Barman, Mike

From: Kunkel, Mark
Sent: Monday, October 04, 1999 5:42 PM
To: Barman, Mike
Subject: Copies

Mike, can you or another PA please make copies of the files for each of the following and add them to the file for LRBb1931? Thanks...

1. LRBb1659 → NOTE that LRBb1659 is based on LRBb1329 which is filed with the SDC supplement
2. ~~LRBb1329~~
3. LRBb1709
4. LRB-3373 ← move into
5. LRBs0102 → copy & move into

b1659

Mark Kunkel
Legislative Attorney
State of Wisconsin
Legislative Reference Bureau

mark.kunkel@legis.state.wi.us
(608) 266-0131

① copy 99s 0102
→ move "copy" into 99-3373
→ move 99-3373 into 99b1709
→ move 99b1709 into 99b1931

② move 99b1659 into b1931

LRBb1659

1999 DRAFTING REQUEST

Senate Amendment (SA-ASA1-AB133)

Received: **07/02/1999**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Charles Chvala (608) 266-9170**

By/Representing: **Lee Cullen**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact: **Lee Cullen**

Alt. Drafters:

Subject: **Public Util. - electric**

Extra Copies:

Pre Topic:

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Topic:

Electric reliability and utility public benefits

Instructions:

See Attached

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b1659

MEMORANDUM

Confidential

To: Mark Kunkel, LRB

From: Lee Cullen

Date: July 1, 1999

Re: LRB 3150/3dn

Thank you for providing a copy of LRB 3150/3dn dated June 15. The following are technical corrections submitted by the Customers First! Coalition and Energize Wisconsin:

p. 5 of summary, "Transmission system operation," last paragraph. The final sentence is accurate, except that the bill also excludes from gross receipts subject to gross receipts tax revenues from public utilities and coops which have already paid the gross-receipts tax on such revenues. In other words, it prevents double taxation of such revenues. See p, 23, l. 20-25.

p. 10, l. 24 to p. 11, l. 2. This should say "shall be sufficient to ensure that an amount equal to 47% of the sum of the following is spent for weatherization and other energy conservation services." The reason is that amounts awarded under this paragraph are from the public benefits funds, which does not include the federal monies. In other words, the 47% is of a larger pie.

p. 27, l. 16, 17. Should read "individual contracts with the utility that allow a retail customer, through service from its existing utility, to receive market benefits and to take market risks."

p. 30, l. 16, 17. Replace "capacity" with "energy" in both lines.

p. 38, l. 6. Replace "public utility" with "electric utility."

p. 40, l. 20. Add the following sentence "At the end of the final contract period, the provisions of sec. 196.807 shall apply." See 6/7/99 drafting instructions, p. 16.

p. 41, l. 15. Replace "Except as provided" with "Subject to." There is no exception to the single zone; the phase-in is an aspect of the single zone.

p. 43, l. 22. Add "voting" before "security holders."

p. 62, l. 11-12. Delete "or an asset that is used for manufacturing, distributing or selling swimming pools or spas." This is a change at the request of WICOR to which we do not object.

Please feel free to contact me if you have any questions.

LC:vm

cc: Senator Charles Chvala
John Stolzenberg
David Lovell
Customers First! Coalition
Energize Wisconsin

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Shana R. Lewis

Of Counsel:
Cheryl Rosen Weston

MEMORANDUM

Confidential

To: Mark Kunkel, LRB

From: Lee Cullen LC

Date: July 2, 1999

Re: Technical Corrections

The following are technical corrections required for the Governor's Reliability 2000 initiative as adopted by the Senate in the budget bill. This memorandum is organized in response to the attached memos. Please make only those changes which I have affirmatively identified in this memorandum.

1. Legislative Council Corrections. Please make the corrections as identified in Sections I. A, B, C, D, E, G, H, I, J, L and in Sections II. A, D, and H. In I. F, make the correction that includes only the identified alternative "that the funding reductions be applied first to one funding source and then after that funding source has been reduced to zero to the second funding source. . . ." In II. C, do not delay implementation of the program, but do provide deadlines for all rule promulgation required by the bill. In II. E, the intent is not to itemize the fees and we agree that the additional language that is suggested should be included in the statutes. In II. R, our intent was that neither the employee protection, nor the transfer of integrated transmission facilities provisions should apply to merchant plants. We did intend that merchant plants be covered by the reliability reporting requirement and the more stringent nitrogen oxide emission reduction requirements. In II. S, our intent was only to address electric energy.

2. Jeff Landsman Letter, July 2, 1999. Please make the changes identified in nos. 1-3 in Mr. Landsman's letter. Suggested language for item #3 is attached.

3. Leonard Sosnowski Memo, June 30, 1999. Please make the changes identified in nos. 1-8 and 10 of Mr. Sosnowski's memorandum.

LC:vm
Enclosures

cc: Senator Charles Chvala
John Stolzenberg
David Lovell
David Worzala
Customers First! Coalition
Energize Wisconsin

CORRECTION AND CLARIFICATION OF PROVISIONS IN 1999 SENATE BILL 196 (THE "RELIABILITY 2000" BILL)

I. CORRECTIONS -- Obvious flaws that we expect all interested parties will agree need correcting.

A. [p. 12, ll. 20, 24 and 25; p. 13, l. 4; and p. 33, ll. 13, 17 and 20] These provisions apply to electric utilities and not to electric cooperatives. As such, references to members of electric cooperatives should be deleted.

B. [p. 9, l. 15; and p. 16, l. 5] These provisions refer to the component in the computation of either "low-income need percentage" or "low-income need target" that relates to the total amount spent by utilities under s. 196.374. Since these provisions relate to funding for low-income assistance, the cited utility expenditure should be limited to expenditures under s. 196.374 related to low-income assistance. As drafted, these provisions include utility expenditures on energy conservation and efficiency, renewable resources and environmental research and development. (Compare the language on p. 11, l. 5.)

C. [p. 10, l. 22] "Of administration" should be deleted, as "department" is defined in s. 16.002 (1), Stats.

D. [p. 16, l. 23; and p. 20, l. 22] "An" should be inserted before "amount."

E. [p. 18, ll. 8 to 11, 16 to 19 and 24 to p. 19, l. 2] Each of these three provisions contain formulas that, with one exception, specify that the public benefits fees must be allocated on one of two programs and that these expenditures or allocations must be "no less than 50%" of the fees charged by a municipal utility or retail electric cooperative. Since these formulas provide no flexibility on the split in the distribution of the fees, the "no less than" phrase should be deleted in all of them. If the intent is to allow commitment to community programs to spend more than the amount required, it would still seem appropriate to delete "no less than" on p. 18, l. 8.

F. [p. 16, ll. 11 to 14; and p. 29, ll. 20 to 24] These provisions require adjustments in the portions of the new public benefit fees and the continuing utility public benefit expenditures on energy programs if, after fiscal year 2003-04, the Department of Administration (DOA) reduces the total amount necessary for energy programs. As drafted, the bill appears to require both the new fee and the continuing utility expenditures be reduced by the amount that the DOA reduces the total funding level for energy programs, thus accounting for the same reduction twice. The bill should either specify that the funding reductions be applied first to one funding source and then after that funding source has been reduced to zero to the second funding source or authorize the DOA to allocate a

reduction between the two funding sources. Also, the language describing these reductions should perhaps be more parallel.

G. [p. 31, l. 23] The definition of "resource" is potentially confusing and should be revised to be "a fuel used to generate electric power" or "a source of energy used to generate electric power."

H. [p. 32, l. 23, and p. 33, l. 2] "Conventional fuels" and "conventional resource fuels" should be replaced with the defined term "conventional resource."

I. [p. 32, l. 23] Since there has to be a determination that the combined biomass and conventional resource fuel is a renewable resource, "shall be" should be replaced with "that is considered to be a renewable resource shall be an amount."

J. [p. 33, l. 1] The term "British thermal unit" should be replaced with "energy." (Style change.)

K. [p. 33, ll. 3 to 5] The defined term "excludable renewable capacity" should be used in this provision rather than "excludable renewable energy." In addition, this provision would be clearer if the definition of "excludable renewable capacity" was incorporated into the text of the provision.

L. [p. 34, l. 23] The reference should be to sub. (1) (h) 1. and 1m. and not sub. (1) (g) 1. and 1m.

M. [p. 10, l. 24 to p. 11, l. 9] The formula for the wording of the requirement that 47% of all low-income assistance be spent on weatherization and energy conservation services under the new DOA-administered low-income public benefits program results in directing that more money be spent for weatherization than is available for the program in the early years of the program. In the first year of the program (fiscal year 1999-2000), the sum of the four terms is $111.5 million (see Legislative Council Staff Memorandum to Interested Legislators, *Public Benefit Programs Funding Fees in 1999 Assembly Bill 389 and 1999 Senate Bill 196 (the "Reliability 2000" Proposal)* (June 23, 1999)). Forty-seven percent of this amount is $52.4 million. In that fiscal year, the new DOA low-income program will have between $23.3 and $27 million, depending upon the portion of new public benefits fees retained by commitment to community municipal utilities and retail electric cooperatives for local low-income programs. One remedy for this defect in this provision is to delay the applicability of the 47% weatherization funding requirement until a later year after all of the continuing funding for major investor-owned natural gas and electric utilities low-income program expenditures are diverted to the new DOA program.

N. [p. 62, ll. 11 and 12] If the last clause in this sentence is intended to apply to WICOR assets that make pumps or filters for swimming pools and spas, then

these assets are included in the definition of "eligible asset" and the last clause is not needed.

II. CLARIFICATIONS -- Possible refinements that raise policy conerns.

A. [p. 44, ll. 1 to 21] As drafted, a security holder could appoint a director under more than one of the four options listed in this provision. For example, it could be argued that MG&E could appoint under options c. and d. Similarly, a municipal utility that is a security holder may be eligible to appoint under both options b. and c. One remedy would be to specify that any security holder may appoint a director under only one option, even if more than one apply to the person.

B. [p. 15, l. 16 to p. 16, l. 14] Under these provisions, the new public benefits fees collected by the DOA begin in fiscal year 1999-2000. This language creates the expectation that the program will be fully funded this fiscal year. However, since it will take time to organize the program and begin to collect the fees (due to the need to hire staff, and write rules), realistically the fees cannot be collected until at the earliest, late in the fiscal year. To allow adequate preparation time, the new public benefits programs could be delayed until 2000-01.

C. [p. 66, ll. 1 to 24] If the new public benefits programs implementation is delayed, then there is no need to have the specified rules promulgated as emergency rules. In addition, to ensure timely implementation of other provisions within the bill, deadlines should be specified for a promulgation of other rules required by the bill. These include the impact fees under s. 16.969 (2), the PSC's environmental impact statement standards under s. 196.025 (2) and the PSC's requirements for reliability reports under s. 196.025 (3).

D. [p. 13, l. 19 to p. 14, l. 5] Arguably, the annual audit provision precludes either the DOA or the Council on Utility Public Benefits from adding issues to the content of an audit. Should the DOA or the Council explicitly be authorized to add issues to the audit?

E. [p. 15, ll. 1 to 4] The provision that "an electric utility shall include a public benefits fee in a customer's bill" could be read to mean either that the fee must be incorporated into the electricity charges or that it must be a separate item on the bill. If the intent is to itemize the fees, it should be explicitly stated. If the intent is to ***not*** to itemize these fees, either an explicit statement to this effect should be made or additional language, such as "in the service charges" or "in the fixed charges for electricity" could be inserted after "fee" on p. 15, l. 1.

F. [p. 16, l. 21 to p. 17, l. 3] Under this provision, cooperatives and municipal utilities may charge new public benefit fees based upon energy consumption,

which investor-owned utilities are prohibited from doing. Is this language intentional?

G. [p. 33, l. 22 to p. 34, l. 2] It is unclear why two separate standards are created or how they are to be applied. The standard that refers only to in-state demand clearly applies to utilities with only in-state sales. As drafted, though, a utility with both in-state and out-of-state sales would seem to have a choice of standards. Since the standard that refers only to in-state demand is easier to meet, this presumably would be the standard of choice. What then is the purpose of the second standard?

H. [p. 34, ll. 16 to 18] Under this provision, it may be argued that the PSC's rule making on renewable resource credits is limited to calculating the amount of the credits. The PSC will probably want to address other issues such as the term of the credit. To address this concern, "the use of a renewable resource credit" could be added after "for" on l. 17.

I. [p. 34, l. 24 to p. 35, l. 5] Is each day of continued violation a separate offense?

J. [p. 41, ll. 22 and 23] Since there are electric cooperatives in eastern Wisconsin, why should this provision not also apply to bypassing the distribution facilities of a retail cooperative or providing electric service directly to a member of a cooperative?

K. [p. 42, ll. 10 to 23] The requirement in this provision that during the phase-in period transmission service must be provided to all users of the transmission system on a single-zone basis, even though they may have different transmission charges, is not clear. Does "single-zone basis" mean something other than a uniform charge?

L. [p. 53, l. 8] The PSC's authority under this provision applies to public utility affiliates and the transmission company. Should it also apply to MG&E and WPPI? Should it apply to electric providers in western Wisconsin (Dairyland Power and NSP)?

M. [p. 56, ll. 10 and 11] A mechanism for resolving conflicts between states regarding the siting of transmission facilities under the interstate compact could involve the payment of fees from a utility in Wisconsin constructing the transmission line to a local government or property owners in another state in which the line is located. If this outcome is not intended, then the bill should be amended to explicitly address fees and payments. Also, the use of an "interstate compact" may be too narrow and inflexible. An interstate compact may require congressional approval. An agreement or contract may provide more flexibility.

N. [p. 15, ll. 1 to 4] If the new public benefits fees constitute an increase in rates to consumers, then under s. 196.20 (2m), the fees may not be instituted until

ordered by the PSC after an investigation and an opportunity for a hearing. If this is not the intent, an exception to sub. (2m) should be created in the bill.

O. [p. 20, ll. 16 to 24] Should either of the impact fees be established at a different rate if the transmission line is located in an existing right-of-way?

P. [p. 23, ll. 20 and 21] The PSC apparently had a major battle with long distance telecommunication providers over the portions of their revenues attributable to Wisconsin's sales. This definition of "gross revenues" based upon total operating revenues as reported to the PSC appears vague. Should it be limited to revenues from sales within the state?

Q. [p. 27, ll. 19 to 23] Under this provision, the standard for the PSC to approve a market-based rate option is that the option will not harm shareholders or customers who are not subject to the rate. Under s. 196.194, individual contracts for telecommunications and natural gas service must be "compensatory." Should a market-based rate be based on the compensatory requirement rather than the no harm requirement?

R. [p. 62, ll. 16 and 17] Due to the definition of "electric utility" in this provision, the employe protections in s. 196.807 apply to employes of a merchant plant and other persons that operate "large electric generating facilities," as defined in s. 196.491 (1) (g). Is that the intent? In addition, the use of this definition of "electric utility" implies that these persons are also subject to reliability reporting requirements on p. 25, l. 18 to p. 26, l. 2; the authority to transfer integrated transmission facilities to the transmission company on p. 51, l. 23 to p. 52, l. 2; and the restriction on more stringent nitrogen oxide emission reduction requirements on p. 65, ll. 9 to 12.

S. [p. 32, l. 9 to p. 33, l. 5] Since "total retail energy sales" is not defined, it appears to include the sale of steam energy, and in the case of a combined electric and natural gas utility, natural gas sales. Is this the intent? Similarly, the reference to "energy" on p. 31, l. 4, appears to include steam energy in addition to electric energy.

T. [p. 25, l. 18 to p. 26, l. 2; and p. 62, l. 14 to p. 64, l. 3] These provisions on reliability reports and employe protections do not contain any specific penalty provisions. Thus, the general forfeiture provisions in s. 196.66 apply to them. However, s. 196.66 (1) applies to violations of ch. 196 by a public utility and not by nonutility affiliates or entities that qualify under the definition of "electric utility" under s. 196.491 (1) (d) that are not public utilities. (Similarly, the general power of the PSC to investigate violations of ch. 196 under s. 196.44 (1) applies to violations by public utilities and their officers, agents and employes.)

FOLEY & LARDNER

MEMORANDUM

CLIENT-MATTER NUMBER
086120-0550

TO: Allen W. Williams, Jr.

FROM: Leonard S. Sosnowski

DATE: June 30, 1999

RE: AB 389 (LRB 3200/4)

A number of technical corrections to AB 389 (LRB 3200/4) are needed for purposes of clarification. As we discussed, after your review, we will discuss how to proceed with the respective interested parties in the legislation and with the legislature

1. Section 2, page 14, lines 21-25. Add a new sentence at the end of line 25: "The public benefits fees collected by an electric utility shall be considered trust funds of the department and not income of the electric utility."

RATIONALE: This language would clarify that the amounts collected are not the property of the electric utility for income, gross receipts and sales tax purposes. For comparable programs, the IRS has taken the position that the amounts collected are income and that a utility may not accrue a deduction for amounts includible in income at the end of a year but which will not be paid until the next year. This produces a timing difference which would increase the recovery in rates permitted under new s. 16.957(4)(b)3 (lines 14-16 on page 15). Thus, a savings could be realized if the statute makes it clear that the fees are not income of the utility. A similar savings to ratepayers is achieved if the fee is not considered utility revenues for sales and gross receipt tax purposes.

2. Section 28, page 35, line 16. This section should be amended to delete "and associated tax revenues." Alternatively, line 16 should read:

> facility, and associated tax reserves to the extent they may be transferred without adverse tax consequences, to another person.

The present provision carries the potential for significant tax consequences because the transferring utilities could lose the right to accelerated depreciation because of a violation of the IRC normalization rules. Normally, if a utility subject to the normalization rules (i.e., all Wisconsin IOU's) disposes of assets, deferred taxes and ITC must be removed from the regulated accounts of the transferor, eliminating any future benefit to the transferor's

ratepayers. The transferee, in turn, cannot utilize the deferred items since it is a new taxpayer. There is a limited exception for tax-free transfers that permits a transfer of the deferred items on the theory that the transferee is "stepping into the shoes" of the transferor. This exception may apply to the Transmission Company since the transfer is intended to be tax-free under § 351 (if to a corporation) or § 721 (if to an LLC). However, the little guidance provided by the IRS has involved transfers of regulated assets to wholly-owned subsidiaries which carried on the business of the parent. Here, the Transmission Company is substantively a very different entity from the transferors. The result will also be affected by how transmission associated debt is handled and how the transmission rates of the Transmission Company will be determined. The preference is to delete the tax reserves language since federal tax law will control the result regardless of what the bill provides. The alternative leaves the issue open and would permit the PSCW to grant rate relief as a transition cost if a transfer is still desired after the tax consequences are specifically identified.

It should also be noted that identifying and allocating the deferred taxes associated with transmission assets will be a difficult task given utility plant accounting for such assets.

3. Section 36, page 36, lines 13-16. Amend the provision to read as follows:

> "Manager" means, with respect to a transmission company organized as a limited liability company under Chapter 183, the representatives of the security holders elected or appointed pursuant to s. 196.485(3m)(c).

RATIONALE: As drafted, the provision adopts the § 183.0102(13) concept of a "manager" for a transmission company organized as an LLC. I believe this is inconsistent with the goal of the IOU's to effectively have the LLC governed by a board of directors analog. A statutory LLC manager has sole authority to bind the LLC unless a third party has actual knowledge of any limitations on the manager's authority. With 5-14 "managers," as envisioned by the Act, this concept becomes cumbersome. A member-managed LLC can still have non-statutory managers running the LLC on behalf of the members. This is the usual model for LLC's when each member has a significant stake in an LLC that is not simply a passive investment.

4. Section 52, page 43, line 11. The articles of organization of an LLC do not permit any provisions beyond the very limited information required by § 183.0202. What the bill envisions would be in the operating agreement. Therefore, in line 11, "operating agreement" should be substituted for "articles of organization" and "s. 183.0102(16)" should be substituted for "s. 183.0102(1)."

5. Section 52, page 43, line 16. Substitute "operating agreement" for "articles of organization."

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July 2, 1999

Attorney Lee Cullen
Attorney Curt Pawlisch
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122 West Washington Avenue, Suite 900
Madison, WI 53703

RE: Reliability 2000

Dear Lee and Curt:

This letter is to reiterate certain technical changes to the Reliability 2000 package I communicated to Curt this morning.

1. Page 26, lines 24 and 25: Change "public" to "electric" so that the market power study does not only focus on the potential impacts on public utility workers and rates.

2. Page 33, lines 13, 17, and 20: Delete "or members" on each of these lines. The Commission does not have approval authority over how cooperatives will recover the costs associated with meeting the portfolio standard.

3. Page 38, line 20: Language to be inserted is attached. As I explained to Curt, the present language gives the transmission company the "exclusive" duty to provide transmission service "in those areas" in which transmission facilities have been contributed. Dairyland's transmission facilities and the transmission facilities owned by Alliant are not segregated by "areas". In addition, I believe MGE's transmission facilities are located in "areas" where transmission facilities owned by Alliant (and perhaps WEPCO) are located. The attached language is intended to preserve Dairyland's ability to provide transmission service.

I also spoke with Curt about my concern that the utilities transferring facilities to the transmission company are relieved of any duty to finance, construct, maintain or operate a transmission

facility (Page 38, lines 13-17). We also talked about a similar provision for the transmission company once the Midwest ISO begins operation. That language is also on page 38, lines 20-22. While I understand that service will be provided pursuant to the Midwest tariff, I question whether it is truly appropriate to relieve the transmission company from its duty to provide service over its facilities.

Thanks for all your efforts.

Sincerely,

WHEELER, VAN SICKLE & ANDERSON, S.C.

Jeffrey L. Landsman

JLL:mkl
Enclosure
cc: William L. Berg
Bruce Staples
Tom Steele
Dave Jenkins
Ruth Ann Nelson
Dave Hoopman

(b) After beginning operations, the transmission company shall have the exclusive duty to provide transmission service in those areas in which transmission facilities have been contributed, provided however, that this paragraph shall not in any way affect the right or duty of an electric utility that has not contributed its transmission facilities to the transmission company to provide transmission service. The duty under this paragraph shall terminate on the date, as determined by the commission under sub. (2) (d), that the Midwest independent system operator begins operations.