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CHAPTER 29 – UTILITIES AND ENERGY

The regulation of public utilities is shared between state and federal regulators. In Wisconsin, the Public Service Commission regulates providers of electric power, natural gas, and water service, and has limited jurisdiction over providers of sewer service and the telecommunications industry, which has been deregulated in many respects.

State policy with regard to energy extends beyond regulation of public utilities to include objectives and incentives regarding the type of fuel used to generate energy, the manner in which energy is transmitted, and the extent to which energy is consumed by state agencies and private industry.

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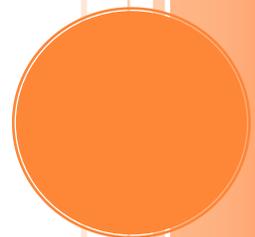


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PUBLIC UTILITIES

Public Utilities as Regulated Monopolies

In economic terms, a public utility is generally a business that provides a vital service to society and that is considered to be a “natural monopoly”; that is, because of the significant investments in infrastructure required for a utility to provide its service to customers, it is generally considered to be in the public interest to allow a single company to provide the service as a regulated monopoly, rather than having consumers pay for the construction of multiple systems by competing service providers.

Under Wisconsin law, “public utility” means an entity “that may own, operate, manage or control...all or any part of a plant or equipment, within the state, for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly, to or for the public.” [s. 196.01 (5) (a), Stats.] Telecommunications utilities, entities that transmit or deliver natural gas by pipe, and certain entities that provide sewerage service are also considered public utilities. The types of entities that are subject to these provisions include various types of businesses, cities, villages, towns, and even individuals in some circumstances. However, cooperative associations that engage in those activities are not considered public utilities. [s. 196.01 (5) (b) 1., Stats.]

State Versus Federal Jurisdiction

The regulation of public utilities is shared between state and federal regulators. There are general principles that set the bounds between state and federal jurisdiction, but their application is not always clear and simple. Some utility transactions are subject to both jurisdictions.

In a very general sense, state jurisdiction applies to activities or transactions that occur entirely within one state and that have a retail nature, while federal jurisdiction applies to activities or transactions that cross state lines or that have an interstate or wholesale nature.

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The Wisconsin Public Service Commission

In Wisconsin, the Public Service Commission (PSC) regulates providers of electric power, natural gas, water, sewer service, and it has limited jurisdiction to regulate telecommunications companies.

The PSC is headed by three commissioners who serve six-year terms, one of whom the Governor designates to serve as the chairperson. [s. 15.79 (1), Stats.] Commissioners are nominated by the Governor and are appointed with Senate approval. [s. 15.06 (1) (c) 1., Stats.]

State Public Utility Regulation

Although the specific requirements that govern a public utility depend in part on the type of service it provides, Wisconsin law generally regulates: (1) a public utility's entrance into the Wisconsin market; (2) the area in which it may provide service; (3) the availability and quality of its service; (4) the rates it may charge for service; and (5) its exit from the market in a given area.

Before providing service or constructing a public utility plant, a public utility must obtain a certificate from the PSC. [s. 196.49 (1) (am), Stats.]

To prevent unnecessary duplication of utility facilities and service, Wisconsin law regulates the number of public utilities that may provide the same service in a given area. The statutes generally provide that the PSC may not authorize a utility to provide service in a municipality if there is already a public utility engaged in similar service there unless it finds that the authorization is necessary in order to serve the public convenience and necessity. [s.196.50 (1) (a), Stats.] Alternatively, a public utility may, with the approval of the PSC, enter into an agreement with another public utility or cooperative to change which utility will serve a given area. [ss. 196.495 (1m) (b) and (4) and 196.50 (1) (am) 1., Stats.]

A public utility has the obligation to serve all who reasonably require service. However, this obligation is limited to providing service within the scope of the public utility's undertaking. [*Milwaukee v. Public Service Comm. (1954)*, 268 Wis. 116, 120.] The scope of a public utility's undertaking is generally characterized by the type of service it provides as well as the geographic area in which it is provided. The PSC can require a utility to serve those who reasonably request service. [s.196.37 (2), Stats.]

Wisconsin law regulates the quality of service that a public utility must provide. The statutes provide that a public utility must furnish reasonably adequate service and facilities. [s. 196.03 (1), Stats.] Every public utility must file its service rules with the PSC and may not change the rules without PSC approval. [ss. 196.19 (2) and 196.20 (1), Stats.]

Wisconsin law also regulates the rates that a public utility may charge. The statutes require a public utility's charges for service to be just and reasonable. [s. 196.03 (1), Stats.] This limits not only the amount that a public utility may charge, but also the costs that a utility may recover through its charges. To enforce this requirement, the statutes require a public utility to file its rates with the PSC. [s. 196.19 (1), Stats.] If the PSC finds rates to be unjust or unreasonable, it must determine reasonable rates to be imposed. [s. 196.37 (1), Stats.]

The principal model of rate setting is known as rate-of-return regulation. Under this model, rates for service are established that will produce revenues sufficient to cover the

utility's operating expenses and capital investments (the cost of providing utility service) plus the authorized return on its capital investments.

Wisconsin prohibits a public utility from discontinuing service unless it first obtains approval from the PSC. [s. 196.81, Stats.] In granting its approval, the PSC may impose any term, condition, or requirement that it deems necessary to protect the public interest. [s. 196.81, Stats.] In addition, a public utility must obtain PSC approval for any service rule that purports to curtail the obligation or undertaking of service of the public utility. [s. 196.20 (1), Stats.]

WATER

Water systems are subject to regulation of both: (1) the quality and safety of the water they supply; and (2) the reliability, availability, and cost of the service they provide. Regulations regarding water quality and safety apply based on whether a system qualifies as a “public water system.” Regulations regarding service apply based on whether a system qualifies as a “public utility.”

Water Quality and Safety

As described in Chapter 14, the federal Safe Drinking Water Act establishes maximum contaminant levels for drinking water supplied from “public water systems,” which includes all systems that provide the public with water for human consumption through pipes and which have at least 15 service connections or regularly serve at least 25 individuals. [42 U.S.C. ss. 300f (4) (A) and 300g; and s. 281.61 (1) (c), Stats.]

Differing levels of federal regulation apply to a public water system depending on its number of service connections, number of people served, and the portion of a year for which a person receives service. The strictest regulations apply to “community water systems,” which are public water systems that serve at least 15 service connections used by year-round residents of the area, or which regularly serve at least 25 year-round residents. [42 U.S.C. s. 300f (15); and s. 281.62 (1) (a), Stats.] Fewer regulations apply to systems that serve 25 or more people for more than six months but less than one year, such as schools that have their own water supply. Still fewer regulations apply to public water systems that provide water in places where each individual consumer remains for only a short period of time, such as campgrounds.

Reliability, Availability, and Cost of Water Service

A water system is subject to the general regulation of the reliability, availability, and cost of its service if the water system qualifies as a water public utility.

Generally, a water public utility is an entity other than a cooperative that furnishes water directly or indirectly to the public, including municipalities that provide water service. [s. 196.01 (5) (a), Stats.]

The rates that a water public utility may charge for service are regulated by the PSC. Wisconsin law provides that a municipality owning a public utility is entitled to the same rate of return permitted for a privately owned utility. [s. 66.0811 (1), Stats.] The income received by a municipal water public utility must first be used to meet operation, maintenance, debt service, and tax equivalent requirements for the utility, but any remaining income may be used for general city purposes or special municipal purposes. [s. 66.0811 (2) and (3), Stats.]

TELECOMMUNICATIONS

State and federal legislation has deregulated many aspects of telecommunications service. The PSC no longer regulates the relationship between telecommunications utilities and their retail customers. However, federal and state law give the PSC a role in regulating inter-utility (or “inter-carrier”) relations.

Deregulation of the Telecommunications Industry

Dating to the turn of the 20th Century, AT&T held a monopoly on the telecommunications industry. The U.S. Department of Justice commenced a comprehensive challenge to AT&T’s monopoly status in 1974, leading to a 1982 federal court order that, effective in 1984, divided AT&T into regional Bell operating companies, and opened long-distance telephone service to competition.

Subsequent state and federal legislation has largely deregulated telephone service. The goal has been to create competitive markets in telecommunications services by allowing competitors to enter the market by using the existing infrastructure of the incumbent service providers, rather than building duplicative infrastructure.

The Federal Telecommunications Act of 1996 required incumbent providers of basic local telephone exchange service (incumbent local exchange carriers, or ILECs) to give access to their facilities, at fair wholesale market rates, to competitors that wished to enter the local telephone market (competitive local exchange carriers, or CLECs). It also allowed local telephone service providers to enter the long-distance market and overrode state regulations that restricted competition in telephone service.

2011 Wisconsin Act 22 repealed most state regulation of retail telephone service.

While the PSC no longer regulates the relationship between telecommunications utilities and their retail customers, federal law gives state regulators a role in inter-utility (or “inter-carrier”) relations in administering the requirements that ILECs make their facilities available to CLECs.

Broadband

The FCC defines “broadband” as any service that provides download speeds of at least 25 megabytes per second (mbps) and upload speeds of at least 3 mbps.

The LinkWISCONSIN interactive map of broadband service availability in Wisconsin is available at this address:
<http://www.link.wisconsin.gov/broadband-maps>

Broadband service can be provided using any of several technologies, including cable, DSL and fixed wireless.

Using federal stimulus funds, the PSC launched a broadband deployment effort. As part of this effort, it contracted with LinkWISCONSIN to create an interactive map

of the state showing where broadband service is available.

The 2013-15 Biennial Budget Act (2013 Wisconsin Act 20) created the Wisconsin Broadband Expansion Grant Program. Under this program, the PSC awards grants for the purpose of constructing broadband infrastructure in underserved areas of the state, meaning areas served by fewer than two broadband service providers. For-profit and not-for-profit organizations, including cooperatives and telecommunications utilities, may apply for grants; in addition, a municipality may submit a joint application with another eligible applicant. [s. 196.504, Stats.]

Video Service

For most of its history, land-based video service was regulated by municipalities under franchise agreements negotiated between municipalities and service providers. Legislation in 2007 replaced municipal franchises with state franchises, issued by the Department of Financial Institutions (DFI). [s. 66.0420 (3) (a), Stats.]

Universal Service Fund

To help ensure that everyone can obtain and afford telecommunications service, the state created the Universal Service Fund (USF) in 1993. From the USF, the PSC provides direct assistance to low-income customers and customers in high-cost areas of the state. It also assists disabled customers to obtain equipment to give them access to telecommunications and provides funding for deployment of essential telecommunications services, such as telemedicine services in rural areas. [s. 196.218, Stats.] The Legislature sets the budget for the program; the PSC then apportions the cost among the telecommunications providers in the state, who then collect the funds from customers as a fee on their bills. USF revenue is also currently being used for broadband expansion grants, described above. There is also a federal USF. It is funded in the same manner as the state USF, and provides similar services.

ELECTRICITY

Structure of the Electric Power System

The three components that make up the electric power system are: (1) facilities for the generation of electric power; (2) networks of high-voltage transmission lines to carry power between utilities, or to load centers within a utility’s service territory; and (3) networks of low-voltage distribution lines to carry power to end users.

The three components of the electric power system are generation, transmission, and distribution.

Federal and State Jurisdiction

In the electric power sector, federal law gives regulatory jurisdiction to the Federal Energy Regulatory Commission (FERC). In general, state regulators must approve the rates for sales of electric power to end users, while FERC must approve the rates for sales to any entity that will resell the power. FERC has jurisdiction over long-distance transmission of electric power, while the PSC has jurisdiction over local distribution. The PSC has jurisdiction over the construction and operation of generation facilities, except for nuclear facilities, which are regulated by both the PSC and the federal Nuclear Regulatory Commission.

Wholesale Competition

Congress and FERC have taken steps to encourage the creation of competitive wholesale markets in electric power. With enactments dating to 1978, Congress authorized non-utility entities to compete with electric utilities in producing power, and required the owners of electric transmission lines to let any generator transmit power over their lines at approved and published rates.

In numerous subsequent orders, FERC has worked to create conditions in which the owners of generation and transmission facilities are not able to gain unfair advantage over competitors. It has done this, in particular, through ordering the “structural separation” of generation functions from transmission functions, and by setting standards for regional transmission organizations (RTOs), ensuring that all participants in the market have equal and fair access to the transmission functions that are necessary for the market to work.

Retail Competition

The states vary greatly in the actions they have taken to create competitive retail electric power markets. Some states have enacted sweeping restructuring laws, allowing retail competition for all customers, splitting vertically integrated utilities into separate generation, transmission, and distribution entities, and creating

Wisconsin did not fully restructure its electric utility industry.

market-based mechanisms to set prices for electric power.

In Wisconsin, the PSC initiated an incremental process to make the reforms it considered necessary precursors to the creation of a fully (or “more”) competitive retail power market. However, it did not complete this process and the subject never came to the Legislature.

Legislation in 1997 and 1999 brought about the separation of generation and transmission facilities in much of Wisconsin by calling for the formation of an independent transmission company within the framework of an RTO. The purpose of these changes was to increase system reliability by strengthening wholesale electric markets and bringing regional coordination to the system, consistent with the FERC actions described earlier.

Current Electric Industry in Wisconsin

Generation

All of the major electric utilities in Wisconsin own generating facilities, as do some of the smaller utilities. Some generating facilities are owned by non-utility companies, termed independent power producers (IPPs) or merchant generators. Merchant generators are not regulated by the PSC, though they are often affiliated with regulated utilities.

Wholesale electric cooperatives and municipal electric companies are entities that supply electricity at wholesale to their member electric cooperatives and municipal utilities, respectively. Dairyland Power Cooperative and Wisconsin Public Power, Inc., are the principal entities in this arena. Both own small amounts of generating capacity and purchase the majority of their electricity from other generators.

The majority of electricity used in Wisconsin is generated by investor-owned utilities. Merchant generators provide the next largest share. Large industrial energy users also generate electricity for their own use and sell excess power into the grid. Electricity is also purchased from generators in neighboring states.

Transmission

The electric industry in the eastern two-thirds of the state was restructured in the late 1990’s, in accordance with FERC orders, resulting in the creation of the American Transmission Company, or ATC, which now owns and manages transmission facilities in that area. Xcell Energy (Northern States Power--WI) and Dairyland Power Cooperative own transmission facilities in western Wisconsin.

The PSC regulates the siting and construction of new transmission lines in Wisconsin. [ss. 196.49 and 196.491 (3), Stats.]

REGIONAL PLANNING

Because of the regional nature of modern energy markets and the fact that the various electric utilities’ transmission systems are interconnected and interdependent, regional planning is used to maintain a reliable and efficient system.

The Midcontinent Independent System Operator (MISO) is a key player in both the generation and transmission of power. It is a membership organization consisting of power generators, power traders, transmission companies, and other entities in a region that includes all or part of 15 states, including Wisconsin, and one Canadian province. MISO was originally established as an RTO which, under FERC regulations, was responsible for ensuring the reliability of the transmission system within its region and was required to prepare comprehensive plans for the transmission system. MISO has expanded its functions and now also manages a regional power market, which uses an auction process to set daily wholesale prices of power at more than 1,700 discrete locations throughout its region. It also determines the dispatch of generating facilities within its region as needed to meet demand and maintain the functioning of the transmission system.

The Midwest Independent System Operator (MISO) is a key player in both the generation and transmission of electric power in all or part of 15 states and one Canadian province.

Distribution

Electric utilities and cooperatives are the only entities that may provide retail electric service in Wisconsin. Apart from the requirements of the State Electrical Code, cooperatives are not subject to PSC regulation.

Electric utilities and cooperatives are the only entities that may provide retail electric service. Cooperatives are generally exempt from PSC regulation.

Emerging Issue: Distributed Generation and Third-Party Ownership

Distributed generation, in the broadest sense, is any source of electric generation that is not a large, centralized generating station, though the statutes define it as a generation source that is no larger than 15 megawatts. [s. 196.496 (1), Stats.] Wisconsin has standards for interconnection between these generators and utility networks. Examples of distributed generation include solar- and wind-powered generation.

Federal law requires electric utilities to buy electricity from these types of non-utility entities, large and small, that generate electricity within their service territories. The price a utility pays for this electricity is set in tariffs which are approved by the PSC. These tariffs usually allow utilities to pay what it would have cost the utility to generate the electricity itself for electricity generated by these non-utility entities, referred to as the utility's "avoided cost." For very small facilities, some utilities pay for distributed generation based on a "net metering" policy, under which the utility pays the generator the same amount it charges to sell electricity, for an amount of electricity up to the amount the

utility sells to that customer. This is equivalent to running the meter forward when the utility is delivering electricity to the customer and running it backward when it is receiving electricity from the customer.

Third-party ownership of distributed generation is an increasingly popular option and business model. Many end users of electricity do not have the technical expertise to operate their own energy system, nor the capital to install it, making this model attractive.

In Wisconsin, such a third-party owner must obtain approval from the PSC if it meets the definition of a “public utility.” [s. 196.49 (1) (am), Stats.]

The PSC has applied the concepts articulated in the Wisconsin Supreme Court case *Cawker v. Meyer* on a case-by-case basis in determining if an entity is a “public utility.” In *Cawker v. Meyer*, the court said that the “furnishing of power, light, and heat to a few neighbors was incidental” and did not make a building owner who generated power for use in his building a public utility. [147 Wis. 320, 324-325 (1911).]

STATE ENERGY POLICY

The state energy policy is set forth in s. 1.12, Stats., and includes five parts including a requirement that state agencies and local governmental units investigate and consider the maximum conservation of energy resources as an important factor when making any major decision that would significantly affect energy usage.

The energy policy also establishes three goals relating to the generation and use of energy, including reducing the ratio of energy consumption to economic activity in the state, basing new capacity for electric generation on renewable energy resources, to the extent feasible, and increasing the forested area of the state in order to ensure a future supply of wood fuel and reduce atmospheric carbon dioxide.

The five-part state energy policy is designated to guide the state in decisions affecting its own energy use and regulatory actions affecting others’ energy use.

The statutes also include a priority list for state agencies and local governments to consider for meeting the energy demands of energy users in the state. [s. 1.12 (4), Stats.] To the extent cost-effective and technically feasible, the options must be considered in the following order:

- Energy conservation and efficiency.
- Noncombustible renewable energy resources.
- Combustible renewable energy resources.
- Advanced nuclear energy using a reactor design or amended reactor design approval after December 31, 2010, by the U.S. Nuclear Regulatory Commission.

- Nonrenewable combustible energy resources, in the following order listed:
 - Natural gas.
 - Oil or coal with a sulfur content of less than 1%.
 - All other carbon-based fuels.

The state energy policy also includes directives to state agencies and local governmental units requiring them to prioritize energy conservation and efficiency and a list of the types of corridors to be prioritized when siting new electric transmission lines.

The energy policies in s. 1.12, Stats., apply only to state and local governments. The policies do not dictate the outcome of any individual agency decision. An agency's compliance with the policies is reflected in the process the agency uses in reaching decisions, as well as the overall pattern of the agency's decisions.

Conservation and Renewable Energy Programs

“Focus on Energy”

The state's principal conservation and renewable energy program is known as the Focus on Energy program. Under this program, all investor-owned electric and gas utilities are required to collectively fund and contract for the administration of statewide energy efficiency and renewable resources programs. Each utility must spend an amount equal to 1.2% of its annual operating revenue derived from retail sales for these programs. The PSC is directed to oversee the programs, set goals and priorities, establish program design standards, and coordinate all energy efficiency and renewable resource programs. [s. 196.374, Stats.]

Program activities include educating energy users regarding opportunities to save money through reducing their energy use, and providing technical and financial assistance for energy users to purchase efficient appliances, lighting, and mechanical equipment, to weatherize their homes, to increase the efficiency of industrial processes, and to install renewable energy systems.

Focus on Energy is the state's principal conservation and renewable energy program.

The statutes give municipal electric utilities and electric cooperatives the option of joining the Focus program or conducting what are termed “commitment to community” programs, in which the utility or cooperative provides a program similar to Focus to its customers or members. [s. 196.374 (7), Stats.]

Renewable Portfolio Standard

A renewable portfolio standard (RPS) is a requirement that suppliers of electric power include in their portfolio of electric supply a specified amount of generation capacity that is derived from renewable resources. Electric power suppliers may comply with the standard by generating electricity from renewable sources, buying electricity from another generator that uses renewable sources, or buying credits from another supplier that has generated or bought more electricity from renewable sources than required to meet the standard. [s. 196.378, Stats.]

An RPS requires suppliers of electric power to include a specified amount of power from renewable resources.

The statutes prescribe a unique RPS for each electric supplier that is based on the supplier's portfolio in the years 2001 to 2003. [s. 196.378 (2) (a) 2., Stats.] The statutes contain a statewide goal that approximately 10% of electric sales be derived from renewable resources by 2015. [s. 196.378 (2) (a) 1., Stats.] PSC staff report that all electric providers are in compliance with their obligations under the RPS, and that the statewide goal has been met.

Tax Incentives for Renewable Energy

Solar and wind energy systems are exempt from the property tax [s. 70.111 (18), Stats.], and the following are exempt from the sales and use taxes:

- Biomass that is used for fuel sold for residential use. [s. 77.54 (30) (a) 1m., Stats.]
- Any residue that results from the harvesting of timber or the production of wood products that is used as fuel in a business activity. [s. 77.54 (30) (a) 4., Stats.]
- Certain equipment that generates energy from wind, sunlight, or agricultural waste, and electricity or energy produced by such equipment. [s. 77.54 (56) (a), Stats.]

Tax exemptions encourage the use of renewable resources by reducing the cost.

Low-Income Energy Programs

For information regarding Home Energy Plus, including where to apply for assistance, see:
www.homeenergyplus.wi.gov

The Department of Administration administers low-income energy assistance programs under the program name Home Energy Plus. The programs are funded with federal funds received by the state and fees collected by electric and natural gas utilities and remitted to the state,

and are implemented by contract agencies at the county level. The programs offer a variety of services, including direct bill payment assistance for some customers who are unable to make full payments, and early intervention programs to identify and assist customers in

danger of falling behind in bill payments. The programs also provide financial assistance for the installation of insulation and other energy conservation measures in the homes of low-income families to reduce the total energy needs of the homes, thereby making energy more affordable for those families. In addition, the programs provide emergency furnace repair or replacement assistance. [s. 16.957, Stats.]

ADDITIONAL REFERENCES

1. Legislative Council Staff: <http://www.legis.wisconsin.gov/lc>
 - *Regulation of Telecommunications Services*, Information Memorandum 2011-07 (June 2, 2011).
 - *Municipal Regulation of Wind Energy Systems (2009 Wisconsin Act 40)*, Information Memorandum 2009-05 (October 27, 2009).
 - *The New Law Relating to State-Issued Franchises for Video Service Providers*, Information Memorandum 2008-01 (January 15, 2008).
 - *2005 Wisconsin Act 141: Energy Efficiency, Renewable Energy, and Energy Policy*, Information Memorandum 2006-01 (March 30, 2006).
 - *Customer-Owned Electric Generation: Opportunities for Customers, Challenges for Utilities*, Information Memorandum 2015-07 (April 30, 2015).
2. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers on various state programs, including taxation and regulation of public utilities and other utilities topics. These Informational Papers are available at: <http://www.legis.wisconsin.gov/lfb>.
3. Legislative Audit Bureau: <http://www.legis.wisconsin.gov/lab>
 - Audit Report 11-13, *Focus on Energy* (December 2011).
 - Heating Assistance and Weatherization Services (audit in progress November 2012).
4. Broadband resources:
 - LinkWISCONSIN: <http://www.link.wisconsin.gov/>.
 - Broadband Reference Guide: <http://psc.wi.gov/utilityInfo/tele/broadband/documents/BroadbandReferenceGuide.pdf>.
 - Broadband Expansion Grant Program: <http://psc.wi.gov/utilityinfo/tele/broadband/grants/bbGrantApplicationPage.htm>
5. Low-Income Energy Programs: <http://homeenergyplus.wi.gov>.
6. Other:
 - Wisconsin PSC: <http://psc.wi.gov>.
 - FERC: <http://www.ferc.gov/>.
 - FCC: <http://www.fcc.gov/>.

- Federal Energy Information Administration: <http://www.eia.doe.gov/>.

GLOSSARY

CLEC: Competitive local exchange carrier.

FCC: Federal Communications Commission.

FERC: Federal Energy Regulatory Commission.

ILEC: Incumbent local exchange carrier.

IPP: Independent power producer.

NRC: Nuclear Regulatory Commission.

RPS: Renewable portfolio standard.

RTO: Regional Transmission Organization.

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