any individual who is in the regular employ of a public utility affiliate, except any officer or director and any officer's or director's incidental supporting staff and except such personnel as is required by the public utility affiliate's organizational structure to perform such functions as accounting consolidation.

(m) "Sell at retail" means to sell an appliance to a person who is the consumer or user of the appliance.

(o) "Subsidiary" has the meaning given under s. 180.725 (1) (m).

(p) "Telecommunications public utility" means any company, including any company appointed by a court, which owns, operates, manages or controls all or any part of a plant or equipment in this state for the conveyance of telephone messages or for the receiving, transmitting or delivery of messages by telegraph.

(2) HOLDING COMPANY FORMATION. (a) No person may form a holding company unless the person has received a certificate of approval from the commission under this subsection.

(b) An application for a certificate of approval to form a holding company is complete if it contains all of the following information:

1. The names and corporate relationships of all companies which will be in the holding company system with the applicant when the applicant forms the holding company and the name of the applicant and any parent or subsidiary corporation of the applicant.

2. A description of how the applicant plans to form the holding company including, if available at the time of application:

a. Copies of the organizational documents associated with the holding company formation, including articles of incorporation or amendments to the articles of incorporation of all companies which will be in the holding company system with the applicant when the applicant forms the holding company.

b. Copies of any filings, including securities filings, related to the formation of the holding company made with any agency of this state or the federal government.

3. The costs and fees attributable to the formation of the holding company.

4. The method by which management, personnel, property, income, losses, costs and expenses will be

allocated within the holding company system between public utility affiliates and nonutility affiliates.

5. A copy of any proposed agreement between a public utility affiliate and any person with which it will be an affiliated interest at the time the holding company is formed.

6. An identification of all public utility assets or information in existence at the time of formation of the holding company, such as customer lists, which the applicant plans to transfer to or permit a nonutility affiliate, with which it is in the holding company system, to use. The identification shall include a description of the proposed terms and conditions under which the assets or information will be transferred or used.

7. A copy of a financial forecast showing the capital requirements of every public utility affiliate which at the time of the formation of the holding company will be within the holding company system. The financial forecast shall include for each public utility affiliate on an annual basis for 10 years following the year of application:

- a. Projected capital requirements.
- b. Sources of capital.
- c. An itemization of major capital expenditures.
- d. Projected capital structure.
- e. An estimated amount of retained earnings available for nonutility purposes.

f. The assumptions underlying the information included in the financial forecast under subd. 7. a to e.

(c) No later than 30 days after the commission receives an application for a certificate of approval to form a holding company under this subsection, the commission shall determine whether such application is complete as specified under par. (b). If the commission determines that the application is complete, the commission shall docket the application for a determination under this paragraph. If the commission determines the application to be incomplete, the commission shall notify the applicant in writing of its determination, identify any part of the application which the commission has determined to be incomplete and state the reasons for such determination. An applicant may supplement and refile an application which the commission has determined to be incomplete under this paragraph. There is no limit on the number of times an applicant may refile an application under this paragraph prior to a determination under par. (e). If the commission fails to make a determination regarding the completeness of an application within 30 days after the application has been filed, the application shall be deemed to be complete.

(d) The commission shall hold a hearing concerning an application for a certificate of approval to form a holding company under this subsection. The hearing may not be a hearing under s. 227.064 or 227.07.

(e) No later than 120 days after an application has been docketed under par. (c), the commission shall issue its findings of fact, conclusions of law and special

order approving or rejecting the application. The commission shall issue a certificate of approval to form a holding company unless it finds that the formation of the holding company would materially harm the interests of utility consumers or investors. The commission, in issuing a certificate of approval under this subsection, may only impose terms, limitations or conditions on such approval which are consistent with and necessary to satisfy the requirements of sub. (5) (b) to (s).

(f) At any time subsequent to the time the commission approves the formation of a holding company under par. (e), the commission may, after notice and opportunity for hearing, modify any term, limitation or condition imposed under par. (e) or add any limitation, term or condition under par. (e). Any term, limitation or condition modified or added under this paragraph shall be consistent with and necessary to satisfy the requirements of sub. (5) (b) to (s).

(3) TAKEOVERS. No person may take, hold or acquire, directly or indirectly, more than 10% of the outstanding voting securities of a holding company, with the unconditional power to vote those securities, unless the commission has determined, after investigation and an opportunity for hearing, that the taking, holding or acquiring is in the best interests of utility consumers, investors and the public. This subsection does not apply to the taking, holding or acquiring of the voting securities of any holding company existing before the effective date of this subsection [revisor inserts date], if such holding company is a company which provides public utility service.

(4) CAPITAL IMPAIRMENT. If the commission finds that the capital of any public utility affiliate will be impaired by the payment of a dividend, the commission may, after an investigation and opportunity for hearing, order the public utility affiliate to limit or cease the payment of dividends to the holding company until the potential for impairment is eliminated.

(5) REGULATION OF HOLDING COMPANY SYSTEMS. (a) No holding company which is not a public utility and no nonutility affiliate is subject to any regulatory power of the commission except under this section, ss. 196.52, 196.525 and 196.84 and except under ch. 184 if the commission has made a determination under sub. (7) (a) which makes such holding company a public service corporation, as defined under s. 184.01 (2).

(b) The commission has full access to any book, record, document or other information relating to a holding company system to the extent that such information is relevant to the performance of the commission's duties under ch. 184, this chapter or any other statute applicable to the public utility affiliate. The commission may require a holding company to keep any record or document which is necessary for the commission to perform its duties under this section and which is consistent with generally accepted accounting and recordkeeping practices of the particular type of business involved. Any information

obtained under this paragraph is subject to sub. (9), when applicable.

(c) No public utility affiliate may lend money to any holding company which is not a public utility or to any nonutility affiliate with which it is in the holding company system.

(d) No public utility affiliate may guarantee the obligations of any nonutility affiliate with which it is in a holding company system.

(dm) No public utility affiliate may provide utility service to any consumer of such public utility service or to any nonutility affiliate with which the public utility affiliate is in a holding company system except on the same terms or conditions that it provides such utility service to consumers in the same class.

(dr) No public utility affiliate may provide any nonutility product or service in a manner or at a price that unfairly discriminates against any competing provider of the product or service.

(f) No nonutility activity of any holding company or nonutility affiliate may be subsidized materially by the consumers of any public utility affiliate with which the holding company or nonutility affiliate is in the holding company system. No public utility activity of any holding company or public utility affiliate may be subsidized materially by the nonutility activities of the holding company or any of its nonutility affiliates.

(g) No holding company system may be operated in any way which materially impairs the credit, ability to acquire capital on reasonable terms or ability to provide safe, reasonable, reliable and adequate utility service of any public utility affiliate in the holding company system.

(h) No public utility affiliate may transfer to any company with which it is in a holding company any confidential public utility information, including but not limited to customer lists, which will be transferred or used for any nonutility purpose by any holding company or nonutility affiliate unless the public utility affiliate has applied for and received the written approval of the commission for the transfer. The commission shall condition approval of such a transfer upon the applicant's providing adequate notice of the availability of such information to the public and making the information available to any person at a cost not to exceed the cost of reproduction. The commission may not approve any transfer which would foster unfair or discriminatory business practices, or which would destroy or hamper competition through conduct which violates ch. 133 or any other applicable state or federal antitrust law.

(i) In its determination of any rate change proposed by a public utility affiliate under s. 196.20, the commission:

1. Shall consider the public utility affiliate as a wholly independent corporation;

2. May not attribute to that public utility affiliate any tax benefit or other benefit or tax liability or other liability resulting from the operations of the holding

company or of any subsidiary of the holding company; and

3. May not attribute to the holding company or to any subsidiary of the holding company any tax benefit or other benefit or tax liability or other liability resulting from the operations of that public utility affiliate.

(j) Every public utility affiliate is subject to every law, regulation and precedent applicable to the regulation of public utilities.

(k) 1. Except as provided under subd. 2, no public utility affiliate may transfer, sell or lease to any nonutility affiliate with which it is in a holding company system any real property which, on or after the effective date of this subdivision [revisor inserts date], is held or used for provision of utility service except by public sale or offering to the highest qualified bidder.

2. A public utility affiliate may lease or rent office space to a holding company or any nonutility affiliate with which it is in a holding company system at not less than fair market value. A public utility affiliate may transfer real property which is contiguous to and used by the public utility affiliate for providing public access to a federally licensed hydroelectric project to a nonutility affiliate.

(L) Any holding company which is incorporated shall be incorporated under ch. 180.

(m) 1. No holding company system may take any action to terminate its interest in a public utility affiliate without notice to and approval of the commission. If the commission grants approval, it may impose conditions with respect to the division and allocation of plant, equipment, resources and any other asset necessary to protect the interests of utility consumers and investors and the public.

2. If a holding company system terminates its interest under subd. 1 in all public utility affiliates with which it is in a holding company system, no company remaining in the holding company system is subject to any regulatory power of the commission.

(n) A public utility affiliate may not engage in any combined advertising, directly or indirectly, with any nonutility affiliate with which it is in a holding company system within this state except for purposes of corporate identification and noncompetitive purposes.

(o) The assets of every company in a holding company system shall be as recorded on the books of accounting record of the company, net of any applicable valuation accounts, including but not limited to accumulated depreciation and allowance for uncollectible accounts, as of the end of the prior year.

(p) 1. The sum of the assets of all nonutility affiliates in a holding company system of any holding company formed on or after the effective date of this subdivision [revisor inserts date], may not exceed the sum of the following:

a. Twenty-five percent of the assets of all public utility affiliates in the holding company system

engaged in the generation, transmission or distribution of electric power.

b. A percentage of the assets, as determined by the commission, which may be more, but may not be less, than 25% of all public utility affiliates in the holding company system engaged in providing utility service other than the generation, transmission or distribution of electric power.

c. For any public utility affiliate which is in the holding company system and which engages in the provision of more than one type of utility service, a percentage of assets equal to the amount of the public utility affiliate's assets devoted to public utility service, other than the generation, transmission and distribution of electric power, multiplied by a percentage, as determined by the commission, which may be more, but may not be less, than 25%, plus 25% of all remaining assets of such public utility affiliate.

2. For purposes of subd. 1, the assets of each nonutility affiliate shall be determined by doing all of the following:

a. Subtracting from the nonutility affiliate's total assets the amount of the nonutility affiliate's investment in other utility and nonutility affiliates with which the nonutility affiliate is in a holding company system.

b. Multiplying the amount derived under subd. 2. a by the quotient of the amount of the direct ownership interest in such nonutility affiliate owned by persons who are not with the nonutility affiliate in the holding company system, if such ownership by such persons is greater than one-half of the total ownership interest in such nonutility affiliate, divided by the total ownership interest in such nonutility affiliate.

c. Subtracting the amount derived under subd. 2. b from the amount derived under subd. 2. a.

3. Within 36 months after it is formed, a holding company formed on or after the effective date of this subdivision ... [revisor inserts date], may not have nonutility affiliate assets exceeding 40% of the maximum amount allowed under subd. 1.

4. If the commission establishes a percentage of assets under subd. 1. b or c which is greater than 25%, any subsequent reduction of such percentage by the commission may not take effect until the last day of the 12th month following issuance of the order establishing the reduction or until a later date which the commission sets and which the commission determines to be reasonable after considering the size of the reduction and which is no later than 36 months following issuance of the order establishing the reduction.

(q) 1. No nonutility affiliate or joint venture or partnership with a nonutility affiliate as a member or partner may, in the service territory of a public utility affiliate with which it is in a holding company system, sell at retail, lease, install, maintain or service any appliance that uses as its primary energy source energy supplied by that public utility affiliate under

rates and tariffs approved by the commission, if the appliance is, or is intended to be, located in any building used primarily for residential occupancy or in any commercial building unless the building is owned or operated by the holding company or by its nonutility affiliates or unless the commission determines, after notice and hearing, that the selling at retail, leasing, installing, maintaining or servicing of the appliance will not do any of the following:

a. So as to violate ch. 133 or any other applicable state or federal antitrust law, lessen competition or tend to create a monopoly, restrain trade or constitute an unfair business practice.

b. Make use of any customer list, other confidential information, logo or trademark obtained from a public utility affiliate in a manner unfair to competitors.

2. Except as provided under subd. 3, no public utility affiliate or its subsidiary or joint venture or partnership having a utility affiliate or its subsidiary as a member or partner may, in the service territory of the public utility affiliate, sell at retail, lease, install, maintain or service any appliance that uses as its primary energy source energy supplied by that public utility affiliate under rates and tariffs approved by the commission, unless the appliance is located in facilities owned or operated by that public utility affiliate or its subsidiary or unless the appliance is sold, leased, installed, maintained or serviced:

a. In response to circumstances which reasonably appear to the public utility affiliate or its subsidiary to endanger human health or life or property;

b. Under any appliance sale or service plan or program in effect on March 1, 1985; or

c. Under any energy conservation or other program which a state law, state agency, federal law or federal agency requires the public utility or public utility affiliate to perform.

3. Notwithstanding subd. 2, a public utility affiliate or its subsidiary may sell, lease, install, maintain or service an appliance which is in its public utility service territory and which uses as its primary energy source energy supplied by the public utility affiliate under rates and tariffs approved by the commission if:

a. The installation, maintenance or service of the appliance is performed by an independent contractor which is not in the holding company system of the public utility affiliate and which is regularly engaged in, qualified and, if required by any state or local governmental unit, licensed to perform heating, ventilation, air conditioning, electrical or plumbing work; or

b. The commission determines, after notice and hearing, that the sale, lease, installation, maintenance or service of the appliance, if conducted by the public utility affiliate's employes or by the employes of the public utility affiliate's subsidiary, will not, so as to violate ch. 133 or any other applicable state or federal antitrust law, lessen competition, tend to create a monopoly, restrain trade or constitute an unfair business practice.

4. No nonutility affiliate may sell at wholesale to any person any appliance, except a swimming pool or spa heater, for delivery in this state unless the nonutility affiliate is engaged in the production, manufacture, fabrication or assembly of any component part of the appliance.

(r) No public utility affiliate may permit the use of any public utility affiliate employee's services by any nonutility affiliate with which it is in a holding company system except by contract or arrangement. Any such contract or arrangement made or entered into on or after the effective date of this paragraph [revisor inserts date], for the use of any public utility affiliate employee's services by a nonutility affiliate shall have prior written approval of the commission before it is effective. The commission shall approve such contract or arrangement if it is established upon investigation that the nonutility affiliate will compensate the public utility affiliate for the use of the employee's services at the fair market value of the employee's service and that the nonutility affiliate's use of the employee's services will not result in unjust discrimination against, or have an anticompetitive impact on, any competitor of the nonutility affiliate. The commission may not approve any such contract or arrangement if it determines that the potential burden of administering such contract or arrangement is greater than the potential benefits to the public utility affiliate's customers or if it determines that the public utility affiliate has not minimized the use of such employees by nonutility affiliates in the holding company system. Any contract or arrangement in effect on the effective date of this paragraph [revisor inserts date], for the continued or future use of any public utility affiliate employee's services by a nonutility affiliate approved under s. 196.52 shall be resubmitted for approval by the commission under this paragraph within 90 days after the effective date of this paragraph [revisor inserts date]. Such contract or arrangement, if approved by the commission, shall take effect within 60 days after the date of approval.

(s) In this paragraph, "property" means any equipment, facilities, property or other nonmonetary item of value except real property and utility service which is provided by the public utility affiliate on the same terms or conditions to all consumers in the same class. No public utility affiliate may sell, lease, transfer to or exchange with any nonutility affiliate with which it is in a holding company system any property except by contract or arrangement. Any such contract or arrangement made or entered into on or after the effective date of this paragraph [revisor inserts date], for the sale, use, transfer or exchange of any public utility affiliate's property by a nonutility affiliate shall have the prior written approval of the commission before it is effective. The commission shall approve such contract or arrangement if it is established upon investigation that the nonutility affiliate will compensate the public utility affiliate for selling,

leasing, transferring to or exchanging with the nonutility affiliate any property at the fair market value of the property and that the nonutility affiliate's acquisition or lease of the property will not result in unjust discrimination against, or have an anticompetitive impact on, any competitor of the nonutility affiliate. The commission may not approve any such contract or arrangement if it determines that the potential burden of administering such contract or arrangement is greater than the potential benefits to the public utility affiliate's customers or if it determines that the public utility affiliate has not minimized selling, leasing, transferring to or exchanging with nonutility affiliates in the holding company system such property. Any contract or arrangement which is in effect on the effective date of this paragraph [revisor inserts date], for a public utility affiliate to sell, lease, transfer to or exchange with a nonutility affiliate, on a continuing basis or in the future, the public utility affiliate's property and which is approved under s. 196.52 shall be resubmitted for approval by the commission under this paragraph within 90 days after the effective date of this paragraph [revisor inserts date]. Such contract or arrangement, if approved by the commission, shall take effect within 60 days after approval.

(6) REPORTING REQUIREMENTS. No more than 10 business days after a holding company forms, organizes or acquires a nonutility affiliate, the holding company shall notify the commission of the formation, organization or acquisition and shall provide the commission with the following information:

(a) The name, identification of officers and corporate relationship of the nonutility affiliate to the holding company and utility affiliate.

(b) A copy of any proposed agreement or arrangement between the nonutility affiliate and the public utility affiliate.

(c) A brief description of the nature of the business of the nonutility affiliate, including its most recent public annual financial statement.

(d) As of the last day of the calendar year immediately preceding the date of the notification under this subsection, the total amount of assets held by the nonutility affiliate, the amount of such assets located within this state, the total number of employees and the total number of employees located in this state. The holding company shall report the information required under this paragraph to the commission annually no later than March 31. The information shall be available to the public upon filing.

(7) COMMISSION INVESTIGATIONS. (a) No sooner than the first day of the 36th month after the formation of a holding company and at least once every 3 years thereafter, the commission shall investigate the impact of the operation of every holding company system formed on or after the effective date of this paragraph [revisor inserts date], on every public utility affiliate in the holding company system and shall determine whether each nonutility affiliate does, or

can reasonably be expected to do, at least one of the following:

1. Substantially retain, substantially attract or substantially promote business activity or employment or provide capital to businesses being formed or operating within the wholesale or retail service territory, within or outside this state, of:

a. Any public utility affiliate.

b. Any public utility or member of a cooperative association organized under ch. 185 which files or has filed a plan under s. 196.491 (2).

2. Increase or promote energy conservation or develop, produce or sell renewable energy products or equipment.

3. Conduct a business that is functionally related to the provision of utility service or to the development or acquisition of energy resources.

4. Develop or operate commercial or industrial parks in the wholesale or retail service territory of any public utility affiliate.

(am) Funds utilized by a nonutility affiliate for any of the following may not be considered by the commission in making any determination under par. (a):

1. The purchase or sale of securities or other appropriate cash management practices.

2. The establishment and maintenance of cash accounts in banks or other financial institutions.

(ar) Three years after the formation of a holding company under this section, the commission shall report its findings under par. (a) to the legislature. Thereafter the commission shall, based on its existing investigative findings, rate reviews and other relevant information, submit to the legislature a report on the impact of the holding company, including the benefits and adverse effects on every public utility affiliate in the holding company system and on the investors and consumers of such public utility affiliates, at least once every 2 years. The report shall include any recommendations for legislation relating to the regulation of any part of a holding company system.

(b) The commission, on its own motion, or, at its discretion, upon the complaint of any person, may, after reasonable notice and an opportunity for hearing, conduct an investigation to determine if any practice of a holding company system violates any provision of sub. (5) (b) to (s) or any limitation, term or condition imposed under sub. (2) (e) or (f). If the commission finds after investigation, notice and opportunity for hearing that any practice of any company in a holding company system violates any provision of sub. (5) (b) to (s) or any term, limitation or condition imposed under sub. (2) (e) or (f), the commission, by order or otherwise, shall direct the company to modify or cease the practice. Such order is reviewable under ch. 227. The circuit court of Dane county, by appropriate process including the issuance of a preliminary injunction by suit of the commission, may enforce an order to cease or modify a practice under this paragraph.

(c) The commission, after investigation and a hearing, may order a holding company to terminate its interest in a public utility affiliate on terms adequate to protect the interests of utility investors and consumers and the public, if the commission finds that, based upon clear and convincing evidence, termination of the interest is necessary to protect the interests of utility investors in a financially healthy utility and consumers in reasonably adequate utility service at a just and reasonable price. The circuit court of Dane county may enforce by appropriate process an order establishing a plan of reorganization to terminate a holding company system's interest in a public utility affiliate. Any such order of the commission issued under this paragraph may be reviewed under ch. 227.

(8) EXEMPTIONS. (a) This section does not apply to any holding company which was organized or created before the effective date of this paragraph ... [revisor inserts date], and which was not organized or created by or at the direction of a public utility.

(b) This section does not apply to any telecommunications public utility.

(9) PROTECTION OF BUSINESS INFORMATION. Notwithstanding s. 19.35 or 196.14, if the commission obtains business information from a holding company system which, if disclosed to the public, would put any part of the holding company system at a material competitive disadvantage, the commission shall protect such information from public disclosure as if it were a trade secret.

(9m) PRIVATE CAUSE OF ACTION. Any company in a holding company system which does, causes or permits to be done any prohibited action under sub. (5) (c) to (dr), (f), (h), (k), (n), (q), (r) or (s), or fails to comply with any term, limitation or condition imposed under sub. (2) (e) or (f) consistent with sub. (5) (c) to (dr), (f), (h), (k), (n), (q), (r) or (s), is liable to any person injured thereby in treble the amount of damages sustained in consequence of the prohibited action or failure to act.

(10) COMMISSION INTERVENOR AUTHORITY. The commission may intervene on behalf of this state in any proceeding before any state or federal agency or court before which an application or issue related to this section is pending. The commission may enter into any binding settlement related to any proceeding in which the commission has intervened and may exercise any power or right necessary to accomplish the intervention.

(10m) SMALL BUSINESS PROTECTION. In this subsection, "small business" means a business which has had less than \$5,000,000 in gross annual sales in the most recent calendar year or fiscal year and which has less than 150 employees. The commission shall provide assistance, monitoring and advocacy in protecting small business interests under s. 196.795 in any action or proceedings before the commission.

(11) CONSTRUCTION. (a) This section may not be deemed to diminish the commission's control and reg-

ulation over the operations and assets of any public utility.

(b) This section shall be deemed to legalize and confirm the formation, prior to the effective date of this paragraph [revisor inserts date], of any holding company, which is not itself a public utility, and shall be deemed to legalize and confirm the operations and issuances of securities of the holding company, except that nothing in this section shall be deemed to prevent the commission from imposing reasonable terms, limitations or conditions on any holding company which are consistent with and necessary to satisfy the requirements of sub. (5) (b) to (o) and (q) to (s) or which relate to future investments by the holding company unless the holding company owns, operates, manages or controls a telecommunications public utility and does not also own, operate, manage or control a public utility which is not a telecommunications public utility.

SECTION 6. 196.84 of the statutes is created to read:

196.84 Payment of commission's holding company regulation costs. Under rules promulgated by the commission, a holding company, as defined in s. 196.795 (1) (h) or a nonutility affiliate, as defined under s. 196.795 (1) (j), shall compensate the commission for the cost of any increase in regulation of any public utility affiliate, as defined under s. 196.795 (1) (L), which is with the holding company or nonutility affiliate in a holding company system as defined in s. 196.795 (1) (i), if the commission determines that the increase is reasonably required in order for the commission to implement and enforce s. 196.795. Such compensation may not be recovered directly or indirectly from any public utility affiliate. The commission shall assess such compensation using the procedure prescribed in s. 196.85, except that no advance payment of a remainder assessment under s. 196.85 (2) may be required for the first 2 fiscal years

after the effective date of this section [revisor inserts date]. No assessment for costs which are not reasonably required for the implementation or enforcement of s. 196.795 may be assessed against a holding company or nonutility affiliate under this section. No assessment may be made under this section against any holding company or nonutility affiliate for any time worked by any person under s. 196.795 (10m) if the time is properly assessable for utility regulation under s. 196.85.

SECTION 7. Nonstatutory provisions; position authorization. The authorized FTE positions for the public service commission are increased by 6.0 PRO professional positions and 2.0 PRO clerical positions on the effective date of this SECTION, to be funded from the appropriation under section 20.155 (1) (h) of the statutes, as created by this act, the purpose of ensuring that any transaction between a public utility affiliate, as defined in section 196.795 (1) (L) of the statutes, as created by this act, and any nonutility affiliate, as defined in section 196.795 (1) (j) of the statutes, as created by this act, with which it is in a holding company system does not materially adversely affect the public utility affiliate or any competitor of the holding company system, as defined in section 196.795 (1) (i) of the statutes, as created by this act, and for the purpose of section 196.795 (10m) of the statutes, as created by this act. The cost of the positions shall be deemed reasonably required in order for the commission to implement and enforce section 196.795 of the statutes, as created by this act and shall be assessed under section 196.84, as created by this act.

SECTION 8. Initial applicability. The treatment of section 196.795 of the statutes by this act first applies to any activity of a holding company system, as defined in section 196.795 (1) (i) of the statutes, as created by this act, which occurs on the effective date of this SECTION.