

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

*Joint Committee for
Review of
Administrative Rules*

(JCR-AR)

Sample:

- Record of Comm. Proceedings
- 97hr_AC-EdR_RCP_pt01a
- 97hr_AC-EdR_RCP_pt01b
- 97hr_AC-EdR_RCP_pt02

- Appointments ... Appt
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- Clearinghouse Rules ... CRule
- 97hr_JCR-AR_CRule_98-172
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- Committee Hearings ... CH
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98-172 COST & OPPORTUNITY
PSC-117- SALES

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-172

AN ORDER to create chapter PSC 117, relating to assignment of costs and opportunity sales.

Submitted by **PUBLIC SERVICE COMMISSION**

11-02-98 RECEIVED BY LEGISLATIVE COUNCIL.

11-30-98 REPORT SENT TO AGENCY.

RNS:RJC;jal;wu

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CLEARINGHOUSE RULE 98-172

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section 196.03 (5m), Stats., requires the commission to promulgate rules relating to the sale of electric service to customers outside the state that the public utility does not have a duty to serve. The rule appears to do this. However, s. PSC 117.02 authorizes the commission to apply the rule to sales to in-state customers as well. Presumably, the commission has the authority to regulate these sales to in-state customers under its general regulatory authority. However, since the rule does not indicate, in the text or analysis, what statutes other than s. 196.03 (5m), Stats., it is interpreting, it is not clear from the text of the rule what authority it operates under to regulate these sales to in-state customers. The rule should better identify its statutory authority in this regard. Also, see comment 2. a.

2. Form, Style and Placement in Administrative Code

a. The arrangement of the rule should be reviewed. Rules are required to have an introductory clause, which consists of a relating clause stating the subject matter of the rule and an enumeration of the sections treated by the rule. Rules must also contain a plain language analysis, which describes the rule and includes a reference to any statute that the rule interprets, each statute that authorizes promulgation of the rule and any related statute or rule. The rule must also contain a fiscal estimate, at least one treatment clause and, in many instances, a regulatory flexibility analysis. This rule contains none of these items. Section 1.02, Manual, should be reviewed and the rule made to conform to the requirements of the Manual.

- b. In s. PSC 117.02, “the rules under” should be deleted.
- c. In s. PSC 117.03 (1) and (2), the parenthetical acronyms for megawatts, kilowatthours, magawatthours and gigawatthours do not appear to be used again in the rule and, it appears, could be deleted. [See s. 1.01 (6) and (8), Manual.]
- d. The definition of “existing capacity” in s. PSC 117.03 (4) should end after the first sentence. The remaining two sentences appear to be either definitions of other terms that ought to be placed in separate definitional provisions, or substantive provisions that should be placed in separate substantive provisions of the rule. [See s. 1.01 (7), Manual.] This comment applies also to the second sentence of s. PSC 117.03 (5).
- e. Section PSC 117.03 (6) should end after the citation to ch. PSC 116. The remainder of the material appears to be unnecessary material.
- f. The second sentence of s. PSC 117.03 (8) should be removed to a note to the rule since its purpose appears to be explanatory. [See s. 1.09, Manual.]
- g. Section PSC 117.03 (12) (a) (intro.) is improperly drafted as introductory material. It does not end with a colon and lead into the subsequent subdivisions. [See s. 1.03 (8), Manual.]
- h. The second sentence of s. PSC 117.03 (14) appears to be a definition of the term “expected annual peak demand.” Accordingly, the second sentence should be redrafted to read: “In this subsection, “public utility’s expected annual peak demand” includes”
- i. In the titles to ss. PSC 117.04 and 117.05, only the first letter should be capitalized.
- j. In s. PSC 117.04 (1) (intro.), “all of” should be inserted after “includes.”
- k. In s. PSC 117.04 (1) (c), “shall” should replace “must.”
- l. Generally, when any unit of a rule is divided into subunits, at least two subunits must be created. Thus, in ss. PSC 117.04 and 117.05, for every sub. (1), there must be a sub. (2). In s. PSC 117.04, it is suggested that the “(1)” be eliminated, thus creating an introductory provision, and pars. (a) through (c) be renumbered subs. (1) to (3). In s. PSC 117.05, it appears that pars. (a) and (b) can be renumbered subs. (2) and (3).
- m. The rule should contain an effective date provision. [See s. 1.02 (4), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

- a. The use of the phrase “Wis. Adm. Code” in s. PSC 117.03 (6), and elsewhere throughout the rule, should be deleted. The reference to the code is unnecessary because material relating to ch. PSC 116 can only be found in the Wisconsin Administrative Code.
- b. In s. PSC 117.03 (10), the phrase “obligation to serve” should be clarified by including a cross-reference to the statutory or rule provision establishing this obligation.

c. In s. PSC 117.03 (13), the citations to “Wis. Stats.” should be changed to “Stats.”

d. Section PSC 117.05 (1) (a) and (b) refer to a public utility’s “Wisconsin retail revenue requirement.” It is not clear from the text of the rule to what this phrase refers. An appropriate cross-reference to this requirement, or an explanatory note to the rule, should be provided.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. PSC 117.01, the word “that” after the statutory citation should be “which.”

b. In s. PSC 117.02, the term “s.” should be inserted before “PSC 117.01.” Also, the word “above” should be deleted.

c. It appears that the term “commission” should be defined in the rule for purposes of ch. PSC 117.

d. In s. PSC 117.03 (4), it is not clear what is meant by the term “purchased firm capacity.” Perhaps the term “firm capacity” could be defined to better enhance the understanding of the rule. In any event, the rule should be clarified.

e. In s. PSC 117.03 (11), it appears that a comma should be inserted after the word “energy.”

f. In s. PSC 117.03 (12) (a) 1. to 3., the term “will” should be changed to “shall.” In subd. 3., what is “native load”? The term should be defined. Also, subd. 3. refers to “this sale.” Which sale is being referred to?

g. The beginning of the second and third sentences of s. PSC 117.03 (13) should be rewritten substantially as follows: ““Planned additional capacity” does not include”

h. In s. PSC 117.04 (1), what does it mean to request “opportunity sales treatment”? The meaning of the phrase should be clarified.

i. The word “Such” in the third sentence of s. PSC 117.04 (1) (c) should be changed to “The.”

j. Section PSC 117.05 (1) (intro.) refers to the public utility “making the sale.” What sale is being referred to? A retail sale to a non-native customer? The rule should be clarified.

k. In s. PSC 117.05 (1) (b), does the term “its” refer to “the commission” or “the sale”? The rule should be clarified.

Jan 1st

Public Service Commission of Wisconsin
Proposed Rules to Create Chapter PSC 117, Wis. Adm. Code
Assignment of Costs and Opportunity Sales
Docket: 1-AC-177

NO analysis
Stats independent

PSC 117.01 Scope. This chapter implements s. 196.03(5m) Stats., ^{which} that requires the public service commission to promulgate administrative rules to consider the costs and revenues related to sales to out-of-state customers in setting rates for retail electric service.

PSC 117.02 Applicability. This chapter applies to all electric public utilities as defined in s. 196.01(5) Stats., with respect to sales transactions set forth in PSC 117.01 ^{s.} (above). The commission may also apply the rules under this chapter to sales to in-state customers that the utility does not have a duty to serve. _{Active}

PSC 117.03 Definitions. In this chapter:

(1) "Capacity" means the continuous load-carrying ability of electric generation expressed in megawatts (MW). _{more.}

(2) "Energy" means the amount of electric generation or use of electric power over a period of time, expressed in kilowatthours (kWh), megawatthours (MWh), or Gigawatthours (GWh).

(3) "Excess capacity" means any existing capacity and any planned additional capacity that is not needed to meet native customers' capacity demands, contracted firm power sales, and the required planning reserve margin after taking into consideration scheduled maintenance outages.

(4) "Existing capacity" means all installed and in-service capacity owned by the public utility and all purchased firm capacity under contract to the utility. The installed and in-service capacity of any electric generating unit owned by the public utility means that public utility's ownership share of the available peak capacity from that generating unit under expected normal operating conditions. Purchased firm capacity under contract to the utility must be deliverable to the public utility on a firm basis. _{substantive definition other terms more to a process}

(5) "Firm power sale" means any sale of electric capacity, or electric capacity and energy to a customer other than the public utility's native customers, that is not curtailable for economic purposes. The electric capacity or electric capacity and energy are only curtailable under emergency conditions, and any such curtailment is made in proportion to the amount that the selling utility's native customers' capacity demand is curtailed. _{excess...}

(6) "Fuel rules" means the provisions of ch. PSC 116, Wis. Adm. Code, as administered to individual public utilities in commission rate orders for those public utilities.

(7) "Fully-allocated sale" means a firm power sale that does not meet the definition of an opportunity sale.

(8) "Incremental cost" means the additional costs that would be incurred by producing or purchasing the next available unit of electric energy or capacity in order to supply the sale. Alternatively stated: the costs that could be avoided by not producing or purchasing the next available unit of electric energy or capacity if the sale was not made.

(9) "Jurisdictional cost-of-service study" means a method of allocating a public utility's total revenue requirement among each retail and wholesale jurisdiction using factors such as capacity demands, energy requirements, and customer data.

(10) "Native customers" means the retail electric customers that the public utility has an obligation to serve.

Where does this obligation come from?
Commission

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(11) "Non-firm power sale" means any sale of electric capacity, or electric capacity and energy to a customer other than the public utility's native customers, that is not a firm power sale.

(12) "Opportunity sale" means either a non-firm power sale, or a firm power sale that meets all of the following conditions:

(a) The contracted sale is a firm power sale that does not extend more than three years. *lead intra*

1. Sales contracts that include options for the purchaser to extend the contract to a period of more than three years will be considered to extend more than three years.

2. Sales contracts that include a provision to automatically extend the contract to a period of more than three years, unless the purchaser notifies the seller that it is exercising its option to cancel the automatic extension, will be considered a sale that extends more than three years.

3. If a contract has a cancellation clause that allows the utility to cancel the contract after three years if the power becomes needed to serve native load, such a contract will be considered as not exceeding three years. Failure of the utility to exercise this option in time of need will automatically remove this sale from the opportunity sales category.

(b) The contracted sales capacity could be supplied from excess capacity that existed at the time the sales contract was signed by the selling public utility, and at that time excess capacity was reasonably expected to exist during the entire term of the contract.

(13) "Planned additional capacity" means any additional capacity that will be owned by the public utility and that is expected to be installed and in-service within three years. Additional capacity which requires commission approval under either s. 196.491, Wis. Stats., or ch. PSC 112, Wis. Adm. Code is not included in the definition of planned additional capacity until such commission approval has been granted. Additional capacity which does not require commission approval under either s. 196.491, Wis. Stats. or ch. PSC 112, Wis. Adm. Code is not included in planned additional capacity until the construction of such additional capacity has been approved by the board of directors of the public utility. *✓*

(14) "Planning reserve margin" means the difference between the public utility's expected annual peak existing capacity plus any planned additional capacity and the public utility's expected annual peak demand, expressed as a percentage of the annual peak demand. The public utility's expected annual peak demand includes the expected peak demand of its native customers, less any interruptible sales to native customers, plus any firm power sales under contract. *sep data*

(15) "Required planning reserve margin" means the minimum planning reserve margin that the commission requires the public utility to maintain for system reliability.

(16) "Scheduled maintenance outages" means regularly scheduled outages or planned outages caused by the removal of generation equipment from service for the purpose of inspection or general maintenance of one or more major components.

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PSC 117.04 Responsibilities of the Public Utility (1) In each rate proceeding before the commission that affects the selling public utility's retail rates, or at the request of the commission, the public utility shall have the burden to prove that a sale for which the public utility requests opportunity sales treatment qualifies as an opportunity sale. At a minimum, the public utility shall provide evidence that includes the following: *all of*

(a) Information showing that the term of the contract does not extend more than three years, does not include an option for the purchaser to extend the term of the contract to more than three years and does not include a provision which automatically extends the term of the contract to more than three years. X

(b) Information showing that excess capacity to supply the sale existed at the time the sales contract was signed by the selling utility and that available excess capacity was reasonably expected to exist during the entire term of the contract. X

(c) An analysis comparing the forecasted revenues expected to be earned as a result of the sale with the forecasted incremental costs to the public utility of supplying the sale. This analysis must be presented for each annual period covered by the sale. Such analysis must include supporting calculations for both the forecasted revenues and the forecasted incremental costs, and explanations of any underlying assumptions made for the analysis. X

PSC 117.05 Revenues and Costs Allocations. (1) In each rate proceeding involving the public utility making the sale, the commission shall determine which sales qualify as opportunity sales. *what sale*

(a) For every sale that qualifies as an opportunity sale, the commission shall reflect the greater of revenues received from the sale or the incremental costs associated with the sale as a revenue credit in the jurisdictional cost-of-service study when determining the public utility's Wisconsin retail revenue requirement. Opportunity sales revenue credits shall also be taken into account under the provisions of the fuel rules.

(b) For every sale that qualifies as a fully-allocated sale, the commission shall assign to the sale its proportionate share of the public utility's total revenue requirements in the jurisdictional cost-of-service-study when determining the public utility's Wisconsin retail revenue requirement.

Effect on Rate?
Fiscal Note