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CHAPTER 196

REGULATION OF PUBLIC UTILITIES

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Cross−reference: See also PSC, Wis. adm. code.

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196.01 Definitions. As used in this chapter and ch. 197, unless the context requires otherwise:

(1b) "Access service" means the provision of switched or dedicated access to a local exchange network for the purpose of enabling a telecommunications provider to originate or terminate telecommunications service. "Access service" includes unbundled local service provided to telecommunications providers.

(1d) "Alternative telecommunications utility" means any of the following:

(a) Cable television telecommunications service providers.

(b) Pay telephone service providers.

(c) Telecommunications resellers or resellers.

(f) Any other telecommunications provider if the commission finds that the service offered by the telecommunications provider is available from other telecommunications providers within this state directly or indirectly to the public.

(g) A telecommunications utility certified under s. 196.203 pursuant to s. 196.50 (2) (j) 1. a.

(1g) "Basic local exchange service" means the provision to residential customers of an access facility, whether by wire, cable, fiber optics or radio, and essential usage within a local calling area for the transmission of high−quality 2−way interactive switched voice or data communication. "Basic local exchange service" includes extended community calling and extended area service. "Basic local exchange service" does not include additional access facilities or any discretionary or optional services that may be provided to a residential customer. "Basic local exchange service" does not include cable service or services provided by a commercial mobile radio service provider.

(1j) "Basic message telecommunications service" means long distance toll service as provided on January 1, 1994, on a direct−dialed, single−message, dial−1 basis between local exchanges in this state at tariff rates. "Basic message telecommunications service" does not include any wide−area telecommunications service, 800−prefix service, volume, dedicated, discounted or other interoffice services or individually negotiated contracts for telecommunications service.

(1m) "Broadcast service" means the one−way transmission to the public of video or audio programming regulated under 47 USC 301 to 334 that is provided by a broadcast station, as defined in 47 USC 153 (dd), including any interaction with a recipient of the programming as part of the video or audio programming offered to the public.

(1p) "Cable service" has the meaning given in 47 USC 522 (6).

(1r) "Cable television telecommunications service provider" means a person who provides one or more telecommunications services but who, during the previous taxable year, received at least 90% of his or her gross income in the particular television franchise area in which telecommunication services are provided from the operation of a cable television system subject in whole or in part to 47 USC 521 to 559.

(2g) "Commercial mobile radio service provider" means a telecommunications provider that is authorized by the federal communications commission to provide commercial mobile service.

(2i) "Commercial mobile service" has the meaning given in 47 USC 332 (d).

(2m) "Commission" means the public service commission.

(2s) "Incumbent local exchange carrier" has the meaning given in 47 USC 251 (h).

(3) "Indeterminate permit" means any grant, directly or indirectly, from the state to any public utility of power, right or privilege to own, operate, manage or control any plant or equipment or any part of a plant or equipment within this state for the production, transmission, delivery or furnishing of any public utility service.

(3a) "Interconnected voice over Internet protocol service" has the meaning given in 47 CFR 9.3.

(3b) "Interconnection agreement" means an interconnection agreement that is subject to approval by the commission under 47 USC 252 (e).

(3e) "Interlata" means between local access and transport areas.

(3g) "Intralata" means within the boundaries of a local access and transport area.

(4) "Municipality" means any town, village or city wherein property of a public utility or any part thereof is located.

(4m) "Pay telephone service provider" means a person who owns or leases a pay telephone located on property owned or leased by that person and who otherwise does not offer any telecommunications service directly or indirectly to the public.

(5) (a) "Public utility" means, except as provided in par. (b), 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 production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for the public. "Public utility" includes all of the following:

1. 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.

2. A telecommunications utility.

(b) "Public utility" does not include any of the following:

1. A cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power or water to its members only.

2. A holding company, as defined in s. 196.795 (1) (h), unless the holding company furnishes, directly to the public, telecommunications or sewer service, heat, light, water or power or, by means of pipes or mains, natural gas.

3. Any company, as defined in s. 196.795 (1) (f), which owns, operates, manages or controls a telecommunications utility unless the company furnishes, directly to the public, telecommunications or sewer service, heat, light, water or power or, by means of pipes or mains, natural gas.

4. A commercial mobile radio service provider.

5. A joint local water authority under s. 66.0823.

6. A person that owns an electric generating facility or improvement to an electric generating facility that is subject to a leased generation contract, as defined in s. 196.52 (9) (a) 3., unless the person furnishes, directly to the public, telecommunications or sewer service, heat, light, water or power or, by means of pipes or mains, natural gas.

(6) "Railroad" has the meaning given under s. 195.02.

(7) "Service" is used in its broadest and most inclusive sense.

(8) "Small telecommunications utility" means any telecommunications utility or a successor in interest of a telecommunications utility that provided landline local and access telecommunications service as of January 1, 1984, and that has less than 50,000 access lines in use in this state.

(8d) "Switched access rates" means the rates, rate elements, and rate structure, including all applicable fixed and traffic sensitive charges, that a telecommunications provider charges for the provision of switched access services.

(8e) "Switched access service" means the offering of switched access to a local exchange network for the purpose of enabling an entity to originate or terminate telecommunications service within the local exchange.

(8m) "Telecommunications carrier" means any person that owns, operates, manages or controls any plant or equipment used to furnish telecommunications services within the state directly or

indirectly to the public but does not provide basic local exchange service, except on a resale basis. "Telecommunications carrier" does not include an alternative telecommunications utility or a commercial mobile radio service provider.

(8p) "Telecommunications provider" means any person who provides telecommunications services.

(9) "Telecommunications reseller" or "reseller" means a telecommunications utility that resells message telecommunications service, wide−area telecommunications services or other telecommunications services which have been approved for reselling by the commission.

(9m) "Telecommunications service" means the offering for sale of the conveyance of voice communication, including the sale of service for collection, storage, forwarding, switching, and delivery incidental to such communication, regardless of the technology or mode used to make such offering. "Telecommunications service" includes switched access service. "Telecommunications service" does not include cable service or broadcast service.

(10) "Telecommunications utility" means any person, corporation, company, cooperative, unincorporated cooperative association, partnership, association and lessees, trustees or receivers appointed by any court that owns, operates, manages or controls any plant or equipment used to furnish telecommunications services within the state directly or indirectly to the public. "Telecommunications utility" does not include a telecommunications carrier.

(12) "Transmission facility" means any plant or equipment used to carry telecommunications services by wire, optics, radio signal or other means.

(12g) "Video service" has the meaning given in s. 66.0420 (2) (y).

(12r) "Video service provider" has the meaning given in s. 66.0420 (2) (zg), and also includes an interim cable operator, as defined in s. 66.0420 (2) (n).

(12w) (a) "Wholesale telecommunications service" means, except as provided in par. (b), a service that satisfies all of the following:

1. The service is provided by a telecommunications provider to another telecommunications provider other than an affiliate, as defined in s. 196.212 (1) (a).

2. The service is subject to regulation by the commission under this chapter.

3. The service is subsequently used in the provision of a telecommunications service to retail end users.

(b) "Wholesale telecommunications service" does not include switched access service.

(13) "Wide−area telecommunications service" means the offering of message−based telecommunications service using a single, dedicated access line at the originating end of the call at a significant volume−based discount.

History: 1977 c. 29, 418; 1981 c. 390; 1983 a. 27, 53, 76, 192, 425, 538; 1985 a. 79, 1985 a. 297 ss. 14 to 22, 39; 1987 a. 27; 1989 a. 344; 1993 a. 121, 496; 1995 a. 46, 409; 1997 a. 184, 218, 229; 1999 a. 9, 32, 53; 1999 a. 150 s. 672; 2001 a. 16; 2005 a. 441; 2007 a. 42; 2011 a. 22.

The PSC may determine that a holding company, formed by a public utility corporation to engage in non−utility business ventures, is itself a public utility when the holding company possesses the power to control utility plants or equipment or when the arrangement is a device to evade regulatory jurisdiction. 71 Atty. Gen. 147.

196.012 Interstate commerce. This chapter applies to interstate commerce only so far as the constitution and laws of the United States permit.

History: 2005 a. 179 s. 99; Stats. 2005 s. 196.012.

196.015 Total service long−run incremental cost. (1) In this section, "basic network function" means the smallest disaggregation of local exchange transport, switching and loop functions that is capable of being separately listed in a tariff and offered for sale.

(2) In this chapter, total service long−run incremental cost is calculated as the total forward−looking cost, using least cost technology that is reasonably implementable based on currently available technology, of a telecommunications service, relevant group of services, or basic network function that would be avoided if the telecommunications provider had never offered the service, group of services, or basic network function or, alternatively, the total cost that the telecommunications provider would incur if it were to initially offer the service, group of services, or basic network function for the entire current demand, given that the telecommunications provider already produces all of its other services.

History: 1993 a. 496.

196.016 Relationship to certain federal telecommunications law. Except as provided in s. 196.50 (2) (j) 2. and 3., nothing in this chapter is intended to either reduce or expand the scope and application of the federal Telecommunications Act of 1996, P.L. 104−104, including the jurisdiction and authority granted to the commission thereunder, and the commission may take any action that the commission is authorized to take under that federal act.

History: 2011 a. 22.

196.02 Commission's powers. (1) JURISDICTION. The commission has jurisdiction to supervise and regulate every public utility in this state and to do all things necessary and convenient to its jurisdiction.

(2) DEFINITION; CLASSIFICATION. The commission shall provide for a comprehensive classification of service for each public utility. The classification may take into account the quantity used, the time when used, the purpose for which used, and any other reasonable consideration. Each public utility shall conform its schedules of rates, tolls and charges to such classification.

(3) RULES. The commission may adopt reasonable rules to govern its proceedings and to regulate the mode and manner of all inspections, tests, audits, investigations and hearings.

(4) INFORMATION REQUIRED; STOCK HOLDERS. (a) The commission may inquire into the management of the business of all public utilities. The commission shall keep itself informed as to the manner and method in which the same is conducted. The commission may obtain from any public utility any information necessary to enable the commission to perform its duties.

(b) Each public utility shall furnish to the commission, in such form and at such times as the commission requires, the following information respecting the identity of the holders of its voting capital stock in order to enable the commission to determine whether the holders constitute an affiliated interest within the meaning of this chapter:

1. The names of each holder of one percent or more of the voting capital stock of the public utility.

2. The nature of the property right or other legal or equitable interest which the holder has in the stock.

3. Any other similarly relevant information which the commission prescribes and directs.

(c) If any public utility fails to furnish the commission with information required of it by the commission, the commission may issue an order directing the delinquent public utility to furnish the information immediately or to show good cause why the information cannot be obtained. Failure of any public utility to comply with the order of the commission is a violation of this chapter within the meaning of s. 196.66.

(5) INSPECT BOOKS. The commission or any commissioner or any person employed by the commission for that purpose may, upon demand, inspect the books, accounts, papers, records and memoranda of any public utility, and examine under oath any officer, agent or employee of the public utility in relation to its business and affairs. Any person, other than one of the commission-

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ers, who makes a demand shall produce his or her authority to make the inspection.

(5m) PROPERTY INSPECTIONS. The commission may inspect property for the purpose of obtaining any information related to the preparation or review of an application for a certificate under s. 196.49 or 196.491 (3), including any information necessary to evaluate any environmental features or effects that are relevant to such an application.

(6) PRODUCTION OF RECORDS. The commission may require, by order or subpoena served on any public utility as a summons is served in circuit court, the production within this state at the time and place the commission designates of any books, accounts, papers or records kept by the public utility outside the state, or verified copies in lieu thereof, if the commission orders. If a public utility fails or refuses to comply with the order or subpoena, for each day of the failure or refusal the public utility shall forfeit not less than $50 nor more than $500.

(7) COMMISSION INITIATIVE. In any matter within its jurisdiction, including, but not limited to, chs. 197 and 201 and this chapter, the commission may initiate, investigate, and order a hearing at its discretion upon such notice as it deems proper. The commission may use personal delivery, mail, electronic mail, or any other reasonable method to provide notice, including notice for a contested case hearing, notwithstanding s. 227.44 (1).

(8) EMPLOY COUNSEL. The commission may employ counsel in any proceeding, investigation, hearing or trial had by it or in which it is a party, and the expenses thereby incurred shall be charged to the commission's appropriation.

(9) TECHNICALITIES DISREGARDED. Substantial compliance with the requirements of the statutes shall be sufficient to make effective any rule, regulation, order or action of the commission. No rule, regulation, order or action of the commission is invalid for any omission of a technical nature.

(10) COMMISSION NOTICES; CERTIFICATIONS. Any notice of investigation or hearing or certification to a copy of a record of the commission may be issued or certified by any member of the commission or by its secretary or assistant secretary.

(12) SUE; BE SUED. The commission may sue and be sued in its own name, and may confer with or participate in any proceedings before any regulatory agency of any other state or of the federal government.

History: 1977 c. 29 ss. 1329, 1331, 1333, 1352; 1977 c. 418; 1981 c. 148; 1983 a. 27, 53; 1985 a. 297; 1987 a. 403; 1989 a. 344; 1993 a. 496; 1997 a. 140; 1999 a. 150; 2003 a. 89; 2005 a. 441; 2011 a. 22, 155.

Cross−reference: See also PSC, Wis. adm. code.

The PSC has authority to order a utility to refund compensation collected in violation of its filed tariffs. GTE North Inc. v. PSC 176 Wis. 2d 559, 500 N.W.2d 284 (1993).

Public service commission ordered rebates for inadequate service. 1976 WLR 584.

196.025 Duties of the commission. (1) STATE ENERGY POLICY. (ag) *Definitions.* In this subsection:

1. "Renewable resource" has the meaning given in s. 196.374 (1) (j).

2. "Wholesale supplier" has the meaning given in s. 16.957 (1) (w).

(ar) *Consideration of energy priorities.* Except as provided in pars. (b) to (d), to the extent cost−effective, technically feasible and environmentally sound, the commission shall implement the priorities under s. 1.12 (4) in making all energy−related decisions and orders, including strategic energy assessment, rate setting and rule−making orders.

(b) *Energy conservation and efficiency.* 1. In a proceeding in which an investor−owned electric public utility is a party, the commission shall not order or otherwise impose energy conservation or efficiency requirements on the investor−owned electric public utility if the commission has fulfilled all of its duties under s. 196.374 and the investor−owned electric public utility has satisfied the requirements of s. 196.374 for the year prior to commencement of the proceeding, as specified in s. 196.374 (8).

2. In a proceeding in which a wholesale supplier is a party, the commission shall not order or otherwise impose energy conservation or efficiency requirements on the wholesale supplier if the commission has fulfilled all of its duties under s. 196.374 and the wholesale supplier's members are in the aggregate substantially in compliance with s. 196.374 (7).

(c) *Renewable resources.* 1. In a proceeding in which an investor−owned electric public utility is a party, the commission shall not order or otherwise impose any renewable resource requirements on the investor−owned electric public utility if the commission has fulfilled all of its duties under s. 196.378 and the commission has informed the utility under s. 196.378 (2) (c) that, with respect to the most recent report submitted under s. 196.378 (2) (c), the utility is in compliance with the requirements of s. 196.378 (2) (a) 2.

2. In a proceeding in which a wholesale supplier is a party, the commission shall not order or otherwise impose any renewable resource requirements on the wholesale supplier if the commission has fulfilled all of its duties under s. 196.378 and the wholesale supplier's members are in the aggregate substantially in compliance with s. 196.378 (2).

(d) *Transmission facilities.* In a proceeding regarding a request by a public utility or wholesale supplier to acquire, construct, install, or operate an electric transmission facility or associated equipment, the commission shall not order or otherwise impose requirements on the public utility or wholesale supplier.

(1m) TRANSMISSION CORRIDORS. The commission shall implement the policy specified in s. 1.12 (6) in making all decisions, orders, and rules affecting the siting of new electric transmission facilities.

(2) ENVIRONMENTAL IMPACTS. The commission shall promulgate rules establishing requirements and procedures for the commission to carry out the duties under s. 1.11. Rules promulgated under this subsection shall include requirements and procedures for the commission to comply with sub. (2m) and for each of the following:

(a) Standards for determining the necessity of preparing an environmental impact statement.

(b) Adequate opportunities for interested persons to be heard on environmental impact statements, including adequate time for the preparation and submission of comments.

(c) Deadlines that allow thorough review of environmental issues without imposing unnecessary delays in addressing the need for additional electric transmission capacity in this state.

(2m) COORDINATION WITH DEPARTMENT OF NATURAL RESOURCES. (a) In this subsection:

1. "Department" means the department of natural resources.

2. "Project" means a project or construction requiring a certificate under s. 196.49 or 196.491 (3) and requiring a permit or approval from the department.

(b) The commission and the department shall coordinate the execution of their respective duties under s. 1.11 for any action of the commission or department regarding a project as follows:

1. If the rules of either the commission or the department require the commission or the department to prepare an environmental impact statement on the project, the commission and the department shall cooperatively prepare an environmental impact statement.

2. If subd. 1. does not apply and the rules of either the commission or the department require the commission or the department to prepare an environmental assessment on the project, the commission and the department shall cooperatively prepare an environmental assessment.

3. The environmental impact statement or environmental assessment under subd. 1. or 2. shall include all of the information required for both the commission and the department to carry out their respective duties under s. 1.11.

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(c) Paragraph (b) does not waive any duty of the commission or the department to comply with s. 1.11 or to take any other action required by law regarding a project, except that, in the consideration of alternative locations, sites, or routes for a project, the commission and the department are required to consider only the location, site, or route for the project identified in an application for a certificate under s. 196.49 and no more than one alternative location, site, or route; and, for a project identified in an application for a certificate under s. 196.491 (3), the commission and the department are required to consider only the location, site, or route for the project identified in the application and one alternative location, site, or route.

(3) RELIABILITY REPORTS. The commission shall promulgate rules establishing requirements and procedures for electric utilities, as defined under s. 196.491 (1) (d), to file reports with the commission, on a frequency that the commission determines is reasonably necessary, on their current reliability status, including the status of operating and planning reserves, available transmission capacity and outages of major operational units and transmission lines. A report filed under the rules promulgated under this subsection is subject to inspection and copying under s. 19.35 (1), except that the commission may withhold the report from inspection and copying for a period of time that the commission determines is reasonably necessary to prevent an adverse impact on the supply or price of energy in this state.

(4) SMALL−SCALE GENERATION INCENTIVES. (a) In consultation with the department of administration and the department of revenue, the commission shall study the establishment of a program for providing incentives for the development of high−efficiency, small−scale electric generating facilities in this state that do either of the following:

1. Provide benefits in the form of support for electric distribution or transmission systems, power quality or environmental performance.

2. Employ technologies such as combined heat and power systems, fuel cells, microturbines, or photovoltaic systems that may be situated in, on, or next to buildings or other electric load centers.

(b) No later than January 1, 2001, the commission shall submit a report of its findings and recommendations under par. (a) to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3).

(5) MARKET POWER STUDY. (ag) In this subsection, "electric cooperative" means a cooperative association organized under ch. 185 for the purpose of generating, distributing or furnishing electric energy at retail or wholesale to its members only.

(ar) The commission shall contract with an expert consultant in economics to conduct a study on the potential for horizontal market power, including the horizontal market power of electric generators, to frustrate the creation of an effectively competitive retail electricity market in this state and to make recommendations on measures to eliminate such market power on a sustainable basis. The study shall include each of the following:

1. An assessment of the effect of each recommendation on public utility workers and shareholders and electric cooperative workers and members.

1m. An assessment of the effect of each recommendation on rates for each class of public utility customers and electric cooperative members.

2. An evaluation of the impact of transmission constraints on the market power of electric generators in local areas.

(b) No later than January 1, 2001, the commission shall submit a report of the results of the study under par. (ar) to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3).

(6) POLICE AND FIRE PROTECTION FEE. (a) In this subsection:

1. "Communications provider" means a person that provides communications service.

2. "Communications service" means active retail voice communications service.

3. "Department" means the department of revenue.

(b) 1. Except as provided in subd. 2., a communications provider shall impose a monthly fee of $0.75 on each communications service connection with an assigned telephone number, including a communication service provided via a voice over Internet protocol connection. If a communications provider provides multiple communications service connections to a subscriber, the communications provider shall impose a separate fee under this subdivision on each of the first 10 connections and one additional fee for each 10 additional connections per billed account. A communications provider may list the fee separately from other charges on a subscriber's bill, and if a communications provider does so, the communications provider shall identify the fee as "police and fire protection fee," or, if the communications provider combines the fee with a charge imposed under s. 256.35 (3), the communications provider shall identify the combined fee and charge as "charge for funding countywide 911 systems plus police and fire protection fee." Any partial payment of a fee by a subscriber shall first be applied to any amount the subscriber owes the communications provider for communications service.

2. A communications provider that offers a prepaid wireless telecommunications plan, or a retailer that offers such a plan on behalf of a communications provider, shall impose a fee equal to $0.38 on each retail transaction for such a plan that occurs in this state. A communications provider or retailer may state the amount of the fee separately on a bill for the retail transaction, and if a communications provider or retailer does so, the communications provider or retailer shall identify the fee as "police and fire protection fee."

(c) 1. Except as provided in subd. 2., no later than the first calendar month following the calendar month in which a communications provider or retailer receives from a subscriber a fee imposed under par. (b), the communications provider or retailer shall remit the fee to the commission.

2. The commission may contract with the department for the collection of fees imposed under par. (b) 2. If the commission and department enter into such a contract, no later than the first calendar month following the calendar month in which a communications provider or retailer receives from a subscriber a fee imposed under par. (b) 2., the communications provider or retailer shall remit the fee to the department.

3. The commission and department shall deposit all fees remitted under subds. 1. and 2. into the police and fire protection fund.

(d) The commission may do any of the following:

1. Promulgate rules for administering this subsection.

2. Bring an action to collect any amount that is required to be remitted under par. (c).

Cross−reference: See also ch. PSC 172, Wis. adm. code.

History: 1993 a. 414; 1999 a. 9; 2001 a. 38; 2003 a. 89; 2005 a. 141; 2009 a. 28.

NOTE: 1993 Wis. Act 414, which creates this section, contains extensive explanatory notes.

Cross−reference: See also PSC, Wis. adm. code.

196.027 Environmental trust financing. (1) DEFINITIONS. In this section:

(a) "Ancillary agreement" means any bond insurance policy or other financial arrangement entered into in connection with the issuance of environmental trust bonds.

(b) "Assignee" means any person to which an interest in environmental control property is sold, assigned, transferred, or conveyed and any successor to such a person.

(c) "Energy utility" means a public utility engaged in the transmission, delivery, or furnishing of natural gas by means of pipes or mains or of heat, light, or power.

(d) "Environmental control activity" means any of the following:

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1. The construction, installation, or otherwise putting into place of environmental control equipment in connection with an energy utility plant that, before March 30, 2004, has been used to provide service to customers.

2. The retiring of any existing plant, facility, or other property to reduce, control, or eliminate environmental pollution in accordance with federal or state law.

(e) "Environmental control charge" means a charge paid by customers of an energy utility or its successors for the energy utility to recover environmental control costs and financing costs.

(f) "Environmental control cost" means capital cost, including capitalized cost relating to regulatory assets, incurred or expected to be incurred by an energy utility in undertaking an environmental control activity and, with respect to an environmental control activity described in par. (d) 2., includes the unrecovered value of property that is retired, including any demolition or similar cost that exceeds the salvage value of the property. "Environmental control cost" does not include any monetary penalty, fine, or forfeiture assessed against an energy utility by a government agency or court under a federal or state environmental statute, rule, or regulation.

(g) "Environmental control equipment" means any device, equipment, structure, process, facility, or technology, owned or controlled by an energy utility, that is designed for the primary purpose of preventing, reducing, or remediating environmental pollution.

(h) "Environmental control property" means all of the following:

1. The right specified in a financing order to impose, collect, or receive environmental control charges, or to obtain adjustments to such charges as provided in this section, and any interest in such right.

2. All revenues and proceeds arising from the right and interests specified in subd. 1.

(i) "Environmental pollution" means the contamination or rendering unclean or impure of the air, land, or waters of the state, or the making of the same injurious to public health, harmful for commercial or recreational use, or deleterious to animal or plant life.

(j) "Environmental trust bonds" means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness that are issued by an energy utility or an assignee, the proceeds of which are used directly or indirectly to recover, finance, or refinance environmental control costs and financing costs, and that are secured by or payable from environmental control property.

(k) "Financing cost" means any of the following:

1. Interest and redemption premiums, that are payable on environmental trust bonds.

2. A payment required under an ancillary agreement, including any amount required to fund a reserve account.

3. The cost of retiring or refunding an energy utility's existing debt and equity securities in connection with the issuance of environmental trust bonds, but only to the extent the securities were issued for the purpose of financing environmental control costs.

4. Any other reasonable cost related to issuing and servicing environmental trust bonds, including servicing fees, trustee fees, legal fees, administrative fees, placement fees, capitalized interest, and rating agency fees.

5. Any taxes and license fees imposed on the revenues generated from the collection of environmental control charges.

(L) "Financing order" means an order under sub. (2) that allows for the issuance of environmental trust bonds, the collection of environmental control charges, and the creation of environmental control property.

(2) FINANCING ORDERS. (a) *Applications.* An energy utility may apply to the commission for a financing order. In addition to any other information required by the commission, an energy utility shall do all of the following in an application:

1. Describe the environmental control activities that the energy utility proposes to undertake, indicate whether the energy utility's electric, natural gas, or steam service is associated with the activities, and describe the reasons for undertaking the activities.

2. Estimate the environmental control costs of the activities described under subd. 1.

3. Indicate whether the energy utility proposes to finance all or a portion of the costs estimated under subd. 2. with environmental trust bonds. If the energy utility proposes to finance a portion of the costs, the energy utility shall identify that portion in the application.

4. Estimate the financing costs of the environmental trust bonds proposed under subd. 3.

5. Estimate the environmental control charges necessary to recover the environmental control costs and financing costs estimated in the application and indicate whether the environmental control charges are proposed for the energy utility's electric, natural gas, or steam service.

6. Estimate any cost savings to customers resulting from financing environmental control costs with environmental trust bonds as opposed to alternative financing methods.

(b) *Commission powers and duties.* 1. No later than 120 days after receiving an application under par. (a), the commission shall, after a hearing, issue a financing order or an order rejecting the application. The commission may issue a financing order if the commission finds all of the following:

a. That the order will result in lower overall costs to customers than would alternative methods of financing environmental control activities.

b. That the proposed structuring and expected pricing of the environmental trust bonds will result in the lowest environmental control charges that are consistent with market conditions and the terms of the financing order.

c. That the financing order is otherwise consistent with the public interest, and is prudent, reasonable, and appropriate.

2. In a financing order issued to an energy utility, the commission shall do all of the following:

a. Except as provided in subds. 2. c. and 4., specify the amount of environmental control costs and financing costs that may be recovered through environmental control charges and the period over which such costs may be recovered.

b. For the period specified in subd. 2. a. require that, as long as any customer obtains distribution service from the energy utility or its successors, the customer shall pay environmental control charges to the energy utility or its assignees regardless of whether the customer obtains other service from a different energy utility or other energy supplier.

c. Include a formula−based mechanism for making any adjustments in the environmental control charges that customers are required to pay under the order and making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the energy utility's or assignee's timely recovery of environmental control costs and financing costs.

d. Specify the environmental control property that is created and that may be used to pay or secure environmental trust bonds.

e. If considered appropriate by the commission, include a provision allowing for the retirement of environmental trust bonds before their termination dates.

f. Include any other conditions that the commission considers appropriate and that are not otherwise inconsistent with this section.

3. A financing order issued to an energy utility may provide that the energy utility's acquisition of environmental control prop-

erty specified in subd. 2. d. is conditioned upon, and shall be simultaneous with, the sale of the environmental control property to an assignee and the pledge of the environmental control property to secure environmental trust bonds.

4. a. If the commission issues a financing order, the commission shall apply, at least annually, the formula−based mechanism specified in subd. 2. c. and, based on estimates of demand and other mathematical factors, make the adjustments described in subd. 2. c. The commission shall make the adjustments within 45 days of the anniversary date on which environmental trust bonds are issued and after expiration of the comment period described in subd. 4. b.

b. The commission may not hold a hearing for the purpose of making an adjustment under subd. 4. a., but shall allow interested parties 30 days to make comments limited to any error in the application of the formula−based mechanism relating to the appropriate amount of any overcollection or undercollection of environmental control charges and the appropriate amount of an adjustment.

5. A financing order is irrevocable and, except as provided in subds. 2. c. and 4., the commission may not reduce, impair, or otherwise adjust environmental control charges approved in the order.

(c) *Subsequent orders.* The commission may commence a proceeding and issue a subsequent financing order that provides for retiring or refunding environmental trust bonds issued pursuant to the original financing order if the commission included a provision described in par. (b) 2. e. in the original financing order and if the commission finds that the subsequent financing order satisfies all of the criteria specified in par. (b) 1. a., b., and c.

(d) *Judicial review.* A financing order or an order rejecting an application under par. (b) 1. is reviewable by the circuit court for Dane County under ch. 227, except that the court shall proceed to hear and determine the action as expeditiously as practicable and give the action precedence over other matters not accorded similar precedence by law.

(e) *Effect of orders.* 1. A financing order shall remain in effect until the environmental trust bonds issued pursuant to the order have been paid in full and the financing costs of the bonds have been recovered in full.

2. A financing order issued to an energy utility shall remain in effect and unabated notwithstanding the bankruptcy of the energy utility.

3. An application by an energy utility for a financing order and commission approval of a financing order are in addition to and do not replace or supersede any other review or approval by the commission under this chapter that may be required or allowed for environmental control activities.

(3) EXCEPTIONS TO COMMISSION JURISDICTION. (a) If the commission issues a financing order to an energy utility, the commission may not, in exercising its powers and carrying out its duties regarding rate making, consider the environmental trust bonds issued pursuant to the order to be the debt of the energy utility, the environmental control charges paid under the order to be the revenue of the energy utility, or the environmental control costs or financing costs specified in the order to be the costs of the energy utility, nor may the commission determine that any action taken by an energy utility that is consistent with the order is unjust or unreasonable. Nothing in this paragraph affects the authority of the commission to adjust or reduce an energy utility's revenue requirements under sub. (4) (a).

(b) The commission may not order or otherwise directly or indirectly require an energy utility to use environmental trust bonds to finance any project, addition, plant, facility, extension, capital improvement, environmental control equipment, or any other expenditure, unless, except as provided in sub. (2) (c), the energy utility has made an application under sub. (2) (a) to finance such expenditure using environmental trust bonds. The commission may not refuse to allow an energy utility to recover costs for environmental control activities in an otherwise permissible fashion solely because of the potential availability of environmental trust financing.

(4) ENERGY UTILITY DUTIES. (a) An energy utility shall place the proceeds of any environmental trust bonds issued pursuant to a financing order in a separate account. An energy utility may use the proceeds only for paying environmental control costs and financing costs that are prudent, reasonable, and appropriate, and only if the energy utility has applied for and obtained all approvals from the commission under this chapter that are required for the environmental control activities for which the environmental control costs are incurred or expected to be incurred. If the commission finds that the proceeds have been used for environmental control costs or financing costs that are not prudent, reasonable, or appropriate, the commission may adjust or reduce the energy utility's revenue requirements in connection with charges other than environmental control charges for the purpose of ensuring that the energy utility's customers do not pay for such costs.

(b) An energy utility shall annually provide to its customers a concise explanation of the environmental control charges approved in a financing order issued to the energy utility. The explanation may be made by bill inserts, Web site information, or other appropriate means.

(c) The failure of an energy utility to comply with this subsection shall not invalidate, impair, or affect any financing order, environmental control property, environmental control charge, or environmental control bonds.

(5) ENVIRONMENTAL CONTROL PROPERTY. (a) *In general.* 1. Environmental control property that is specified in a financing order shall constitute a present property right notwithstanding that the imposition and collection of environmental control charges depend on the energy utility to which the order is issued performing its servicing functions relating to the collection of environmental control charges and on future energy consumption. Such property is considered to exist whether or not the revenues or proceeds arising from the property have accrued and whether or not the value of the property is dependent on the receipt of service by customers of an energy utility.

2. Environmental control property specified in a financing order shall continue to exist until the environmental trust bonds issued pursuant to the order are paid in full and all financing costs of the bonds have been recovered in full.

3. Environmental control property specified in a financing order issued to an energy utility may be transferred, sold, conveyed, or assigned to any person, including an affiliate of the energy utility created for the limited purpose of facilitating or administering environmental control property or environmental control trust bonds under the financing order and not including any other affiliate of the energy utility. Environmental control property may be pledged to secure environmental trust bonds issued pursuant to the order. Each such transfer, sale, conveyance, assignment, or pledge by an energy utility or affiliate of an energy utility is considered to be a transaction in the ordinary course of business.

4. If an energy utility defaults on any required payment of revenues arising from environmental control property specified in a financing order, a court, upon application by an interested party, and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues. Any such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the energy utility.

5. The interest of an assignee or pledgee in environmental control property specified in a financing order issued to an energy utility, and in the revenue and collections arising from that property, are not subject to setoff, counterclaim, surcharge, or defense by the energy utility or any other person or in connection with the bankruptcy of the energy utility or any other entity.

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6. Any successor to an energy utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding, or pursuant to any merger or acquisition, sale, or transfer by operation of law, as a result of energy utility restructuring or otherwise, shall perform and satisfy all obligations of, and have the same rights under a financing order as, the energy utility under the financing order in the same manner and to the same extent as the energy utility including collecting and paying to the person entitled to receive them revenues with respect to the environmental control property.

(b) *Security interests.* Except as otherwise provided in this paragraph, the creation, perfection, and enforcement of security interests in environmental control property to secure environmental trust bonds are governed by ch. 409. Notwithstanding ch. 409, with regard to creating, perfecting, and enforcing a valid security interest in environmental control property to secure environmental trust bonds, all of the following apply:

1. The description of environmental control property in a security agreement is sufficient if the description refers to this section and the financing order creating the environmental control property.

2. A security interest is created, valid, binding, and perfected at the time a security agreement is made and attaches without any physical delivery of collateral or other act, and the lien of such security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether such parties have notice of the lien. The filing or recording of a financial statement or instrument in which such a security interest is created is not required.

3. A security interest in environmental control property is a continuously perfected security interest and has priority over any other lien created by operation of law or otherwise, which subsequently attaches to the environmental control property.

4. The priority of a security interest created under this paragraph is not affected by the commingling of proceeds arising from environmental control property with other amounts.

5. Any changes that the commission makes to a financing order that creates the environmental control property does not affect the validity, perfection, or priority of a security interest in the environmental control property.

(c) *Sales.* The sale, assignment, and transfer of environmental control property are governed by this paragraph. All of the following apply to a sale, assignment, or transfer under this paragraph:

1. The sale, assignment, or transfer is an absolute transfer of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the environmental control property, if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. After such a transaction, the environmental control property is not subject to any claims of the seller or the seller's creditors, other than creditors holding a prior security interest in the environmental control property perfected under par. (b).

2. The characterization of the sale, assignment, or transfer as an absolute transfer under subd. 1. and the corresponding characterization of the purchaser's property interest is not affected by any of the following factors:

a. Commingling of amounts arising with respect to the environmental control property with other amounts.

b. The retention by the seller of a partial or residual interest, including an equity interest, in the environmental control property, whether direct or indirect, or whether subordinate or otherwise.

c. Any recourse that the purchaser may have against the seller.

d. Any indemnifications, obligations, or repurchase rights made or provided by the seller.

e. The responsibility of the seller to collect environmental control charges.

f. The treatment of the sale, assignment, or transfer for tax, financial reporting, or other purposes.

(6) ENVIRONMENTAL TRUST BONDS NOT PUBLIC DEBT. The state is not liable on environmental trust bonds and the bonds are not a debt of the state. An issue of environmental trust bonds does not, directly or indirectly or contingently, obligate the state or a political subdivision of the state to levy any tax or make any appropriation for payment of the bonds.

(7) ENVIRONMENTAL TRUST BONDS AS LEGAL INVESTMENTS. Any of the following may legally invest any sinking funds, moneys, or other funds belonging to them or under their control in environmental trust bonds:

(a) The state, the investment board, municipal corporations, political subdivisions, public bodies, and public officers except for members of the public service commission.

(b) Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business.

(c) Personal representatives, guardians, trustees, and other fiduciaries.

(8) STATE PLEDGE. (a) In this subsection, "bondholder" means a person who holds an environmental trust bond.

(b) The state pledges to and agrees with bondholders that the state will not do any of the following:

1. Take or permit any action that impairs the value of environmental control property.

2. Except as allowed under this section, reduce, alter, or impair environmental control charges that are imposed, collected, and remitted for the benefit of the bondholders until any principal, interest, premium, or other charge incurred, or contract to be performed, in connection with environmental trust bonds held by the bondholders are paid or performed in full.

(c) Any person who issues environmental trust bonds is allowed to include the pledge specified in par. (b) in the bonds and relating documentation.

(9) CONFLICTS. In the event of conflict between this section and any other law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of any security interest in environmental control property, this section to the extent of the conflict shall govern.

(10) EFFECT OF INVALIDITY ON ACTIONS. Effective on the date that environmental trust bonds are first issued under this section, if any provision of this section is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence shall not affect any action allowed under this section that is taken by an energy utility, an assignee, a collection agent, or a party to a transaction and any such action shall remain in full force and effect.

History: 2003 a. 152, 326; 2011 a. 260.

196.03 Utility charges and service; reasonable and adequate. (1) Subject to s. 196.63, a public utility shall furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, water, telecommunications service or power produced, transmitted, delivered or furnished or for any service rendered or to be rendered in connection therewith shall be reasonable and just and every unjust or unreasonable charge for such service is prohibited and declared unlawful.

(2) For rate−making purposes the commission may consider 2 or more municipalities as a regional unit if the same public utility serves the municipalities and if the commission determines that the public interest so requires.

(3) (a) In the case of a public utility furnishing water, the commission shall include, in the determination of water rates, the cost

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of fluoridating the water in the area served by the public utility furnishing water if the governing body of the city, village or town which owns or is served by the public utility furnishing water authorizes the fluoridation of water by the public utility furnishing water.

(b) Unless the governing body of a city, village or town adopts a resolution providing that the city, village or town will pay the retail charges for the production, storage, transmission, sale and delivery or furnishing of water for public fire protection purposes that are not included in general service charges:

1. A public utility shall include the charges in the water utility bill of each customer of the public utility in the city, village or town.

2. A municipal utility may, in addition to including the charges in water utility bills under subd. 1., bill the charges to any person who meets all of the following conditions:

a. The person is not a customer of the municipal utility.

b. The person owns land that is located in the city, village or town and in an area in which the municipal utility has an obligation to provide water for public fire protection.

(4) Any public utility which is not a city, town or village and which supplies gas or electricity to its customers may not recover in rates set by the commission from any customer for any expenditure for costs in a proceeding before the commission which exceed 4 times the total amount assessed to the utility under s. 196.85 (1) and (2) unless the object of the expenditure has been ordered by the commission. The commission, by rule, shall establish procedures whereby a public utility may recover its expenditures under this subsection.

(5) (a) In this subsection "facility" means nuclear−fired electric generating equipment and associated facilities subject to a loss of coolant accident in March 1979.

(b) The commission may not authorize a utility furnishing electricity to recover in rates charged to consumers for the costs of repairing, maintaining or operating any facility owned by another public utility located outside of this state.

(c) The commission may not authorize a utility furnishing electricity to recover in rates charged to consumers for insurance premiums that provide coverage for an accident at a facility in March 1979, if the coverage is first obtained on or after May 7, 1982.

(d) No utility may otherwise pay directly or indirectly for the costs in pars. (b) and (c).

(5m) The commission shall promulgate rules establishing requirements and procedures for the commission, in setting rates for retail electric service, to reflect the assignment of costs and the treatment of revenues from sales to customers outside this state that the public utility does not have a duty to serve.

Cross−reference: See also ch. PSC 117, Wis. adm. code.

(6) In determining a reasonably adequate telecommunications service or a reasonable and just charge for that telecommunications service, the commission shall consider at least the following factors in determining what is reasonable and just, reasonably adequate, convenient and necessary or in the public interest:

(a) Promotion and preservation of competition consistent with ch. 133 and s. 196.219.

(b) Promotion of consumer choice.

(c) Impact on the quality of life for the public, including privacy considerations.

(d) Promotion of universal service.

(e) Promotion of economic development, including telecommunications infrastructure deployment.

(f) Promotion of efficiency and productivity.

(g) Promotion of telecommunications services in geographical areas with diverse income or racial populations.

History: 1981 c. 20, 342; 1983 a. 53; 1985 a. 297; 1987 a. 399; 1991 a. 294; 1993 a. 496; 1995 a. 27; 1997 a. 204.

Cross−reference: See also chs. PSC 113, 134, and 185, Wis. adm. code.

A charge for fire protection services under sub. (3) is a fee not a tax; imposing the fee against a church is constitutional. City of River Falls v. St. Bridget's Catholic Church, 182 Wis. 2d 436, 513 N.W.2d 673 (Ct. App. 1994).

This section and related administrative rules dictate contract terms between a regulated utility and its customers and do not create any duties independent of the utility service contract. A phone company's failure to include a subscriber in its directory did not result in tort liability. Recycle Worlds Consulting Corp. v. Wisconsin Bell, 224 Wis. 2d 586, 592 N.W.2d 637 (Ct. App. 1999), 98−0752.

A public utility has no duty to provide services to persons in the utility's area of undertaking requesting service who live in a mobile home park, are supplied with services by a vendor selected by the park operator that is not a public utility, and are not claiming that service is inadequate or rates unreasonable. An agreement between the park operator and the selected vendor is not void as against public policy. Northern States Power Co. v. National Gas Company, Inc. 2000 WI App 30, 232 Wis. 2d 541, 606 N.W.2d 613, 99−1486.

196.04 Facilities granted other utilities; physical telecommunications connections; petition; investigation.

(1) (a) *Definitions.* In this section:

2. "Physical connection" means the number of trunk lines or complete circuits and connections, including connections by wire, optics, radio signal or other means, required to furnish reasonably adequate telecommunications service between telecommunications providers.

3. "Political subdivision" means any county, city, village, or town or public utility owned or operated by any county, city, village, or town.

4. "Transmission equipment and property" means any conduit, subway, pole, tower, transmission wire, or other equipment on, over, or under any right−of−way owned or controlled by a political subdivision, street, or highway.

(b) *Transmission equipment and property access.* 1. Any person who owns transmission equipment and property shall permit, for reasonable compensation, the use of the transmission equipment and property, including an attachment to a pole, by any public utility, video service provider, or telecommunications provider if public convenience and necessity require such use and if the use will not result in irreparable injury to any owner or user of the transmission equipment and property or in any substantial detriment to the service to be rendered by the owner or user.

2. Every telecommunications utility shall permit physical connections to be made, and telecommunications service to be furnished, between any telecommunications system operated by it and the telecommunications toll line operated by another telecommunications provider, or between its toll line and the telecommunications system of another telecommunications provider, or between its toll line and the toll line of another telecommunications provider, or between its telecommunications system and the telecommunications system of another telecommunications provider if all of the following apply:

a. Public convenience and necessity require the connection.

b. The connection will not result in irreparable injury to the owners or other users of the facilities of the public utility making the connection.

c. The connection will not result in any substantial detriment to the service to be rendered by a public utility making the connection.

(2) If there is a failure to agree upon the use of transmission equipment and property under sub. (1) or the conditions or compensation for the use, or if there is a failure to agree upon the physical connections or the terms and conditions upon which the physical connections shall be made, any public utility, video service provider, telecommunications provider, or other interested person may apply to the commission. If, after investigation, the commission determines that public convenience and necessity require the use of the transmission equipment and property or the physical connections and that the use or physical connections will not result in irreparable injury to the owner or other users of the transmission equipment and property or of the facilities of the public utility, video service provider, or telecommunications provider or in any substantial detriment to the service to be rendered by the owner or the public utility, video service provider, telecommunications provider, or other users of the transmission equipment and

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property or facilities, the commission, by order, shall direct that the use of the transmission equipment and property be permitted and that the physical connections be made. The commission shall prescribe reasonable conditions and compensation for the use of the transmission equipment and property and shall determine how and within what time the physical connections shall be made and by whom the expense of making and maintaining the physical connections shall be paid. An order under this subsection may be revised by the commission.

(4) (a) In this subsection, "sewerage system operator" means any of the following:

1. A municipality that operates a sewerage system under s. 66.0821.

2. A town sanitary district commission that operates a sewerage system under 60.77 (4).

3. A city or village that obtains a sewerage system under s. 60.79.

4. A metropolitan sewerage district commission that operates a sewerage system under s. 200.11 (2) or 200.31 (1).

5. A public inland lake protection and rehabilitation district that exercises the powers of a town sanitary district under s. 33.22 (3) and that operates a sewerage system under s. 60.77 (4).

(b) If the parties cannot agree and the commission finds that public convenience and necessity or the rendition of reasonably adequate service to the public requires that a public utility, telecommunications provider, sewerage system operator, or video service provider be permitted to extend its lines on, over or under the right−of−way of any railroad, or requires that the tracks of any railroad be extended on, over or under the right−of−way of any public utility, telecommunications provider, sewerage system operator, or video service provider, the commission may order the extension by the public utility, telecommunications provider, sewerage system operator, video service provider, or railroad on, over or under the right−of−way of the other if it will not materially impair the ability of the railroad, telecommunications provider, sewerage system operator, video service provider, or public utility, on, over or under whose right−of−way the extension would be made, to serve the public. The commission shall prescribe lawful conditions and compensation which the commission deems equitable and reasonable in light of all the circumstances.

History: 1983 a. 53; 1985 a. 297 ss. 25, 76; 1993 a. 496; 1995 a. 27; 1997 a. 27; 1999 a. 9; 1999 a. 150 s. 672; 2007 a. 42; 2011 a. 22.

Cross−reference: See also ch. PSC 132, Wis. adm. code.

It was reasonable to determine that an award under sub. (4) should consist of compensation for: 1) the right of crossing the railway, measured by the diminution of value; and 2) the consequential damages that result directly from the construction and maintenance of the utility's crossing. Wisconsin Central LTD. v. PSC, 170 Wis. 2d 558, 490 N.W.2d 27 (Ct. App. 1992).

196.05 Public utility property; valuation; revaluation. If the commission deems it proper or necessary for effective regulation, the commission shall value or revalue all the property of every public utility actually used and useful for the convenience of the public.

History: 1983 a. 53.

196.06 Uniform accounting; forms; books; office. (1) Every public utility shall keep and render to the commission in the manner and form prescribed by the commission uniform accounts of all business transacted.

(2) The commission may require any public utility engaged directly or indirectly in any business other than that of the production, transmission or furnishing of heat, light, water, telecommunications service or power to keep and render separately to the commission in like manner and form the accounts of all such other business. This chapter applies to the books, accounts, papers and records of such other business if the commission requires the keeping and rendering separately of the accounts under this subsection.

(3) Each public utility shall keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the commission and shall comply with all directions of the commission relating to such books, accounts, papers and records.

(6) Each public utility shall have an office in one of the towns, villages or cities in this state in which its property or some part thereof is located, in which it shall keep all books, accounts, papers and records required by the commission to be kept within the state. No books, accounts, papers or records required by the commission to be kept within the state shall be removed from the state, except upon conditions prescribed by the commission.

History: 1977 c. 418; 1983 a. 53; 1985 a. 297.

Cross−reference: See also chs. PSC 113, 134, and 185, Wis. adm. code.

196.07 Balance sheet filed annually. (1) Each public utility shall close its accounts annually on December 31 and promptly prepare a balance sheet of that date. On or before the following April 1 every public utility shall file with the commission the balance sheet together with any other information the commission prescribes, verified by an officer of the public utility. The commission, for good cause shown, may extend the time for filing the balance sheet and prescribed information.

(2) If a public utility fails to file a report with the commission containing its balance sheet and other information prescribed by the commission by the date the report is due under sub. (1), the commission may prepare the report from the records of the public utility. All expenses of the commission in preparing the report, plus a penalty equal to 50% of the amount of the expenses, shall be assessed against and collected from the public utility under s. 196.85. The amount of the charge to a public utility shall not be limited by s. 196.85 (1) (b) and shall be in addition to any other charges assessable under s. 196.85. The penalty provision of the charge shall be credited to the general fund under s. 20.906.

History: 1983 a. 53; 2001 a. 16.

196.08 Audit and inspection. The commission shall provide for the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the commission.

History: 1975 c. 142; 1983 a. 53; 1985 a. 297.

196.09 Depreciation rates and practices; findings by commission; dividends from reserves; retirements. (1) Every public utility shall file with the commission, within such time as may be required by the commission, its estimate of the annual rate of depreciation required for each of its classes of fixed capital used for public utility purposes, and of the composite annual rate of depreciation required for such fixed capital as an aggregate, which shall constitute the public utility's estimates of the amount which should be returned to it out of its rates for service, to meet the depreciation of its property.

(2) After the submission of the estimates under sub. (1), the commission shall review the estimates. If the commission determines that the estimates submitted are reasonable and proper, it shall certify its determination to the public utility. If the commission determines that the estimates submitted are not reasonable and proper, it shall certify to the public utility the percentages which it considers reasonable and proper. If the fixed capital accounts of the public utility are not subdivided to permit the rates for the various classes of fixed capital used for public utility purposes to be applied, the estimates submitted by the public utility and the percentages determined by the commission may be based upon the aggregate of such fixed capital.

(3) After the commission certifies to the public utility its findings as to the percentages required for depreciation under sub. (2), the public utility shall have 30 days within which to make application to the commission for a hearing and order. If the public utility does not make application to the commission for a hearing and order within the time set, the commission's certification of findings shall have the effect of an order and the public utility shall

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have the right of appeal from the certification as provided in this chapter.

(4) The commission may provide, in order to meet changing conditions, that a public utility submit from time to time the estimate required under sub. (1). If it requires such resubmission of estimates, the commission shall follow the procedure for certifying its findings under sub. (2). In revising the reasonable and proper percentages of depreciation, the commission shall give consideration to the experience of the public utility in accumulating a depreciation reserve under previous rates, any retirements actually made and any other relevant factor.

(5) If the commission establishes, by certification or order, the reasonable and proper percentages of depreciation, the percentages shall constitute the percentages to be used in any proceeding involving the rates or practices of the public utility, except that if at the time of such proceeding the commission finds that the percentages of depreciation previously established are no longer reasonable and proper, the commission shall establish reasonable and proper percentages for the purpose of such proceeding and certify the new percentages under this section.

(6) (a) If the commission establishes for any public utility, by certification or order, the percentages necessary for depreciation on fixed capital used for public utility purposes, the public utility shall credit to its depreciation reserve in each accounting period the amount required to provide for depreciation at the percentage established. If the public utility is a corporation, the corporation may not pay any dividend out of earnings for any fiscal period subsequent to the commission's certification or order, or carry any portion of its earnings to its surplus account, except out of earnings remaining after crediting its depreciation reserve in accordance with the rates established by the commission, except as provided under par. (b).

(b) After application and hearing the commission, upon a finding that it is necessary in the public interest, may exempt a public utility from the duty of crediting to the depreciation reserve in any accounting period a greater amount than is possible without impairing its ability to pay dividends for the current calendar year. Nothing in this section shall be construed to modify the requirements of ss. 180.0623 and 180.0640.

(7) If a public utility desires to account for depreciation on a sinking fund basis and the commission determines that such basis of accounting for depreciation reasonably may be employed, the commission shall establish, under sub. (2), the composite rate to be applied to the aggregate fixed capital used for public utility purposes to determine the amount which shall be charged to operating expenses, and the interest rate applicable to the reserve balance at which additional credits to the reserve shall be computed. If a public utility accounts for depreciation on a sinking fund basis, the public utility shall:

(a) Credit to the reserve the amount charged to operating expenses plus the amount obtained by applying the interest rate to the reserve balance.

(b) Be subject to the same restrictions and regulations in its accounting for the entire amount to be credited to the depreciation reserve as are applicable to other public utilities which account for depreciation by other methods under this section.

(8) No public utility may charge to its depreciation reserve anything except losses on property actually retired from service.

History: 1981 c. 148; 1983 a. 53; 1985 a. 297; 1989 a. 303, 344; 1993 a. 496; 2005 a. 441; 2009 a. 238; 2011 a. 22.

An order establishing depreciation rates for a utility's nuclear plant did not require an environmental impact statement. Wisconsin Environmental Decade, Inc. v. PSC, 105 Wis. 2d 457, 313 N.W.2d 863 (Ct. App. 1981).

196.10 Construction; accounting. The commission shall keep itself informed of all new construction, extensions and additions to the property of public utilities, and shall prescribe the necessary forms, regulations and instructions for the keeping of construction accounts, which shall clearly distinguish all operating expenses from new construction.

Cross−reference: See also chs. PSC 113 and 134, Wis. adm. code.

196.11 Profit sharing and sliding scales. (1) A public utility may enter into any reasonable arrangement with its consumers or employees, for the division or distribution of its surplus profits, or providing for a sliding scale of charges, or other financial device if the arrangement is:

(a) Practicable and advantageous to the parties interested; and

(b) Entered into by a public utility other than a telecommunications utility and found by the commission to be reasonable and just and consistent with the purposes of this chapter.

(2) Any arrangement under this section shall be under the supervision and regulation of the commission. The commission may order any rate, charge or regulation which the commission deems necessary to give effect to the arrangement. The commission may make any change in a rate, charge or regulation as the commission determines is necessary and reasonable and may revoke its approval and amend or rescind all orders relative to any arrangement. This subsection does not apply to telecommunications cooperatives, unincorporated telecommunications cooperative associations, or telecommunications utilities except as provided in s. 196.205.

(3) A telecommunications utility may enter into any reasonable arrangement with its consumers or employees, for the division or distribution of its surplus profits, or providing for a sliding scale of charges or other financial device, if the arrangement is practical and advantageous to the parties interested.

History: 1981 c. 148; 1983 a. 53; 1985 a. 297; 1989 a. 344; 1993 a. 496; 2005 a. 441; 2011 a. 22.

196.12 Report by public utilities; items. (1) Each public utility shall furnish to the commission, in the form and at the time the commission requires, accounts, reports or other information which shows in itemized detail:

(a) Depreciation.

(b) Salaries and wages.

(c) Legal expenses.

(d) Taxes and rentals.

(e) The quantity and value of material used.

(f) Receipts from residuals, by−products, services or other sales.

(g) Total and net cost.

(h) Gross and net profit.

(i) Dividends and interest.

(j) Surplus or reserve.

(k) Prices paid by consumers.

(L) Any other information whether or not similar to the information under pars. (a) to (k).

(2) No public utility operated by a city, village or town having a population of less than 5,000 shall be required to report under this section except as to earnings, operating expenses, including depreciation and maintenance, cost of renewals, extensions and improvements to the property and the nature and amount of service furnished in such detail as the commission deems necessary, except that if the commission conducts any investigation of the public utility upon formal complaint, the commission may require the detailed reports required under sub. (1).

History: 1983 a. 53; 1993 a. 246.

Cross−reference: See also chs. PSC 113, 134, and 185, Wis. adm. code.

196.13 Commission's report. (1) The commission shall publish biennial reports showing its proceedings together with any financial or other data which concerns and is appropriate for all public utilities and may publish any other report related to public utilities.

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(2) The commission shall publish in its reports the value of all the property actually used and useful for the convenience of the public of a public utility if the commission has held a hearing on the public utility's rates, charges, service or regulations or if the commission has otherwise determined the value of the public utility's property.

History: 1983 a. 53; 1993 a. 496; 2011 a. 22.

196.135 Confidential handling of records. (1) DEFINITION. In this section, "record" has the meaning given in s. 19.32 (2).

(2) RULES. The commission shall promulgate rules establishing requirements and procedures for the confidential handling of records filed with the commission.

(3) NOTICE. If the commission decides to allow public access under s. 19.35 to a record filed with the commission, the commission shall, before allowing access and within 3 working days after making the decision to allow access, serve written notice of that decision by certified mail or personal service on the person who filed the record, if any of the following applies:

(a) The commission granted the record confidential handling status under the rules promulgated under sub. (2).

(b) The person who filed the record requested confidential handling status under the rules promulgated under sub. (2) and the commission has not yet acted on the request.

(c) The commission denied a request for confidential handling under the rules promulgated under sub. (2); the person whose request was denied filed a petition for review of the commission's decision to deny the request; and the petition is pending before a court.

(4) LIMIT ON ACCESS; RIGHT OF ACTION. (a) The commission shall not provide access to a record that is the subject of a notice under sub. (3) within 12 days of the date of service of the notice.

(b) A person who is entitled to a notice under sub. (3) may bring an action for judicial review of a decision by the commission to allow public access under s. 19.35 to a record. Section 19.356 (3) to (8) applies to such an action, except that "record subject" means the person who is entitled to notice under sub. (3), "authority" means the commission, "notice under s. 19.356 (2) (a)" means the notice under sub. (3), and "action commenced under s. 19.356 (4)" means the action under this paragraph.

History: 2003 a. 47.

NOTE: 2003 Wis. Act 47, which creates this section, contains extensive explanatory notes.

196.14 Public record exception. The commission may withhold from public inspection any information which would aid a competitor of a public utility in competition with the public utility.

History: 1983 a. 53; 1985 a. 236, 297.

Cross−reference: See s. 19.36 for other public record exceptions.

196.15 Units of product or service. The commission shall prescribe for each kind of public utility, other than a telecommunications utility, suitable and convenient standard commercial units of product or service.

History: 1993 a. 496.

Cross−reference: See also chs. PSC 113, 134, and 185, Wis. adm. code.

196.16 Standard measurements; accurate appliances. (1) The commission shall fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other condition pertaining to the supply of the product or service rendered by a public utility. The commission shall prescribe reasonable regulations for measurement, examination and testing of the product or service.

(2) The commission shall establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurement of public utility service.

(3) This section does not limit any power of a municipal governing body under s. 196.58.

History: 1983 a. 53; 1997 a. 254.

Cross−reference: See also chs. PSC 113, 134, and 185, Wis. adm. code.

196.17 Tests of meters; fees. (1) The commission shall provide for the examination and testing of every appliance used for measuring any product or service of a public utility.

(2) Any consumer may have an appliance tested under this section upon payment of a fee fixed by the commission.

(3) The commission shall establish a reasonable fee to be paid for testing appliances under this section if a consumer requests the test. The fee shall be paid by the consumer at the time of his or her request, but shall be repaid to the consumer if the appliance is found to be defective or incorrect to the disadvantage of the consumer.

(4) The commission may purchase materials, apparatus and standard measuring instruments for examinations and tests under this section.

History: 1983 a. 53.

Cross−reference: See also chs. PSC 113, 134, and 185, Wis. adm. code.

196.171 Examination of meters, pipes, fittings, wires and works; entering buildings for. (1) Any officer or agent of any public utility furnishing or transmitting water, gas or electric current to the public or for public purposes may enter, at any reasonable time, any place supplied with gas, electricity or water by the public utility, for the purpose of inspecting, examining, repairing, installing or removing the meters, pipes, fittings, wires and works for supplying or regulating the supply of gas, electricity or water and for the purpose of ascertaining the quantity of gas, electricity or water supplied.

(2) No officer or agent of a public utility may enter any premises under this section unless the officer or agent:

(a) Was duly appointed by the public utility for the purpose of acting under this section.

(b) Exhibits written authority signed by the president, by a vice president and secretary, or by a vice president and assistant secretary of the public utility. The authority of any officer or agent of a municipally owned public utility shall be signed by the commissioner of public works or by any other official in charge of the public utility.

(3) Any person who directly or indirectly prevents or hinders any officer or agent from entering a premises, or from making an inspection, examination, removal or installation under this section shall be fined not more than $25 for each offense.

History: 1983 a. 53.

Cross−reference: See also ss. PSC 113.0611, 134.15, and 185.41, Wis. adm. code.

196.175 Construction and occupancy standards. The commission may not establish or enforce construction or occupancy standards applicable to any public building, as defined in s. 101.01 (12), dwelling, as defined in s. 101.71 (2) or any occupancy standard applicable to any place of employment as defined in s. 101.01 (11).

History: 1979 c. 34; 1983 a. 189 s. 329 (4); 1995 a. 27.

196.18 Entry upon premises. The commission, its agents, experts or examiners may enter any premises occupied by a public utility to make any examination or test under this chapter and may set up and use on the premises any apparatus or appliance and occupy reasonable space for the examination or test.

History: 1983 a. 53.

196.19 Publish schedules; regulations; files; joint rates. (1) Each public utility shall file with the commission schedules showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any public utility controlled or operated by it. The

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rates, tolls and charges shown on such schedules may not be changed except as provided under this chapter.

(2) Every public utility shall file with and as a part of such schedule all rules and regulations that, in the judgment of the commission, in any manner affect the service or product, or the rates charged or to be charged for any service or product, as well as any contracts, agreements or arrangements relating to the service or product or the rates to be charged for any service or product to which the schedule is applicable as the commission may by general or special order direct.

(3) A copy of as much of the schedules filed under sub. (1) as the commission determines necessary for the use of the public shall be printed in plain type, and kept on file in every public utility station or office where payments are made by consumers in a form and place readily accessible to the public.

(4) If a schedule of joint rates or charges is in force between public utilities, the schedule shall be printed and filed with the commission under sub. (1). The commission shall determine the portion of the schedule necessary for the use of the public. The public utilities shall file the portion of the schedule under sub. (3).

(6) The commission may prescribe the form in which any schedule is issued under this section by any public utility.

History: 1983 a. 53 ss. 28, 35; 1985 a. 297; 1993 a. 496; 1999 a. 9; 2011 a. 22.
Cross−reference: See also chs. PSC 113, 134, and 185, Wis. adm. code.

196.191 Telecommunications utility and alternative telecommunications utility tariffs. (1) No later than the 90th day beginning after June 9, 2011, any telecommunications utility or alternative telecommunications utility that provides intrastate switched access service within this state shall at all times have on file with the commission a tariff showing all rates, tolls, and charges that it has established and that are in force for such intrastate switched access service. The absence of such a tariff before the 90th day beginning after June 9, 2011, shall not prohibit a telecommunications utility or alternative telecommunications utility from charging intrastate switched access rates for any intrastate switched access service that it provides, or limit or excuse any entity from its obligation to pay intrastate switched access rates, provided that such intrastate switched access rates comply with the requirements of ss. 196.212 and 196.219 (2r). A telecommunications utility or alternative telecommunications utility may not withdraw a tariff for switched access service once the tariff is in effect. Except as allowed under this section or to comply with ss. 196.212 and 196.219 (2r), a telecommunications utility or alternative telecommunications utility may not file to change the rates, tolls, and charges shown in a tariff for switched access service.

(2) Except as provided in this section and s. 196.212, notwithstanding anything in this chapter to the contrary, any telecommunications utility or alternative telecommunications utility may do any of the following:

(a) Retain on file with the commission tariffs already on file with the commission as of June 9, 2011, showing the rates, tolls, and charges and the terms and conditions that the telecommunications utility or alternative telecommunications utility has established as of June 9, 2011, for some or all of the services performed by the telecommunications utility or alternative telecommunications utility within the state or for any service in connection therewith or performed by any telecommunications utility or alternative telecommunications utility controlled or operated by the telecommunications utility or alternative telecommunications utility.

(b) File with the commission new tariffs showing the rates, tolls, and charges and the terms and conditions that the telecommunications utility or alternative telecommunications utility has established, as provided in the tariff filings, for some or all of the services performed by the telecommunications utility or alternative telecommunications utility within the state or for any service in connection therewith or performed by any telecommunications utility or alternative telecommunications utility controlled or operated by the telecommunications utility or alternative telecommunications utility.

(c) Except as provided in sub. (1), withdraw a tariff for any service by providing notice to the commission.

(d) 1. Except as provided in subd. 2., change the rates, tolls, and charges and the terms and conditions of a tariff on file with the commission by filing a revised tariff with the commission. Except as provided in subd. 2., a proposed change in a tariff shall be effective at the time specified in the revised tariff as filed with the commission.

2. No change in a tariff that constitutes an increase in intrastate switched access rates may be made unless the change is consistent with the public interest factors set forth in s. 196.03 (6) and does not violate ss. 196.212 and 196.219 (2r) and the commission by order, after investigation and opportunity for a hearing, approves the change, except that an increase in intrastate switched access rates shall be effective at the time specified in the revised tariff as filed with the commission, if either of the following is satisfied:

a. The increase results in the intrastate switched access rates mirroring the interstate switched access rates for the telecommunications utility or alternative telecommunications utility.

b. If the telecommunications utility or alternative telecommunications utility is a small telecommunications utility, the increase does not violate s. 196.212 or 196.219 (2r), does not exceed, in any 12−month period, the percentage increase in the U.S. consumer price index for all urban consumers, U.S. city average, for the previous year, and is not greater than the corresponding increase in interstate switched access rates for the small telecommunications utility.

(3) (a) Except as provided in par. (b), if a telecommunications utility or alternative telecommunications utility files a new tariff under sub. (2) (b), all of the following apply:

1. The new tariff shall become effective on the date specified in the tariff, unless the commission suspends the operation of the new tariff upon serving a written notice of the suspension on the telecommunications utility or alternative telecommunications utility within 10 days after the date of filing. The notice shall include a statement of the reason under subd. 2. upon which the commission believes the tariff may be modified.

2. The commission may modify the new tariff after an opportunity for a hearing only to the extent that the tariff violates s. 196.209, 196.212, or 196.219 and only to the extent that s. 196.209, 196.212, or 196.219 applies to the telecommunications utility or alternative telecommunications utility.

3. If the commission does not conduct a hearing under subd. 2., the commission shall issue its final order within 60 days after issuing the notice of suspension under subd. 1. If the commission conducts a hearing, the commission shall issue its final order within 120 days after issuing the notice of suspension under subd. 1. If a final order is not issued within the time limits specified in this subdivision, the new tariff becomes effective as filed.

(b) If a telecommunications utility or alternative telecommunications utility files a new tariff under sub. (2) (b) to comply with sub. (1) for intrastate switched access service that includes intrastate switched access rates higher than the intrastate switched access rates it charged on January 1, 2011, the tariff shall not be effective unless the new tariff is consistent with the public interest factors set forth in s. 196.03 (6) and does not violate s. 196.212 or 196.219 (2r) and the commission by order, after investigation and opportunity for a hearing, approves the new tariff and rates, except that an increase in intrastate switched access rates shall be effective at the time specified in the new tariff as filed with the commission if sub. (2) (d) 2. a. is satisfied or, if the telecommunications utility or alternative telecommunications utility is a small telecommunications utility, sub. (2) (d) 2. a. or b. is satisfied.

(4) Nothing in this section shall give the commission jurisdiction over the rates, tolls, and charges or the terms and conditions of any service that is not subject to a tariff under this section.

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(5) Every telecommunications utility or alternative telecommunications utility that files a tariff with the commission under this section shall include all rates, tolls, and charges and all terms and conditions that apply to the services specified in the tariff.

(6) Nothing in this chapter prohibits a tariff for a service that permits a telecommunications utility or alternative telecommunications utility to enter into a contract with a customer for that tariffed service that includes rates, tolls, and charges and terms and conditions that are different from those in the tariff.

(7) Except as provided in sub. (6), no telecommunications utility or alternative telecommunications utility may charge, demand, collect, or receive more or less compensation for any service for which a tariff is filed under this section than is specified in the tariff, as may at the time be in force, or demand, collect, or receive any rate, toll, or charge for such service not specified in the tariff.

(8) A copy of the tariffs filed under this section shall be made available to consumers in a form and place readily accessible to the public.

History: 2011 a. 22.

196.192 Market−based compensation, rates and contracts. (1) In this section, "electric public utility" means a public utility whose purpose is the generation, distribution and sale of electric energy.

(2) No later than March 1, 2000, each investor−owned electric public utility shall do each of the following:

(a) File with the commission rates that result in customers receiving market−based compensation for voluntary interruptions of firm load during peak periods of electric use.

(b) File with the commission market−based pricing options and options for individual contracts that allow a retail customer, through service from its existing public utility, to receive market benefits and take market risks for the customer's purchases of capacity or energy.

(3) (a) The commission shall approve market−based rates that are consistent with the options specified in sub. (2), except that the commission may not approve a market−based rate unless the commission determines that the rate will not harm shareholders of the investor−owned electric public utility or customers who are not subject to the rate.

(b) Nothing in s. 196.20, 196.21, 196.22, 196.37, 196.60 or 196.604 prohibits the commission from approving a filing under sub. (2) or approving market−based rates under par. (a).

(4) Subject to any approval of the commission that is necessary, an electric public utility that is not an investor−owned electric public utility may implement market−based rates approved under sub. (3) (a) or implement the options in filings under sub. (2) that are approved by the commission.

History: 1999 a 9.

196.193 Water and sewer rate increases without hearings. (1) WHEN PERMITTED. The commission may grant a rate increase to a municipally owned water or a municipally owned combined water and sewer public utility without a hearing if all of the following conditions are met:

(a) The revenue increase is calculated by multiplying the utility's prior year's revenues from sales of utility service by the rate increase factor under sub. (2).

(b) The revenue increase under par. (a), combined with the prior year's net operating income, either results in an overall rate of return that does not exceed the rate of return determined by the commission under sub. (3) or results in an amount that does not exceed 6% of the utility's prior year's total operation and maintenance expenses.

(c) The utility will increase its rates for general service, wholesale service and public fire protection uniformly for all utility customers by the rate increase factor determined by the commission under sub. (2), unless the commission determines that the utility has good cause for not meeting the condition under this paragraph.

(d) The effective date of the rate increase is not less than 12 months from the effective date of an increase previously filed under this section nor less than 45 days from the date on which the application was filed.

(e) If the utility's rates in effect prior to the rate increase under this section were authorized pursuant to a hearing under s. 196.20, the rates have been in effect for a calendar year.

(f) The commission has not rejected the application for good cause.

(g) If the utility has 4,000 or more customers, the effective date of the rate increase is not more than 5 years from the effective date of an increase authorized pursuant to a hearing under s. 196.20.

(h) If the utility has less than 4,000 customers, the total of all prior rate increases granted since the last hearing under s. 196.20 does not result in rates that are more than 40% higher than the base rates previously authorized by a hearing under s. 196.20.

(2) DETERMINATION OF THE RATE INCREASE FACTOR. Not later than March 1 annually, the commission shall set an increase factor to apply to rates of municipally owned water public utilities or municipally owned combined water and sewer public utilities. The factor shall be equal to the U.S. consumer price index for all urban consumers, U.S. city average, for the previous year; however, the factor may not be less than 3% nor more than 10%. The rate increase factor need not be defined by rule.

(3) DETERMINATION OF AN OVERALL RATE OF RETURN. Not later than March 1 annually, the commission shall set the overall rate of return to be applicable to municipally owned water public utilities or municipally owned combined water and sewer public utilities for rate increases under this section. The overall rate of return shall be equal to the simple average, rounded to the nearest tenth of 1%, of the interest rates listed for state and local bonds in the Federal Reserve Statistical Release H.15 (519) published by the federal reserve board, for the last quarter of the prior year, plus 2%. The overall rate of return need not be defined by rule.

(4) NOTICE REQUIREMENTS. A utility seeking an increase in rates under this section shall notify all customers, upon a form approved by the commission, by newspaper publication or by mail. The utility shall include a copy of the issued notice in its filing of an application under this section. The notice shall include all of the following:

(a) The anticipated date of filing of the rate increase application and the anticipated effective date of the rate increase.

(b) The impact on customer bills resulting from the rate increase calculated for at least 5 different usage levels, including an average residential usage level.

(c) A statement that the increase is being proposed under this section and that no hearing is required.

(d) Other information required by the commission to be included in a notice under this subsection.

History: 1995 a. 363.

196.194 Gas utility individual contracts. Nothing in ss. 196.03, 196.19, 196.20, 196.21, 196.22, 196.37, 196.60, 196.604 and 196.625 prohibits the commission from approving the filing of a tariff which permits a gas utility to enter into an individual contract with an individual customer if the term of the contract is no more than 5 years, or a longer period approved by the commission, and if the commission determines that substitute gas services are available to customers or potential customers of the gas utility and the absence of such a tariff will cause the gas utility to be disadvantaged in competing for business. A tariff filed under this section shall include the condition that any such contract shall be compensatory. The tariff shall include any other condition and procedure required by the commission in the public interest. Within 20 days after a contract authorized under this section or an amendment to such a contract has been executed, the gas utility

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shall submit the contract to the commission. The commission shall give notice to any person, upon request, that a contract authorized under this section has been received by the commission. The notice shall identify the gas utility that has entered into the contract. Within 6 months after receiving substantial evidence that a contract may be noncompensatory, or upon its own motion, the commission shall investigate and determine whether the contract is compensatory. If the commission determines that the contract is noncompensatory, the commission may make appropriate adjustments in the rates or tariffs of the gas utility that has entered into the contract, in addition to other remedies under this chapter. The dollar amount of the adjustment may not be less than the amount by which the contract was found to be noncompensatory.

History: 1985 a. 297; 1993 a. 211, 496; 1995 a. 317; 1997 a. 90; 2011 a. 22.

196.195 Alternative telecommunications regulation plans. Any telecommunications utility that as of June 9, 2011, is subject to an alternative regulation plan approved by the commission under s. 196.195, 2009 stats., shall remain regulated pursuant to such alternative regulation plan to the extent that the alternative regulation plan is not inconsistent with ss. 196.191 and 196.212, unless the telecommunications utility terminates the alternative regulation plan pursuant to the terms and conditions of the plan. If such an inconsistency exists, the requirements of ss. 196.191 and 196.212 shall apply to the intrastate switched access rates and intrastate switched access service tariff filings of such a telecommunications utility.

History: 2011 a. 22.

196.197 Unbundled network elements. (1) APPLICABILITY. This section applies to a petition to determine rates and costs of unbundled network elements or unbundled service elements under federal or state law, but does not apply to a petition for arbitration.

(2) PETITIONS. (a) A telecommunications provider may file a petition with the commission in the form and containing the information required by the commission. The commission shall determine that a petition is complete if the petition includes all of the following:

1. A request that the commission determine rates and costs of unbundled network elements or unbundled service elements, an identification of the particular rates and costs that are the subject of the petition, and an identification of the relief sought by the petitioner.

2. One or more cost studies upon which the petitioner relies to support the rates and costs sought by the petitioner.

3. Prefiled written direct testimony upon which the petitioner relies to support the petition and relief sought.

4. Any other information required by the commission.

(b) 1. No later than 30 days after the date on which a petition is filed under par. (a), the commission shall determine whether a petition is complete under par. (a) and notify the petitioner about the determination. If the commission fails to make a determination within the 30−day period, the petition is considered to be complete. If the commission determines that a petition filed under par. (a) is incomplete, the commission shall state the reason for the determination and identify the information that is needed to determine that the petition is complete.

2. A petitioner may supplement a petition that the commission has determined to be incomplete. No later than 15 days after a petitioner files a supplemented petition under this subdivision, the commission shall determine whether the supplemented petition is complete and notify the petitioner about the determination. The commission shall determine that a supplemented petition is complete if it contains the information identified in the determination under subd. 1. that is needed to determine that the petition is complete. If the commission fails to make a determination under this subdivision within the 15−day period, the petition is considered to be complete. If the commission determines that a petition supplemented under this subdivision is not complete pursuant to this subdivision, the commission shall state the reason for the determination under this subdivision and identify the information that is needed to determine that the petition is complete under this subdivision. There is no limit on the number of times that a petitioner may supplement a petition under this subdivision.

(c) A petitioner shall provide a copy of a petition filed under par. (a) or supplemented under par. (b) 2. to any other telecommunications provider that may be affected by the petition at the same time that the petition is filed or supplemented. A telecommunications provider that may be affected by the petition may respond to the petition and provide the commission any additional information.

(3) TIME FRAME FOR FINAL DECISIONS. (a) 1. This paragraph applies to petitions to determine 100 or less rates.

2. The commission shall enter a final decision under sub. (4) on a petition within 180 days after the date on which the petition is determined or considered to be complete under sub. (2) (b), unless an extension is agreed to under subd. 3. or granted under subd. 4.

3. With the approval of the commission, the petitioner may, within the 180−day period specified in subd. 2., agree to extend the time for a final decision.

4. The commission may, within the 180−day period specified in subd. 2. or within any extension approved under subd. 3., petition the circuit court for Dane County for an extension of time for entering a final decision on the petition. Within the 180−day period specified in subd. 2. or within any extension approved under subd. 3., the court may, upon a showing of good cause, grant an extension of not more than an additional 60 days. No more than one extension may be granted under this subdivision.

(b) 1. This paragraph applies to petitions to determine more than 100 rates.

2. The commission shall enter a final decision under sub. (4) on a petition within 270 days after the date on which the petition is determined or considered to be complete under sub. (2) (b), unless an extension is agreed to under subd. 3. or granted under subd. 4.

3. With the approval of the commission, the petitioner may, within the 270−day period specified in subd. 2., agree to extend the time for a final decision.

4. The commission may, within the 270−day period specified in subd. 2. or within any extension approved under subd. 3., petition the circuit court for Dane County for an extension of time for entering a final decision on the petition. Within the 270−day period specified in subd. 2. or within any extension approved under subd. 3., the court may, upon a showing of good cause, grant an extension of not more than an additional 90 days. No more than one extension may be granted under this subdivision.

(4) FINAL DECISION. The commission may reject a petition, grant a petition, or approve a petition with modifications or conditions. The commission shall issue a final decision that determines rates for the unbundled network elements and unbundled service elements specified in the petition, except to the extent that the evidence in the record is not sufficient for making such a determination with respect to a particular rate, unbundled network element, or unbundled service element.

History: 2003 a. 125; 2011 a. 260 s. 81.

196.198 Local measured telecommunications service. (1) In this section, "extended community telephone service" means a telecommunications service by which a customer in one exchange may call a customer in another exchange or combination of exchanges under a discounted toll charge plan.

(2) Except as provided in sub. (3), a telecommunications utility that has more than 150,000 access lines in use in this state or a telecommunications provider that has more than 150,000 access lines in use in this state may not charge a residential customer for basic local exchange service based on the duration of a call or on

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the time of day that a call is made. This subsection does not apply to an extended community telephone service.

(3) The commission may suspend the application of sub. (2) in a particular geographical area for a telecommunications utility or a telecommunications provider if, after a contested case hearing, the commission determines that all of the following apply:

(a) Failure to suspend the application of sub. (2) makes competition in that geographical area impractical.

(b) Suspending the application of sub. (2) is beneficial to all of the following groups:

1. Residential customers in general.

2. Disabled customers.

3. Elderly customers.

History: 1993 a. 496; 2011 a. 22.

196.199 Interconnection agreements. (1) DEFINITION. In this section, "interconnection agreement" does not include an interconnection agreement to which a commercial mobile radio service provider is a party.

(2) COMMISSION POWERS. (a) The commission has jurisdiction to approve and enforce interconnection agreements and may do all things necessary and convenient to its jurisdiction.

(b) The commission may promulgate rules that require an interconnection agreement to include alternate dispute resolution provisions.

(c) The commission shall promulgate rules that specify the requirements for determining under sub. (3) (a) 1m. a. whether a party's alleged failure to comply with an interconnection agreement has a significant adverse effect on the ability of another party to the agreement to provide telecommunications service to its customers or potential customers.

(3) ENFORCEMENT. (a) 1. Upon the filing of any of the following, the commission may investigate whether a party to an interconnection agreement approved by the commission has failed to comply with the agreement:

a. A complaint by a party to the agreement that another party to the agreement has failed to comply with the agreement and that the failure to comply with the agreement has a significant adverse effect on the ability of the complaining party to provide telecommunications service to its customers or potential customers.

b. A complaint filed under any provision of this chapter by any person that the commission determines may involve a failure to comply with the agreement by a party to the agreement.

1g. The commission may investigate whether a party to an interconnection agreement approved by the commission has complied with the agreement upon the filing of a petition by the party for a determination of whether the party has complied with the agreement if the petition demonstrates that a controversy has arisen over the party's compliance with the agreement. If the commission initiates an investigation under this subdivision, the commission may determine that a party to an interconnection agreement has failed to comply with the agreement only if a complaint is filed under subd. 1. a. in which the complaining party alleges that the party's failure to comply with the agreement has a significant adverse affect on the complaining party's ability to provide telecommunications service to its customers or potential customers.

1m. a. Within 5 business days after the filing of a complaint under subd. 1. a. or the receipt of notice under par. (b) 1. b., the party who is the subject of a complaint or the party who is identified in a notice under par. (b) 1. b. as a party who has allegedly failed to comply with an agreement may request that the commission determine whether the alleged failure to comply has a significant adverse effect on the ability of the complaining party or any other party to the agreement to provide telecommunications service to its customers or potential customers. If a request is made under this subd. 1m. a., the commission shall make a determination within 30 business days after receipt of the request.

b. If the commission determines under subd. 1m. a. that an alleged failure to comply has not had a significant adverse effect on the ability of a complaining party or any other party to an agreement to provide telecommunications service to its customers or potential customers, the commission shall terminate a proceeding on the complaint under this subsection and proceed on the complaint under s. 196.26.

2. If the commission does not terminate a proceeding under subd. 1m. b., the commission may, after an investigation under subd. 1. or 1g. and after notice and hearing, do one of the following:

a. Issue an order under this subd. 2. a. that includes a finding of a failure to comply with an interconnection agreement and that requires compliance with the agreement.

b. Issue an order that interprets any provision of an interconnection agreement.

c. If the commission determines that a party specified in subd. 1g. has complied with an agreement, issue an order requiring any other action that the commission determines is necessary to resolve a controversy specified in subd. 1g.

2n. The commission may not issue an order under subd. 2. more than 120 days after the filing of a complaint or petition under subd. 1. or 1g., unless all of the parties to the proceeding consent to a longer time period that is approved by the commission. An order issued under subd. 2. may be reviewed under s. 227.52.

(b) 1. Before initiating an investigation of a complaint specified in par. (a) 1. b., the commission shall notify the parties to the agreement about the complaint. Within 5 business days after the parties receive notice under this subdivision, or within a shorter period of time specified by the commission in the notice, the commission shall do one of the following:

a. If the alleged failure to comply is resolved to the satisfaction of the commission, the commission shall dismiss the complaint with respect to any issues that involve an alleged failure to comply.

b. If the alleged failure to comply is not resolved to the satisfaction of the commission, the commission shall provide a notice to the parties that identifies the party who has allegedly failed to comply with the agreement.

2. No party to an interconnection agreement may file a complaint under par. (a) 1. a. or a petition under par. (a) 1g. unless the party has first notified the other parties to the agreement and provided an opportunity to resolve the alleged failure to comply or controversy over compliance to the satisfaction of the complaining or petitioning party within 5 business days, or a shorter period of time approved by the commission, after receipt of the notice. The commission shall promulgate rules establishing standards and procedures for approving a period of time shorter than 5 business days.

(c) No person may make any filing in a proceeding under this subsection unless there is a nonfrivolous basis for doing so. A person may not make any filing in a proceeding under this subsection unless, to the best of the person's knowledge, information and belief, formed after a reasonable inquiry, all of the following conditions are satisfied:

1. The filing is reasonably supported by applicable law.

2. The allegations and other factual contentions in the filing have evidentiary support or, if specifically so identified in the filing, are likely to have evidentiary support after reasonable opportunity for further investigation or discovery.

3. The filing is not intended to harass a party to an interconnection agreement.

4. The filing is not intended to cause unnecessary delay in implementing an interconnection agreement or create a needless increase in the cost of litigation.

(d) If, at any time during a proceeding under this subsection, the commission determines, after notice and reasonable opportunity to be heard, that a person has made a filing in violation of par.

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(c), the commission shall order the person to pay to any party to the proceeding the amount of reasonable expenses incurred by that party because of the filing, including reasonable attorney fees, and the commission may directly assess a forfeiture against the person of not less than $25 nor more than $5,000. A person against whom the commission assesses a forfeiture under this paragraph shall pay the forfeiture to the commission within 10 days after receipt of notice of the assessment or, if the person petitions for judicial review under ch. 227, within 10 days after receipt of the final decision after exhaustion of judicial review. The commission shall remit all forfeitures paid under this paragraph to the secretary of administration for deposit in the school fund. The attorney general may bring an action in the name of the state to collect any forfeiture assessed by the commission under this paragraph that has not been paid as provided in this paragraph. The only contestable issue in such an action is whether or not the forfeiture has been paid.

(e) At any time during a proceeding under this subsection, the commission may, without holding a hearing, order a party to the interconnection agreement to take an action or refrain from taking an action that is related to complying with the agreement upon a showing by any other party to the proceeding of all of the following:

1. That there is a substantial probability that, at the conclusion of the proceeding, the commission will find that the party against whom the order is sought has failed to comply with the interconnection agreement.

2. For a complaint or petition filed by a party to an interconnection agreement, that the party against whom the order is sought is taking an action or failing to take an action that has a substantial adverse effect on the ability of the complaining or petitioning party to provide telecommunications service to its customers or potential customers.

3. That the order is in the public interest.

(f) The commission may require a bond or other security of a person seeking an order under par. (e) to the effect that the person shall pay the party against whom the order is issued such damages and expenses, excluding attorney fees, in an amount specified by the commission, as that party may sustain by reason of the order if the commission determines under par. (g) that the person seeking the order was not entitled to the order.

(g) Within 5 business days after receiving an order issued under par. (e), the party against whom the order is issued may request the commission to review the order. Within 30 days after receiving a request under this paragraph, the commission shall determine whether the person who sought the order under par. (e) was entitled to the order and shall terminate, continue or modify the order on such terms as the commission determines are appropriate. If the commission determines that the person was not entitled to the order, the commission may order the person to pay the damages and expenses, excluding attorney fees, sustained, by reason of the order, by the party against whom the order was issued. In making a determination under this paragraph, the commission may consider only the factors specified in par. (e) 1. to 3. and may consider information that the commission receives after the commission issued the order under par. (e).

(4) PENALTIES. (a) 1. If the commission issues an order under sub. (3) (a) 2. a. in which the commission finds that a party to an interconnection agreement has failed to comply with the agreement, the party shall forfeit not more than $15,000 or, if the failure is willful, not more than $40,000, except that if the party is a holding company that provides access under an interconnection agreement to 50,000 or less access lines in this state through affiliates that are small telecommunications utilities, or if the party is a small telecommunications utility, the forfeiture under this subdivision shall be not more than $7,500. For purposes of this subdivision, each day that a party fails to comply with an interconnection agreement is a separate failure to comply.

2. The maximum forfeiture that may be imposed under subd. 1. shall be trebled if either of the following conditions is satisfied and shall be sextupled if both of the following conditions are satisfied:

a. The party's failure to comply causes death or life−threatening or seriously debilitating injury.

b. The party's failure to comply continues after the party receives written notice of the commission's order requiring compliance with the interconnection agreement.

3. In addition to a forfeiture imposed under subd. 1., a party to an interconnection agreement, approved by the commission, who has willfully failed to comply with the agreement shall forfeit an amount equal to not more than 2 times the gross value of the party's economic gain resulting from the failure to comply.

(b) A court shall consider each of the following in determining the amount of a forfeiture under par. (a):

1. The appropriateness of the forfeiture to the volume of business of the party that failed to comply with the agreement.

2. The gravity of the failure to comply.

3. Any good faith attempt to comply with the agreement after the party receives notice of a failure to comply.

4. Any other factor that the court determines is relevant.

(c) In an action to recover a forfeiture under par. (a), a finding by the commission in a proceeding under this subsection that a party to an interconnection agreement has failed to comply with the agreement shall be, subject to review under s. 227.52, conclusive proof that the party failed to comply with the agreement.

History: 1997 a. 218; 2003 a. 33.

Cross−reference: See also ch. PSC 179, Wis. adm. code.

196.20 Rules on service; changes in rates. (1) The rate schedules of any public utility shall include all rules applicable to the rendition or discontinuance of the service to which the rates specified in the schedules are applicable. No change may be made by any public utility in its schedules except by filing the change as proposed with the commission. No change in any public utility rule which purports to curtail the obligation or undertaking of service of the public utility shall be effective without the written approval of the commission after hearing, except that the commission, by emergency order, may make the rule, as filed, effective from the date of the order, pending final approval of the rule after hearing.

(2) (a) A proposed change which constitutes a decrease in rates shall be effective at the time specified in the change as filed but not earlier than 10 days after the date of filing the change with the commission, unless any of the following occurs:

1. During the 10−day period the commission, either upon complaint or upon its own motion, by order, suspends the operation of the proposed change.

2. The commission, upon application of any public utility, directs that a proposed reduction in rates be made effective less than 10 days after filing the proposed reduction.

(b) 1. A suspension under par. (a) 1. shall be effective for a period not exceeding 4 months, during which period the commission shall investigate any matter relative to the reasonableness or lawfulness of any change in schedule as filed. After the investigation the commission, by order, shall approve or disapprove the change, except as provided under subd. 2. The commission shall give the public utility proposing the change an opportunity for hearing prior to issuing any order disapproving a change. If the commission disapproves the change, the change shall be ineffective.

2. If the commission orders a suspension under par. (a) 1., the commission, after notice to the public utility of its objections to the change and after giving the public utility an opportunity to be heard on the objections, may prescribe a schedule which, revised on the basis of the objections, the commission finds to be lawful

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and reasonable instead of disapproving the schedule under subd. 1.

(2m) Except as provided under s. 196.193, no change in schedules which constitutes an increase in rates to consumers may be made except by order of the commission, after an investigation and opportunity for hearing.

(4) (a) In this subsection:

1. "Automatic adjustment clause" means a provision included in the rate schedule of an electric public utility after investigation, notice and hearing which permits the electric public utility to recover in rates, without prior hearing and order of the commission, an increase in costs incurred by the electric public utility.

2. "Electric public utility" means a public utility whose purpose is the generation, transmission, delivery or furnishing of electric power but does not include a public utility owned and operated wholly by a municipality or cooperative and does not include any public utility which purchases, under federal or state approved wholesale rates, more than 50% of its electric power requirements from other than an affiliated interest as defined under s. 196.52. "Electric public utility" does not include any Class A utility, as defined under s. 199.03 (4), whose electric generation equipment has a total capacity of less than 30 megawatts.

(b) An electric public utility may not recover in rates any increase in cost, including fuel, by means of the operation of an automatic adjustment clause.

(c) 1. If an electric public utility has an approved fuel cost plan, the commission shall defer any under−collection or over−collection of fuel costs that are outside of the utility's symmetrical fuel cost annual tolerance, as established by the commission, for subsequent rate recovery or refund.

2. The commission may commence a proceeding to adjust rates for an electric public utility outside of a general rate case proceeding if the utility's actual fuel costs are outside of the utility's fuel cost annual tolerance, as established by the commission.

3. Approval of a fuel cost plan and any rate adjustment for deferred fuel costs or refund of over−collected fuel costs shall be determined by the commission after opportunity for hearing.

(d) The commission shall promulgate a rule to implement this subsection.

(7) (a) In this subsection, "mitigation payment" means, as approved by the commission, an unrestricted or recurring monetary payment to a local unit of government in which an electric generating facility is located to mitigate the impact of the electric generating facility on the local unit of government. "Mitigation payment" does not include payments made or in−kind contributions for restricted purposes to directly address health or safety impacts of the electric generating facility on the local unit of government.

(b) Except as provided in par. (c), an electric public utility may not recover in rates any of the following:

1. The cost of mitigation payments paid by the utility.

2. The cost of mitigation payments paid by the owner or operator of an electric generating facility that the owner or operator recovers from the utility by selling electricity to the utility, by leasing the facility to the utility, or by any agreement between the owner or operator of the electric generating facility and the public utility.

(c) 1. Except as provided in subd. 2., the commission shall only approve a mitigation payment agreement that is received by the commission before June 10, 2003, and, if the commission finds the agreement to be reasonable, shall not subsequently modify the agreement.

2. If the commission receives a mitigation payment agreement before June 10, 2003, and does not determine that the agreement is unreasonable before November 11, 2003, mitigation payments in accordance with the terms of the agreement shall be recoverable in rates, notwithstanding any subsequent limitations imposed by the commission on the mitigation payments.

History: 1981 c. 148; 1983 a. 27, 53, 461, 502; 1985 a. 182 s. 57; 1985 a. 297; 1989 a. 344; 1993 a. 496; 1995 a. 27, 363; 1997 a. 27; 2003 a. 89; 2005 a. 337, 441; 2009 a. 403; 2011 a. 22.

Cross−reference: See also chs. PSC 116 and 164, Wis. adm. code.

A utility's expanded adjustment clause violated the requirement of public hearings prior to rate increases under sub. (2) [now sub. (2m)]. Wisconsin Environmental Decade, Inc. v. PSC, 81 Wis. 2d 344, 260 N.W.2d 712.

The inclusion of nuclear fuel in an adjustment clause did not violate sub. (2) [now sub. (2m)]. Wisconsin Environmental Decade, Inc. v. PSC, 105 Wis. 2d 457, 313 N.W.2d 863 (Ct. App. 1981).

Sub. (2m) requires a utility to charge only those rates that have been filed with the PSC in conformity with applicable statutes. Filed rates are those rates filed in compliance with applicable statutes, including those under sub. (2m) for changes in schedules that increase rates. CenturyTel of the Midwest−Kendall, Inc. v. PSC, 2002 WI App 236, 257 Wis. 2d 837, 653 N.W.2d 130, 02−0053.

196.201 Regulation of private shared telecommunications systems. (1) DEFINITION. In this section, "private shared telecommunications system" means plant or equipment used to provide telecommunications service through privately owned customer premises equipment to a user group located in a discrete premises, such as in a building complex or a large multitenant building, or used to provide telecommunications service where the cost of service is shared among 2 or more persons who are not affiliated interests under s. 196.52, and where the plant or equipment is not used to offer telecommunications service for sale directly or indirectly to the general public.

(2) REQUEST FOR ACCESS. At the request of any person who receives telecommunications service from a private shared telecommunications system, or at the request of a telecommunications utility or telecommunications carrier seeking to provide telecommunications service requested by any such person, the owner or manager of the private shared telecommunications system shall make facilities or conduit space available to any telecommunications utility or telecommunications carrier for the purpose of providing telecommunications service.

(3) COMMISSION MAY ORDER. If the commission finds that the owner or manager of a private shared telecommunications system has failed to comply with a request under sub. (2), it may order the owner or manager to make facilities or conduit space available to any telecommunications utility or telecommunications carrier making a request under sub. (2) at reasonable prices and on reasonable terms and conditions, under the procedures of s. 196.04.

History: 1985 a. 297; 1993 a. 491, 496.

196.202 Exemption of commercial mobile radio service providers. (2) SCOPE OF REGULATION. A commercial mobile radio service provider is not subject to this chapter, except as provided in sub. (5), and except that a commercial mobile radio service provider is subject to ss. 196.025 (6), 196.218 (3), and 196.859, and shall respond, subject to the protection of the commercial mobile radio service provider's competitive information, to all reasonable requests for information about its operations in this state from the commission necessary to administer ss. 196.025 (6), 196.218 (3), and 196.859.

(5) BILLING. A commercial mobile radio service provider may not charge a customer for an incomplete call.

History: 1985 a. 297; 1987 a. 27; 1991 a. 39; 1993 a. 36, 496; 1997 a. 27, 140, 218; 1999 a. 32, 150; 2001 a. 16; 2009 a. 28; 2011 a. 22.

196.203 Exemption of alternative telecommunications utilities. (1d) In this section, "local government telecommunications utility" has the meaning given in s. 196.204 (1m) (a).

(1g) Alternative telecommunications utilities are exempt from all provisions of this chapter, except as provided in this section, and except for all of the following:

(a) An alternative telecommunications utility is subject to ss. 196.01, 196.016, 196.025 (6), 196.191, 196.206, and 196.212.

(b) An alternative telecommunications utility certified under this section pursuant to s. 196.50 (2) (j) 1. a. is subject to ss. 196.219 (2r) and 196.503, and, with respect only to wholesale

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telecommunications services, is subject to ss. 196.03 (1) and (6), 196.219 (4), 196.28, and 196.37; and, if such an alternative telecommunications utility was regulated as a price−regulated telecommunications utility prior to June 9, 2011, the alternative telecommunications utility's intrastate dedicated access rates shall mirror its interstate dedicated access rates.

(c) An alternative telecommunications utility that is a local government telecommunications utility is subject to s. 196.204 (5) [s. 196.204].

NOTE: The correct cross−reference is shown in brackets. Corrective legislation is pending.

(1m) Any person claiming to be a cable television telecommunications service provider under this section shall annually file with the commission any information required by the commission to determine the gross income of the person which is derived from the operation of a cable television system.

(2) (a) No person may commence providing service as an alternative telecommunications utility unless the person petitions for and the commission issues a certification that the person is an alternative telecommunications utility or unless the person is a telecommunications utility that the commission certifies as an alternative telecommunications utility under this section pursuant to s. 196.50 (2) (j) 1. a.

(b) Except for an alternative telecommunications utility that is a local government telecommunications utility, certification as an alternative telecommunications utility shall be on a statewide basis and any certification issued by the commission before June 9, 2011, to an alternative telecommunications utility that is not a local government telecommunications utility is considered amended to be a statewide certification.

(c) An alternative telecommunications utility may provide notice to the commission to maintain certification as an alternative telecommunications utility but to recertify the alternative telecommunications utility and impose on the alternative telecommunications utility only those provisions of this chapter specified in this paragraph. No later than 30 days after receiving notice under this paragraph, the commission shall issue an order granting recertification and imposing on the alternative telecommunications utility those provisions of this chapter specified in sub. (4m) (a) that are imposed on all alternative telecommunications utilities under sub. (3). The commission may impose a provision of this chapter specified in sub. (4m) (b) or (c) if in the public interest. An alternative telecommunications utility for which an order of recertification is issued is subject to sub. (1g). The granting of the recertification shall operate to terminate the alternative telecommunications utility's prior certification. All regulatory requirements in or related to the prior certification that are inconsistent with the requirements of or regulation allowed under this section, including all such requirements imposed by the certification and all such requirements imposed by the commission, whether by statute or commission rule or order, on the alternative telecommunications utility are terminated on the effective date of the order, unless the alternative telecommunications utility, in its notice to the commission seeking recertification under this paragraph, requests to remain subject to one or more requirements of its prior certification that do not violate the alternative telecommunications utility's requirements and obligations under this chapter and the commission does not deny the request in the commission's recertification order.

(d) The commission may deny a petition for certification as an alternative telecommunications utility described in s. 196.01 (1d) (f) only if the commission finds that the petitioner does not have the financial, managerial, or technical capabilities to provide its proposed services or to comply with conditions that the commission is authorized to impose under sub. (3).

(3) In response to a petition from any interested person, or upon its own motion, the commission shall determine whether the public interest requires that a provision of this chapter specified in sub. (4m) be imposed on a person providing or proposing to provide service as an alternative telecommunications utility. If the commission imposes a provision of this chapter specified in sub. (4m) (a) on an alternative telecommunications utility under this subsection, the commission shall impose the same provision at the same level of regulation on all other alternative telecommunications utilities.

(4m) (a) The commission may impose s. 196.02 (1), (4), or (5), 196.04, 196.135, 196.14, 196.197, 196.199, 196.207, 196.208, 196.209, 196.218, 196.219 (1), (2) (b), (c), or (d), (2r), or (3) (a), (d), (j), (m), (n), or (o), 196.25, 196.26, 196.39, 196.395, 196.40, 196.41, 196.43, 196.44, 196.65, 196.66, 196.81, 196.85, 196.858, or 196.859 on an alternative telecommunications utility.

(b) In addition to the requirements under s. 196.212, the commission may, with respect only to intrastate switched access services, impose s. 196.03 (1) or (6) or 196.37 on an alternative telecommunications utility, except that the commission may not investigate, review, or set the rates for intrastate switched access services of an alternative telecommunications utility that is subject to s. 196.212 (2) or (3) except as required to enforce s. 196.212 (2) or (3).

(c) The commission may, with respect only to wholesale telecommunications service, impose s. 196.03 (1) or (6), 196.219 (4), 196.28, or 196.37 on an alternative telecommunications utility certified under sub. (2) (a) or (c).

(5) The commission may establish a reasonable fee schedule and may assess an alternative telecommunications utility to cover the cost of certification, recertification, or other determinations made under this section.

(6) The commission shall maintain information on certified alternative telecommunications utilities and on applicants for alternative telecommunications utility certification and make that information available to any person, upon request.

History: 1985 a. 297; 1993 a. 496; 1997 a. 140; 1999 a. 150; 2003 a. 125, 278; 2007 a. 42; 2009 a. 28; 2011 a. 22.

Cross−reference: See also chs. PSC 168, 169, and 171, Wis. adm. code.

196.204 Local government telecommunications utilities. (1m) In this section:

(a) "Local government telecommunications utility" means a municipality that owns, operates, manages, or controls any plant or equipment, or that wholly owns, operates, manages, or controls any entity that owns, operates, manages, or controls any plant or equipment, used to furnish telecommunications services within the state directly or indirectly to the public.

(b) "Nongovernmental telecommunications utility" means a telecommunications utility that is not a local government telecommunications utility.

(2m) (a) Each telecommunications service, relevant group of services, and basic network function offered or used by a local government telecommunications utility shall be priced to exceed its total service long−run incremental cost.

(b) For purposes of par. (a), the total service long−run incremental cost of a local government telecommunications utility shall take into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights−of−way, licenses, and similar costs that are incurred by nongovernmental telecommunications utilities. This paragraph does not apply to a local government telecommunications utility that is subject to the exemption under s. 66.0422 (3n). This paragraph also does not apply to a telecommunications service, relevant group of services, or basic network function if all of the following conditions apply:

1. On November 1, 2003, the commission has determined that the local government telecommunications utility is an alternative telecommunications utility under s. 196.203.

2. A majority of the governing board of the local government telecommunications utility votes to submit the question of supporting the operation of the local government telecommunications utility to the electors in an advisory referendum and a majority of the voters in the local government telecommunications utility voting at the advisory referendum vote to support operation of the local government telecommunications utility.

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(c) Paragraph (b) does not apply to a telecommunications service, relevant group of services, or basic network function that is used to provide broadband service and that is offered by a municipal telecommunications utility, if all of the following apply:

1. The municipal telecommunications utility offers the telecommunications service, relevant group of services, or basic network function on a nondiscriminatory basis to persons who provide broadband service to end users.

2. The municipality does not provide to end users the telecommunications service, relevant group of services, or broadband service provided by the basic network function.

3. The municipal utility determines that, at the time that the municipal utility authorizes the provision of the telecommunications service, relevant group of services, or basic network function, the municipal utility's provision of the service, group of services, or function does not compete with more than one provider of broadband service.

History: 2003 a. 278, 327; 2011 a. 22.

196.205 Election of rate regulation. A telecommunications cooperative, an unincorporated telecommunications cooperative association, or a small telecommunications utility may elect to be subject to ss. 196.28 and 196.37 as they apply to any rate, toll, or charge and to s. 196.11 (2) in any of the following ways:

(1) By amendment of any of the following:

(a) The articles of incorporation of the cooperative under s. 185.51.

(b) The articles of organization of the association under s. 193.221.

(c) The articles of incorporation of the small telecommunications utility under s. 181.1001 or the articles of organization of the small telecommunications utility under s. 183.0203.

(2m) By a majority of any of the following:

(a) The voting members of the board of directors of the cooperative, association, or small telecommunications utility.

(b) If a small telecommunications utility is organized as a limited liability company, the voting members of the small telecommunications utility.

History: 1981 c. 148; 1985 a. 297 s. 76; 1989 a. 344; 1993 a. 496; 1997 a. 218; 1999 a. 32; 2005 a. 441; 2011 a. 22.

196.206 Interconnected voice over Internet protocol service. (1) EXEMPTIONS. An interconnected voice over Internet protocol service is not subject to this chapter, except as provided in this section, and except that an interconnected voice over Internet protocol service is subject to ss. 196.01, 196.016, 196.025 (6), 196.199, 196.218 (3), 196.858, and 196.859, and except as required for the commission to administer and enforce this section.

(2) UNIVERSAL SERVICE FUND. An entity that provides interconnected voice over Internet protocol service in this state shall make contributions to the universal service fund based on its revenues from providing intrastate interconnected voice over Internet protocol service. The revenues shall be calculated using the entity's actual intrastate revenues, a provider−specific traffic study approved by the commission or federal communications commission, or the inverse of the interstate jurisdictional allocation established by the federal communications commission for the purpose of federal universal service assessments. To the extent applicable, the calculation of the intrastate revenues of an entity that provides interconnected voice over Internet protocol service shall be based on the primary physical service address identified by the customer.

(3) INTRASTATE SWITCHED ACCESS RATES. (a) Unless otherwise provided under federal law, an entity that provides an interconnected voice over Internet protocol service shall pay intrastate switched access rates in connection with the interconnected voice over Internet protocol services that it provides to the same extent that any telecommunications provider is obligated to pay intrastate switched access rates in connection with the telecommunications services that it provides.

(b) Unless otherwise provided under federal law, an entity that provides an intrastate switched access service in connection with interconnected voice over Internet protocol services shall be subject to s. 196.191 with respect to such intrastate switched access service and may charge intrastate switched access rates to the same extent that any telecommunications provider may charge intrastate switched access rates in connection with the intrastate switched access services that it provides.

History: 2011 a. 22.

196.207 Telephone caller identification services. (1) DEFINITIONS. In this section:

(a) "Inbound wide−area telecommunications service" means a telecommunications service that allows a subscriber to the service to receive telephone calls from selected service areas at no charge to the person originating the telephone call.

(b) "Pay−per−call service" means a telecommunications service that permits simultaneous calling by a large number of callers to a single telephone number and for which the customer is assessed, on a per−call or a per−time−interval basis, a charge that is greater than or in addition to the charge for the transmission of the call. "Pay−per−call service" does not include a directory assistance or conference call service that is offered by a telecommunications utility and does not include a telecommunications service for which the customer charge is dependent on the existence of a presubscription relationship.

(c) "Telephone caller identification service" means a telecommunications service offered by a telecommunications utility that identifies a telephone line identification for an access line that is used by a person to originate a telephone call to a subscriber to the service.

(d) "Telephone line identification" means the number of or other information associated with an access line that can be used to identify the access line or the subscriber to the line.

(2) CONDITIONS FOR SERVICE. The commission may not approve a schedule or tariff that permits a telephone caller identification service to be offered in this state unless the schedule or tariff provides all of the following:

(a) For the 60−day period immediately preceding the first day on which a telephone caller identification service is operational in a geographical area, the telecommunications utility offering the service shall conduct an informational campaign to describe the telephone caller identification service to its access line customers within that area. The telecommunications utility informational campaign shall include all of the following information:

1. That the utility is offering telephone caller identification service and the date on which the service becomes operational.

2. That an access line customer may choose not to have the customer's telephone line identification identified to telephone caller identification service subscribers on an individual call basis without charge.

3. Other information on the telephone caller identification service that is specified by the commission.

(b) A calling telephone line identification shall be identified to a telephone caller identification service subscriber unless the calling access line customer chooses to have the customer's telephone line identification withheld from identification on an individual call basis or unless the customer installs customer premises equipment that withholds the customer's telephone line identification for all calls originating from the customer's access line.

(c) The telecommunications utility may not charge an access line customer for withholding the customer's telephone line identification from identification on an individual call basis.

(d) An access line customer subscribing to the telephone caller identification service is not prohibited from using customer premises equipment that prevents the subscriber from receiving a call for which the calling telephone line identification is not identified.

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(e) An access line customer who is any of the following may choose to have the customer's telephone line identification withheld from identification without charge for all calls originating from the customer's access line:

1. A victim of domestic violence protected by a court order.

2. A domestic violence victim's service program.

3. A battered women's shelter or other organization that provides a safe haven for victims of domestic violence.

(f) If the equipment is available, a telecommunications utility shall offer to access line customers in the geographical area in which telephone caller identification service is offered customer premises equipment produced by an authorized equipment manufacturer that permits a customer to withhold telephone line identification for all calls originating from the customer's access line and customer premises equipment produced by an authorized equipment manufacturer that prevents a telephone caller identification service subscriber from receiving a call for which the calling telephone line identification is not identified.

(2g) BLOCKING BY BUSINESS. The commission may prohibit business or commercial access line customers from withholding customer telephone line identifications from identification under any schedule or tariff that the commission approves.

(2m) PER LINE BLOCKING. Under any schedule or tariff that the commission approves, the commission may require that a telecommunications utility that offers a telephone caller identification service to permit an access line customer to choose to withhold the customer's access line identification from identification for all calls originating from the customer's access line.

(3) EXCEPTIONS. The commission may not approve a schedule or tariff under sub. (2) if the schedule or tariff allows a customer to withhold the identity of a telephone line identification from any of the following:

(a) A public agency emergency system under s. 256.35.

(b) An identification service provided in connection with an inbound wide−area telecommunications service or a pay−per−call service, unless the commission determines that the telecommunications utility providing the inbound wide−area telecommunications service or the pay−per−call service has the capability to comply with sub. (2) (b) or (e) with regard to that service.

(c) A telephone caller identification service used for calls that are completed within a system that includes both the caller's telephone or other customer premises equipment and the call recipient's telephone or other customer premises equipment and are completed without being transmitted through a publicly switched network.

(e) A trap and trace device as authorized under ss. 968.34 to 968.37.

(f) A telecommunications utility, to identify the access line used to originate a call, for purposes of billing for that call.

(4) COSTS. Except for customer premises equipment offered under sub. (2) (f), a telecommunications utility shall charge all costs for caller identification services provided under this section, including all costs related to the options and services provided to access line customers under subs. (2) and (2m), to telephone caller identification service subscribers.

(6) REDISCLOSURE. (a) A person who obtains an unpublished telephone line identification using a telephone caller identification service may not do any of the following without the written consent of the customer of the unpublished telephone line identification:

1. Disclose the unpublished telephone line identification to another person for purposes of resale or commercial gain.

2. Use the unpublished telephone line identification to solicit business.

3. Intentionally disclose the unpublished telephone line identification through a computer database, on−line bulletin board or other similar mechanism.

(b) 1. A person, other than a corporation, who violates par. (a) may be required to forfeit not more than $5,000. Each disclosure or use of an unpublished telephone line identification is a separate violation.

2. A corporation that violates par. (a) may be required to forfeit not more than $50,000. Each disclosure or use of an unpublished telephone line identification is a separate violation.

History: 1991 a. 268, 269, 315; 1993 a. 496; 1999 a. 185; 2007 a. 130.

196.208 Telecommunications pay−per−call and toll−free services. (1) DEFINITIONS. In this section:

(a) "Pay−per−call service" means a telecommunications service that permits simultaneous calling by a large number of callers to a single telephone number and for which the customer is assessed, on a per−call or a per−time−interval basis, a charge that is greater than or in addition to the charge for the transmission of the call. "Pay−per−call service" does not include a directory assistance or conference call service that is offered by a telecommunications utility and does not include a telecommunications service for which the customer charge is dependent on the existence of a presubscription relationship.

(b) "Provider" means a person who furnishes, conducts or offers a pay−per−call service or who holds himself or herself out as engaged in the business of furnishing, conducting or offering a pay−per−call service.

(c) "Toll−free service vendor" means a person who sells goods or services using a telecommunications service that allows calls to be made to a specific location at no charge to the calling party.

(2) PREAMBLE. (a) 1. Except as provided in subd. 2., a provider shall begin a pay−per−call service with a clear and express preamble that states the cost of the call. The preamble shall disclose all per−call charges. If the call is billed on a usage−sensitive basis, the preamble shall state all rates, by minute or other unit of time, any minimum charges and the total cost for a call to that service if the duration of the call may be determined.

2. A provider is not required to begin a pay−per−call service with a preamble if the service is charged at a flat rate that does not exceed $2.

(b) A preamble shall include the name of the provider and an accurate description of the information, product or service that the caller will receive.

(c) A preamble shall inform the caller that billing will commence only after a specific identified event following the preamble, such as an audible signal tone.

(d) If the pay−per−call service is associated with, aimed at or likely to be of interest to an individual under the age of 18, the preamble shall include a statement that the caller should hang up unless the caller has parental permission.

(e) A provider may offer a caller a means to bypass the preamble on subsequent calls to the pay−per−call service, if the caller is in sole control of that bypass capability. If a provider includes preamble bypass instructions, the instructions shall be given at the end of the preamble or at the end of the pay−per−call service. A provider shall disable preamble bypass capability for 30 days following the date of an increase in any charge for the pay−per−call service.

(f) If a provider complies with federal requirements that specifically apply to a preamble on a pay−per−call service, that compliance shall be considered to be compliance with this subsection.

(3) BILLING COMMENCEMENT. If a preamble is required, a provider shall give a caller a reasonable opportunity to disconnect the call before the specific event identified under sub. (2) (c) that signals the commencement of billing.

(4) SOLICITATION REQUIREMENTS. If a provider includes an offer of goods or services within the pay−per−call service, all of the following apply:

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(a) The provider shall disclose all conditions, restrictions and charges associated with the offer of goods and services during the initial communication with the caller.

(b) The provider may not make any assertion, representation or statement of fact that is false, deceptive or misleading.

(5) PROVIDER CHARGE LIMITS. (a) If a delayed billing period is required under sub. (3), a provider may not charge for usage of the pay−per−call service if the caller ends the usage before the specific event identified under sub. (2) (c) and, if the call is billed on a usage−sensitive basis, may not charge for the time that elapses before the specific event identified under sub. (2) (c) occurs.

(b) A provider may not charge for time that a caller is placed on hold.

(5p) TOLL−FREE CALLS ANSWERED BY PRISONERS. (a) In this subsection:

1. "Charitable organization" has the meaning given in s. 440.41 (1).

2. "Prisoner" has the meaning given in s. 134.73 (1) (b).

(b) If a prisoner is employed directly or indirectly by a charitable organization or toll−free service vendor to answer calls made to the charitable organization or toll−free service vendor, the prisoner shall do all of the following immediately upon answering a call:

1. Identify himself or herself by name.

2. State that he or she is a prisoner.

3. Inform the calling party of the name of the correctional or detention facility in which he or she is a prisoner and the city and state in which the facility is located.

(c) A charitable organization or toll−free service vendor that directly or indirectly employs a prisoner shall provide reasonable supervision of the prisoner to assure the prisoner's compliance with par. (b).

(5t) TOLL−FREE SERVICE. A toll−free service vendor may not do any of the following:

(a) Impose a charge on the calling party or the customer responsible for the access line from which the call is placed for calling the toll−free service vendor.

(b) Transfer the calling party to a pay−per−call service.

(c) Charge the calling party for information provided during the call, unless the calling party has a presubscription relationship with the toll−free service vendor or unless the caller discloses a credit card account number during the call.

(d) Call back the calling party collect.

(6) ADVERTISING AND SALES PRACTICES. A person shall do all of the following:

(a) In any advertisement for a pay−per−call service, clearly and conspicuously disclose the name of the provider and the identity and cost of any goods or services offered for sale.

(b) In any advertisement for a pay−per−call service, clearly and conspicuously disclose all conditions, restrictions and charges associated with the receipt of goods or services that are represented to be a gift, prize or incentive for using a pay−per−call service.

(c) Not make any assertion, representation or statement that is false, deceptive or misleading in an offer or sale of a pay−per−call service.

(d) If a caller to a pay−per−call service may be solicited to purchase additional pay−per−call services, clearly and conspicuously disclose that information in any advertisement for the pay−per−call service.

(e) Refrain from advertising a number as toll−free if the toll−free service vendor has violated sub. (5t).

(7) BILLING INFORMATION. (a) A telecommunications utility shall do all of the following:

1. Include on each billing statement that includes charges for pay−per−call services a clear and conspicuous notice that states: "You may not have your telephone service disconnected for failure to pay for '900' number services. You may dispute charges for '900' number services if you believe the charges are unauthorized, fraudulent or illegal."

2. If a customer's local exchange telecommunications utility is technically able to provide blocking, semiannually include with a billing statement a clear and conspicuous notice stating that the customer may request that the local exchange telecommunications utility block the customer's access to pay−per−call services.

(b) If a telecommunications utility provides billing services to a provider, the telecommunications utility shall do all of the following:

1. In a clear and conspicuous manner, list charges for pay−per−call services separately from charges for telecommunications service or identify charges for pay−per−call services with an identifying symbol.

2. If a customer contacts the telecommunications utility regarding a charge for pay−per−call services, inform the customer that the customer may request the telecommunications utility to remove charges for pay−per−call services from subsequent billing statements.

3. If a customer reasonably disputes a charge for pay−per−call services and requests removal, remove that charge for pay−per−call services from subsequent billing statements.

(c) A local telecommunications utility shall disseminate information that explains that a customer may request blocking, if available, and may request that charges for pay−per−call services be removed from its billing statements, although nonpayment of charges may result in a civil collection action.

(8) COLLECTION PRACTICES. (a) A telecommunications utility may not do any of the following:

1. Disconnect a customer's basic local exchange and basic interexchange services for failure to pay for pay−per−call services billed by the telecommunications utility.

2. Misrepresent that telecommunication service may be disconnected for nonpayment of pay−per−call service charges.

3. Condition the extension of local exchange service to a customer upon the customer's agreement to block access to pay−per−call services.

4. Regarding a delinquent account, condition the acceptance of deposits or guarantees upon customer payment of outstanding pay−per−call service charges.

5. Regarding a delinquent account, condition the acceptance of a deferred payment plan upon inclusion of outstanding pay−per−call service charges in the plan unless the telecommunications utility discloses the amount of pay−per−call service charges, informs the customer that payment of pay−per−call service charges are not required as part of the plan and sends the customer a written confirmation that outlines the deferred payment plan with and without the inclusion of pay−per−call service charges.

(b) Except as provided in par. (c), a telecommunications utility shall verify that a notice of disconnection does not include charges relating to pay−per−call services before the telecommunications utility sends the notice to a customer.

(c) A telecommunications utility may request the commission to waive the verification requirement of par. (b). The commission may grant a waiver if it determines that the costs that would be incurred by the telecommunications utility to meet the verification requirement are such that meeting the verification requirement is not in the best interest of the utility's customers.

(9) BLOCKING. (a) If technically feasible, a local exchange telecommunications utility shall provide a customer the option of blocking access to pay−per−call services that use "900" exchanges.

(b) A local exchange telecommunications utility may not charge a customer for the cost of blocking the first time a customer requests blocking.

(c) A local exchange telecommunications utility may not reinstate a customer's access to pay−per−call services that use "900"

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exchanges unless the customer makes the request for reinstatement in writing and the request is confirmed by the utility.

(10) TERRITORIAL APPLICATION. (a) Subsections (2) to (5) apply to any pay−per−call service that a caller may access by a call originating in this state and subs. (5p) and (5t) apply to any charitable organization, toll−free service vendor, or employee of a charitable organization or toll−free service vendor that a caller may access by a call originating in this state.

(b) Subsection (6) applies to any advertising or sales practice directed to a resident of this state.

(11) REMEDIES AND PENALTIES. (a) 1. If a provider or a toll−free service vendor fails to comply with this section, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief, including but not limited to damages, injunctive or declaratory relief, specific performance and rescission.

2. A person or class of persons entitled to relief under subd. 1. is also entitled to recover costs, disbursements and reasonable attorney fees, notwithstanding s. 814.04 (1).

(b) The commission shall inquire into any violation of subs. (7) to (9) by a telecommunications utility or by an officer, employee or agent of a telecommunications utility and shall report all violations to the department of justice.

(c) 1. The department of justice, or any district attorney upon informing the department of justice, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of subs. (2) to (9). The department of justice or a district attorney may not commence an action to enforce subs. (7) to (9) unless the commission requests an enforcement action. Before entry of final judgment, the court may make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action if proof of these acts or practices is submitted to the satisfaction of the court.

2. The department of justice may conduct hearings, administer oaths, issue subpoenas and take testimony to aid in its investigation of violations of subs. (2) to (6).

(d) 1. Except as provided in subd. 2., any person who violates subs. (2) to (9) shall be required to forfeit not less than $25 nor more than $5,000 for each offense.

2. a. A prisoner who violates sub. (5p) (b) may be required to forfeit not more than $500.

b. A person who employs a prisoner to answer calls made to a toll−free telephone number may be required to forfeit not more than $10,000 if the person violates sub. (5p) (c), aids and abets a prisoner's violation of sub. (5p) (b), is a party to a conspiracy with a prisoner to commit a violation of sub. (5p) (b), or advises, hires, or counsels or otherwise procures a prisoner to commit a violation of sub. (5p) (b).

3. Forfeitures under subds. 1. and 2. shall be enforced by action on behalf of the state by the department of justice or, upon informing the department of justice, by the district attorney of the county where the violation occurs.

History: 1991 a. 127; 1993 a. 361; 2001 a. 16.

196.209 Privacy considerations. (1) RULES. The commission shall promulgate rules that establish privacy guidelines applicable to telecommunications services. Notwithstanding any exemptions identified in this chapter, a telecommunications provider is subject to rules promulgated under this subsection and s. 196.66 applies to a violation of this subsection.

(2) RULE REVIEW. At least biennially, the commission shall review and revise as appropriate rules promulgated under sub. (1).

(3) NEW SERVICES. A telecommunications provider introducing a new telecommunications service shall explicitly address privacy considerations before introducing that telecommunications service.

(4) SCOPE. Rules promulgated by the commission under this section and privacy considerations addressed by a telecommunications provider shall include all of the following:

(a) Protections against the outflow of information about users of telecommunications services.

(b) Protection to the users of telecommunications services from receiving privacy intrusions.

(5) TELECOMMUNICATIONS PRIVACY COUNCIL. (a) The commission shall appoint a telecommunications privacy council under s. 15.04 (1) (c) consisting of representatives of telecommunications providers and of consumers of telecommunications services, including this state.

(b) The telecommunications privacy council shall advise the commission concerning the administration of this section and the content of rules promulgated under this section.

History: 1993 a. 496 ss. 107, 108, 110; 1995 a. 27.

196.21 Publicity of revised schedules. A public utility shall file new schedules under s. 196.19 in every station and office of the public utility where consumers make payments. A public utility shall file new schedules under this section at least 10 days prior to the time the new schedules take effect unless the commission prescribes a shorter time period.

History: 1983 a. 53.

Cross−reference: See also chs. PSC 113 and 134, Wis. adm. code.

196.212 Switched access rates. (1) DEFINITIONS. In this section:

(a) "Affiliate" means any person, corporation, company, cooperative, unincorporated cooperative association, partnership, association, or other entity that is controlled by, or is under common control with, a telecommunications provider or telecommunications utility.

(b) "Large incumbent local exchange carrier" means an incumbent local exchange carrier that, with any affiliates that are incumbent local exchange carriers operating in the state, in total had 150,000 or more access lines in use in this state as of January 1, 2010.

(c) "Large nonincumbent" means a telecommunications provider that is not an incumbent local exchange carrier, that had 10,000 or more access lines in use in this state as of January 1, 2010, and that was granted an initial certification by the commission pursuant to s. 196.203 or 196.50 before January 1, 2011.

(d) "New nonincumbent" means a telecommunications provider, other than an alternative telecommunications utility certified under s. 196.203 pursuant to s. 196.50 (2) (j) 1. a., that is not an incumbent local exchange carrier and that was granted an initial certification by the commission pursuant to s. 196.203 or 196.50 on or after January 1, 2011.

(e) "Small incumbent local exchange carrier" means an incumbent local exchange carrier that, with any affiliates that are incumbent local exchange carriers operating in the state, in total had fewer than 150,000 access lines in use in this state as of January 1, 2010.

(f) "Small nonincumbent" means a telecommunications provider that is not an incumbent local exchange carrier, that had fewer than 10,000 access lines in use in this state as of January 1, 2010, and that was granted an initial certification by the commission pursuant to s. 196.203 or 196.50 before January 1, 2011.

(2) NEW NONINCUMBENTS AND LARGE NONINCUMBENTS. (a) *New nonincumbents.* Within 30 days of June 9, 2011, a new nonincumbent may not charge intrastate switched access rates that are higher than its interstate switched access rates.

(b) *Large nonincumbents.* 1. Except for an increase in intrastate switched access rates under s. 196.191 (2) (d) 2. a. or (3) (b) in order to mirror its interstate switched access rates, a large nonincumbent may not charge intrastate switched access rates higher

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than the intrastate switched access rates it charged on January 1, 2011.

2. A large nonincumbent shall reduce its intrastate switched access rates as follows:

a. No later than 4 years after June 9, 2011, the large nonincumbent shall reduce its intrastate switched access rates by an amount equal to 33 percent of the difference between its intrastate switched access rates in effect prior to the reduction and its interstate switched access rates in effect prior to the reduction.

b. No later than 5 years after June 9, 2011, the large nonincumbent shall further reduce its intrastate switched access rates by an amount equal to 50 percent of the difference between its intrastate switched access rates in effect prior to the reduction and its interstate switched access rates in effect prior to the reduction.

c. No later than 6 years after June 9, 2011, the large nonincumbent shall further reduce its intrastate switched access rates in order to mirror its interstate switched access rates in effect prior to the reduction and, beginning no later than that date, may not charge intrastate switched access rates that are higher than its interstate switched access rates.

(3) LARGE INCUMBENT LOCAL EXCHANGE CARRIERS. A large incumbent local exchange carrier shall reduce its intrastate switched access rates to no higher than the large incumbent local exchange carrier's interstate switched access rates as follows:

(a) Beginning on June 9, 2011, the large incumbent local exchange carrier may not charge intrastate switched access rates higher than the intrastate switched access rates it charged on January 1, 2011.

(b) No later than 2 years after June 9, 2011, the large incumbent local exchange carrier shall reduce its intrastate switched access rates by an amount equal to 25 percent of the difference between its intrastate switched access rates in effect prior to the reduction and its interstate switched access rates in effect prior to the reduction.

(c) No later than 3 years after June 9, 2011, the large incumbent local exchange carrier shall further reduce its intrastate switched access rates by an amount equal to 33 percent of the difference between its intrastate switched access rates in effect prior to the reduction and its interstate switched access rates in effect prior to the reduction.

(d) No later than 4 years after June 9, 2011, the large incumbent local exchange carrier shall further reduce its intrastate switched access rates by an amount equal to 50 percent of the difference between its intrastate switched access rates in effect prior to the reduction and its interstate switched access rates in effect prior to the reduction.

(e) No later than 5 years after June 9, 2011, the large incumbent local exchange carrier shall further reduce its intrastate switched access rates in order to mirror its interstate switched access rates in effect prior to the reduction and, beginning no later than that date, may not charge intrastate switched access rates that are higher than its interstate switched access rates.

(4) LIMITED COMMISSION REVIEW. (a) Notwithstanding any other provision of this chapter, except to enforce this section and ss. 196.191 (2) (d) 2. a. and 196.219 (2r), and except to enforce s. 196.191 (3) (b) only to allow an increase in intrastate switched access rates in order to mirror interstate switched access rates, the commission may not investigate, review, or set the intrastate switched access rates of large nonincumbents, new nonincumbents, and large incumbent local exchange carriers.

(b) Notwithstanding any other provision of this chapter except to enforce ss. 196.191 (2) (d) 2. and 196.219 (2r), during the 4−year period beginning on June 9, 2011, the commission may not investigate, review, or set the intrastate switched access rates of small incumbent local exchange carriers.

(c) Notwithstanding any other provision of this chapter except to enforce ss. 196.191 (2) (d) 2. and 196.219 (2r), during the 3−year period beginning on June 9, 2011, the commission may not investigate, review, or set the intrastate switched access rates of small nonincumbents.

(5) ENFORCEMENT. Notwithstanding any other provision of this chapter, the commission shall have jurisdiction to enforce payment of intrastate switched access rates set forth in a tariff required under s. 196.191 (1) or a contract for intrastate switched access service allowed under 196.191 (6).

(6) APPLICATION. The intrastate switched access rate reductions required by this section apply to any entity subject to those rates, regardless of the technology or mode used by that entity to provide its telecommunications services.

History: 2011 a. 22.

196.216 Small telecommunications utilities as small businesses. A small telecommunications utility is a small business for the purposes of s. 227.114.

History: 1985 a. 297; 1987 a. 403 s. 256.

196.217 Average toll rates. (1) DIFFERENT RATES RESTRICTED. A telecommunications utility may not charge different rates for residential basic message telecommunications service, business basic message telecommunications service, or single−line wide−area telecommunications service on routes of similar distances within this state, unless authorized by the commission. This subsection does not prohibit volume or term discounts, discounts in promotional offerings, differences in the rates for intralata and interlata services of similar distances, the provision of optional toll calling plans to selected exchanges or customers or the passing through of any state or local taxes in the specific geographic area from which the tax originates.

(2) TOLL SERVICES. Notwithstanding sub. (1), a telecommunications utility may charge prices for toll services under contract that are unique to a particular customer or group of customers if differences in the cost of providing a service or a service element justify a different price for a particular customer or group of customers, or if market conditions require individual pricing.

(3) AVERAGED RATES. Notwithstanding subs. (1) and (2), an intralata toll provider shall offer all optional toll calling plans on a statewide basis at geographically averaged rates until the provider deploys intralata dial−1 presubscription, except that an optional toll call plan need not be offered where deployment of that offering would not be economically or technically feasible.

History: 1993 a. 496.

196.218 Universal service fund. (1) DEFINITIONS. In this section:

(a) "Essential telecommunications services" means the services or functionalities listed in 47 CFR 54.101 (a) as of January 1, 2010.

(bm) "Local exchange service" means basic local exchange service or business access line and usage service.

(c) "Universal service" includes the availability of a basic set of essential telecommunications services anywhere in this state.

(d) "Universal service fund" means the trust fund established under s. 25.95.

(2) FUND ADMINISTRATION. The commission shall do all of the following:

(c) Contract for the administration of the universal service fund.

(d) Obtain an annual independent audit of the universal service fund.

(3) CONTRIBUTIONS TO THE FUND. (a) 1. Except as provided in par. (b), the commission shall require all telecommunications providers to contribute to the universal service fund beginning on January 1, 1996.

2. The commission may require a person other than a telecommunications provider to contribute to the universal service fund if, after notice and opportunity for hearing, the commission determines that the person is offering a nontraditional broadcast service in this state that competes with a telecommunications service pro-

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vided in this state for which a contribution is required under this subsection.

3. The commission shall designate the method by which the contributions under this paragraph shall be calculated and collected. The method shall ensure that the contributions are sufficient to generate the following amounts:

a. The amount appropriated under s. 20.155 (1) (q).

b. The amounts appropriated under ss. 20.255 (3) (q), (qm), and (r), 20.285 (1) (q), and 20.505 (4) (s), (t), (tm), (tu), and (tw).

3m. Contributions under this paragraph may be based only on the gross operating revenues from the provision of broadcast services identified by the commission under subd. 2. and on intrastate telecommunications services in this state of the telecommunications providers subject to the contribution. Contributions based on revenues from interconnected voice over Internet protocol service shall be calculated as provided under s. 196.206 (2).

(b) The commission may exempt from part or all of the contributions required under par. (a) telecommunications providers who have small gross operating revenues from the provision of intrastate telecommunications services in this state and who have provided these services for less than a period specified by the commission, not to exceed 5 years. The commission may also exempt a telecommunications provider or other person from part or all of the contribution required under par. (a) if the commission determines that requiring the contribution would not be in the public interest.

(c) The commission shall designate by rule the classes of providers or other persons subject to par. (a) and the required rates of contribution for each class.

(d) The commission shall consider all of the following in specifying the contributions required under par. (a):

1. The impact of the contributions on all members of the public and the telecommunications industry.

2. The fairness of the amount of the contributions and the methods of collection.

3. The costs of administering the collection of the contributions.

(e) A telecommunications provider or other person may establish a surcharge on customers' bills to collect from customers contributions required under this subsection.

(f) A telecommunications utility that provides local exchange service may make adjustments to local exchange service rates for the purpose of recovering its contributions to the universal service fund required under this subsection. A telecommunications utility that adjusts local exchange service rates for the purpose of recovering such contributions shall identify on customer bills a single amount that is the total amount of the adjustment. The public service commission shall provide telecommunications utilities the information necessary to identify such amounts on customer bills.

(g) If the commission or a telecommunications provider makes a mistake in calculating or reporting any data in connection with the contributions required under par. (a), and the mistake results in the telecommunications provider's overpayment of such a contribution, the commission shall reimburse the telecommunications provider for the amount of the overpayment.

(4) ESSENTIAL TELECOMMUNICATIONS SERVICES. (a) Each telecommunications provider that is designated as an eligible telecommunications carrier pursuant to 47 USC 214 (e) shall make available to its customers all essential telecommunications services. A telecommunications provider may satisfy this paragraph by providing essential telecommunications services itself or through an affiliate and in either case may provide essential telecommunications services through the use of any available technology or mode.

(b) Notwithstanding par. (a), if a commercial mobile radio service provider is designated or seeks designation as an eligible telecommunications carrier pursuant to 47 USC 214 (e) for the purpose of federal universal service funding and not for the purpose of state universal service funding, the commercial mobile radio service provider is not subject to any eligible telecommunications carrier requirements imposed by the commission and shall be subject only to the eligible telecommunications carrier requirements imposed by 47 USC 214 (e) (1) and regulations and orders of the federal communications commission implementing 47 USC 214 (e) (1).

(4m) TOLL BLOCKING. The commission shall issue rules to implement, cost−free to low−income customers, the capability to block all long distance or other toll calls from a customer's telephone service with a goal of universal applicability of the toll−blocking service no later than January 1, 1996. A telecommunications utility may petition the commission for a waiver from providing toll−blocking service upon a demonstration that providing this service would represent an unreasonable expense for the telecommunications utility and its ratepayers.

(4t) EDUCATIONAL TELECOMMUNICATIONS ACCESS PROGRAM RULES. The commission, in consultation with the department of administration, shall promulgate rules specifying the telecommunications services eligible for funding through the educational telecommunications access program under s. 16.997.

(4u) MEDICAL TELECOMMUNICATIONS EQUIPMENT PROGRAM. From the appropriation under 20.155 (1) (q), the commission may spend up to $500,000 annually for grants to nonprofit medical clinics and public health agencies for the purchase of telecommunications equipment to be used in providing services to their clients. The commission shall promulgate rules establishing requirements and procedures for awarding grants under this subsection.

(5) USES OF THE FUND. (a) The commission shall use the moneys in the universal service fund only for any of the following purposes:

1. To assist customers located in areas of this state that have relatively high costs of telecommunications services, low−income customers and disabled customers in obtaining affordable access to a basic set of essential telecommunications services.

4. To administer the universal service fund.

5. To pay costs incurred under contracts under s. 16.971 (13) to (16) to the extent that these costs are not paid under s. 16.997 (2) (d), except that no moneys in the universal service fund may be used to pay installation costs that are necessary for a political subdivision to obtain access to bandwidth under a shared service agreement under s. 16.997 (2r) (a).

5m. To provide statewide access, through the Internet, to periodical reference information databases.

6. To pay the department of administration for telecommunications services provided under s. 16.972 (1) to the campuses of the University of Wisconsin System.

8. To promote access to information and library services to blind and visually handicapped individuals.

9. To make grants under sub. (4u).

11. To provide for state aid to public library systems under s. 43.24.

13. To pay the costs of library service contracts under s. 43.03 (6) and (7).

(b) The commission shall promulgate rules to determine whether a telecommunications provider, the customers of a telecommunications provider or another person shall be assisted by the universal service fund for any use under par. (a) 1. and 4.

(c) The commission shall consider all of the following in establishing the services and equipment which may be assisted by the universal service fund:

1. The impact of the assistance on all members of the public and the telecommunications industry.

2. Eligibility requirements for assistance recipients.

3. The costs of administering the assistance.

4. Telecommunications plans and requirements established by the federal rural electrification administration.

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5. The extent to which the fund preserves and promotes an available and affordable basic set of essential telecommunications services throughout the state and promotes economic development.

(d) 1. In this paragraph, "Wisconsin works agency" has the meaning given in s. 49.001 (9).

2. The commission shall annually provide information booklets to all Wisconsin Works agencies that describe the current assistance from the universal service fund that is available to low−income individuals who are served by the Wisconsin Works agencies, including a description of how such individuals may obtain such assistance. The department of children and families shall assist the commission in identifying the Wisconsin Works agencies to which the commission is required to submit the information required under this subdivision.

(5m) RULE REVIEW. The commission shall review and revise as appropriate rules promulgated under this section.

(5r) REPORT. (a) Biennially, the commission shall submit a universal service fund report to the legislature under s. 13.172 (2). The report shall include information about all of the following:

1. The affordability of and accessibility to a basic set of essential telecommunications services throughout this state.

2. The affordability of and accessability to high−quality education, library and health care information services.

3. Financial assistance provided under the universal service fund.

4. An assessment of how assistance provided by the universal service fund and other alternative incentive regulations of telecommunications utilities designed to promote competition have been in advancing the public interest goals identified under s. 196.03 (6), and recommendations for further advancing those goals.

(b) The commission shall prepare a report to determine if public access broadcast channels may receive funding from the universal service fund as an advanced telecommunications service or other service and the effect of federal law on public access broadcast channel funding eligibility. The results of the report shall be included in the 2nd annual report submitted by the commission under s. 196.218 (5r) (a), 2007 stats.

(5u) BIENNIAL BUDGET REQUEST. The commission shall include in its biennial budget request under s. 16.42 a proposed budget for each individual program for which the commission proposes to expend moneys from the universal fund in the forthcoming biennium. A proposed budget under this subsection shall describe each program and identify the proposed expenditure amount for each program for each fiscal year of the biennium.

(6) UNIVERSAL SERVICE FUND COUNCIL. (a) The commission shall appoint a universal service fund council under s. 15.04 (1) (c) consisting of representatives of telecommunications providers and consumers of telecommunications services, including this state. The majority of the members of the council shall be representatives of consumers of telecommunications services.

(b) The universal service fund council shall advise the commission concerning the administration of this section and the content of rules promulgated under this section.

(7) EDUCATION. The commission may require a telecommunications provider to undertake reasonable public notification and education efforts to inform eligible customers of the availability and requirements of universal and basic service programs, including any offerings of lifeline or other supported services established under state or federal law.

(8) PENALTIES. (a) Any person who fails or refuses to pay the contribution required under sub. (3) may be required to forfeit not less than $100 nor more than $10,000. Each day of continued violation constitutes a separate offense.

(b) A court imposing a forfeiture under par. (a) shall consider all of the following in determining the amount of the forfeiture:

1. The appropriateness of the forfeiture to the volume of business of the person.

2. The gravity of the violation.

3. Any good faith attempt to achieve compliance after the person or an officer, agent or employee of the person receives notice of the violation.

4. The financial gain sought by the person by not paying the contribution required under sub. (3).

History: 1993 a. 496; 1997 a. 27, 41, 237; 1999 a. 9, 29, 185; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20; 2009 a. 28, 238; 2011 a. 22.

196.219 Protection of telecommunications consumers. (1) DEFINITIONS. In this section:

(a) "Consumer" means any person, including a telecommunications provider, that uses the services, products or facilities provided by a telecommunications utility or the local exchange services offered by a telecommunications provider that is not a telecommunications utility.

(b) "Local exchange service" includes access service, basic local exchange service, and business access line and usage service within a local calling area.

(2) CONSUMER PROTECTION. (a) Notwithstanding any exemptions identified in this chapter except ss. 196.202, 196.203, 196.206, and 196.50, a telecommunications utility or provider shall provide protection to its consumers under this section unless exempted in whole or in part by rule or order of the commission under this section. The commission shall promulgate rules that identify the conditions under which provisions of this section may be suspended.

(b) On petition, the commission may grant an exemption from a requirement under this section upon a showing that the exemption is reasonable and not in conflict with the factors under s. 196.03 (6).

(c) On petition, the commission may grant an exemption from a requirement under this section retroactively if the application of the requirement would be unjust and unreasonable considering the factors under s. 196.03 (6) or other relevant factors.

(d) If the commission grants an exemption under this subsection, it may require the telecommunications utility or provider to comply with any condition necessary to protect the public interest.

(2r) SWITCHED ACCESS RATES. Any reduction in intrastate switched access rates ordered by the commission prior to June 9, 2011, including any reduction ordered pursuant to s. 196.195, 2009 stats., shall remain effective unless modified by the commission in a subsequent order, or unless the ordered reduction is inconsistent with the requirements of s. 196.212.

(3) PROHIBITED PRACTICES. A telecommunications utility with respect to its regulated services or any other telecommunications provider with respect to its offering of local exchange services may not do any of the following:

(a) Refuse to interconnect within a reasonable time with another person to the same extent that the federal communications commission requires the telecommunications utility or provider to interconnect. The public service commission may require additional interconnection based on a determination, following notice and opportunity for hearing, that additional interconnection is in the public interest and is consistent with the factors under s. 196.03 (6).

(b) Upon request, fail to disclose in a timely and uniform manner information necessary for the design of equipment and services that will meet the specifications for interconnection.

(c) Impair the speed, quality or efficiency of services, products or facilities offered to a consumer under a tariff, contract or price list.

(d) Unreasonably refuse, restrict or delay access by any person to a telecommunications emergency service.

(e) Fail to provide a service, product or facility to a consumer other than a telecommunications provider in accord with the tele-

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communications utility's or provider's applicable tariffs, price lists or contracts and with the commission's rules and orders.

(em) Refuse to provide a service, product or facility, in accord with that telecommunications utility's or provider's applicable tariffs, price lists or contracts and with the commission's rules and orders, to another telecommunications provider.

(f) Refuse to provide basic local exchange service, business access line and usage service within a local calling area and access service on an unbundled basis to the same extent that the federal communications commission requires the telecommunications utility or provider to unbundle the same services provided under its jurisdiction. The public service commission may require additional unbundling of intrastate telecommunications services based on a determination, following notice and opportunity for hearing, that additional unbundling is required in the public interest and is consistent with the factors under s. 196.03 (6). The public service commission may order unbundling by a small telecommunications utility.

(g) Provide services, products or facilities in violation of s. 196.204.

(j) Restrict resale or sharing of services, products or facilities, except for basic local exchange service other than extended community calling, unless the commission orders the restriction to be lifted. A telecommunications utility that has 150,000 or less access lines in use in this state may limit the use of extended community calling or business line and usage service within a local calling area as a substitute for access service, unless the commission orders the limitation to be lifted.

(L) Fail to provide, or to terminate, any telecommunications service as necessary to comply with the minimum standards of service established by the commission with respect to technical service quality, deposits, disconnection, billing and collection of amounts owed for services provided or to be provided.

(m) Provide telecommunications service to any person acting as a telecommunications utility, telecommunications provider, alternative telecommunications utility or telecommunications carrier if the commission has ordered the telecommunications utility or provider to discontinue service to that person.

(n) Provide telecommunications service in violation of s. 100.207.

(o) Refuse to transfer or facilitate the transfer of the telecommunications utility's or telecommunications provider's local exchange service customers to another telecommunications provider on the same terms and conditions as the telecommunications utility or telecommunications provider receives from any other telecommunications provider, unless such terms and conditions violate federal law.

(3m) LATE PAYMENT CHARGES. (a) *Maximum allowed.* 1. Except as provided in subds. 2. and 3., a telecommunications utility may not impose a late payment charge on a retail consumer at a rate that exceeds $1.50 upon $100 for each month computed upon the declining principal balance of any amount that is not paid when due.

2. Except as provided in subd. 3., if the maximum late payment charge for any month that is allowed under subd. 1. is less than $5 for that month, the telecommunications utility may impose a late payment charge that does not exceed $5 for that month. This subdivision does not apply to residential retail consumers.

3. The commission may allow a telecommunications utility to impose a late payment charge at a rate that is greater than that allowed under subd. 1. or 2. if the commission determines that the greater amount is consistent with the factors specified in s. 196.03 (6).

(c) *Commission jurisdiction.* The commission does not have jurisdiction over late payment charges except as may be necessary to enforce the requirements of this subsection.

(4) ENFORCEMENT. (a) On the commission's own motion or upon complaint filed by the consumer, the commission shall have jurisdiction to take administrative action or to commence civil actions against telecommunications utilities or providers to enforce this section.

(b) The commission may, at its discretion, institute in any court of competent jurisdiction a proceeding against a telecommunications utility or provider for injunctive relief to compel compliance with this section, to compel the accounting and refund of any moneys collected in violation of this section or for any other relief permitted under this chapter.

(4d) UNFAIR TRADE PRACTICE ENFORCEMENT. Upon receipt of a notice issued under s. 100.208, the commission may order a telecommunications provider to cease offering the telecommunications service that creates the unfair trade practice or method of competition.

(4m) CIVIL ACTIONS. (a) Upon a finding of a violation of this section by the commission, any person injured because of a violation of this section by a telecommunications utility or provider may commence a civil action to recover damages or to obtain injunctive relief.

(b) Upon request of the commission, the attorney general may bring an action to require a telecommunications utility or provider to compensate any person for any pecuniary loss caused by the failure of the utility or provider to comply with this section.

(5) ALTERNATE DISPUTE RESOLUTION. The commission shall establish by rule a procedure for alternative dispute resolution to be available for complaints filed against a telecommunications utility or provider.

History: 1993 a. 496; 1997 a. 218; 2001 a. 16; 2005 a. 25; 2011 a. 22.

Sub. (4) does not grant the public service commission the right to sue a utility for forfeitures on its own behalf and on behalf of individual citizens to enforce rights granted to them by other provisions of chapter 196. PSC v. Wisconsin Bell, Inc. 211 Wis. 2d 751, 566 N.W.2d 496 (Ct. App. 1997), 96−3038.

Imposition of punitive and non−compensatory sanctions is beyond the commission's power. Wisconsin Bell, Inc. v. PSC, 2003 WI App 193, 267 Wis. 2d 193, 670 N.W.2d 97, 02−2783.

196.22 Discrimination forbidden. No public utility may charge, demand, collect or receive more or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in the schedules for the service filed under s. 196.19, including schedules of joint rates, as may at the time be in force, or demand, collect or receive any rate, toll or charge not specified in the schedule.

History: 1983 a. 53.

Cross−reference: See also chs. PSC 113 and 134, Wis. adm. code.

196.23 Utility service for victims of misappropriated identifying information. (1) If an individual uses personal identifying information of another individual, without the authorization or consent of the other individual, to apply for and receive service from a public utility and, as a result, the individual whose personal identifying information was used without authorization or consent is unable to obtain service from the public utility, the utility shall provide service to that individual if all of the following apply:

(a) The individual furnishes the public utility an affidavit indicating that to the best of the individual's knowledge his or her personal identifying information was used by another individual, without the authorization or consent of the affiant, to obtain the utility service.

(b) The individual furnishes the public utility a copy of a law enforcement agency report, based on the individual's report to the law enforcement agency of the use by another individual of his or her personal identifying information without authorization or consent to obtain utility service.

(c) The individual otherwise qualifies to receive the service from the utility.

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(2) A public utility may contest the accuracy of an affidavit or report furnished by an individual under sub. (1) (a) or (b) by petitioning for a summary investigation under s. 196.28 (1). If a petition is filed, the commission shall conduct a summary investigation. If a hearing is held under s. 196.28 (2) and the commission determines that the conditions of sub. (1) (intro.) have not been met, the public utility is not required to provide utility service under this section to the individual.

History: 2003 a. 36.

196.24 Agents of commission; powers. (1) For the purpose of making any investigation with regard to any public utility the commission may appoint, by an order in writing, an agent whose duties shall be prescribed in the order.

(2) In the discharge of his or her duties, an agent appointed under sub. (1) shall have any inquisitional power granted to the commission and the power of a supplemental court commissioner to take depositions under s. 757.675 (2) (b).

(3) The commission may conduct any number of investigations contemporaneously through different agents, and may delegate to any agent the authority to take testimony bearing upon any investigation or at any hearing. The decision of the commission shall comply with s. 227.46 and shall be based upon its records and upon the evidence before it, except that, notwithstanding s. 227.46 (4), a decision maker may hear a case or read or review the record of a case if the record includes a synopsis or summary of the testimony and other evidence presented at the hearing that is prepared by the commission staff. Parties shall have an opportunity to demonstrate to a decision maker that a synopsis or summary prepared under this subsection is not sufficiently complete or accurate to fairly reflect the relevant and material testimony or other evidence presented at a hearing.

History: 1975 c. 414 s. 28; 1983 a. 53; 1985 a. 182 s. 57; 1997 a. 204; 2001 a. 61.

196.25 Questionnaires. (1) If a public utility, other than a public utility that is a telecommunications provider, receives from the commission any questionnaire, the public utility shall respond fully, specifically and correctly to each question. If a public utility is unable to answer any question, the public utility shall give a good and sufficient reason for its failure. Every answer by a public utility under this section shall be verified under oath by a manager of the public utility and returned to the commission at its office within the period fixed by the commission.

(2) If required by the commission, a public utility, other than a public utility that is a telecommunications provider, shall deliver to the commission the original or a copy of any map, profile, contract or engineer's report and any other document, book, account, paper or record with a complete inventory of all its property, in such form as the commission directs.

(3) If a telecommunications provider receives a questionnaire from the commission, the telecommunications provider shall respond specifically, correctly and fully to each question that relates to a matter over which the commission has jurisdiction. If a telecommunications provider is unable to answer any question, the telecommunications provider shall give a good and sufficient reason for its failure. Answers shall be verified under oath by a manager of the telecommunications provider. A completed questionnaire shall be returned to the commission within the time period specified by the commission.

History: 1983 a. 53; 1993 a. 496; 2011 a. 22.

196.26 Complaint by consumers; hearing; notice; order; costs. (1) COMPLAINT. In this section, "complaint" means any of the following:

(a) A complaint filed with the commission that any rate, toll, charge, or schedule, joint rate, regulation, measurement, act, or practice relating to the provision of heat, light, water, or power is unreasonable, inadequate, unjustly discriminatory, or cannot be obtained.

(b) A complaint specified in s. 196.199 (3) (a) 1m. b.

(c) A complaint by a party to an interconnection agreement, approved by the commission, that another party to the agreement has failed to comply with the agreement and that does not allege that the failure to comply has a significant adverse effect on the ability of the complaining party to provide telecommunications service to its customers or potential customers.

(1m) INVESTIGATION OF COMPLAINT. If any mercantile, agricultural, or manufacturing society, body politic, municipal organization, or 25 persons file a complaint specified in sub. (1) (a) against a public utility, or if the commission terminates a proceeding on a complaint under s. 196.199 (3) (a) 1m. b., or if a person files a complaint specified in sub. (1) (c), the commission, with or without notice, may investigate the complaint under this section as it considers necessary. The commission may not issue an order based on an investigation under this subsection without a public hearing.

(2) NOTICE AND HEARING. (a) Prior to a hearing under this section, the commission shall notify the public utility or party to an interconnection agreement complained of that a complaint has been made, and 10 days after the notice has been given the commission may proceed to set a time and place for a hearing and an investigation. This paragraph does not apply to a complaint specified in sub. (1) (b).

(b) The commission shall give the complainant and either the public utility or party to an interconnection agreement which is the subject of a complaint specified in sub. (1) (a) or (c) or, for a complaint specified in sub. (1) (b), a party to an interconnection agreement who is identified in a notice under s. 196.199 (3) (b) 1. b., 10 days' notice of the time and place of the hearing and the matter to be considered and determined at the hearing. The complainant and either the public utility or party to the interconnection agreement may be heard. The commission may subpoena any witness at the request of the public utility, party to the interconnection agreement, or complainant.

(c) Notice under pars. (a) and (b) may be combined. The combined notice may not be less than 10 days prior to hearing.

(3) SEPARATE HEARINGS. If a complaint is made under sub. (1m) of more than one rate or charge, the commission may order separate hearings on each rate and charge, and may consider and determine the complaint on each rate and charge separately and at such times as the commission prescribes. The commission may not dismiss a complaint because of the absence of direct damage to the complainant.

History: 1981 c. 148; 1983 a. 53; 1985 a. 297; 1989 a. 344; 1993 a. 496; 1995 a. 409; 1997 a. 218, 229; 1999 a. 32, 53, 186; 2001 a. 16; 2005 a. 441; 2011 a. 22.

Cross−reference: See also ch. PSC 2 and s. PSC 2.11, Wis. adm. code.

196.28 Summary investigations. (1) If the commission believes that any rate or charge is unreasonable or unjustly discriminatory or that any service is inadequate or cannot be obtained or that an investigation of any matter relating to any public utility should for any reason be made, the commission on its own motion summarily may investigate with or without notice.

(2) If, after an investigation under sub. (1), the commission determines that sufficient grounds exist to warrant a hearing on the matters investigated, the commission shall set a time and place for a hearing. A hearing under this section shall be conducted as a hearing under s. 196.26.

(3) Notice of the time and place for a hearing under sub. (2) shall be given to the public utility and to such other interested persons as the commission considers necessary. After the notice has been given, proceedings shall be had and conducted in reference to the matter investigated as if a complaint specified in s. 196.26 (1) (a) had been filed with the commission relative to the matter investigated. The same order or orders may be made in reference to the matter as if the investigation had been made on complaint under s. 196.26.

(4) This section does not apply to rates, tolls or charges of a telecommunications cooperative, an unincorporated telecommu-

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nications cooperative association, or a small telecommunications utility except as provided in s. 196.205.

History: 1977 c. 29 s. 1654 (10) (c); 1983 a. 53 ss. 39, 41; 1989 a. 344; 1993 a. 496; 1997 a. 218, 229; 1999 a. 32; 2001 a. 16; 2005 a. 441; 2011 a. 22.

The PSC's decision not to investigate under ss.196.28 and 196.29 was a nonreviewable, discretionary determination. Reviewable decisions are defined. Wisconsin Environmental Decade, Inc. v. PSC, 93 Wis. 2d 650, 287 N.W.2d 737 (1980).

196.30 Utilities may complain. Any public utility may file a complaint with the commission on any matter affecting its own product or service.

History: 1983 a. 53.

Cross−reference: See also ch. PSC 2 and s. PSC 2.11, Wis. adm. code.

196.31 Intervenor financing. (1) In any proceeding before the commission, the commission shall compensate any participant in the proceeding who is not a public utility, for some or all of the reasonable costs of participation in the proceeding if the commission finds that:

(a) The participation is necessary to provide for the record an adequate presentation of a significant position in which the participant has a substantial interest, and that an adequate presentation would not occur without a grant of compensation; or

(b) The participation has provided a significant contribution to the record and has caused a significant financial hardship to the participant.

(1m) The commission shall compensate any consumer group or consumer representative for all reasonable costs of participating in a hearing under s. 196.198.

(2) Compensation granted under this section shall be paid from the appropriation under s. 20.155 (1) (j) and shall be assessed under s. 196.85 (1), except that, if the commission finds that the participation for which compensation is granted relates more to a general issue of utility regulation rather than to an issue arising from a single proceeding, the cost of the compensation may be assessed under s. 196.85 (2). Any payment by a public utility for compensation under this section assessed under s. 196.85 (1) or (2) shall be credited to the appropriation under s. 20.155 (1) (j).

(2m) From the appropriation under s. 20.155 (1) (j), the commission may make grants that, in the aggregate, do not exceed an annual total of $300,000 to one or more nonstock, nonprofit corporations that are described under section 501 (c) (3) of the Internal Revenue Code, and that have a history of advocating at the commission on behalf of ratepayers of this state, for the purpose of offsetting the general expenses of the corporations, including salary, benefit, rent, and utility expenses. The commission may impose conditions on grants made under this subsection and may revoke a grant if the commission finds that such a condition is not being met.

(3) The commission shall adopt rules to implement this section.

History: 1983 a. 27; 1985 a. 297; 1989 a. 56 s. 259; 1993 a. 496; 1999 a. 9; 2009 a. 383; 2011 a. 22, 32.

Cross−reference: See also ch. PSC 3, Wis. adm. code.

196.32 Witness fees and mileage. (1) Any witness who appears before the commission or its agent, by order, shall receive for the applicable attendance the fees provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid under s. 885.07, upon the presentation of proper vouchers sworn to by such witnesses and approved by the chairperson of the commission. Fees paid under this section shall be charged to the appropriation for the commission under s. 20.155 (1) (g).

(2) No witness subpoenaed at the instance of parties other than the commission may be compensated under this section unless the commission certifies that the testimony of the witness was material to the matter investigated.

History: 1983 a. 53.

196.33 Depositions. The commission or any party in any investigation or hearing may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in circuit courts. Any expense incurred or authorized by the commission in taking a deposition shall be charged to the appropriation for the commission under s. 20.155 (1) (g).

History: 1983 a. 53.

196.34 Commission records. The commission shall keep a complete record of its proceedings before the commission or its agent in any formal investigation or hearing.

History: 1983 a. 53; 1995 a. 27.

196.36 Transcripts and tapes. (1) TRANSCRIPTS. The commission shall receive into evidence a transcribed copy of the evidence and proceedings, or any specific part of the evidence and proceedings, on any investigation or hearing taken by a stenographer if the stenographer certifies that the copy is a true and correct transcript of all the testimony or of the testimony of a particular witness, or of any other specific part of the investigation or hearing, that the transcript was carefully compared by the stenographer with his or her original notes, and that the copy is a correct statement of the evidence presented and proceedings held in the investigation or hearing. The certified copy shall have the same effect as if the stenographer were present and testified to the correctness of the copy.

(1m) TRANSCRIPTS FROM TAPES. The commission shall receive into evidence a transcribed copy of an audiotape or videotape of the evidence and proceedings, or any specific part of the evidence and proceedings, of any investigation or hearing that is recorded if the transcriber certifies that the copy is a true and correct transcription from the audiotape or videotape of all the testimony or of the testimony of a particular witness, or of any other specific part of the investigation or hearing and that the copy is a correct statement of the evidence presented and proceedings held in the investigation or hearing. The certified copy shall have the same effect as if the transcriber were present and testified to the correctness of the copy.

(1r) PRODUCTION EXPENSES. The commission may require any party to an investigation or hearing to bear the expense of producing a transcript, audiotape or videotape that is related to the investigation or hearing.

(2) COPIES. Upon request, the commission shall furnish a copy of a transcript under this section to any party to the investigation or hearing from which the transcript is taken and shall furnish a copy of an audiotape or videotape to any party to the investigation or hearing from which the audiotape or videotape is taken. The commission may charge a reasonable price for the transcript or tape.

History: 1983 a. 53; 1995 a. 27; 1997 a. 27.

Cross−reference: See also ch. PSC 113 and s. PSC 2.29, Wis. adm. code.

196.37 Lawful rates; reasonable service. (1) If, after an investigation under this chapter or ch. 197, the commission finds rates, tolls, charges, schedules or joint rates to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential or otherwise unreasonable or unlawful, the commission shall determine and order reasonable rates, tolls, charges, schedules or joint rates to be imposed, observed and followed in the future.

(2) If the commission finds that any measurement, regulation, practice, act or service is unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise unreasonable or unlawful, or that any service is inadequate, or that any service which reasonably can be demanded cannot be obtained, the commission shall determine and make any just and reasonable order relating to a measurement, regulation, practice, act or service to be furnished, imposed, observed and followed in the future.

(3) Any public utility to which an order under this section applies shall make such changes in schedules on file under s. 196.19 to make the schedules conform to the order. The public utility may not make any subsequent change in rates, tolls or charges without the approval of the commission.

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(4) This section does not apply to rates, tolls or charges of a telecommunications cooperative, an unincorporated telecommunications cooperative association, or a small telecommunications utility except as provided in s. 196.205.

History: 1981 c. 390; 1983 a. 53 ss. 47, 50; 1989 a. 344; 1993 a. 496; 1995 a. 409; 2005 a. 441; 2011 a. 22.

Cross−reference: See also ch. PSC 110, Wis. adm. code.

In the absence of statutory authority, the PSC may not fix rates to be applied retroactively. Algoma, Eagle River, New Holstein, Stratford, Sturgeon Bay & Two Rivers v. PSC, 91 Wis. 2d 252, 283 N.W.2d 261 (Ct. App. 1978).

Allowing a utility to charge present ratepayers for a storm damage casualty loss that occurred in a prior year did not constitute retroactive rate making. Wisconsin Environmental Decade, Inc. v. PSC, 98 Wis. 2d 682, 298 N.W.2d 205 (Ct. App. 1980).

The PSC has authority to shift the cost of excess generating capacity to shareholders if the excess capacity was imprudently acquired or is not useful in serving the public, but there must be a reasoned determination that ratepayers should not bear the cost. Madison Gas & Electric Co. v. PSC, 109 Wis. 2d 127, 325 N.W.2d 339 (1982).

A utility's failure to pay taxes under protest may constitute "imprudence" and may reasonably affect a rate−setting decision. Wisconsin Public Service Corporation v. PSC, 156 Wis. 2d 611, 457 N.W.2d 502 (Ct. App. 1990).

The PSC has authority to order a utility to refund compensation collected in violation of filed tariffs. GTE North Inc. v. PSC, 176 Wis. 2d 559, 500 N.W.2d 284 (1993).

The PSC's imposition of a penalty for imprudent administration of a coal acquisition contract was impermissible retroactive rate−making. Wisconsin Power & Light v. PSC, 181 Wis. 2d 385, 511 N.W.2d 291 (1994).

Sub. (1) is not implicated when a refund is ordered for reasons other than the PSC's determination that rates for services already provided were not reasonable. Sub. (2) authorizes the PSC to order a refund of a rate that the utility believed was included in a tariff, but the PSC concluded was not, and of a rate that the utility believed was properly filed with the PSC but the PSC concluded was not. CenturyTel of the Midwest−Kendall, Inc. v. PSC, 2002 WI App 236, 257 Wis. 2d 837, 653 N.W.2d 130, 02−0053.

Once a rate or practice is determined to be unlawful, or once a charge is determined to be a practice that is unlawful, it is subject to the remedial authority of sub. (2). Under *CenturyTel*, sub. (2) provides the PSC authority to order a refund. Wisconsin Bell, Inc. v. Public Service Commission, 2004 WI App 8, 269 Wis. 2d 409, 675 N.W.2d 242, 02−3163.

196.371 Rate−making principles for electric generation facilities. (1) DEFINITION. In this section, "certificate" means a certificate issued under s. 196.49 (3) or 196.491 (3).

(2) APPLICATION. A public utility that proposes to purchase an electric generating facility or that applies for a certificate for the construction of an electric generating facility may apply to the commission for an order specifying in advance the rate−making principles that the commission shall apply to the public utility's recovery of the capital costs of the facility, including the purchase price and any necessary modifications or improvements to the facility at the time of the purchase, in future rate−making proceedings. In applying for an order under this section, a public utility shall describe the public utility's proposal for the recovery of such costs, including all of the following:

(a) The economic useful life of the facility.

(b) The proposed return on equity and rate of return for the facility.

(c) The proposed financing mechanisms for the facility.

(d) The proposed method for determining the costs that may be recovered in rates.

(e) Any other proposals or information regarding the recovery of the costs that the public utility determines are necessary for providing certainty to the public utility, investors, and ratepayers in future rate−making proceedings.

(f) Any other information specified by the commission.

(3) PROCEDURE. (a) The commission shall conduct a hearing on an application for an order under this section. The commission may hold the hearing in conjunction with a hearing, if any, on the application for the certificate or the commission may hold a separate hearing on the application for the order. If the public utility has applied for a certificate for the facility, the commission shall determine whether to deny an application for an order or to issue an order no later than the date that the commission takes final action on the application for the certificate. If the public utility has not applied for a certificate, the commission shall determine whether to deny an application for an order or to issue an order no later than 180 days after the commission determines that the application for the order is complete using the method and deadlines specified under s. 196.491 (3) (a) 2. The commission may issue an order if the commission determines that the order will provide a sufficient degree of certainty to the public utility, investors, and ratepayers with respect to future recovery of the facility's capital costs and that the order is otherwise in the public interest.

(am) The commission shall specify in an order under this section a deadline at least 60 days after the date of issuance of the order for the public utility to notify the commission in writing about whether the public utility accepts or waives acceptance of the order. If the public utility does not make the notification by the deadline specified in the order, the public utility is considered to have waived acceptance of the order.

(b) If the public utility accepts the order, then, in all future rate−making proceedings regarding the public utility, the order shall be binding on the commission in its treatment of the recovery of the capital costs of the facility that is subject to the order and the commission may not consider the order or the effects of the order in its treatment of the recovery of any other cost of the public utility.

(bm) If the public utility waives or is considered to have waived acceptance of the order, the commission shall withdraw the order and consider the capital costs of the facility in all future rate−making proceedings in the same manner as the commission considers capital costs for which no order has been issued under this section.

(c) The commission may not require a public utility to apply for or accept an order under this section.

(4) RULES. The commission shall promulgate rules for administering this section, including rules specifying the information that must be included in an application for an order under this section.

History: 2005 a. 7.

196.372 Railroad telecommunications service. If the commission receives a complaint that telecommunications service with any railroad, as defined under s. 195.02, is inadequate or in any respect unreasonably or unjustly discriminatory or that the service is unavailable, the commission shall investigate the same. If upon investigation the commission finds that any telecommunications service is inadequate or unreasonably or unjustly discriminatory or that the service is unavailable, it shall determine and by order fix a reasonable regulation, practice or service to be installed, imposed and observed and followed in the future.

History: 1977 c. 29 s. 1340; Stats. 1977 s. 196.627; 1983 a. 53 s. 83; Stats. 1983 s. 196.374; 1983 a. 192; Stats. 1983 s. 196.372; 1985 a. 297 s. 76.

196.373 Water heater thermostat settings. (1) In this section:

(a) "Periodic customer billing" means a demand for payment of utility services by a public utility to a residential utility consumer on a monthly or other regular basis.

(b) "Residential utility consumer" means any individual who lives in a dwelling which is located in this state and which is furnished with a utility service by a public utility. "Residential utility consumer" includes, but is not limited to, an individual engaged in farming as defined under s. 102.04 (3).

(2) At least annually every public utility furnishing gas or electricity shall include in its periodic customer billing a statement recommending that water heater thermostats be set no higher than 125 degrees Fahrenheit in order to prevent severe burns and unnecessary energy consumption.

History: 1987 a. 102.

196.374 Energy efficiency and renewable resource programs. (1) DEFINITIONS. In this section:

(a) "Agricultural producer" means a person engaged in an agricultural activity, as defined in s. 101.10 (1) (a).

(b) "Commitment to community program" means an energy efficiency or load management program by or on behalf of a municipal utility or retail electric cooperative.

(c) "Customer application of renewable resources" means the generation of energy from renewable resources that takes place on

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the premises of a customer of an energy utility or municipal utility or a member of a retail electric cooperative.

(d) "Energy efficiency program" means a program for reducing the usage or increasing the efficiency of the usage of energy by a customer or member of an energy utility, municipal utility, or retail electric cooperative. "Energy efficiency program" does not include load management.

(e) "Energy utility" means an investor−owned electric or natural gas public utility.

(em) "Large energy customer" means a customer of an energy utility that owns or operates a facility in the energy utility's service area that has an energy demand of at least 1,000 kilowatts of electricity per month or of at least 10,000 decatherms of natural gas per month and that, in a month, is billed at least $60,000 for electric service, natural gas service, or both, for all of the facilities of the customer within the energy utility's service territory.

(f) "Load management program" means a program to allow an energy utility, municipal utility, wholesale electric cooperative, as defined in s. 16.957 (1) (v), retail electric cooperative, or municipal electric company, as defined in s. 66.0825 (3) (d), to control or manage daily or seasonal customer demand associated with equipment or devices used by customers or members.

(g) "Local unit of government" has the meaning given in s. 23.24 (4) (a) 1.

(h) "Municipal utility" has the meaning given in s. 16.957 (1) (q).

(i) "Ordered program" means an energy efficiency or renewable resource program that an energy utility commenced on or after January 1, 2001, under a commission order issued on or after January 1, 2001, and in effect before July 1, 2007.

(j) "Renewable resource" means a resource that derives energy from any source other than coal, petroleum products, nuclear power or, except as used in a fuel cell, natural gas. "Renewable resource" includes resources deriving energy from any of the following:

1. Solar energy.
2. Wind power.
3. Water power.
4. Biomass.
5. Geothermal technology.
6. Tidal or wave action.
7. Fuel cell technology that uses, as determined by the commission, a renewable fuel.

(k) "Renewable resource program" means a program for encouraging the development or use of customer applications of renewable resources, including educating customers or members about renewable resources, encouraging customers or members to use renewable resources, and encouraging the transfer of new or emerging technologies from research, development, and demonstration to commercial implementation.

(L) "Retail electric cooperative" has the meaning given in s. 16.957 (1) (t).

(n) "Wholesale supplier" has the meaning given in s. 16.957 (1) (w).

(o) "Wholesale supply percentage" has the meaning given in s. 16.957 (1) (x).

(2) ENERGY EFFICIENCY AND RENEWABLE RESOURCE PROGRAMS. (a) *Statewide programs.* 1. The energy utilities in this state shall collectively establish and fund statewide energy efficiency and renewable resource programs. The energy utilities shall contract, on the basis of competitive bids, with one or more persons to develop and administer the programs. The utilities may not execute a contract under this subdivision unless the commission has approved the contract. The commission shall require each energy utility to spend the amount required under sub. (3) (b) 2. to fund statewide energy efficiency and renewable resource programs.

2. The purpose of the programs under this paragraph shall be to help achieve environmentally sound and adequate energy supplies at reasonable cost, consistent with the commission's responsibilities under s. 196.025 (1) (ar) and the utilities' obligations under this chapter. The programs shall include, at a minimum, all of the following:

a. Components to address the energy needs of residential, commercial, agricultural, institutional, and industrial energy users and local units of government.

b. Components to reduce the energy costs incurred by local units of government and agricultural producers, by increasing the efficiency of energy use by local units of government and agricultural producers. The commission shall ensure that not less than 10 percent of the moneys utilities are required to spend under subd. 1. or sub. (3) (b) 2. is spent annually on programs under this subdivision except that, if the commission determines that the full amount cannot be spent on cost−effective programs for local units of government and agricultural producers, the commission shall ensure that any surplus funds be spent on programs to serve commercial, institutional, and industrial customers. A local unit of government that receives assistance under this subd. 2. b. shall apply all costs savings realized from the assistance to reducing the property tax levy.

c. Initiatives and market strategies that address the needs of individuals or businesses facing the most significant barriers to creation of or participation in markets for energy efficient products that the individual or business manufactures or sells or energy efficiency services that the individual or business provides.

d. Initiatives for research and development regarding the environmental and economic impacts of energy use in this state.

e. Components to implement energy efficiency or renewable energy measures in facilities of manufacturing businesses in this state that are consistent with the implementation of energy efficiency or renewable energy measures in manufacturing facilities to enhance their competitiveness, the retooling of existing facilities to manufacture products that support the green economy, the expansion or establishment of domestic clean energy manufacturing operations, and creating or retaining jobs for workers engaged in such activities.

3. The commission may not require an energy utility to administer or fund any energy efficiency or renewable resource program that is in addition to the programs required under subd. 1. and any ordered program of the utility. This subdivision does not limit the authority of the commission to enforce an energy utility's obligations under s. 196.378.

(b) *Utility−administered programs.* 1. An energy utility may, with commission approval, administer or fund one or more energy efficiency programs that is limited to, as determined by the commission, large commercial, industrial, institutional, or agricultural customers in its service territory. An energy utility shall pay for a program under this subdivision with a portion of the amount required under sub. (3) (b) 2., as approved by the commission. The commission may not order an energy utility to administer or fund a program under this subdivision.

2. An energy utility may, with commission approval, administer or fund an energy efficiency or renewable resource program that is in addition to the programs required under par. (a) or authorized under subd. 1. The commission may not order an energy utility to administer or fund a program under this subdivision.

3. An energy utility that administers or funds a program under subd. 1. or 2. or an ordered program may request, and the commission may approve, to modify or discontinue, in whole or in part, the ordered program. An energy utility may request the establishment, modification, or discontinuation of a program under subd. 1. or 2. at any time and shall request the modification or discontinuation of an ordered program as part of a proceeding under sub. (3) (b) 1.

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(c) *Large energy customer programs.* A customer of an energy utility may, with commission approval, administer and fund its own energy efficiency programs if the customer satisfies the definition of a large energy customer for any month in the 12 months preceding the date of the customer's request for approval. A customer may request commission approval at any time. A customer that funds a program under this paragraph may deduct the amount of the funding from the amount the energy utility may collect from the customer under sub. (5) (b). If the customer deducts the amount of the funding from the amount the energy utility may collect from the customer under sub. (5) (b), the energy utility shall credit the amount of the funding against the amount the energy utility is required to spend under sub. (3) (b) 2.

(3) COMMISSION DUTIES. (a) *In general.* The commission shall have oversight of programs under sub. (2). The commission shall maximize coordination of program delivery, including coordination between programs under subs. (2) (a) 1., (b) 1. and 2., and (c) and (7), ordered programs, low−income weatherization programs under s. 16.957, renewable resource programs under s. 196.378, and other energy efficiency or renewable resource programs. The commission shall cooperate with the department of natural resources to ensure coordination of energy efficiency and renewable resource programs with air quality programs and to maximize and document the air quality improvement benefits that can be realized from energy efficiency and renewable resource programs.

(b) *Programs and funding.* 1. At least every 4 years, after notice and opportunity to be heard, the commission shall, by order, evaluate the energy efficiency and renewable resource programs under sub. (2) (a) 1., (b) 1. and 2., and (c) and ordered programs and set or revise goals, priorities, and measurable targets for the programs. The commission shall give priority to programs that moderate the growth in electric and natural gas demand and usage, facilitate markets and assist market providers to achieve higher levels of energy efficiency, promote energy reliability and adequacy, avoid adverse environmental impacts from the use of energy, and promote rural economic development.

2. The commission shall require each energy utility to spend 1.2 percent of its annual operating revenues to fund the utility's programs under sub. (2) (b) 1., the utility's ordered programs, the utility's share of the statewide energy efficiency and renewable resource programs under sub. (2) (a) 1., and the utility's share, as determined by the commission under subd. 4., of the costs incurred by the commission in administering this section.

4. In each fiscal year, the commission shall collect from the persons with whom energy utilities contract under sub. (2) (a) 1. an amount equal to the costs incurred by the commission in administering this section.

(c) *Reviews and approvals.* The commission shall do all of the following:

1. Review and approve contracts under sub. (2) (a) 1. between the energy utilities and program administrators.

2. Review requests under sub. (2) (b). The commission may condition its approval of a request under sub. (2) (b) as necessary to protect the public interest. The commission shall approve a request under sub. (2) (b) 1. or 2. if the commission determines that a proposed energy efficiency or renewable resource program is in the public interest and satisfies all of the following:

a. The program has specific savings targets and performance goals approved by the commission.

b. The program is subject to independent evaluation by the commission.

(d) *Audits.* Annually, the commission shall contract with one or more independent auditors to prepare a financial and performance audit of the programs specified in par. (b) 1. The purpose of the performance audit shall be to evaluate the programs and measure the performance of the programs against the goals and targets set by the commission under par. (b) 1. The person or persons with whom the energy utilities contract for program administration under sub. (2) (a) 1. shall pay the costs of the audits from the amounts paid under the contracts under sub. (2) (a) 1.

(e) *Reports.* Annually, the commission shall prepare and post on the commission's Internet site a report and submit a summary of not more than 2 pages to the legislature under s. 13.172 (2). The reports shall describe each of the following:

1. The expenses of the commission, utilities, and program administrators contracted under sub. (2) (a) 1. in administering or participating in the programs under sub. (2) (a) 1.

2. The effectiveness of the programs specified in par. (b) 1. and sub. (7) in reducing demand for electricity and increasing the use of renewable resources owned by customers or members.

3. The results of audits under par. (d).

4. Any other information required by the commission.

(f) *Rules.* The commission shall promulgate rules to establish all of the following:

1. Procedures for energy utilities to collectively contract with program administrators for administration of statewide programs under sub. (2) (a) 1. and to receive contributions from municipal utilities and retail electric cooperatives under sub. (7) (b) 2.

2. Procedures and criteria for commission review and approval of contracts for administration of statewide programs under sub. (2) (a) 1., including criteria for the selection of program administrators under sub. (2) (a) 1.

3. Procedures and criteria for commission review and approval of utility−administered programs under sub. (2) (b) 1. and 2., customer programs under sub. (2) (c), and requests under sub. (2) (b) 3.

4. Minimum requirements for energy efficiency and renewable resource programs under sub. (2) (a) 1. and customer energy efficiency programs under sub. (2) (c).

(4) DISCRIMINATION PROHIBITED; COMPETITION. (a) In implementing programs under sub. (2) (a) 1., including the awarding of grants or contracts, a person who contracts with the utilities under sub. (2) (a) 1., or a person who subcontracts with such a person:

1. May not discriminate against an energy utility or its affiliate or a wholesale supplier or its affiliate solely on the basis of its status as an energy utility or its affiliate or wholesale supplier or its affiliate.

2. Shall provide services to utility customers on a nondiscriminatory basis and subject to a customer's choice.

(b) An energy utility that provides financing under an energy efficiency program under sub. (2) (b) 1. or 2. for installation, by a customer, of energy efficiency or renewable resource processes, equipment, or appliances, or an affiliate of such a utility, may not sell to or install for the customer those processes, equipment, appliances, or related materials. The customer shall acquire the installation of the processes, equipment, appliances, or related materials from an independent contractor of the customer's choice.

(5) COST RECOVERY. (a) *Rate−making orders.* The commission shall ensure in rate−making orders that an energy utility recovers from its ratepayers the amounts the energy utility spends for programs under sub. (2) (a) 1.

(b) *Large energy customers.* 1. Except as provided in sub. (2) (c) and par. (bm) 2., if the commission has determined that a customer of an energy utility is a large energy customer under 2005 Wisconsin Act 141, section 102 (8) (b), then, each month, the energy utility shall collect from the customer, for recovery of amounts under par. (a), the amount determined by the commission under 2005 Wisconsin Act 141, section 102 (8) (c).

2. A customer of an energy utility that the commission has not determined is a large energy customer under 2005 Wisconsin Act 141, section 102 (8) (b), may petition the commission for a determination that the customer is a large energy customer. The commission shall determine that a petitioner is a large energy customer if the petitioner satisfies the definition of large energy customer for any month in the 12 months preceding the date of the petition.

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If the commission makes such a determination, the commission shall also determine the amount that the energy utility may collect from the customer each month for recovery of the amounts under par. (a). The commission shall determine an amount that ensures that the amount collected from the customer is similar to the amounts collected from other customers that have a similar level of energy costs as the customer. Except as provided in sub. (2) (c) and par. (bm) 2., each month, the energy utility shall collect from the customer, for recovery of amounts under par. (a), the amount determined by the commission under this subdivision.

(bm) *Allocation proposal.* 1. The commission shall commence a proceeding for creating a proposal for allocating within different classes of customers an equitable distribution of the recovery of the amounts under par. (a) by all energy utilities. The purpose of the allocation is to ensure that customers of an energy utility within a particular class are treated equitably with respect to customers of other energy utilities within the same class. No later than December 31, 2008, the commission shall submit the proposal to the governor and chief clerk of each house of the legislature for distribution to the appropriate standing committees of the legislature under s. 13.172 (3).

2. If, by July 1, 2009, legislation based on the proposal under subd. 1. has not been enacted, the commission shall, beginning on July 1, 2009, annually increase the amount that an energy utility may recover from a large energy customer each month under par. (b) only by a percentage that is the lesser of the following:

a. The percentage increase in the energy utility's operating revenues during the preceding year.

b. The percentage increase in the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, during the preceding year.

3. Until the proposal under subd. 1. takes effect, the commission may not include the revenues received from a large energy customer in the calculation of operating revenues for purposes of sub. (3) (b) 2. for an energy utility that in 2005 did not collect revenues from its customers under s. 196.374 (3), 2003 stats.

(c) *Accounting.* The commission may prescribe the accounting treatment of energy utility expenditures required under this section, including the use of any escrow accounting.

(d) *Equitable contributions.* Subject to pars. (b) and (bm) 2., the commission shall ensure that the cost of energy efficiency and renewable resource programs is equitably divided among customer classes so that similarly situated ratepayers contribute equivalent amounts for the programs.

(5m) BENEFIT AND GRANT OPPORTUNITIES. (a) The commission shall ensure that, on an annual basis, each customer class of an energy utility has the opportunity to receive grants and benefits under energy efficiency programs in an amount equal to the amount that is recovered from the customer class under sub. (5) (a). Biennially, the commission shall submit a report to the governor, and the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2), that summarizes the total amount recovered from each customer class and the total amount of grants made to, and benefits received by, each customer class.

(b) The commission shall ensure that customers throughout the state have an equivalent opportunity to receive the benefits of the programs under sub. (2) (a) 1. and (b) 1. The commission shall ensure that statewide programs are designed to ensure that retail customers in areas not served by programs under sub. (2) (b) 1. receive equivalent opportunities as those in areas served by programs under sub. (2) (b) 1.

(6) ANNUAL STATEMENTS. Annually, the commission shall prepare a statement that describes the programs under sub. (2) (a) 1., (b) 1. and 2., and (c), and ordered programs, administered or funded by the energy utility and presents cost and benefit information for those programs. An energy utility shall provide each of its customers with a copy of the statement.

(7) MUNICIPAL UTILITIES AND RETAIL ELECTRIC COOPERATIVES. (a) *Requirement to charge fees.* 1. Each retail electric cooperative and municipal utility shall charge a monthly fee to each customer or member in an amount that is sufficient for the retail electric cooperative or municipal utility to collect an annual average of $8 per meter. A retail electric cooperative or municipal utility may determine the amount that a particular class of customers or members is required to pay under this subdivision and may charge different fees to different classes of customers or members.

2. Notwithstanding subd. 1., in any month, the monthly fee under subd. 1. may not exceed 1.5 percent of the total of every other charge for which the member or customer is billed for that month or $375 per month, whichever is less.

(b) *Commitment to community programs.* 1. Except as provided in subd. 2., each retail electric cooperative and municipal utility shall spend the fees that it charges under par. (a) on commitment to community programs. The purpose of the programs under this paragraph shall be to help achieve environmentally sound and adequate energy supplies at reasonable cost.

2. No later than October 1, 2007, and no later than every 3rd year after that date, each municipal utility or retail electric cooperative shall notify the commission whether it has elected to contribute the fees that it charges under par. (a) to statewide programs established under sub. (2) (a) 1. in each year of the 3−year period for which it has made the election. If a municipal utility or retail electric cooperative elects to contribute to the statewide programs established under sub. (2) (a) 1., the utility or cooperative shall contribute the fees that it collects under par. (a) to the payment of contracts under sub. (2) (a) 1. for administration of the statewide programs, as specified in the rules under sub. (3) (f) 1., in each year of the 3−year period for which the utility or cooperative has made the election.

(c) *Wholesale supplier credit.* If a wholesale supplier has established an energy efficiency or load management program, a municipal utility or retail electric cooperative that is a customer or member of the wholesale supplier may include an amount equal to the product of the municipal utility's or retail electric cooperative's wholesale supply percentage and the amount that the wholesale supplier has spent on energy efficiency or load management programs in a year in calculating the amount that the municipal utility or retail electric cooperative has spent on commitment to community programs under par. (b).

(d) *Joint programs.* Municipal utilities or retail electric cooperatives may establish joint commitment to community programs, except that each municipal utility or retail electric cooperative that participates in a joint program shall comply with the spending requirements under par. (b).

(e) *Reports.* 1. Annually, each municipal utility and retail electric cooperative that spends the fee that it charges under par. (a) for commitment to community programs under par. (b) shall provide for an independent audit of its programs and submit a report to the commission that describes all of the following:

a. An accounting of fees charged to customers or members under par. (a) in the year and expenditures on commitment to community programs under par. (b), including any amounts included in the municipal utility's or retail electric cooperative's calculations under par. (c).

b. A description of commitment to community programs established by the municipal utility or retail electric cooperative in the year.

c. The effectiveness of the commitment to community programs in reducing demand for electricity by customers or members.

d. The results of audits under this subdivision.

2. The commission shall require that municipal utilities and retail electric cooperatives file reports under subd. 1. electronically, in a format that allows for tabulation, comparison, and other analysis of the reports.

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3. The commission shall maintain reports filed under subd. 1. for at least 6 years.

(8) COMPLIANCE. An energy utility that spends the full amount required under sub. (3) (b) 2. in any year is considered to have satisfied its requirements under this section for that year.

History: 1983 a. 27; 1999 a. 9; 2001 a. 30; 2005 a. 141; 2007 a. 17, 20; 2009 a. 180, 276, 332; 2011 a. 32.

Cross−reference: See also ch. PSC 137, Wis. adm. code.

196.375 Adequate service; reasonable rates. Upon complaint by any party affected, setting forth that any grantee of a permit to develop hydraulic power and generate hydroelectric energy for sale or service to the public is not furnishing consumers of this state with adequate service at a reasonable rate as a result of sales of the energy outside of the state, the commission may declare any or all contracts entered into by the grantee for the sales null and void insofar as the contracts interfere with the service or rate. The commission may not make a declaration under this section except after a hearing and investigation and a recorded finding that convenience and necessity require the sale of a specified part or all such energy within this state.

History: 1983 a. 53.

196.377 Renewable energy sources. (1) PROMOTION OF RENEWABLE ENERGY SYSTEMS. The commission shall encourage public utilities to develop and demonstrate electric generating technologies that utilize renewable sources of energy, including new, innovative or experimental technologies. The commission may ensure that a public utility fully recovers the cost of developing, constructing and operating such demonstrations through rates charged to customers of the utility.

(2) EASTERN WISCONSIN UTILITIES. (a) In this subsection:

1. "Eastern Wisconsin utility" means a public utility, other than a municipal utility that, on May 12, 1998, provided retail electric service to customers in the geographic area of the state that was served by the reliability council on that date.

2. "Municipality" means a city, town or village.

3. "Municipal utility" means a public utility that is a municipality or that is wholly owned or operated by a municipality.

4. "Reliability council" means the Mid−America Interconnected Network, Inc., reliability council of the North American Electric Reliability Council.

(b) Except as provided in par. (d), no later than December 31, 2000, each eastern Wisconsin utility shall construct or procure, on a competitive basis, the construction of an aggregate total of 50 megawatts of new electric capacity in this state that is, to the satisfaction of the commission, generated from renewable energy sources. Each eastern Wisconsin utility shall construct or procure the construction of a share of the aggregate total required under this paragraph that corresponds to the utility's share, as determined by the commission, of the aggregate demand for electricity that is supplied by the utilities in this state.

(c) An eastern Wisconsin utility may procure the construction required under par. (a) by issuing requests for proposals no later than September 30, 1998.

(d) The commission may allow an eastern Wisconsin utility to comply with the requirements under par. (b) by a date that is later than December 31, 2000, if the commission determines that the later date is necessary due to circumstances beyond the utility's control.

(e) Any new electric capacity that is generated from a wind power project for which an eastern Wisconsin utility has received a proposal before May 12, 1998, may be counted in determining whether the utility has satisfied the requirements under par. (b).

(f) The commission shall allow an eastern Wisconsin utility to recover in its retail electric rates any costs that are prudently incurred by the utility in complying with the requirements under par. (b).

History: 1993 a. 418; 1997 a. 204.

196.378 Renewable resources. (1) DEFINITIONS. In this section:

(ag) "Baseline renewable percentage" means the average of an energy provider's renewable energy percentage for 2001, 2002, and 2003.

(am) "Biomass cofired facility" means a renewable facility in which biomass and conventional resources are fired together.

(ar) "Biomass" means a resource that derives energy from wood or plant material or residue, biological waste, crops grown for use as a resource or landfill gases. "Biomass" does not include garbage, as defined in s. 289.01 (9), or nonvegetation−based industrial, commercial or household waste, except that "biomass" includes refuse−derived fuel used for a renewable facility that was in service before January 1, 1998.

(b) "Conventional resource" means a resource that derives energy from coal, oil, nuclear power or natural gas, except for natural gas used in a fuel cell.

(c) "Electric provider" means an electric utility or retail electric cooperative.

(d) "Electric utility" means a public utility that sells electricity at retail. For purposes of this paragraph, a public utility is not considered to sell electricity at retail solely on the basis of its ownership or operation of a retail electric distribution system.

(dm) "Large hydroelectric facility" means an electric generating facility with a capacity of 60 megawatts or more that derives electricity from hydroelectric power.

NOTE: Par. (dm) is created eff. 12−31−15 by 2011 Wis. Act 34.

(fg) "Renewable energy" means electricity derived from a renewable resource.

(fm) "Renewable energy percentage" means, with respect to an electric provider for a particular year, the percentage that results from dividing the sum of the megawatt hours represented by the following by the total amount of electricity that the electric provider sold to retail customers or members in that year:

1. The renewable resource credits created from the electric provider's total renewable energy in that year.

2. Any renewable resource credits in addition to the renewable resource credits specified in subd. 1. that the electric provider elects to use in that year.

(fr) "Renewable energy supplier" means a person from whom an electric provider purchases renewable energy at wholesale.

(g) "Renewable facility" means an installed and operational electric generating facility, located in or outside this state, that generates renewable energy.

(h) "Renewable resource" means any of the following:

1. A resource that derives electricity from any of the following:

a. A fuel cell that uses, as determined by the commission, a renewable fuel.

b. Tidal or wave action.

c. Solar thermal electric or photovoltaic energy.

d. Wind power.

e. Geothermal technology.

g. Biomass.

h. Synthetic gas created by the plasma gasification of waste.

i. Densified fuel pellets made from waste material that does not include garbage, as defined in s. 289.01 (9), and that contains no more than 30 percent fixed carbon.

j. Fuel produced by pyrolysis of organic or waste material.

1m. A resource with a capacity of less than 60 megawatts that derives electricity from hydroelectric power.

NOTE: Subd. 1m. is amended eff. 12−31−15 by 2011 Wis. Act 34 to read:

1m. A resource that derives electricity from hydroelectric power.

2. Any other resource, except a conventional resource, that the commission designates as a renewable resource in rules promulgated under sub. (4).

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(i) "Renewable resource credit" means a credit calculated in accordance with rules promulgated under sub. (3) (a) 1., 1m., and 2.

(j) "Resource" means a source of energy used to generate electric power.

(k) "Retail electric cooperative" means a cooperative association organized under ch. 185 that sells electricity at retail to its members only. For purposes of this paragraph, a cooperative association is not considered to sell electricity at retail solely on the basis of its ownership or operation of a retail electric distribution system.

(m) "Small hydroelectric facility" means an electric generating facility with a capacity of less than 60 megawatts that derives electricity from hydroelectric power.

NOTE: Par. (m) is created eff. 12−31−15 by 2011 Wis. Act 34.

(o) "Total renewable energy" means the total amount of renewable energy that the electric provider sold to its customers or members in a year. "Total renewable energy" does not include any energy that is used to comply with the renewable energy requirements of another state. "Total renewable energy" includes all of the following:

1. Renewable energy supplied by a renewable facility owned or operated by an affiliated interest or wholesale supplier of an electric provider and allocated to the electric provider under an agreement between the electric provider and the affiliated interest or wholesale supplier.

2. Renewable energy purchased by an affiliated interest or wholesale supplier of an electric provider from a renewable facility that is not owned or operated by the affiliated interest or wholesale supplier, which renewable energy is allocated to the electric provider under an agreement between the electric provider and the affiliated interest or wholesale supplier.

(p) "Wholesale supplier" has the meaning given in s. 16.957 (1) (w).

(2) RENEWABLE RESOURCE ENERGY. (a) 1. No later than June 1, 2016, the commission shall prepare a report stating whether, by December 31, 2015, the state has met a goal of 10 percent of all electric energy consumed in the state being renewable energy. If the goal has not been achieved, the report shall indicate why the goal was not achieved and how it may be achieved, and the commission shall prepare similar reports biennially thereafter until the goal is achieved. The commission shall submit reports under this subdivision to the governor and chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2).

2. Except as provided in pars. (e), (f), and (g):

a. For the years 2006, 2007, 2008, and 2009, each electric provider may not decrease its renewable energy percentage below the electric provider's baseline renewable percentage.

b. For the year 2010, each electric provider shall increase its renewable energy percentage so that it is at least 2 percentage points above the electric provider's baseline renewable percentage.

c. For the years 2011, 2012, 2013, and 2014, each electric provider may not decrease its renewable energy percentage below the electric provider's renewable energy percentage required under subd. 2. b.

d. For the year 2015, each electric provider shall increase its renewable energy percentage so that it is at least 6 percentage points above the electric provider's baseline renewable percentage.

e. For each year after 2015, each electric provider may not decrease its renewable energy percentage below the electric provider's renewable energy percentage required under subd. 2. d.

(b) For purposes of determining compliance with par. (a):

1. The total amount of electricity that an electric provider sold to retail customers or members in a year shall be calculated on the basis of an average of the electric provider's retail electric sales in this state during the prior 3 years.

1m. The amount of electricity derived from hydroelectric renewable resources that an electric provider may count toward satisfying the requirements of par. (a) 2. shall be all electricity provided by hydroelectric power that the electric provider purchased in the reporting year plus all of the following:

a. The average of the amounts of hydroelectric power generated by facilities owned or operated by the electric provider for 2001, 2002, and 2003, adjusted to reflect the permanent removal from service of any of those facilities and adjusted to reflect any capacity increases from improvements made to those facilities on or after January 1, 2004.

b. The amount of hydroelectric power generated in the reporting year by facilities owned or operated by the electric provider that are initially placed in service on or after January 1, 2004.

NOTE: Subd. 1m. is amended eff. 12−31−15 by 2011 Wis. Act 34 to read:

1m. The amount of electricity derived from small hydroelectric facilities that an electric provider may count toward satisfying the requirements of par. (a) 2. shall be all electricity provided by such facilities that the electric provider purchased in the reporting year plus all of the following:

a. The average of the amounts of hydroelectric power generated by small hydroelectric facilities owned or operated by the electric provider for 2001, 2002, and 2003, adjusted to reflect the permanent removal from service of any of those facilities and adjusted to reflect any capacity increases from improvements made to those facilities on or after January 1, 2004.

b. The amount of hydroelectric power generated in the reporting year by small hydroelectric facilities owned or operated by the electric provider that are initially placed in service on or after January 1, 2004.

1o. An electric provider may count electricity derived from a large hydroelectric facility toward satisfying the requirements of par. (a) 2. only if the facility was initially placed in service on or after December 31, 2010, and, if the facility is located in Manitoba, Canada, all of the following are satisfied:

a. The province of Manitoba has informed the commission in writing that the interim licenses under which the Lake Winnipeg Regulation Project and the Churchill River Diversion Project were operating on December 31, 2015 have been replaced by final licenses.

b. The final licenses specified in subd. 1o. a. are in effect under Canadian law.

NOTE: Subd. 1o. is created eff. 12−31−15 by 2011 Wis. Act 34.

2. The amount of electricity supplied by a biomass cofired facility that may be counted toward satisfying the requirements of par. (a) shall be an amount equal to the product of the maximum amount of electricity that the facility is capable of generating and the ratio of the energy content of the biomass fuels to the energy content of both the biomass and conventional resources.

4. A wholesale supplier may sell credits that it creates and may aggregate and allocate the credits that it creates among its members or customers. A member or customer may sell credits or portions of a credit allocated to the member or customer by the wholesale supplier.

5. An electric provider that purchases renewable energy from a renewable energy supplier may use an allocated share of the renewable energy sold by the renewable energy supplier to comply with a requirement under par. (a) 2. or to create a credit under sub. (3) (a), provided that the cost of the renewable energy is included in the price the electric provider paid the renewable energy supplier.

(bm) Each electric provider shall annually retire renewable resource credits sufficient to satisfy the electric provider's renewable energy percentage required under par. (a) 2.

(c) No later than April 15 annually, or another annual date specified by the commission by rule, an electric provider shall submit a report to the commission that identifies the electric provider's renewable energy percentage for the previous year and describes the electric provider's compliance with par. (a) 2. and the electric provider's implementation plans for future compliance. Reports under this paragraph may include certifications from renewable energy suppliers regarding the sources and amounts of renewable energy supplied to the electric provider. The commission may specify the documentation that is required to be included with reports submitted under this paragraph. The

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commission may require that electric providers submit the reports in a proceeding, initiated by the commission under this section relating to the implementation of s. 1.12, or in a proceeding for preparing a strategic energy assessment under s. 196.491 (2). No later than 90 days after the commission's receipt of an electric provider's report, the commission shall inform the electric provider whether the electric provider is in compliance with par. (a) 2.

(d) The commission shall allow an electric utility to recover from ratepayers the cost of providing total renewable energy to its retail customers in amounts that equal or exceed the percentages specified in par. (a). Subject to any approval of the commission that is necessary, an electric utility may recover costs under this paragraph by any of the following methods:

1. Allocating the costs equally to all customers on a kilowatt−hour basis.

2. Establishing alternative price structures, including price structures under which customers pay a premium for renewable energy.

3. Any combination of the methods specified in subds. 1. and 2.

(e) An electric provider, or a wholesale supplier for its members, may request that the commission grant a delay for complying with a deadline specified in par. (a) 2. The commission shall hold a hearing on the request and, if requested by the electric provider or wholesale supplier, treat the matter as a contested case. The commission shall grant a delay if the commission determines that the applicant has demonstrated good faith efforts to comply with the deadline and that any of the following applies:

1. Notwithstanding reasonable efforts to protect against undesirable impacts on the reliability of an electric provider's system, compliance with the deadline will have an undesirable impact on the reliability of the applicant's system.

2. Notwithstanding reasonable efforts to protect against unreasonable increases in rates of the applicant's ratepayers or members, compliance with the deadline will result in unreasonable increases in rates of the applicant's ratepayers or members, including increases that are due to the discontinuation of federal renewable energy tax credits or other federal policies intended to reduce the acquisition costs of renewable energy.

3. Notwithstanding reasonable efforts to obtain required approvals, the applicant cannot comply with the deadline because the applicant or a supplier has experienced or will experience delays in receiving required siting or permitting approvals for renewable energy projects.

4. Notwithstanding reasonable efforts to secure transmission service, the applicant cannot comply with the deadline because the applicant faces transmission constraints that interfere with the economic and reliable delivery of renewable energy to the applicant's system.

(f) A wholesale electric cooperative for its members or a municipal electric company for its members may delay compliance with a deadline specified in par. (a) 2. for any reason specified in par. (e) 1. to 4. A wholesale electric cooperative or a municipal electric company that delays compliance with a deadline specified in par. (a) 2. shall inform the commission of the delay and the reason for the delay, and shall submit information to the commission demonstrating that, notwithstanding good faith efforts by the wholesale electric cooperative or municipal electric company and its members, the members cannot meet the deadline for the stated reason.

(g) 1. In this paragraph, "energy consumer advocacy group" means a group or organization that advocates on behalf of its members' interests regarding the cost, availability, and reliability of energy or regarding utility regulation.

2. An energy consumer advocacy group may request that the commission grant to an electric provider that serves one or more members of the group a delay for complying with a deadline specified in par. (a) 2. The commission shall hold a hearing on the request and, if requested by the energy consumer advocacy group, treat the matter as a contested case. The commission shall grant a delay if the commission determines that the utility has demonstrated good faith efforts to comply with the deadline and that any of the conditions in par. (e) 1. to 4. apply.

(3) RENEWABLE RESOURCE CREDITS. (a) 1. Each megawatt hour of an electric provider's total renewable energy creates one renewable resource credit for the electric provider. Subject to subd. 2., an electric provider that exceeds its renewable energy percentage required under sub. (2) (a) 2. may, in the applicable year, bank any excess renewable resource credits or any portion of any excess renewable resource credit for use in a subsequent year or sell any excess renewable resource credits or any portion of any excess renewable resource credit to any other electric provider at any negotiated price. An electric provider that creates or purchases a renewable resource credit or portion may use the credit or portion, as provided under par. (c), to establish compliance with sub. (2) (a) 2. The commission shall promulgate rules that establish requirements for the creation and use of a renewable resource credit created on or after January 1, 2004, including calculating the amount of a renewable resource credit, and for the tracking of renewable resource credits by a regional renewable resource credit tracking system. The rules shall specify the manner for aggregating or allocating credits under this subdivision or sub. (2) (b) 4. or 5.

1m. The commission shall promulgate rules that allow an electric provider or customer or member of an electric provider to create a renewable resource credit based on use in a year by the electric provider, customer, or member of solar energy, including solar water heating and direct solar applications such as solar light pipe technology; wind energy; hydroelectric energy; geothermal energy; biomass; biogas; synthetic gas created by the plasma gasification of waste; densified fuel pellets described in sub. (1) (h) 1. i.; or fuel described in sub. (1) (h) 1. j.; but only if the use displaces the electric provider's, customer's, or member's use of electricity that is derived from conventional resources, and only if the displacement is verifiable and measurable, as determined by the commission. The rules shall allow an electric provider, customer, or member to create a renewable resource credit based on 100 percent of the amount of the displacement. The rules may not allow an electric provider to create renewable resource credits under this subdivision based on renewable energy upon which renewable resource credits are created under subd. 1. The rules may also not allow an electric provider to create renewable resource credits under this subdivision based on hydroelectric energy that is not eligible for creating renewable resource credits under subd. 1.

2. The commission shall promulgate rules for calculating the amount of a renewable resource credit that is bankable from a renewable facility placed into service before January 1, 2004. The amount of a bankable renewable resource credit created on or after January 1, 2004, from such a renewable facility, except a renewable facility owned by a retail customer of an electric provider, is limited to the incremental increase in output from the renewable facility that is due to capacity improvements made on or after January 1, 2004.

(b) The commission may promulgate rules that establish requirements and procedures for a sale under par. (a) 1.

(c) A renewable resource credit created under s. 196.378 (3) (a), 2003 stats., may not be used after December 31, 2011. A renewable resource credit created under par. (a) 1., 1m., or 2. may not be used after the 4th year after the year in which the credit is created, except the commission may promulgate rules specifying a different period of time if the commission determines that such period is necessary for consistency with any regional renewable resource credit trading program that applies in this state.

(4) RENEWABLE RESOURCE RULES. The commission may promulgate rules that designate a resource, except for a conventional resource, as a renewable resource in addition to the resources specified in sub. (1) (h) 1. and 1m.

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(4g) WIND ENERGY SYSTEMS. (a) In this subsection:

1. "Application for approval" has the meaning given in s. 66.0401 (1e) (a).

2. "Decommissioning" means removing wind turbines, buildings, cables, electrical components, roads, and any other facilities associated with a wind energy system that are located at the site of the wind energy system and restoring the site of the wind energy system.

3. "Political subdivision" means a city, village, town, or county.

4. "Wind energy system" has the meaning given in s. 66.0403 (1) (m).

(b) The commission shall, with the advice of the wind siting council, promulgate rules that specify the restrictions a political subdivision may impose on the installation or use of a wind energy system consistent with the conditions specified in s. 66.0401 (1m) (a) to (c). The subject matter of these rules shall include setback requirements that provide reasonable protection from any health effects, including health effects from noise and shadow flicker, associated with wind energy systems. The subject matter of these rules shall also include decommissioning and may include visual appearance, lighting, electrical connections to the power grid, setback distances, maximum audible sound levels, shadow flicker, proper means of measuring noise, interference with radio, telephone, or television signals, or other matters. A political subdivision may not place a restriction on the installation or use of a wind energy system that is more restrictive than these rules.

(c) In addition to the rules under par. (b), the commission shall, with the advice of the wind siting council, promulgate rules that do all of the following:

1. Specify the information and documentation to be provided in an application for approval to demonstrate that a proposed wind energy system complies with rules promulgated under par. (b).

2. Specify the information and documentation to be included in a political subdivision's record of decision under s. 66.0401 (4) (b).

3. Specify the procedure a political subdivision shall follow in reviewing an application for approval under s. 66.0401 (4).

4. Specify the requirements and procedures for a political subdivision to enforce the restrictions allowed under par. (b).

(d) The commission shall promulgate rules requiring the owner of a wind energy system with a nominal operating capacity of at least one megawatt to maintain proof of financial responsibility ensuring the availability of funds for decommissioning the wind energy system upon discontinuance of use of the wind energy system. The rules may require that the proof can be established by a bond, deposit, escrow account, irrevocable letter of credit, or other financial commitment specified by the commission.

(e) The wind siting council shall survey the peer−reviewed scientific research regarding the health impacts of wind energy systems and study state and national regulatory developments regarding the siting of wind energy systems. No later than October 1, 2014, and every 5 years thereafter, the wind siting council shall submit a report to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), describing the research and regulatory developments and including any recommendations of the council for legislation that is based on the research and regulatory developments.

(4m) ADDITIONAL RENEWABLE RESOURCES REQUIREMENTS. (a) The commission may not impose on an electric provider any requirement that increases the electric provider's renewable energy percentage beyond that required under sub. (2) (a) 2. If an electric provider is in compliance with the requirements of sub. (2) (a) 2., the commission may not require the electric provider to undertake, administer, or fund any other renewable energy program. This paragraph does not limit the authority of the commission to enforce an electric provider's obligations under s. 196.374.

(b) An electric utility may, with commission approval, administer or fund a program that increases the electric utility's renewable energy percentage beyond that required under sub. (2) (a) 2. The commission may not order an electric utility to administer or fund a program under this paragraph.

(4r) REPORTS. No later than July 1 of each even−numbered year, the commission shall submit a report to the governor and chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) that evaluates the impact of the requirements of this section on the rates and revenue requirements of electric providers and compares that impact with the impact that would have occurred if renewable energy practices of electric providers were subject to market forces in the absence of the requirements of this section.

(5) PENALTY. Any person who violates sub. (2) or any renewable energy supplier who provides an electric provider with a false or misleading certification regarding the sources or amounts of renewable energy supplied at wholesale to the electric provider shall forfeit not less than $5,000 nor more than $500,000. Forfeitures under this subsection shall be enforced by action on behalf of the state by the attorney general. A court imposing a forfeiture under this subsection shall consider all of the following in determining the amount of the forfeiture:

(a) The appropriateness of the forfeiture to the person's or wholesale supplier's volume of business.

(b) The gravity of the violation.

(c) Whether a violation of sub. (2) is due to circumstances beyond the violator's control.

History: 1999 a. 9; 2001 a. 30; 2005 a. 141; 2009 a. 40, 406; 2011 a. 34, 155.
Cross−reference: See also chs. PSC 118 and 128, Wis. adm. code.

196.39 Change, amendment and rescission of orders; reopening cases. (1) The commission at any time, upon notice to the public utility and after opportunity to be heard, may rescind, alter or amend any order fixing rates, tolls, charges or schedules, or any other order made by the commission, and may reopen any case following the issuance of an order in the case, for any reason.

(2) An interested party may request the reopening of a case under s. 227.49.

(3) Any order rescinding, altering, amending or reopening a prior order shall have the same effect as an original order.

(4) Within 30 days after service of an order, the commission may correct an error or omission in the order related to transcription, typing or calculation without hearing if the correction does not alter the intended effect of the order.

(5) This section does not apply to an order issued under s. 196.371.

History: 1983 a. 53, 144, 538; 1997 a. 204; 2005 a. 7.

The PSC cannot order a change in rates by order, without notice and hearing, on the ground that the order is only a clarification of an earlier order. Mid−Plains Telephone, Inc. v. PSC 56 Wis. 2d 780, 202 N.W.2d 907 (1973).

196.395 Test, conditional, emergency and supplemental orders; order conditions. (1) The commission may issue an order calling for a test of actual results under requirements prescribed by the order, during which test period the commission may retain jurisdiction of the subject matter. The commission may issue conditional, temporary, emergency and supplemental orders. If an order is issued upon certain stated conditions, any party acting upon any part of the order shall be deemed to have accepted and waived all objections to any condition contained in the order.

(2) As a condition of any order, the commission may not require a public utility to lobby on a legislative issue or to take a specific position on a legislative issue.

History: 1983 a. 53; 2011 a. 155.

Temporary and emergency rates may be appropriately and widely used by the public service commission when justified by the circumstances. Friends of the Earth v. PSC, 78 Wis. 2d 388, 254 N.W.2d 299 (1977).

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196.40 Orders and determinations; time of taking effect. Every order or determination of the commission shall take effect the day after the order or determination has been filed and served by personal delivery, mail, electronic mail, or any other method that the commission determines is likely to reach the parties or their attorneys, to all parties to the proceeding in which the order or determination was made or to their attorneys, unless the commission specifies a different date upon which the order or determination shall be effective. After the effective date every order or determination shall be on its face lawful and reasonable unless a court determines otherwise under s. 227.57.

History: 1983 a. 53; 1985 a. 182 s. 57; 2011 a. 155.

196.41 Court review. Any order or determination of the commission may be reviewed under ch. 227.

History: 1983 a. 53.

196.43 Injunction procedure. (1) No injunction may be issued in any proceeding for review under ch. 227 of an order of the commission, suspending or staying the order except upon application to the circuit court or presiding judge thereof, notice to the commission and any other party, and hearing. No injunction which delays or prevents an order of the commission from becoming effective may be issued in any other proceeding or action in any court unless the parties to the proceeding before the commission in which the order was made are also parties to the proceeding or action before the court.

(2) No injunction may be issued in any proceeding for review under ch. 227, or in any other proceeding or action, suspending or staying any order of the commission or having the effect of delaying or preventing any order of the commission from becoming effective, unless at least 2 sureties enter into an undertaking on behalf of the petitioner or plaintiff. The court or presiding judge of the court shall direct that the sum of the undertaking be enough to effect payment of any damage which the opposite party may sustain by the delay or prevention of the order of the commission from becoming effective, and to such further effect as the judge or court in its discretion directs. No order or judgment in any proceeding or action may be stayed upon appellate court review unless the petitioner or plaintiff enters into the undertaking under this subsection in addition to any undertaking required under s. 808.07.

(3) No injunction may be issued in any proceeding for review under ch. 227 of an order of the commission under s. 196.199 (3) (a) 2., suspending or staying the order, unless the court finds that the person seeking review of the order is likely to succeed on the merits and suffer irreparable harm without the suspension or stay and that the suspension or stay is in the public interest.

History: Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1977 c. 187 s. 135; 1983 a. 53; 1997 a. 218.

196.44 Law enforcement. (1) DUTY OF COMMISSION. The commission shall inquire into the neglect or violation of the laws of this state by public utilities, or by their officers, agents or employees or by persons operating public utilities, and shall enforce all laws relating to public utilities, and report all violations to the attorney general.

(2) DUTIES OF ATTORNEY GENERAL AND DISTRICT ATTORNEYS. Upon request of the commission, the attorney general or the district attorney of the proper county shall aid in any investigation, hearing or trial had under this chapter, and shall institute and prosecute all necessary actions or proceedings for the enforcement of all laws relating to public utilities or telecommunications providers, and for the punishment of all violations.

(3) ACTIONS, CHARACTER, VENUE. Any forfeiture, fine or other penalty under this chapter may be recovered as a forfeiture in a civil action brought in the name of the state in the circuit court of Dane County or in the county that would be the proper place of trial under s. 801.50.

History: Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1977 c. 29 ss. 1337, 1654 (10) (c), 1656 (43); 1977 c. 272; Stats. 1977 s. 196.44; 1981 c. 390 s. 252; 1983 a. 53; 1993 a. 496; 1997 a. 218; 1999 a. 9; 2001 a. 105.

196.48 Incriminating evidence. No person may be excused from testifying or from producing books, accounts and papers in any proceeding based upon or growing out of any violation of chs. 195 to 197, on the ground or for the reason that the testimony or evidence may tend to incriminate or subject the person to penalty or forfeiture. A person who testifies under this section may not be:

(1) (a) Prosecuted or subjected to any penalty or forfeiture for testifying or producing evidence.

(b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

(2) Exempted from prosecution or punishment for perjury in testifying.

History: 1977 c. 273; 1981 c. 390; 1983 a. 53; 1989 a. 122.

196.485 Transmission system requirements. (1) DEFINITIONS. In this section:

(a) "Affiliated interest of a person" means any of the following:

1. Any person owning or holding directly or indirectly 5% or more of the voting securities of the person.

2. Any person in any chain of successive ownership of 5% or more of voting securities of the person.

3. Any corporation 5% or more of whose voting securities is owned by any person owning 5% or more of the voting securities of the person or by any person in any chain of successive ownership of 5% or more of the voting securities of the person.

4. Any person who is an officer or director of the person or of any corporation in any chain of successive ownership of 5% or more of the voting securities of the person.

5. Any corporation operating a servicing organization for furnishing supervisory, construction, engineering, accounting, legal or similar services to the person, which corporation has one or more officers or one or more directors in common with the person, and any other corporation which has directors in common with the person if the number of directors of the corporation is more than one−third of the total number of the person's directors.

6. Any subsidiary of the person.

(am) "Contribute a transmission facility" means to divest a person's interest in the transmission facility and to transfer ownership of the transmission facility, and associated deferred tax reserves and deferred investment tax credits to the extent permitted by law, to another person.

(b) "Cooperative" means a cooperative association organized under ch. 185.

(be) "Director" means, with respect to a transmission company organized as a corporation under ch. 180, a member of the board of directors of the transmission company.

(bs) "Electric utility" means any of the following:

1. A public utility that is involved in the generation, transmission, distribution or sale of electric energy.

2. A retail or wholesale electric cooperative.

(c) "Federal agency" means, with respect to a transmission utility that is a cooperative, the rural utilities service and, with respect to a transmission utility that is a public utility, the federal energy regulatory commission.

(d) "Independent system operator" means an independent system operator that requires the approval of a federal agency to operate transmission facilities in this state or a region.

(dm) "Independent transmission owner":

1m. Means a person that satisfies each of the following:

a. The person does not own electric generation facilities or does not sell electric generation capacity or energy in a market within the geographic area that, on December 31, 1997, was served by the Mid−America Interconnected Network, Inc., Mid−Continent Area Power Pool, East Central Area Reliability Coordination Agreement or Southwest Power Pool reliability council of the North American Electric Reliability Council.

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b. The person is not an affiliated interest of a person specified in subd. 1m. a.

2. Does not include the transmission company.

(do) "Land right" means any right in real property, including fee simple ownership or a right−of−way or easement, that has been acquired for a transmission facility that is located or intended to be located on the real property.

(dq) "Manager" means, with respect to a transmission company organized as a limited liability company under ch. 183, the representatives of the security holders that are elected or appointed under sub. (3m) (c).

(dr) "Merger enforcement policy" means the enforcement policy of the federal department of justice and the federal trade commission regarding horizontal acquisitions and mergers that are subject to 15 USC 1, 18 or 45.

(ds) "Midwest independent system operator" means the independent system operator the establishment of which the federal energy regulatory commission has conditionally authorized in an order issued on September 16, 1998, or the successor to such independent system operator.

(dt) "Nontransmission utility security holder" means a security holder that is not a transmission utility security holder.

(dv) "Organizational start−up date" means, with respect to a transmission company that is organized as a limited liability company under ch. 183, the date on which the articles of organization become effective under s. 183.0111 or, with respect to a transmission company that is organized as a corporation under ch. 180, the date on which the articles of incorporation become effective under s. 180.0123.

(e) "Region" means an interstate geographic area that includes any portion of this state.

(em) "Retail electric cooperative" means a cooperative that provides retail electric service to its members.

(f) "Rural utilities service" means the agency in the federal department of agriculture that is the successor to the rural electrification administration.

(fe) "Security" means, with respect to a transmission company organized as a corporation under ch. 180, a share, as defined in s. 180.0103 (15), and, with respect to a transmission company organized as a limited liability company under ch. 183, a limited liability company interest, as defined in s. 183.0102 (11).

(fm) "Subsidiary" means any person, 5% or more of the securities of which are directly or indirectly owned by another person.

(g) "Transmission area" means the area of the state that, on January 1, 1997, was served by the Mid−America Interconnected Network, Inc., reliability council of the North American Electric Reliability Council.

(ge) "Transmission company" means a corporation organized under ch. 180 or a limited liability company organized under ch. 183 that has as its sole purpose the planning, constructing, operating, maintaining and expanding of transmission facilities that it owns to provide for an adequate and reliable transmission system that meets the needs of all users that are dependent on the transmission system and that supports effective competition in energy markets without favoring any market participant.

(gm) "Transmission dependent utility" means an electric utility that is not a transmission utility and that is dependent on the transmission system of another person for delivering electricity to the electric utility's customers.

(h) "Transmission facility" means any pipe, pipeline, duct, wire, line, conduit, pole, tower, equipment or other structure used for the transmission of electric power as determined by the public service commission on the basis of factors for identifying a transmission facility that are specified in the orders of the federal energy regulatory commission under 16 USC 824d and 824e.

(i) "Transmission utility" means a cooperative or public utility that owns a transmission facility in this state and that provides transmission service in this state.

(j) "Transmission utility security holder" means a person that is a security holder of a transmission company, is an investor−owned transmission utility in the transmission area and has contributed its transmission facilities to the transmission company.

(k) "Wholesale electric cooperative" means a cooperative that provides wholesale electric service to its members.

(1m) DUTY TO PROVIDE TRANSMISSION SERVICE. (a) The duty of any electric utility that has contributed its transmission facilities to the transmission company to finance, construct, maintain or operate a transmission facility shall terminate on the date, as determined by the commission under sub. (2) (d), that the transmission company begins operations.

(b) After beginning operations, the transmission company shall, except for transmission service provided by an electric utility that has not transferred its transmission facilities to the transmission company, have the exclusive duty to provide transmission service in those areas in which transmission facilities have been contributed. 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, except that the duty shall revert to the transmission company if the transmission company withdraws from the Midwest independent system operator under sub. (3m) (b) 3. If the transmission company makes such a withdrawal, the transmission company shall assume any power or duty granted by state law before the withdrawal to the Midwest independent system operator.

(c) After beginning operations, the Midwest independent system operator shall, except for transmission service provided by an electric utility that has not transferred control over its transmission facilities to the Midwest independent system operator, and except as provided in par. (b), have the exclusive duty to provide transmission service in the transmission area and shall ensure that each transmission facility in the transmission area that is under its operational control is planned, constructed, operated, maintained and controlled as part of a single transmission system.

(2) COMMISSION POWERS AND DUTIES. (a) By June 30, 2000, if a transmission utility has not transferred control over its transmission facilities to an independent system operator that is approved by the applicable federal agency or divested, with approval of the applicable federal agency and, for a public utility, the commission, its interest in its transmission facilities to an independent transmission owner, the commission shall, subject to pars. (am) and (ar), order the transmission utility to apply to the applicable federal agency to do one of the following:

1. Transfer control of the transmission utility's transmission facilities to an independent system operator that has received the approval of the federal agency to operate in a region.

2. If the federal agency has not approved an independent system operator specified in subd. 1., transfer control over the transmission utility's transmission facilities to an independent system operator that is intended to operate in a region.

3. If the transmission utility does not, or is not able to, to the satisfaction of the commission, transfer its transmission facilities to an independent system operator specified in subd. 2., divest the transmission utility's interest in its transmission facilities to an independent transmission owner.

(am) The commission may waive the requirement to issue an order against a transmission utility under par. (a) if each of the following is satisfied:

1. The transmission utility has filed an application with the applicable federal agency for approval to transfer control of its transmission facilities to an independent system operator or to divest its interest in its transmission facilities to an independent transmission owner.

2. The commission finds that the waiver is reasonably expected to result in a more expeditious transfer of control to an independent system operator or divestment of interest to an independent transmission owner than would result under an order issued under par. (a). In making a finding under this subdivision,

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the commission shall consider the need for a reasonably prompt transition period for the transfer of control or divestment of interest that ensures, to the maximum extent practicable, the continued reliability of the electric transmission system in this state.

(ar) The commission shall waive the requirement to issue an order against a transmission utility under par. (a) if the transmission utility shows, to the satisfaction of the commission, that a transfer of its transmission facilities to the Midwest independent system operator may have the effect of jeopardizing the tax−exempt status of the transmission utility or its securities under the Internal Revenue Code. A waiver under this paragraph shall be in effect until the commission determines that the proposed transfer does not have the effect described in this paragraph.

(b) By June 30, 2000, the commission shall, except as provided in par. (bm), order each transmission utility in this state that is a public utility to identify and separately account for the cost of retail transmission service and to take all retail transmission service from an independent system operator or independent transmission owner.

(bm) The commission may issue an order under par. (b) after June 30, 2000, if the commission determines that a later date is necessary due to circumstances beyond the control of a transmission utility, including regulatory delays at the commission or applicable federal agency.

(bx) If the Midwest system operator fails to commence operations or ceases operations, the requirements of this section that apply to the Midwest independent system operator shall apply to any other independent system operator or regional transmission organization that is authorized under federal law to operate in this state. The commission shall require that any transfer of transmission facilities to such independent system operator or regional transmission organization satisfies the requirements of this section.

(c) The commission has jurisdiction to do all things necessary and convenient to enforce the requirements of this section.

(d) The commission shall determine each of the following:

1. The date on which the transmission company begins operations.

2. Whether the Midwest independent system operator has begun operations and the date on which such operations have begun.

(3) INDEPENDENT SYSTEM OPERATOR AND INDEPENDENT TRANSMISSION OWNER DUTIES. (a) If an independent system operator that has control over transmission facilities in this state determines that there is a need for additional transmission facilities in this state, the independent system operator shall order any transmission utility that has transferred control over transmission facilities to the independent system operator to, subject to the requirements of ss. 196.49 and 196.491 (3), expand the portion of the electric transmission system that is in this state and under the control of the independent system operator or construct additional transmission facilities in that portion of the transmission system. An independent system operator may issue an order under this paragraph only if a transmission utility that is subject to the order is reasonably compensated for the costs incurred in complying with the order.

(b) If an independent transmission owner determines that there is a need for additional transmission facilities in a portion of the electric transmission system of this state that consists of transmission facilities the interest in which has been divested to the independent transmission owner by a transmission utility, the independent transmission owner shall, subject to the requirements of ss. 196.49 and 196.491 (3), expand that portion of the electric transmission system or construct additional transmission facilities in that portion.

(c) An independent transmission owner or an independent system operator shall operate transmission facilities over which it has control in a manner that does each of the following:

1. To the maximum extent practicable, eliminates advantages in electric generation, wholesale and retail markets that are otherwise related to ownership, control or operation of transmission facilities over which it has control.

2. Satisfies the reasonable needs of transmission users in this state for reliable, low−cost and competitively priced electric service.

(3m) TRANSMISSION COMPANY. (a) *Duties.* 1. The transmission company shall do each of the following:

a. Apply for any approval under state or federal law that is necessary for the transmission company to begin operations no later than January 1, 2001.

b. Subject to any approval required under state or federal law, contract with each transmission utility that has transferred transmission facilities to the transmission company for the transmission utility to provide reasonable and cost−effective operation and maintenance services to the transmission company during the 3−year period after the transmission company first begins operations. The transmission company and a transmission utility may, subject to any approval required under federal or state law, agree to an extension of such 3−year period.

c. Assume the obligations of a transmission utility that has transferred ownership of its transmission facilities to the transmission company under any agreement by the transmission utility to provide transmission service over its transmission facilities or credits for the use of transmission facilities, except that the transmission company may modify such an agreement to the extent allowed under the agreement and to the extent allowed under state or federal law.

d. Apply for membership in the Midwest independent system operator as a single zone for pricing purposes that includes the transmission area and, upon a determination by the commission under sub. (2) (d) that the Midwest independent system operator has begun operations, transfer operational control of the transmission company's transmission facilities to the Midwest independent system operator.

e. Except as provided under par. (b) 3., remain a member of the Midwest independent system operator, or any independent system operator or regional transmission organization that has been approved under federal law to succeed the Midwest independent system operator, for at least the 6−year transition period that is specified in the agreement conditionally approved by the federal energy regulatory commission that establishes the Midwest independent system operator.

f. Subject to subd. 4., elect to be included in a single zone for the purpose of any tariff administered by the Midwest independent system operator.

2. The transmission company may not do any of the following:

a. Sell or transfer its assets to, or merge its assets with, another person, unless the assets are sold, transferred or merged on an integrated basis and in a manner that ensures that the transmission facilities in the transmission area are planned, constructed, operated, maintained and controlled as a single transmission system.

b. Bypass the distribution facilities of an electric utility or provide service directly to a retail customer or member.

c. Own electric generation facilities or sell, market or broker electric capacity or energy in a relevant wholesale or retail market as determined by the commission, except that, if authorized or required by the federal energy regulatory commission, the transmission company may procure or resell ancillary services obtained from 3rd parties, engage in redispatch activities that are necessary to relieve transmission constraints or operate a control area.

3. Notwithstanding subd. 1. a., the transmission company may not begin operations until it provides an opinion to the commission from a nationally recognized investment banking firm that the transmission company is able to finance, at a reasonable cost, its start−up costs, working capital and operating expenses and the cost of any new facilities that are planned.

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4. If the transmission charges or rates of any transmission utility in the transmission area are 10% or more below the average transmission charges or rates of the transmission utilities in the transmission area on the date, as determined by the commission, that the last public utility affiliate files a commitment with the commission under sub. (5) (a) 2., the transmission company shall, after consulting with each public utility affiliate that has filed a commitment under sub. (5) (a) 2., prepare a plan for phasing in a combined single zone rate for the purpose of pricing network use by users of the transmission system operated by the Midwest independent system operator and shall seek plan approval by the federal energy regulatory commission and the Midwest independent system operator. A plan under this subdivision shall phase in an average−cost price for the combined single zone in equal increments over a 5−year period, except that, under the plan, transmission service shall be provided to all users of the transmission system on a single−zone basis during the phase−in period.

(b) *Powers.* The transmission company may do any of the following:

1. Subject to the approval of the commission under s. 196.491 (3), construct and own transmission facilities, including high−voltage transmission lines, as defined in s. 196.491 (1) (f), in the transmission area or in any other area of the state in which transmission facilities that have been contributed to the transmission company are located. This subdivision does not affect the right or duty of an electric utility that is not located in the transmission area or that has not contributed its transmission facilities to the transmission company to construct or own transmission facilities.

2. Subject to any approval required under state or federal law, purchase or acquire transmission facilities in addition to the transmission facilities contributed under sub. (5) (b).

3. Subject to any approval required under federal or state law, withdraw from the Midwest independent system operator or any other independent system operator or regional transmission organization of which the transmission company is or becomes a member, if the commission determines that the withdrawal is in the public interest.

(c) *Organization.* The operating agreement, as defined in s. 183.0102 (16), of a transmission company that is organized as a limited liability company under ch. 183 or the bylaws of a transmission company that is organized as a corporation under ch. 180 shall provide for each of the following:

1. That the transmission company has no less than 5 nor more than 14 managers or directors, except that the operating agreement or bylaws may allow the requirements of this subdivision to be modified upon a unanimous vote of the managers or directors during the 10−year period after the organizational start−up date or upon a two−thirds vote of the board of directors or managers after such 10−year period.

2. That at least 4 managers or directors of the transmission company have staggered 4−year terms, are elected by a majority vote of the voting security holders and are not directors, employees or independent contractors of a person engaged in the production, sale, marketing, transmission or distribution of electricity or natural gas or of an affiliate of such a person.

3. That, during the 10−year period after the organizational start−up date, each of the following is satisfied, subject to the limitation on the number of managers or directors under subd. 1.:

a. Each nontransmission utility security holder that owns 10% or more of the outstanding voting securities of the transmission company may appoint one manager or director of the transmission company for a one−year term, except that the requirements of this subd. 3. a. may be modified upon a unanimous vote of the managers or directors.

b. Each group of nontransmission utility security holders that, as a group, owns 10% or more of the outstanding voting securities of the transmission company may appoint one manager or director of the transmission company for a one−year term if the group has entered into a written agreement regarding the appointment and the group files the agreement with the transmission company, except that the requirements of this subd. 3. b. may be modified upon a unanimous vote of the managers or directors.

bg. Each nontransmission utility security holder that makes an appointment under subd. 3. a. is not allowed to make an appointment under subd. 3. b. as a member of a group of nontransmission utility security holders.

br. Each nontransmission utility security holder that makes an appointment as a member of a group under subd. 3. b. is not allowed to make an appointment under subd. 3. a.

c. Each person that receives at least 5% of the voting securities of the transmission company under sub. (6) (a) 1. or 3. may appoint one manager or director of the transmission company for a one−year term if the person continues to hold at least a 5% equity interest in the transmission company during the one−year term and if the person does not make an appointment under subd. 3. a., b. or d.

d. Each transmission utility security holder may appoint one manager or director of the transmission company for a one−year term.

4. That, during the 5−year period after the organizational start−up date, no public utility affiliate that contributes transmission facility assets to the transmission company under sub. (5) (b) and no affiliate of such a public utility affiliate may increase its percentage share of the outstanding securities of the transmission company prior to any initial issuance of securities by the transmission company to any 3rd party other than a 3rd party exercising its right to purchase securities under sub. (6) (a) 3., except that this subdivision does not apply to securities that are issued by the transmission company in exchange for transmission facilities that are contributed in addition to the transmission facilities that are contributed under sub. (5) (b) and except that the requirements of this subdivision may be modified upon a unanimous vote of the managers or directors.

5. That, beginning 3 years after the organizational start−up date, any holder of 10% or more of the securities of the transmission company may require the transmission company to comply with any state or federal law that is necessary for the security holder to sell or transfer its shares.

(d) *Commission jurisdiction.* The transmission company is subject to the jurisdiction of the commission except to the extent that it is subject to the exclusive jurisdiction of the federal energy regulatory commission.

(4) TRANSMISSION UTILITIES. (a) Except as provided in par. (am), a transmission utility may not transfer control over, or divest its interest in, its transmission facilities to an independent system operator or independent transmission owner unless, to the satisfaction of the commission, each of the following requirements is satisfied:

1. The independent system operator or independent transmission owner is the sole provider of all transmission service to all users of its transmission system in this state, including the provision of retail transmission service to users that are public utilities.

2. The independent system operator or independent transmission owner has authority over transmission facilities that is sufficient for the independent system operator or independent transmission owner to ensure the reliability of its transmission system.

3. The independent system operator or independent transmission owner has sufficient authority to carry out the duties specified in sub. (3).

(am) Each transmission utility in the transmission area that is a public utility shall become a member of the Midwest independent system operator no later than June 30, 2000, and shall transfer operational control over its transmission facilities to the Midwest independent system operator. Each such transmission utility that has not contributed its transmission facilities to the transmission company shall elect to become part of the single zone for pricing purposes within the Midwest independent system operator and any phase−in plan prepared under sub. (3m) (a) 4.

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(b) A transmission utility that transfers control over its transmission facilities to an independent system operator shall, subject to the approval of the applicable federal agency, provide reasonable and cost−effective construction, operation and maintenance services to the independent system operator that are required for operation of the transmission facilities.

(5) PUBLIC UTILITY AFFILIATES. (a) *Asset cap exception.* Section 196.795 (6m) (e) does not apply to the eligible assets of a nonutility affiliate in a holding company system unless each public utility affiliate in the holding company system does each of the following:

1. Petitions the commission and the federal energy regulatory commission to approve the transfer of operational control of all the public utility affiliate's transmission facilities in this state and in Iowa, Michigan, Minnesota and Illinois to the Midwest independent system operator.

2. Files with the commission an unconditional, irrevocable and binding commitment to contribute, no later than January 1, 2001, all of the transmission facilities that the public utility affiliate owns or operates in this state on October 29, 1999, and land rights, to the transmission company. A filing under this subdivision shall specify a date no later than January 1, 2001, on which the public utility affiliate will complete the contribution of transmission facilities.

3. Files with the commission an unconditional, irrevocable and binding commitment to contribute, and to cause each entity into which it merges or consolidates or to which it transfers substantially all of its assets to contribute, any transmission facility in this state the ownership or control of which it acquires after October 29, 1999, and land rights, to the transmission company.

4. Notifies the commission in writing that the public utility affiliate has become a member of the Midwest independent system operator, has agreed to transfer its transmission facilities to the Midwest independent system operator and has committed not to withdraw its membership prior to the date on which the public utility affiliate contributes transmission facilities to the transmission company under par. (b).

5. Petitions the commission and the federal energy regulatory commission to approve the contributions specified in subds. 2. and 3. and agrees in such a petition not to withdraw the petition in the event that the commission or the federal energy regulatory commission conditions its approval on changes that are consistent with state and federal law.

(b) *Contribution of transmission facilities.* 1. A public utility affiliate may not contribute a transmission facility to the transmission company until the commission has reviewed the terms and conditions of the transfer to determine whether the transfer satisfies the requirements of this subsection and has issued an order approving the terms and conditions of the transfer. The commission may modify the terms and conditions of the transfer and take any other action necessary to satisfy the requirements of this subsection. An order under this subdivision that approves or modifies the terms and conditions of a transfer may allow a public utility affiliate to recover in retail rates any adverse tax consequences of the transfer as a transition cost.

2. The transmission company and a public utility affiliate that files a commitment to contribute transmission facilities under par. (a) 2. shall structure the transfer of the transmission facilities in a manner that satisfies each of the following:

a. The structure of the transfer avoids or minimizes material adverse tax consequences to the public utility affiliate from the transfer and avoids or minimizes material adverse consequences on public utility rates that do not arise out of combining the transmission company's facilities into a single zone in the Midwest independent system operator.

b. To the extent practicable, the structure of the transfer satisfies the requirements of the Internal Revenue Service for a tax−free transfer.

3. The requirements under subd. 2. b. shall, if practicable, be satisfied by the transmission company's issuance of a preferred class of securities that provides the fixed−cost portion of the resulting capital structure of the transmission company. The transmission company shall issue preferred securities under this subdivision on a basis that does not dilute the voting rights of the initial security holders relative to the value of their initial contributions.

4. If the transfer of transmission assets under this paragraph results in a capital structure of the transmission company in which the percentage of common equity is materially higher than that of the public utility affiliates who made the transfer, or if the cost of the fixed−cost portion of the capital structure of the transmission company is materially higher than that of the public utility affiliates who made the transfer, the public utility affiliates shall enter into a contract with the transmission company under which the public utility affiliates agree to accept from the transmission company a return on common equity based upon the equity rate of return approved by the federal energy regulatory commission and upon an imputed capital structure that assigns to a portion of the public utility affiliates' common equity holdings an imputed debt return that is consistent with the requirements of this subdivision. A contract under this subdivision shall specify that the public utility affiliates shall be required to accept the return on common equity described in this subdivision only until such time that the federal energy regulatory commission determines that the actual capital structure and capital costs of the transmission company are appropriate and consistent with industry practice for a regulated public utility that provides electric transmission service in interstate commerce.

5. If, at the time that a public utility affiliate files a commitment under par. (a) 2., the public utility affiliate has applied for or obtained a certificate of public convenience and necessity under s. 196.491 (3) or a certificate under s. 196.49 for the construction of transmission facilities, the public utility affiliate shall do each of the following:

a. Proceed with diligence with respect to obtaining the certificate and, except as provided in subd. 6., constructing the transmission facilities.

b. If the commission determines that the cost of the transmission facilities is reasonable and prudent, transfer the transmission facilities to the transmission company at net book value when construction is completed in exchange for additional securities of the transmission company on a basis that is consistent with the securities that were initially issued to the public utility affiliate.

6. If the construction of a transmission facility specified in subd. 5. a. is not completed within 3 years after a certificate is issued for the transmission facility under s. 196.49 or 196.491 (3), the transmission company may assume responsibility for completing construction of the transmission facility. If the transmission company assumes responsibility for completing construction under this subdivision, the transmission company shall carry out any obligation under any contract entered into by the public utility with respect to the construction until the contract is modified or rescinded by the transmission company to the extent allowed under the contract.

7. Any transmission facilities that are contributed to the transmission company shall be valued at net book value determined on the basis of the regulated books of account at the time of the transfer.

(bm) *Lease of transmission facilities.* If a public utility affiliate is not able to contribute its transmission facilities to the transmission company as required under par. (b) due to merger−related accounting requirements, the public utility affiliate shall transfer the transmission facilities to the transmission company under a lease for the period of time during which the accounting requirements are in effect and, after such requirements are no longer in effect, contribute the transmission facilities to the transmission

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company under par. (b). A public utility affiliate that transfers transmission facilities under a lease under this paragraph does not qualify for the asset cap exception under par. (a) unless, during the term of the lease, the public utility affiliate does not receive any voting interest in the transmission company.

(c) *Contribution of land rights.* 1. A public utility affiliate that commits to contributing land rights to the transmission company under par. (a) 2. shall do each of the following:

a. Except as provided in subd. 2., if the land right is assigned to a transmission account for rate−making purposes and is not jointly used for electric and gas distribution facilities by the public utility affiliate, the public utility affiliate shall convey or assign at book value all of its interest in the land right to the transmission company, except that any conveyance or assignment under this subd. 1. a. shall be subject to the rights of any joint user of the land right and to the right of the public utility affiliate to nondiscriminatory access to the real estate that is subject to the land right.

b. If the land right is jointly used, or is intended to be jointly used, for electric and gas distribution facilities by the public utility affiliate, the public utility affiliate shall enter into a contract with the transmission company that grants the transmission company a right to place, maintain, modify or replace the transmission company's transmission facilities on the real property that is subject to the land right during the life of the transmission facilities and the life of any replacements of the transmission facilities. A right granted in a contract under this subd. 1. b. shall be paramount to the right of any other user of the land right, except that a right granted in such a contract shall be on par with the right of the public utility affiliate to use the land right for electric or gas distribution facilities.

2. If a public utility affiliate is prohibited from making a conveyance or assignment described in subd. 1. a., the public utility affiliate shall enter into a contract with the transmission company that grants the transmission company substantially the same rights as under such a conveyance or assignment. For purposes of a contract under this subdivision, a land right shall be valued at book value, not at market value.

3. The commission shall resolve any dispute over the contribution of a land right under subd. 1. or 2., including a dispute over the valuation of such a land right, unless a federal agency exercises jurisdiction over the dispute. During the pendency of any dispute that is before the commission or a federal agency, the transmission company shall be entitled to use the land right that is the subject to the dispute and shall be required to pay any compensation that is in dispute into an escrow account.

(d) *Applicability.* Notwithstanding sub. (1) (h), and subject to any approval required under federal law, for purposes of this subsection, a facility of a public utility affiliate is a transmission facility if any of the following applies:

1. The facility is not a radial facility and the facility is designed for operation at a nominal voltage of more than 130 kilovolts.

2. The facility is not a radial facility and the facility is designed for operation at a nominal voltage of more than 50 kilovolts but not more than 130 kilovolts, unless a person has demonstrated to the commission that the facility is not a transmission facility on the basis of factors for identifying a transmission facility that are specified in the orders of the federal energy regulatory commission under 16 USC 824d and 824e.

3. The facility is a radial facility or is designed for operation at a nominal voltage of 50 kilovolts or less, and a person has demonstrated to the commission that the facility is a transmission facility on the basis of factors for identifying a transmission facility that are specified in the orders of the federal energy regulatory commission under 16 USC 824d and 824e.

(6) ELECTRIC UTILITIES, TRANSMISSION DEPENDENT UTILITIES AND RETAIL ELECTRIC COOPERATIVES. (a) No later than January 1, 2001:

1. An electric utility, other than a public utility affiliate or an owner or operator of a wholesale merchant plant, as defined in s. 196.491 (1) (w), may transfer all of its transmission facilities that are specified in subd. 2. to the transmission company on the same terms and conditions as a contribution of transmission facilities and land rights by a public utility affiliate under sub. (5) (b) and (c).

2. An electric utility may transfer transmission facilities under subd. 1. if the transmission facilities are located in the geographic area that is served by the Mid−America Interconnected Network, Inc., or the Mid−Continent Area Power Pool reliability council of the North American Electric Reliability Council.

3. A transmission−dependent utility or retail electric cooperative may purchase equity interests in the transmission company at a price that is equivalent to net book value and on terms and conditions that are comparable to those for public utility affiliates that have contributed transmission facilities to the transmission company. A purchaser under this subdivision may contribute funds to the transmission company that are no more than the value of its prorated shares based on firm electric usage in this state in 1999.

(b) Notwithstanding sub. (1) (h), and subject to any approval required under federal law, for purposes of this subsection, a facility of an electric utility is a transmission facility if the criteria specified in sub. (5) (d) 1., 2. or 3. are satisfied.

(6m) DIVIDENDS, DISTRIBUTIONS, PROFITS AND GAINS. The commission may not treat any dividend or distribution received by a transmission utility from the transmission company or any gain or profit of a transmission utility from the sale or other disposition of securities issued by the transmission company as a credit against the retail revenue requirements of the transmission utility.

(7) ENFORCEMENT. A wholesale or retail customer of a public utility affiliate may petition the circuit court for Dane County for specific performance of a commitment filed under sub. (5) (a) 2. or 3.

(8) PENALTIES. A public utility affiliate that fails to complete the contribution of transmission facilities to the transmission company by the completion date specified in the filing under sub. (5) (a) 2. shall forfeit $25,000 for each day that completion of the contribution is delayed if the transmission company is legally able to accept the contribution.

History: 1997 a. 204; 1999 a. 9, 75; 2001 a. 104; 2003 a. 40.

196.487 Reliability of electric service. (1) DEFINITIONS. In this section:

(a) "Public utility affiliate" has the meaning given in s. 196.795 (1) (L).

(b) "Transmission company" has the meaning given in s. 196.485 (1) (ge).

(2) COMMISSION ORDER. If the commission determines that a public utility affiliate or the transmission company is not making investments in the facilities under its control that are sufficient to ensure reliable electric service, the commission shall order the public utility affiliate or transmission company to make adequate investments in its facilities that are sufficient to ensure reliable electric service. An order under this subsection shall require the public utility affiliate or transmission company to provide security in an amount and form that, to the satisfaction of the commission, is sufficient to ensure that the public utility affiliate or transmission company expeditiously makes any investment that is ordered.

(3) COST RECOVERY. The commission shall allow a public utility affiliate that is subject to an order under sub. (2) to recover in its retail electric rates the costs that are prudently incurred in complying with the order.

History: 1999 a. 9.

196.49 Authorization from commission before transacting business; extensions and improvements to be approved; enforcement of orders; natural gas. (1) (am)

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No public utility not legally engaged in performing a utility service on August 1, 1931, in any municipality may commence the construction of any public utility plant, extension or facility, or render service in such municipality directly, or indirectly by serving any other public utility or agency engaged in public utility service or otherwise, unless the public utility has obtained a certificate from the commission authorizing it to transact public utility business.

(b) This subsection applies only to a public utility which was not legally engaged in performing a public utility service on August 1, 1931, in a municipality and which proposes to commence construction or render service in the municipality. If there is a public utility engaged in similar service in operation under an indeterminate permit in the municipality, ss. 196.495 and 196.50 apply.

(2) No public utility may begin the construction, installation or operation of any new plant, equipment, property or facility, nor the construction or installation of any extension, improvement or addition to its existing plant, equipment, property, apparatus or facilities unless the public utility has complied with any applicable rule or order of the commission. If a cooperative association has been incorporated under ch. 185 for the production, transmission, delivery or furnishing of light or power and has filed with the commission a map of the territory to be served by the association and a statement showing that a majority of the prospective consumers in the area are included in the project, no public utility may begin any such construction, installation or operation within the territory until after the expiration of 6 months from the date of filing the map and notice. If the cooperative association has entered into a loan agreement with any federal agency for the financing of its proposed system and has given written notice of the agreement to the commission, no public utility may begin any construction, installation or operation within the territory until 12 months after the date of the loan agreement.

(3) (a) In this subsection, "project" means construction of any new plant, equipment, property or facility, or extension, improvement or addition to its existing plant, equipment, property, apparatus or facilities. The commission may require by rule or special order that a public utility submit, periodically or at such times as the commission specifies and in such detail as the commission requires, plans, specifications and estimated costs of any proposed project which the commission finds will materially affect the public interest.

(b) The commission may require by rule or special order under par. (a) that no project may proceed until the commission has certified that public convenience and necessity require the project. The commission may refuse to certify a project if it appears that the completion of the project will do any of the following:

1. Substantially impair the efficiency of the service of the public utility.

2. Provide facilities unreasonably in excess of the probable future requirements.

3. When placed in operation, add to the cost of service without proportionately increasing the value or available quantity of service unless the public utility waives consideration by the commission, in the fixation of rates, of such consequent increase of cost of service.

(c) The commission may issue a certificate for the project or for any part of the project which complies with the requirements of this section, or the commission may attach to the issuance of its certificate such terms and conditions as will ensure that the project meets the requirements of this section. The issuance of a certificate under this section shall not be a condition precedent to the exercise of eminent domain under ch. 32.

(4) The commission may not issue a certificate under sub. (1), (2), or (3) for the construction of electric generating equipment and associated facilities unless the commission determines that brownfields, as defined in s. 238.13 (1) (a) or s. 560.13 (1) (a), 2009 stats., are used to the extent practicable.

(5) (a) No public utility furnishing gas to the public in this state may construct, install or place in operation any new plant, equipment, property or facility, or construct or install any extension, improvement, addition or alteration to its existing plant, equipment, property or facilities for the purpose of connecting its properties and system to a source of supply of gaseous fuel for sale to the public which is different from that which has been sold previously, or for the purpose of adapting its facilities to use the different kind of gaseous fuel unless the commission certifies that the general public interest and public convenience and necessity require the connection to or use of the different fuel. No public utility may substitute natural gas or a mixture of natural and manufactured gas in lieu of manufactured gas for distribution and sale to the public unless it has obtained from the commission a certificate that the general public interest and public convenience and necessity require the substitution.

(b) Proceedings for a certificate under par. (a) shall be commenced by petition to the commission in a form prescribed by the commission, furnishing such information as the commission by rule or order prescribes. The commission shall prescribe the form of notice, to whom the notice shall be given, and how notice shall be given.

(c) A petition under par. (b) may include one or more municipalities, may be made by one or more public utilities as a joint petition, by any other interested person or by a public utility and any other interested person. The commission may direct the consolidation, separation or consideration of separate petitions as it deems necessary or expedient to a prompt hearing and disposition of the issue.

(d) Upon the filing of a petition under par. (b), notice of hearing on the petition shall be given by the person filing the petition by publication of a class 2 notice, under ch. 985, or by mailing or personal service, as the commission directs by the order under par. (b). Notice under this paragraph shall be given at least 2 weeks prior to hearing on the petition. Proof of notice shall be filed as directed by the commission.

(e) The commission, with or without an order, prior to or during any hearing under this subsection, may frame and prescribe special issues and limit the issues or the nature and extent of proof so as to avoid unnecessary duplication. The commission, with or without an order, may proceed with the hearing as to part of a petition under par. (b) as it may find desirable to a full but speedy hearing upon the petition.

(f) The commission may accept as presumptive evidence in a commission proceeding the facts found in findings and orders of the federal energy regulatory commission or any federal agency having jurisdiction as to the availability of adequate supplies of natural gas, the adequacy or sufficiency of equipment and facilities to be employed in the delivery or storage of natural gas for any public utility, and any similar findings or determinations affecting the seller or person furnishing natural gas to any public utility and material to the ultimate determination of the issues in the proceeding. The commission may accept and take judicial notice of its own files and records, including all proceedings and the evidence therein which it finds to be material and relevant. The commission shall give notice of the taking of judicial notice under this paragraph prior to the conclusion of final hearings upon any proceeding so as to give interested parties the right to object to acceptance of the evidence or to contradict the evidence by other competent evidence.

(g) A certificate granted under par. (a) shall be authorized by an order following a hearing. The order shall contain any condition or limitation which the commission deems necessary or practicable, including, but not limited to, exceptions or regulations as to specific communities or public utilities, provision for protection of employees under existing labor contracts, as well as other employees, so as to avoid unemployment, regulations for accounting for expenses for change−over to the use of natural gas where necessary and to the extent necessary, provision for amorti-

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zation of any expenditure or other items, and any other regulation, condition and limitation which the commission considers necessary in the public interest.

(h) The commission by order may extend a certificate under par. (a) to more than one public utility or municipality. The commission may prescribe different conditions and regulations for each public utility or municipality if the commission deems the different conditions and regulations necessary to carry out the purposes of this section.

(i) In making a determination under this section, the commission shall consider all appropriate factors affecting the public interest, including, but not limited to, when the substitution of natural or a mixture of natural and manufactured gas is involved, the likelihood of substantial rate reduction from the substitution and the effect of the substitution upon employment, existing business and industries, railroads and other transportation agencies and facilities, upon conveniences, economies and savings to consumers, upon existing gas utilities and their ability to continue to serve the public and upon the state, any of its political subdivisions or any citizen or resident of the state.

(5g) (a) A public utility is exempt from the requirement to obtain a certification or approval of the commission under this section before beginning a proposed project if the estimated gross cost of the proposed project is not more than one of the following cost thresholds:

1. For an electric public utility whose electric operating revenues in the prior year were less than $5,000,000, the cost threshold is $250,000.

2. For an electric public utility whose electric operating revenues in the prior year were $5,000,000 or more and less than $250,000,000, the cost threshold is 4 percent of those operating revenues.

3. For an electric public utility whose electric operating revenues in the prior year were $250,000,000 or more, the cost threshold is $10,000,000.

4. For a natural gas public utility, the cost threshold is $2,500,000 or 4 percent of the public utility's natural gas operating revenues in the prior year, whichever is less.

5. For a water public utility or combined water and sewer public utility, the cost threshold is $250,000 or 25 percent of the utility's operating revenues in the prior year, whichever is less.

(b) Beginning on May 1, 2014, and on May 1 of each successive even−numbered year thereafter, the commission shall adjust the cost thresholds specified in par. (a) to reflect changes to the cost of utility construction based on the applicable industry cost index numbers published in the Handy−Whitman Index of Public Utility Construction Costs, or an equivalent successor index, and publicize the adjusted cost thresholds on the commission's Web site.

(5r) (a) If a hearing is held on an application filed under sub. (1), (2), (3), or (5), the commission shall take final action on the application within 180 days after the commission issues a notice of hearing on the application. The chairperson of the commission may extend the time period for an additional 180 days for good cause. If the commission fails to take final action within the initial 180−day period, or the extended 180−day time period, the commission is considered to have issued a certificate of authority with respect to the application.

(b) If a hearing is not held on an application filed under sub. (1), (2), (3), or (5), the commission shall take final action on the application within 90 days after the commission issues a notice opening a docket on the application. The chairperson of the commission may extend the time period for an additional 90 days for good cause. If the commission fails to take final action within the initial 90−day period, or the extended 90−day time period, the commission is considered to have issued a certificate of authority with respect to the application.

(6) If the commission finds that any public utility has taken or is about to take an action which violates or disregards a rule or special order under this section, the commission, in its own name either before or after investigation or public hearing and either before or after issuing any additional orders or directions it deems proper, may bring an action in the circuit court of Dane County to enjoin the action. If necessary to preserve the existing state of affairs, the court may issue a temporary injunction pending a hearing upon the merits. An appeal from an order or judgment of the circuit court may be taken to the court of appeals.

History: Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1977 c. 187; 1979 c. 110 s. 60 (9); 1983 a. 53; 1985 a. 60; 1993 a. 496; 1995 a. 227; 2003 a. 89; 2007 a. 227; 2011 a. 22, 32, 155.

Cross−reference: See also chs. PSC 112, 113, 114, 133, and 162, Wis. adm. code.

There is no hearing requirement for the issuance of a certificate authorizing service. Adams−Marquette Electric Cooperative v. PSC. 51 Wis. 2d 718, 188 N.W.2d 515 (1971).

The "public" in sub. (3) (b) includes all electric consumers in the state, not only the ratepayers of the utility seeking authorization. Wisconsin Power & Light Co. v. PSC, 148 Wis. 2d 881, 437 N.W.2d 888 (Ct. App. 1989).

Sub. (3) controls a utility's application to construct an out−of−state electric generating facility. Section 196.491 (3) applies exclusively to in−state facilities. Under s. 196.01 (5) (a) and sub. (1) (am), every public utility has availed itself of the state's regulatory jurisdiction by obtaining authorization to engage in public utility business. Therefore, when the Public Service Commission reviews an application under sub. (3) it is a statutory entity that is being regulated, not a person's activity of constructing a facility, as is the case under s. 196.491 (3). Wisconsin Industrial Energy Group v. Public Service Commission, 2012 WI 89, ___ Wis. 2d ___, ___ N.W.2d ___, 10−2762.

196.491 Strategic energy assessment; electric generating facilities and transmission lines. (1) DEFINITIONS.

In this section:

(am) "Affiliated interest" has the meaning given in s. 196.52 (1).

(b) "Commencement of construction" means site clearing, excavation, placement of facilities or any other substantial action adversely affecting the natural environment of the site, but does not mean borings necessary to determine foundation conditions or other preconstruction monitoring to establish background information related to site or environmental suitability.

(bm) "Cooperative association" means a cooperative association organized under ch. 185 for the purpose of generating, distributing or furnishing electric energy at retail or wholesale to its members only.

(c) "Department" means the department of natural resources.

(d) "Electric utility" means any public utility, as defined in s. 196.01, which is involved in the generation, distribution and sale of electric energy, and any corporation, company, individual or association, and any cooperative association, which owns or operates, or plans within the next 3 years to construct, own or operate, facilities in the state.

(e) "Facility" means a large electric generating facility or a high−voltage transmission line.

(f) Except as provided in subs. (2) (b) 8. and (3) (d) 3m., "high−voltage transmission line" means a conductor of electric energy exceeding one mile in length designed for operation at a nominal voltage of 100 kilovolts or more, together with associated facilities, and does not include transmission line relocations that the commission determines are necessary to facilitate highway or airport projects.

(g) "Large electric generating facility" means electric generating equipment and associated facilities designed for nominal operation at a capacity of 100 megawatts or more.

(w) 1. "Wholesale merchant plant" means, except as provided in subd. 2., electric generating equipment and associated facilities located in this state that do not provide service to any retail customer and that are owned and operated by any of the following:

a. Subject to the approval of the commission under sub. (3m) (a), an affiliated interest of a public utility.

b. A person that is not a public utility.

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2. "Wholesale merchant plant" does not include an electric generating facility or an improvement to an electric generating facility that is subject to a leased generation contract, as defined in s. 196.52 (9) (a) 3.

(2) STRATEGIC ENERGY ASSESSMENT. (a) The commission shall prepare a biennial strategic energy assessment that evaluates the adequacy and reliability of the state's current and future electrical supply. The strategic energy assessment shall do all of the following:

3. Identify and describe large electric generating facilities on which an electric utility plans to commence construction within 3 years.

3g. Assess the adequacy and reliability of purchased generation capacity and energy to serve the needs of the public.

3m. Identify and describe high−voltage transmission lines on which an electric utility plans to commence construction within 3 years.

3r. Identify and describe any plans for assuring that there is an adequate ability to transfer electric power into the state and the transmission area, as defined in s. 196.485 (1) (g), in a reliable manner.

4. Identify and describe the projected demand for electric energy and the basis for determining the projected demand.

7. Identify and describe activities to discourage inefficient and excessive power use.

9. Identify and describe existing and planned generating facilities that use renewable sources of energy.

10. Consider the public interest in economic development, public health and safety, protection of the environment and diversification of sources of energy supplies.

11. Assess the extent to which the regional bulk−power market is contributing to the adequacy and reliability of the state's electrical supply.

12. Assess the extent to which effective competition is contributing to a reliable, low−cost and environmentally sound source of electricity for the public.

13. Assess whether sufficient electric capacity and energy will be available to the public at a reasonable price.

(ag) The commission shall promulgate rules that establish procedures and requirements for reporting information that is necessary for the commission to prepare strategic energy assessments under par. (a).

(b) On or before July 1, 2000, and on or before July 1 of each even−numbered year thereafter, the commission shall issue a draft of the biennial strategic energy assessment that it prepares under par. (a) to each of the following:

1. Department of administration.

2. Department of safety and professional services.

3. Department of health services.

4. Department of justice.

5. Department of natural resources.

6. Department of transportation.

7. The director or chairperson of each regional planning commission constituted under s. 66.0309 which has jurisdiction over any area where a facility is proposed to be located or which requests a copy of such plan.

8. The lower Wisconsin state riverway board if the draft includes an assessment of the construction, modification or relocation of a high−voltage transmission line, as defined in s. 30.40 (3r), that is located in the lower Wisconsin riverway as defined in s. 30.40 (15).

9. Each person that is required to report information to the commission under the rules promulgated under par. (ag).

10. The clerk of each city, village, town and county that, as determined by the commission, is affected by the assessment.

(e) Any state agency, as defined in s. 16.310 (1), county, municipality, town, or person may submit written comments to the commission on a strategic energy assessment within 90 days after copies of the draft are issued under par. (b).

(f) Section 1.11 (2) (c) shall not apply to a strategic energy assessment prepared under par. (a) but the commission shall prepare a single environmental assessment on the strategic energy assessment, which shall include a discussion of generic issues and environmental impacts. The commission shall make the environmental assessment available to the public at least 30 days prior to the hearing under par. (g).

(g) No sooner than 30 and no later than 90 days after copies of the draft are issued under par. (b), the commission shall hold a hearing on the draft which may not be a hearing under s. 227.42 or 227.44. The hearing shall be held in an administrative district, established by executive order 22, issued August 24, 1970, which the commission determines will be significantly affected by facilities on which an electric utility plans to commence construction within 3 years. The commission may thereafter adjourn the hearing to other locations or may conduct the hearing by interactive video conference or other electronic method. Notice of such hearing shall be given by class 1 notice, under ch. 985, published in the official state newspaper and such other regional papers of general circulation as may be designated by the commission. At such hearing the commission shall briefly describe the strategic energy assessment and give all interested persons an opportunity, subject to reasonable limitations on the presentation of repetitious material, to express their views on any aspect of the strategic energy assessment. A record of the hearing shall be made and considered by the commission as comments on the strategic energy assessment under par. (e).

(gm) Based on comments received on a draft, the commission shall prepare a final strategic energy assessment within 90 days after a hearing under par. (g). The commission shall provide copies of the final strategic energy assessment to any state agency, county, municipality, town or other person who submitted comments on the draft under par. (e) and to the persons specified in par. (b).

Cross−reference: See also ch. PSC 111, Wis. adm. code.

(2r) LOCAL ORDINANCES. No local ordinance may prohibit or restrict testing activities undertaken by an electric utility for purposes of determining the suitability of a site for the placement of a facility. Any local unit of government objecting to such testing may petition the commission to impose reasonable restrictions on such activity.

(3) CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY. (a) 1. Except as provided in sub. (3b), no person may commence the construction of a facility unless the person has applied for and received a certificate of public convenience and necessity under this subsection. An application for a certificate issued under this subsection shall be in the form and contain the information required by commission rules and shall be filed with the commission not less than 6 months prior to the commencement of construction of a facility. Within 10 days after filing an application under this subdivision, the commission shall send a copy of the application to the clerk of each municipality and town in which the proposed facility is to be located and to the main public library in each such county.

2. The commission shall determine whether an application filed under subd. 1. is complete and, no later than 30 days after the application is filed, notify the applicant about the determination. If the commission determines that the application is incomplete, the notice shall state the reason for the determination. An applicant may supplement and refile an application that the commission has determined to be incomplete. There is no limit on the number of times that an applicant may refile an application under this subdivision. If the commission fails to determine whether an application is complete within 30 days after the application is filed, the application shall be considered to be complete.

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2m. If an application for a large electric generating facility is complete in all other respects, the commission shall determine that the application is complete under subd. 2. even if one or more of the following apply:

a. The application includes some but not all of the information necessary to evaluate or approve the construction of transmission facilities that may be associated with the proposed electric generating facility and a person other than the applicant will construct, or be responsible for the construction of, the transmission facilities.

b. The applicant proposes alternative construction sites for the facility that are contiguous or proximate, provided that at least one of the proposed sites is a brownfield, as defined in s. 238.13 (1) (a), or the site of a former or existing large electric generating facility.

c. The applicant has not yet obtained all the permits or approvals required for construction.

3. a. At least 60 days before a person files an application under subd. 1., the person shall provide the department with an engineering plan if the facility is a large electric generating facility or a detailed project plan if the facility is a high−voltage transmission line. The engineering or project plan shall show the location of the facility, a description of the facility, including the major components of the facility that have a significant air, water or solid waste pollution potential, and a brief description of the anticipated effects of the facility on air quality, water quality, wetlands, solid waste disposal capacity, and other natural resources. Within 30 days after a person provides an engineering or project plan, the department shall provide the person with a listing of each department permit or approval which, on the basis of the information contained in the engineering or project plan, appears to be required for the construction or operation of the facility.

b. Within 20 days after the department provides a listing specified in subd. 3. a. to a person, the person shall apply for the permits and approvals identified in the listing. The department shall determine whether an application under this subd. 3. b. is complete and, no later than 30 days after the application is filed, notify the applicant about the determination. If the department determines that the application is incomplete, the notice shall state the reason for the determination. An applicant may supplement and refile an application that the department has determined to be incomplete. There is no limit on the number of times that an applicant may refile an application under this subd. 3. b. If the department fails to determine whether an application is complete within 30 days after the application is filed, the application shall be considered to be complete. The department shall complete action on an application under this subd. 3. b. for any permit or approval that is required prior to construction of a facility within 120 days after the date on which the application is determined or considered to be complete.

(b) The commission shall hold a public hearing on an application filed under par. (a) 1. that is determined or considered to be complete in the area affected pursuant to s. 227.44. A class 1 notice, under ch. 985, shall be given at least 30 days prior to the hearing.

(d) Except as provided under par. (e) and s. 196.493, the commission shall approve an application filed under par. (a) 1. for a certificate of public convenience and necessity only if the commission determines all of the following:

2. The proposed facility satisfies the reasonable needs of the public for an adequate supply of electric energy. This subdivision does not apply to a wholesale merchant plant.

3. The design and location or route is in the public interest considering alternative sources of supply, alternative locations or routes, individual hardships, engineering, economic, safety, reliability and environmental factors, except that the commission may not consider alternative sources of supply or engineering or economic factors if the application is for a wholesale merchant plant. In its consideration of environmental factors, the commission may not determine that the design and location or route is not in the public interest because of the impact of air pollution if the proposed facility will meet the requirements of ch. 285.

3m. For a high−voltage transmission line, as defined in s. 30.40 (3r), that is to be located in the lower Wisconsin state riverway, as defined in s. 30.40 (15), the high−voltage transmission line will not impair, to the extent practicable, the scenic beauty or the natural value of the riverway. The commission may not require that a high−voltage transmission line, as defined in s. 30.40 (3r), be placed underground in order for it to approve an application.

3r. For a high−voltage transmission line that is proposed to increase the transmission import capability into this state, existing rights−of−way are used to the extent practicable and the routing and design of the high−voltage transmission line minimizes environmental impacts in a manner that is consistent with achieving reasonable electric rates.

3t. For a high−voltage transmission line that is designed for operation at a nominal voltage of 345 kilovolts or more, the high−voltage transmission line provides usage, service or increased regional reliability benefits to the wholesale and retail customers or members in this state and the benefits of the high−voltage transmission line are reasonable in relation to the cost of the high−voltage transmission line.

4. The proposed facility will not have undue adverse impact on other environmental values such as, but not limited to, ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water and recreational use. In its consideration of the impact on other environmental values, the commission may not determine that the proposed facility will have an undue adverse impact on these values because of the impact of air pollution if the proposed facility will meet the requirements of ch. 285.

5. The proposed facility complies with the criteria under s. 196.49 (3) (b) if the application is by a public utility as defined in s. 196.01.

6. The proposed facility will not unreasonably interfere with the orderly land use and development plans for the area involved.

7. The proposed facility will not have a material adverse impact on competition in the relevant wholesale electric service market.

8. For a large electric generating facility, brownfields, as defined in s. 238.13 (1) (a), are used to the extent practicable.

(dg) In making a determination under par. (d) that applies to a large electric generating facility, if the large electric generating facility is a wind energy system, as defined in s. 66.0403 (1) (m), the commission shall consider whether installation or use of the facility is consistent with the standards specified in the rules promulgated by the commission under s. 196.378 (4g) (b).

(dm) In making a determination required under par. (d), the commission may not consider a factual conclusion in a strategic energy assessment unless the conclusion is independently corroborated in the hearing under par. (b).

(e) If an application filed under par. (a) 1. does not meet the criteria under par. (d), the commission shall reject the application or approve the application with such modifications as are necessary for an affirmative finding under par. (d).

(g) The commission shall take final action on an application filed under par. (a) 1. within 180 days after the application is determined or considered to be complete under par. (a) 2. If the commission fails to take final action within the 180−day period, the commission is considered to have issued a certificate of public convenience and necessity with respect to the application, unless the commission, within the 180−day period, petitions the circuit court for Dane County for an extension of time for taking final action on the application and the court grants an extension. Upon a showing of good cause, the court may extend the 180−day period for no more than an additional 180 days. If the commission fails to take final action within the extended period, the commission is

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considered to have issued a certificate of public convenience and necessity with respect to the application.

(gm) The commission may not approve an application filed after October 29, 1999, under this subsection for a certificate of public convenience and necessity for a high−voltage transmission line that is designed for operation at a nominal voltage of 345 kilovolts or more unless the approval includes the condition that the applicant shall pay the fees specified in sub. (3g) (a). If the commission has approved an application under this subsection for a certificate of public convenience and necessity for a high−voltage transmission line that is designed for operation at a nominal voltage of 345 kilovolts or more that was filed after April 1, 1999, and before October 29, 1999, the commission shall require the applicant to pay the fees specified in sub. (3g) (a). For any application subject to this paragraph, the commission shall determine the cost of the high−voltage transmission line, identify the counties, towns, villages and cities through which the high−voltage transmission line is routed and allocate the amount of investment associated with the high−voltage transmission line to each such county, town, village and city.

(i) If installation or utilization of a facility for which a certificate of convenience and necessity has been granted is precluded or inhibited by a local ordinance, the installation and utilization of the facility may nevertheless proceed.

(j) Any person whose substantial rights may be adversely affected or any county, municipality or town having jurisdiction over land affected by a certificate of public convenience and necessity for which an application is filed under par. (a) 1. may petition for judicial review, under ch. 227, of any decision of the commission regarding the certificate.

(k) No person may purchase, or acquire an option to purchase, any interest in real property knowing that such property is being purchased to be used for the construction of a high−voltage transmission line unless the person gives written notice to the prospective seller of the size, maximum voltage and structure type of any transmission line planned to be constructed thereon and the person by whom it will be operated. Contracts made in violation of this paragraph are subject to rescission by the seller at any time prior to the issuance of a certificate of public convenience and necessity for the high−voltage transmission line by the commission.

(3b) EXPEDITED REVIEW. (a) A person who proposes to construct a high−voltage transmission line may apply for a certificate under this subsection if the construction is limited to adding conductors to existing transmission poles or towers and if all related construction activity takes place entirely within the area of an existing electric transmission line right−of−way.

(b) The commission shall promulgate rules specifying the information that must be included in an application under this subsection. If the commission receives an application that complies with rules, the commission shall, as soon as practicable, notify the applicant that the commission has received a complete application.

(c) The commission is considered to have issued a certificate of public convenience and necessity under sub. (3) for construction specified in an application under par. (a) unless the commission notifies the applicant, no later than 30 business days after the date on which the commission notifies an applicant under par. (b) that the application is complete, that the commission has determined that the public interest requires the applicant to obtain a certificate under s. 196.49.

(3c) COMMENCEMENT OF CONSTRUCTION OF LARGE ELECTRIC GENERATING FACILITIES. (a) Except as provided in par. (b), an electric utility that has received a certificate of public convenience and necessity under sub. (3) for constructing a large electric generating facility shall commence construction no later than one year after the latest of the following:

1. The date on which the commission issues the certificate of public convenience and necessity.

2. The date on which the electric utility has been issued every federal and state permit, approval, and license that is required prior to commencement of construction.

3. The date on which every deadline has expired for requesting administrative review or reconsideration of every federal and state permit, approval, and license that is required prior to commencement of construction.

4. The date on which the electric utility has received the final decision, after exhaustion of judicial review, in every proceeding for judicial review described in sub. (3) (j).

(b) Upon showing of good cause, the commission may grant an extension to the deadline specified in par. (a).

(c) If an electric utility does not commence construction of a large electric generating facility within the deadline specified in par. (a) or extended under par. (b), the certificate of public convenience and necessity is void, and the electric utility may not commence construction of the large electric generating facility.

(3e) CONVEYANCE OF PROPERTY TO AN ELECTRIC UTILITY. (ag) In this subsection, "electric utility" has the meaning given in s. 196.485 (1) (bs).

(am) Notwithstanding s. 32.03 (1), if an electric utility receives a certificate of public convenience and necessity from the commission under sub. (3) for the construction of a high−voltage transmission line that will be constructed over, on, or under land owned by a county, city, village, town, public board or commission, the owner of the land shall convey to the electric utility, at fair market value as determined under par. (b), the interest in the land necessary for the construction, operation, and maintenance of the high−voltage transmission line.

(b) If the electric utility and owner of the land cannot agree on the fair market value of the interest in land sought by the electric utility within 90 days after the electric utility notifies the owner that the certificate of public convenience and necessity has been issued, the issue of the fair market value of the interest shall be determined by an arbitrator appointed by the circuit court of the county in which the land is located, except that the electric utility and owner of the land may agree to extend the 90−day period by an additional 90 days if necessary to reach an agreement concerning fair market value in lieu of arbitration. The interest in land shall be conveyed to the electric utility upon commencement of the arbitration proceeding. Any arbitration under this paragraph shall be conducted on an expedited basis to the extent that an expedited proceeding is available. The arbitrator and circuit court appointing the arbitrator shall have the powers and duties specified in ch. 788. The decision of an arbitrator concerning fair market value shall be binding on the parties, except as otherwise provided under ch. 788.

(3g) FEES FOR CERTAIN HIGH−VOLTAGE TRANSMISSION LINES. (a) A person who receives a certificate of public convenience and necessity for a high−voltage transmission line that is designed for operation at a nominal voltage of 345 kilovolts or more under sub. (3) shall pay the department of administration an annual impact fee as specified in the rules promulgated by the department of administration under s. 16.969 (2) (a) and shall pay the department of administration a one−time environmental impact fee as specified in the rules promulgated by the department of administration under s. 16.969 (2) (b).

(b) A person that pays a fee under par. (a) may not use the payment to offset any other mitigation measure that is required in an order by the commission under sub. (3) regarding the certificate of public convenience and necessity specified in par. (a).

(3m) WHOLESALE MERCHANT PLANTS. (a) *Commission approval required.* Except as provided in par. (e) 1., an affiliated interest of a public utility may not own, control or operate a wholesale merchant plant without the approval of the commission. The commission shall grant its approval only if each of the following is satisfied:

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1. The public utility has transferred control over its transmission facilities, as defined in s. 196.485 (1) (h), to an independent system operator, as defined in s. 196.485 (1) (d), that is approved by the federal energy regulatory commission or the public utility has divested its interest in the transmission facilities to an independent transmission owner, as defined in s. 196.485 (1) (dm).

2. The commission finds that the ownership, control or operation will not have a substantial anticompetitive effect on electricity markets for any classes of customers.

(b) *Duty to promulgate rules.* 1. The commission shall promulgate rules that establish requirements and procedures for an affiliated interest to apply for an approval under par. (a). The rules shall do each of the following:

a. Describe the showing that an applicant is required to make for the commission to grant an approval under par. (a).

am. Establish screening tests and safe harbors for proposed wholesale merchant plant projects, including projects in which an affiliated interest is a passive investor and over which the affiliated interest is not able to exercise control or influence and projects in which an affiliated interest's ownership interest is less than 5%.

b. Describe the analytical process that the commission shall use in determining whether to make a finding under par. (a) 2. and describe the factors specified in subd. 3.

c. Allow an interested person to request a hearing on an application under s. 227.42.

2. The analytical process specified in subd. 1. b. shall, to the extent practicable, be consistent with the analytical process described in the merger enforcement policy, as defined in s. 196.485 (1) (dr).

3. The commission shall use the following factors in determining whether to make a finding under par. (a) 2.:

a. The degree of market concentration resulting from the affiliated interest's proposed ownership, operation or control.

b. The extent of control that the affiliated interest proposes to exercise over the wholesale merchant plant.

d. Any other factor that the commission determines is necessary to determine whether to make a finding under par. (a) 2.

(c) *Sales by affiliated interests.* 1. In this paragraph:

a. "Electric sale" means a sale of electricity that is generated at a wholesale merchant plant that is owned, operated or controlled by an affiliated interest.

b. "Firm sale" means an electric sale in which electricity is intended to be available to a purchaser at all times during a specified period on an uninterruptible basis.

2. The commission shall review any electric sale by an affiliated interest to a public utility with which the affiliated interest is affiliated. If the commission finds that an electric sale is not in the public interest, the commission shall do any of the following:

a. Disallow the public utility's costs related to the sale in a rate−setting proceeding.

b. Order the public utility to provide a refund, in an amount determined by the commission, to its customers.

c. Order the public utility or affiliated interest to take any action that the commission determines is in the public interest, except that the commission may not order the public utility or affiliated interest to void the sale.

3. Except as provided in par. (e) 2., an affiliated interest may not make any firm sale to a public utility with which the affiliated interest is affiliated if the firm sale satisfies any of the following:

a. The period of the firm sale is 3 years or more.

b. The period of the firm sale is less than 3 years and either the public utility or the affiliated interest has an option to extend the period to 3 years or more.

(d) *Retail sales outside this state.* The commission may not promulgate rules or issue orders that prohibit owners or operators of wholesale merchant plants from providing electric service to retail customers in another state.

(e) *Exemptions.* 1. An approval under par. (a) is not required for an affiliated interest to own, operate or control a wholesale merchant plant in Grant County if the affiliated interest owned, operated or controlled the wholesale merchant plant before January 1, 1998.

2. Paragraph (c) 3. does not apply to a firm sale from a wholesale merchant plant located in Adams or Juneau county to a public utility if the wholesale merchant plant is owned by an affiliated interest of the public utility and the public utility owned, operated, or controlled the affiliated interest before January 1, 2012.

Cross−reference: See also s. PSC 100.11, Wis. adm. code.

(4) EXEMPTIONS. (b) Subsection (3) does not apply to a person that constructs electric generating equipment and associated facilities if the person satisfies each of the following:

1. The person is not a public utility or a cooperative association organized under ch. 185 for the purpose of generating, distributing or furnishing electric energy at retail or wholesale to its members only.

2. The person shows to the satisfaction of the commission that the person reasonably anticipates, at the time that construction of the equipment or facilities commences, that on each day that the equipment and facilities are in operation the person will consume no less than 70% of the aggregate kilowatt hours output from the equipment and facilities in manufacturing processes at the site where the equipment and facilities are located.

(c) 1e. In this paragraph, "centerline" means a line drawn through the centerline of an electric transmission line along its length.

1m. Except as provided in subd. 1s., a certificate under sub. (3) is not required for a person to construct a high−voltage transmission line designed for operation at a nominal voltage of less than 345 kilovolts if the centerline of the new high−voltage transmission line is located within 60 feet on either side of the centerline of an existing electric transmission line operating at a nominal voltage of 69 kilovolts or more and the applicant demonstrates all of the following:

a. That the project will not have undue adverse environmental impacts.

b. That the new high−voltage transmission line requires the acquisition in total of one−half mile or less of rights−of−way from landowners from which rights−of−way were not required to be acquired for the existing electric transmission line.

1s. A certificate under sub. (3) is not required for a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power, or water to its members to construct a high−voltage transmission line designed for operation at a nominal voltage of less than 345 kilovolts if all related construction activity takes place entirely within the area of an existing electric transmission line right−of−way.

2. The commission is not required to prepare an environmental impact statement under s. 1.11 (2) (c) for construction that is specified in subd. 1m. or 1s., but shall prepare an environmental assessment regarding the construction if an environmental assessment is required under the commission's rules.

3. If construction or utilization of a high−voltage transmission line described in subd. 1m. or 1s. is precluded or inhibited by a local ordinance, the construction and utilization of the line may nevertheless proceed.

(5) SERVICE STANDARDS FOR ELECTRIC GENERATION, TRANSMISSION AND DISTRIBUTION FACILITIES. The commission shall promulgate rules that establish all of the following:

(a) Standards for inspecting, maintaining and repairing each of the following:

1. Electric generation facilities in this state that are owned by public utilities or provide service to public utilities under contracts with terms of 5 years or more.

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2. Electric transmission or distribution facilities in this state that are owned by public utilities.

(b) Standards that the commission determines are necessary for the safe and reliable operation of each of the following:

1. Electric generation facilities in this state that are owned by public utilities or provide service to public utilities under contracts with terms of 5 years or more.

2. Electric transmission or distribution facilities in this state that are owned by public utilities.

(6) WAIVER. The commission may waive compliance with any requirement of this section to the extent necessary to restore service which has been substantially interrupted by a natural catastrophe, accident, sabotage or act of God.

History: 1975 c. 68, 199; 1979 c. 221, 361; 1983 a. 53 s. 114; 1983 a. 192, 401; 1985 a. 182 s. 57; 1989 a. 31; 1993 a. 184; 1995 a. 27 ss. 9116 (5), 9126 (19); 1995 a. 227, 409; 1997 a. 27, 35, 204; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 33, 89; 2005 a. 24, 29; 2007 a. 20 s. 9121 (6) (a); 2009 a. 40, 378, 379; 2011 a. 32, 155; 2011 a. 260 s. 81.

Cross−reference: See also ch. PSC 112, Wis. adm. code.

It was reasonable for the PSC to issue a certificate conditioned on the issuance of DNR permits when legislatively imposed time constraints could not have been met if sub. (3) (e) had been strictly followed and all permits required before the issuance of the certificate. Responsible Use of Rural & Agricultural Land v. PSC, 2000 WI 129, 239 Wis. 2d 660, 619 N.W.2d 888, 99−2430.

While sub. (3) (a) 1. does not provide standards to determine if an application for a certificate of public convenience and necessity is complete, it specifically states that an application must contain the information required by PSC rules and PSC is not free to ignore those requirements in making its completeness determination. Although the PSC's decision that an application is complete is not itself a final decision, it is nonetheless subject to judicial review. Clean Wisconsin, Inc. v. Public Service Commission, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768, 04−3179.

Interpreting a PSC rule to require a certificate of public convenience and necessity applicant to file the actual regulatory approvals before the application can be deemed to be complete would conflict with sub. (3) (a) 3. a. and b. The statute expressly contemplates that an applicant will not have the required DNR permits in hand at the time the PSC must render its completeness determination. Clean Wisconsin, Inc. v. Public Service Commission, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768, 04−3179.

There is nothing unreasonable in the PSC determining an application to be complete yet requesting further information to assist in its review of the certificate of public convenience and necessity application. Clean Wisconsin, Inc. v. Public Service Commission, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768, 04−3179.

PSC decisions under sub. (3) (d) are entitled to great weight deference. Examining the numerous requirements in sub. (3) (d) 2. to 8. and forecasting future energy needs and prices is a highly technical exercise that the PSC is charged with performing. Deciding what economic factors are to be included in a computer model is precisely the type of determination that the PSC should be given great deference to carry out. Great weight deference review of the alternate energy sources is not concerned with the actual procedures utilized by the PSC, but whether there is a rational basis for the determination of the PSC. Clean Wisconsin, Inc. v. Public Service Commission, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768, 04−3179.

Sub. (3) (i) expressly withdraws the power of municipalities to act, once the PSC has issued a certificate of public convenience and necessity, on any matter that the PSC has addressed or could have addressed in that administrative proceeding. American Transmission Co., LLC v. Dane County, 2009 WI App 126, 321 Wis. 2d 138, 772 N.W.2d 731, 08−2604.

Section 196.49 (3) controls a utility's application to construct an out−of−state electric generating facility. Sub. (3) applies exclusively to in−state facilities. Under s. 196.01 (5) (a) and s. 196.491 (1) (am), every public utility has availed itself of Wisconsin's regulatory jurisdiction by obtaining authorization to engage in public utility business. Therefore, when the Public Service Commission reviews an application under s. 196.49 (3) it is a statutory entity that is being regulated, not a person's activity of constructing a facility, as is the case under sub. (3). Wisconsin Industrial Energy Group v. Public Service Commission, 2012 WI 89, ___ Wis. 2d ___, ___ N.W.2d ___, 10−2762.

196.493 Construction of nuclear power plants limited. **(1)** DEFINITION. In this section, "nuclear power plant" means a nuclear−fired large electric generating facility as defined under s. 196.491 (1) (g).

(2) LIMITS ON CERTIFICATION. The commission may not certify under s. 196.49 (3) (b) or 196.491 (3) any nuclear power plant unless the commission finds that:

(a) A federally licensed facility, or a facility outside of the United States which the commission determines will satisfy the public welfare requirements of the people of this state, with adequate capacity to dispose of high−level nuclear waste from all nuclear power plants operating in this state will be available, as necessary, for disposal of the waste; and

(b) The proposed nuclear power plant, in comparison with feasible alternatives, is economically advantageous to ratepayers, based upon:

1. The existence of a reliable and adequate nuclear fuel supply;

2. The costs for construction, operation and decommissioning of nuclear power plants and for nuclear waste disposal; and

3. Any other factor having an impact on the economics of nuclear power plants, as determined by the commission.

History: 1983 a. 401; 1997 a. 204.

196.494 Regional transmission planning. **(1)** In this section:

(a) "Electric utility" means a public utility, other than a municipal utility, as defined in s. 196.377 (2) (a) 3., that provides retail electric service to customers in this state.

(b) "Transmission facility" means any pipe, pipeline, duct, wire, line, conduit, pole, tower, equipment or other structure used for the transmission of electric power as determined by the commission.

(2) The commission shall conduct a study on identifying and relieving any constraint on an intrastate or interstate electric transmission system that adversely affects the reliability of transmission service provided to electric customers in this state and shall, no later than September 1, 1998, submit a report on the results of the study to the legislature in the manner provided under s. 13.172 (2).

(3) The commission shall, under this subsection, issue an order requiring the transmission company, as defined in s. 196.485 (1) (ge), or an electric utility to construct or procure, on a competitive basis, the construction of transmission facilities specified by the commission in its order if the commission determines that such construction is necessary to relieve a constraint on a transmission system and the construction will materially benefit the customers of the transmission company or electric utility or other electric utilities or of an independent system operator, as defined in s. 196.485 (1) (d), or independent transmission owner, as defined in s. 196.485 (1) (dm).

(4) The commission shall allow an electric utility to recover in its retail electric rates any costs that are prudently incurred by the utility in complying with an order under sub. (3).

(5) The governor may, on behalf of this state, enter into an interstate compact that establishes a joint process for the states in the upper midwest region of the United States to determine the need for and siting of regional electric transmission facilities that may affect electric service in this state. The governor may not enter into a compact under this subsection unless the compact includes requirements and procedures for establishing each of the following:

(a) Compliance with each state's environmental and siting standards for transmission facilities.

(b) A regional need determination for transmission facilities.

(c) A mechanism for resolving conflicts between the states regarding the siting of transmission facilities.

History: 1997 a. 204; 1999 a. 9.

196.495 Avoidance of duplication in electric facilities. **(1)** (a) In this section:

1. "Primary voltage extension" means an extension of 500 feet or more.

2. "Secondary voltage extension" means an extension that is less than 500 feet.

(b) The length of an extension shall be measured as the air line distance between an existing local service distribution line that normally operates at less than 35 kilovolts and the nearest point on the principal building or facility to be served by a primary voltage extension or a secondary voltage extension.

(1m) No public utility, and no cooperative association organized under ch. 185 for the purpose of furnishing electric service to its members only, may:

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(a) Extend or render electric service directly or indirectly to the premises of any person already receiving electric service directly or indirectly from another public utility or another cooperative association.

(b) Make a primary voltage extension to serve the premises of any person not receiving electric service and to which service is available from the facilities of another public utility or another such cooperative association through a secondary voltage extension, unless the other public utility or cooperative association consents to the primary voltage extension in writing or unless the commission, after notice to the interested parties and hearing, determines that the service rendered or to be rendered by the other public utility or cooperative association is inadequate and is not likely to be made adequate, or that the rates charged for service are unreasonable and are not likely to be made reasonable.

(2) If a public utility is rendering electric service under an indeterminate permit to a city or village, no cooperative association may extend any new electric service to the premises of any person inside the corporate limits, existing on January 1, 1961, of the city or village without the written consent of the public utility. Within any area annexed to a city or village after January 1, 1961, in which annexed area a cooperative association or public utility, other than the public utility serving the city or village under an indeterminate permit, has electric distribution facilities at the time of the annexation, the cooperative association or other public utility may make a primary voltage extension or a secondary voltage extension in the annexed area, subject to sub. (1m).

(2m) The distribution service facilities of a cooperative association or public utility rendering electric service in an annexed area under sub. (2) shall be subject to acquisition under ch. 197 by a city or village if the city or village operates or proposes to operate its own electric public utility.

(3) Nothing in this section shall preclude any public utility or any cooperative association from extending electric service to its own property or facilities or to another cooperative association for resale.

(4) To avoid duplication of facilities, a public utility and a cooperative association may enter into a written agreement governing the extension of electric distribution lines and the right to serve customers. The commission shall enforce an agreement if the agreement has been filed with the commission and approved by the commission as being in the public interest.

(5) If an interested party files a complaint with the commission that an electric public utility or a cooperative association has made a primary voltage extension that requires approval or consent under this section without obtaining approval or consent, the commission shall hear the complaint upon notice to the interested parties. If the commission determines that the primary voltage extension was made in violation of this section, it shall order the prompt removal of the primary voltage extension.

(6) A cooperative association shall be subject to the authority of the commission to enforce the provisions of this section and to issue rules and orders relating to the provisions.

(7) A cooperative association shall be subject to the authority of the commission to allocate, assess and collect expenditures of the commission against a cooperative association involved in a proceeding under this section in the same manner as provided for public utilities under s. 196.85.

History: 1971 c. 125 s. 521; 1983 a. 53; 1991 a. 94.

Cross−reference: See also s. PSC 112.08, Wis. adm. code.

Although one utility was serving a farm, when the farm was annexed to a city and a large shopping center was built, the utility having an indeterminate permit to serve the city could not be barred from serving the area; the PSC should determine which utility should serve the area. Adams−Marquette Electric Cooperative v. PSC 51 Wis. 2d 718, 188 N.W.2d 515 (1971).

The "premises of a person already receiving electrical service" refers to the premises to be served, not the person. Adams−Marquette Electric Cooperative v. PSC 51 Wis. 2d 718, 188 N.W.2d 515 (1971).

The application of this section is discussed. A court's order to a utility violating this section to remove the offending line or sell it to the utility who should have provided the service was within the authority granted by sub. (5). Barron Electric Cooperative v. PSC, 212 Wis. 2d 752, 569 N.W.2d 726 (Ct. App. 1997), 97−0420.

196.496 Distributed generation facilities. (1) DEFINITION. In this section, "distributed generation facility" means a facility for the generation of electricity with a capacity of no more than 15 megawatts that is located near the point where the electricity will be used or is in a location that will support the functioning of the electric power distribution grid.

(2) RULES. The commission shall promulgate rules establishing standards for the connection of distributed generation facilities to electric distribution facilities. To the extent technically feasible and cost effective, the standards shall be uniform and shall promote the development of distributed generation facilities. The standards shall address engineering, electric reliability, and safety concerns and the methods for determining charges for interconnection.

History: 2001 a. 16.

Cross−reference: See also ch. PSC 119, Wis. adm. code.

196.497 State policy regarding the long−term disposal of high−level radioactive waste and transuranic waste. (1) DEFINITIONS. As used in this section unless the context requires otherwise:

(b) "Federal department of energy" means the federal department of energy or any successor agency assigned responsibility for the long−term disposal of high−level radioactive waste and transuranic waste.

(c) "High−level radioactive waste" means:

1. Fuel that is withdrawn from a nuclear reactor after irradiation and which is packaged and prepared for disposal; or

2. Highly radioactive waste resulting from reprocessing irradiated nuclear fuel including both the liquid waste which is produced directly in reprocessing and any solid material into which the liquid waste is transformed.

(d) "Transuranic waste" means waste material containing alpha−emitting radioactive elements having an atomic number greater than 92 in concentrations greater than 10 nanocuries per gram.

(2) COORDINATION. (a) *Initial agency to be contacted.* The commission shall serve as the initial agency in this state to be contacted by the federal department of energy or any other federal agency on any matter related to the long−term disposal of high−level radioactive waste or transuranic waste.

(b) *Receipt of information.* The commission shall serve as the initial agency in this state to receive any report, study, document, information or notification of proposed plans from the federal department of energy or any other federal agency on any matter related to the long−term disposal of high−level radioactive waste or transuranic waste. Notification of proposed plans include notification of proposals to conduct field work, on−site evaluation, on−site testing or similar activities.

(c) *Dissemination of information.* The commission shall disseminate or arrange with the federal department of energy or other federal agency to disseminate information received under par. (b) to appropriate state agencies, local units of government, regional planning commissions, American Indian tribal governing bodies, the general public, interested citizen groups and persons who have requested in writing to receive this information.

(d) *Response.* The commission shall respond to contacts under par. (a) and information received under par. (b) if a response is appropriate. The commission shall consult with appropriate state agencies, local units of government, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups in preparing this response.

(3) ADVOCATE. The commission shall serve as an advocate on behalf of the citizens of this state before the federal department of energy and other federal agencies on matters related to the long−term disposal of radioactive waste and transuranic waste.

(5) REVIEW OF APPLICATIONS FOR FEDERAL FUNDS. The commission shall review any application to the federal department of energy or other federal agency by a state agency, local unit of gov-

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ernment or regional planning commission for funds for any program related to the long−term disposal of high−level radioactive waste or transuranic waste. If the commission finds that the application is not consistent with the commission's policy related to the long−term disposal of high−level radioactive waste or transuranic waste or that the application is not in the best interest of the state, the commission shall forward its findings to the governor, the joint committee on finance and the federal agency to which the application for funds is being made. If the commission finds that the application of a state agency is not consistent with the commission's policy related to the long−term disposal of high−level radioactive waste or transuranic waste or that the application of a state agency is not in the best interest of the state, the findings forwarded to the governor shall include a recommendation that the governor act under s. 16.54 (1) and stipulate conditions for the acceptance of the funds which are necessary to safeguard the interests of the state.

(6) MONITOR FEDERAL ACTIVITY. The commission shall monitor activity in congress and the federal government related to the long−term disposal of high−level radioactive waste and transuranic waste. The commission may advise the congressional delegation from this state of action which is needed to protect the interests of the state.

(7) REQUEST ATTORNEY GENERAL TO INTERVENE. If appropriate the commission shall request the attorney general to intervene in federal proceedings to protect the state's interests and present the state's point of view on matters related to the long−term disposal of high−level radioactive waste or transuranic waste.

(8) NEGOTIATION OF AGREEMENTS. (a) *Negotiations with the federal department of energy.* The commission shall serve as the agency in this state to negotiate written agreements and modifications to these agreements, with the federal department of energy on any matter related to the long−term disposal of high−level radioactive waste or transuranic waste.

(b) *Negotiations with other federal agencies.* The commission shall serve as the agency in this state to negotiate written agreements and modifications to these agreements, with any federal agency other than the federal department of energy on any matter related to the long−term disposal of high−level radioactive waste or transuranic waste.

(d) *Hearings.* The commission shall conduct public hearings on any proposed agreement or modification to an agreement negotiated under par. (a) or (b). The commission shall provide 30 days' notice of the date and location of hearings conducted under this paragraph. The commission shall prepare a written summary of testimony presented at hearings conducted under this paragraph and shall consider the need for modifications to the negotiated agreement as a result of the hearings.

(f) *Approval of agreements and modifications by the legislature and governor.* No agreement or modification to an agreement negotiated under par. (a) or (b) may take effect unless it is approved under sub. (10).

(g) *Technical revisions.* The commission may negotiate what in the commission's judgment are technical revisions to any agreement approved under sub. (10).

(i) *Review of technical revisions by the legislature and governor.* No technical revision to an agreement negotiated under par. (g) may take effect unless it is considered approved under sub. (11).

(9) AGREEMENTS WITH THE FEDERAL DEPARTMENT OF ENERGY. (a) *Separate agreements.* The commission may negotiate separate agreements with the federal department of energy concerning different stages of the process of evaluating and selecting a site for the long−term disposal of high−level radioactive waste or transuranic waste. The commission shall negotiate a separate agreement with the federal department of energy for the final stages of the selection of any site for the long−term disposal of high−level radioactive waste or transuranic waste.

(b) *Contents.* Any agreement negotiated by the commission with the federal department of energy under sub. (8) (a) shall include all of the following:

1. A general description of the roles of the state and the federal department of energy.

2. A compliance schedule which includes a list of significant events and stages which are expected to be reached as the federal department of energy assesses the suitability of the state for the long−term disposal of high−level radioactive waste or transuranic waste and a description of the actions to be taken by the federal department of energy and the state at each event and stage.

3. The criteria that the department of energy shall use in evaluating the suitability of any site in the state for the long−term disposal of high−level radioactive waste or transuranic waste.

4. A requirement that the federal department of energy shall comply with all federal laws, American Indian laws, state laws and local ordinances and shall respect state sovereignty consistent with the 10th amendment to the U.S. constitution and the U.S. constitution, regardless of the ownership of the land on which the activity takes place.

5. A requirement that the federal department of energy and any of its contractors or subcontractors shall provide the commission with all reports and documents the commission requests and any other relevant reports and documents in a timely manner and in accordance with any applicable law, regulation or rule. The requirement shall specify that the federal department of energy may not charge a fee for searching for or for supplying reports and documents requested by the commission. The requirement shall specify that the federal department of energy shall provide the commission with all reports and documents the commission requests and any other relevant reports and documents from contractors and subcontractors after the reports and documents are submitted to the federal department of energy regardless of whether the reports and documents have received the department of energy's final approval.

6. A requirement that, upon request by the commission, the federal department of energy shall provide the data, methods and underlying assumptions used in the preparation of reports and documents in accordance with any applicable law, regulation or rule.

7. A requirement that the federal department of energy shall notify the commission of any grants related to the long−term disposal of high−level radioactive waste and transuranic waste from the federal department of energy to any person in this state.

8. A requirement that the federal department of energy shall notify the commission in a timely manner of any proposed field work, on−site evaluation, on−site testing or similar activities it or any contractor or subcontractor intends to conduct and a requirement that the federal department of energy shall allow the commission to monitor these activities by designating a reasonable number of persons to observe the activities or by any other appropriate means.

9. A requirement that the federal department of energy shall provide the commission in a timely manner with a copy of any requests for proposals and final contracts issued by the federal department of energy relating to the evaluation, selection or construction of a site for the long−term disposal of high−level radioactive waste or transuranic waste in this state.

10. A provision that the federal department of energy shall agree to provide funds to be used to review the activities of the federal department of energy and its contractors and subcontractors which relate to assessing the suitability of the state for the long−term disposal of high−level radioactive waste or transuranic waste.

11. A process for resolving disputes between the commission and the federal department of energy including disputes concerning alleged violations of the written agreement and disputes concerning technical assessments made by the federal department of

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energy. The process for resolving disputes concerning technical assessments made by the federal department of energy may involve a process of scientific review and mediation.

12. A requirement that if the federal department of energy selects a site in the state for construction of a repository for the long−term disposal of high−level radioactive waste or transuranic waste, the federal department of energy shall prepare, prior to submission of an application to license or construct the repository, a repository plan which shall include descriptions of the federal department of energy's plans for construction of the repository, transportation of wastes to the repository, operation of the repository, closing of the repository and monitoring the repository after closure.

(c) *Objection to site selection.* Any agreement negotiated by the commission with the federal department of energy under sub. (8) (a) shall include a list of reasons for which the commission may object to the selection of a site within this state for the long−term disposal of high−level radioactive waste and transuranic waste. These reasons shall include the following:

1. The site or the transportation of waste to the site poses a danger to public health and safety or to the environment.

2. The federal department of energy fails to address to the satisfaction of the commission the potential socioeconomic effects of the site or of the transportation of waste to the site.

3. The federal department of energy violates any written agreement or revision approved under sub. (10) or (11).

4. If, in the judgment of the commission, the federal department of energy fails to comply with criteria, regulations or standards of other federal agencies concerning the long−term disposal of high−level radioactive waste or transuranic waste including criteria which excludes a proposed site from consideration because of previous mining or drilling of any type within the area which could be affected by the construction of the site or by the heat resulting from the disposal of high−level radioactive waste or transuranic waste at the site.

5. If, in the judgment of the commission, the federal department of energy fails to use generally accepted scientific and technical practices in evaluating the suitability of a site for the long−term disposal of high−level radioactive waste or transuranic waste.

(10) APPROVAL OF AGREEMENTS. (a) *Submission.* The commission shall submit any written agreement or modification to an agreement negotiated under sub. (8) (a) or (b), approved by the commission and approved by the federal department of energy or other federal agency to the speaker of the assembly and the president of the senate. The commission shall submit with the agreement or modification a written summary of the hearings held under sub. (8) (d).

(b) *Introduction of bill.* Upon request of the commission, the speaker of the assembly or the president of the senate shall introduce a bill to approve the agreement or modification to an agreement. The bill is not subject to s. 16.47 (2).

(c) *Legislative action required.* Within 120 days after the bill is introduced the appropriate committees in each house of the legislature shall authorize an extraordinary session of the legislature to commence within the 120 days and to extend until the legislature passes the bill or passes a joint resolution which disapproves of the agreement or modification and returns the agreement or modification to the commission for renegotiation. If the 120−day period extends beyond the date specified in s. 13.02 (1), the 120−day period is deemed to commence on the first day the succeeding legislature convenes, unless a bill or joint resolution is passed prior to that time.

(d) *Veto review.* Within 10 days after the bill passes the legislature, the chief clerk of the house of origin shall refer the bill to the governor for executive action. If the governor vetoes the bill, the appropriate committees in each house of the legislature shall schedule a veto review session.

(e) *Approval.* If the bill is enacted into law, the agreement or modification to the agreement is approved and shall take effect.

(11) REVIEW OF TECHNICAL REVISIONS. (a) *Submission.* The commission shall submit any technical revision to a written agreement negotiated under sub. (8) (g), approved by the commission and approved by the federal department of energy or other federal agency, to the presiding officer of each house of the legislature and to the governor.

(b) *Referral to standing committees.* Each presiding officer shall refer the technical revision to one standing committee within 7 working days after the day on which the revision is received unless the revision is received on or after November 1 of an even−numbered year. If a revision is received on or after November 1 of an even−numbered year, each presiding officer shall refer the revision to one standing committee within 7 days after the first day of the next regular session of the legislature. Each presiding officer shall cause a statement to appear in the journal of the appropriate house that a technical revision to an agreement approved under sub. (10) is submitted for review.

(c) *Standing committee review.* Either standing committee may object to the technical revision by taking action in executive session within 30 days after the revision is referred to the committee. If a standing committee objects to the revision, it shall submit a written notice of the objection to the presiding officer of that house of the legislature and the presiding officer shall cause the written notice of the objection to appear in the journal of the house.

(d) *Review by the governor.* The governor may object to the technical revision by taking action within 30 days after the revision is received unless the revision is received on or after November 1 of an even−numbered year. If the revision is received on or after November 1 of an even−numbered year, the governor may object to the revision by taking action within 30 days after the first day of the next regular session of the legislature. If the governor objects to the revision, the governor shall submit a written notice of the objection to the presiding officer of each house of the legislature and each presiding officer shall cause the written notice of the objection to appear in the journal of each house.

(e) *Objection.* A standing committee to which a revision is referred or the governor may object to a technical revision for any reason including a belief that the revision is so substantial that the revised agreement should be approved under sub. (10) rather than this subsection. If either standing committee to which a revision is referred or the governor objects to a technical revision within the 30−day review period, the revision may not take effect.

(f) *No objection.* If neither standing committee nor the governor objects to a technical revision within the 30−day review period, the revision is considered approved and shall take effect.

(11m) REVIEW OF FINAL SITE SELECTION AND SITE PLAN. (a) *Review by the commission.* If the federal department of energy selects a site in the state for construction of a repository for the long−term disposal of high−level radioactive or transuranic waste, the commission shall review the adequacy of the selected site and of the site plan prepared by the federal department of energy under sub. (9) (b) 12. The review shall include a full scientific review of the adequacy of the selected site and of the site plan. The commission shall utilize recognized experts in conducting its scientific review. The commission shall conduct more than one public hearing on the site plan and shall make available to the public arguments and evidence for and against the site plan. The commission shall provide 30 days' notice of the date and location of the public hearings. The commission shall solicit comments from appropriate state agencies, local units of government, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups on the adequacy of the selected site and the site plan. The commission shall make these comments available to the public.

(b) *Recommendation to the legislature and the governor.* After completing this review, the commission shall submit a recommendation to the speaker of the assembly, the president of the senate

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and the governor on whether the state should accept the site selected by the federal department of energy and the site plan. The reasons for which the commission may recommend that the legislature and the governor object to the site selection or the site plan, or both, include those specified in sub. (9) (c). The recommendation to the speaker of the assembly and the president of the senate shall be accompanied by a request for the introduction of a bill to approve the site selected and the site plan or by a request for the introduction of a bill to disapprove the site or the site plan or both.

(c) *Introduction of legislation.* Upon request of the commission, the speaker of the assembly or the president of the senate shall introduce a bill reflecting the recommendation of the commission on whether to approve or disapprove the site selected by the federal department of energy and the site plan. The bill is not subject to s. 16.47 (2).

(d) *Legislative action required.* Within 120 days after the legislation is introduced under par. (c), the appropriate committees in each house of the legislature shall authorize an extraordinary session of the legislature to commence within the 120 days and to extend until the legislature passes a bill which approves the site selected by the federal department of energy and the site plan or the legislature passes a bill which disapproves the site or the site plan or both. If the 120−day period extends beyond the date specified under s. 13.02 (1), the 120−day period is deemed to commence on the first day the succeeding legislature convenes, unless a bill is passed prior to that time.

(e) *Veto review.* Within 10 days after the bill passes the legislature, the chief clerk of the house of origin shall refer the bill to the governor for executive action. If the governor vetoes the bill, the appropriate committees in each house of the legislature shall schedule a veto review session.

(f) *Transmittal of action by the legislature and the governor.* After the legislature takes action under par. (d) and after the governor takes any action under par. (e), the chief clerk of the house of origin shall notify the commission of the action taken and the commission shall send a report to the president of the United States, the members of the U.S. senate, the members of the U.S. house of representatives, the federal department of energy and other appropriate federal agencies. The report shall contain a summary of the review undertaken by the commission in accordance with par. (a), the recommendation made by the commission under par. (b), the action of the legislature under par. (d) and any action of the governor under par. (e).

(11s) ESCROWING OF CERTAIN PAYMENTS TO THE FEDERAL GOVERNMENT. (a) If the commission determines that the federal department of energy is not meeting its obligations under contracts entered into under 42 USC 10222 with state agencies or with persons in this state, the commission, subject to par. (ab), shall direct the state agencies or persons to pay to the commission, instead of the federal department of energy the fees due under 42 USC 10222 for the period during which those contractual obligations are not met. The commission shall deposit any funds received under this paragraph in the nuclear waste escrow fund.

(ab) The commission may only direct the state agencies or persons to make the payment to the commission under par. (a) if a federal court or the federal department of energy has authorized the commission to receive the payment of the fees due under 42 USC 10222.

(b) Upon a showing by the secretary of the federal department of energy that the federal department of energy is meeting its obligations under contracts entered into under 42 USC 10222, the commission shall pay to the secretary of the federal department of energy all funds contained in the nuclear waste escrow fund and shall cease accepting additional funds under par. (a).

(12) IMPLEMENTATION. The commission shall implement agreements, modifications and technical revisions approved under subs. (10) and (11). In implementing these agreements, modifications and revisions, the commission may solicit the views of appropriate state agencies, local units of government, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups.

(13) FUNDING. The commission shall attempt to finance all of its expenses under this section from moneys received from the federal department of energy and other federal agencies and from gifts and grants received from other persons.

(14) STATE AGENCIES TO COOPERATE. Other state agencies shall assist the commission in fulfilling its duties under this section to the fullest extent possible.

History: 1981 c. 62; 1985 a. 29; 1989 a. 31 ss. 107m, 713e; Stats. 1989 s. 36.50; 1991 a. 25; 1995 a. 27, ss. 1779 to 1799; Stats. 196.497; 1999 a. 196; 2009 a. 276.

Only the Radioactive Waste Review Board is authorized to negotiate agreements with the federal government regarding disposal of high−level nuclear waste. 80 Atty. Gen. 308.

196.499 Regulation of telecommunications carriers. **(1)** SCOPE. Notwithstanding any other provisions of this chapter, a telecommunications carrier is not subject to regulation under this chapter, except for s. 196.025 (6), and except under each of the following provisions:

(a) A telecommunications carrier shall comply with the requirements of this section.

(b) A telecommunications carrier shall be treated under ss. 196.209, 196.218 (8) and 196.219 as a telecommunications provider.

(c) A telecommunications carrier shall be treated under s. 196.85 as a telecommunications utility.

(d) A telecommunications carrier shall be treated under s. 196.858 as an interexchange telecommunications utility.

(e) A telecommunications carrier may be assessed under s. 196.218 (3) as a telecommunications provider and shall respond, subject to the protection of the telecommunications carrier's competitive information, to all reasonable requests for information about its operations in this state from the commission necessary to administer the universal service fund. A telecommunications carrier may not be assessed in a manner that is inconsistent with this paragraph.

(f) For purposes of enforcing s. 196.209, 196.218 (3) or (8), 196.219, 196.85, or 196.858, or for purposes of approving or enforcing an interconnection agreement to which a telecommunications carrier is a party, a telecommunications carrier shall be subject to ss. 196.02 (3), 196.32, 196.33, 196.39, 196.395, 196.40, 196.41, 196.43, 196.44 (3), and 196.48 and be treated as a party to the agreement under ss. 196.199 and 196.26, as a public utility under ss. 196.02 (5) and (6), 196.14, 196.24, 196.44 (2), 196.66, and 196.85 (1), and as a telecommunications provider under ss. 196.25 (3) and 196.65 (3).

(2) TARIFFS. Every telecommunications carrier shall keep on file with the commission a tariff for each service, that contains all the rules, rates and classifications used by it in the provision of its telecommunications services, including limitations on liability unless the commission waives any requirement. A tariff shall be effective when filed or on a date indicated by the carrier. The telecommunications carrier shall provide notice of price increases by publication in newspapers or by any other reasonable means and may provide notice of price decreases or of tariffed promotional rates. Tariffs may be filed for services offered on an interim basis, for special promotions, for discounts, including discounts intended to maintain customer relations, or for individual contracts between carriers and customers. A telecommunications carrier shall charge rates in accordance with its tariff.

(3) RATES. (a) Except as provided in this subsection, a telecommunications carrier may not charge different rates for residential basic message telecommunications services, business basic message telecommunications services, or single−line wide−area telecommunications service on routes of similar distances within the state, unless otherwise authorized by the commission.

(am) Paragraph (a) does not prohibit volume or term discounts, discounts in promotional offerings, differences in the rates for intralata and interlata services of similar distances, the provision

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of optional toll calling plans to selected exchanges or customers or the passing through of any state or local taxes in the specific geographic areas from which the taxes originate.

(b) Notwithstanding any other provision in this chapter, a telecommunications carrier may furnish services to its employees, officers, agents or pensioners at no charge or at rates that are lower than its tariff rates.

(c) A telecommunications carrier may contract to charge prices for services that are unique to a particular customer or group of customers if differences in the cost of providing a service or a service element justify a different price for a particular customer or group of customers or if market conditions require individual pricing.

(4) ABANDONMENT OF SERVICES. A telecommunications carrier shall provide written notice to the commission not less than 60 days before its abandonment of basic message telecommunications service to an exchange. The carrier shall also publish notice in a newspaper of general circulation within the exchange and provide any other notice required by the commission. A telecommunications carrier shall be subject to rules and procedures that the commission may establish for the continuance of basic message telecommunications service to an exchange if notice has been received that all providers of the service intend to abandon that service in the exchange. A rule or procedure may not regulate the price, terms or conditions of service other than as authorized in this section and may not discriminate in favor of or against any telecommunications provider.

(5) COMPLAINTS. (a) In this subsection, "complaint" means a complaint filed with the commission that any rate, toll, charge or schedule relating to the provision of telecommunications service violates sub. (2) or (3) (a).

(am) In any complaint proceeding, the person initiating the complaint has the burden of proving a violation of sub. (2) or (3) (a).

(b) If any business organization, body politic or 25 individuals file a complaint against a telecommunications carrier, the commission, with or without notice, may investigate the complaint as it considers necessary. The commission may not issue an order based on the investigation without allowing the telecommunications carrier an opportunity for a hearing.

(c) 1. Before holding a hearing under this subsection, the commission shall notify the telecommunications carrier complained of that a complaint has been made, and no sooner than 10 days after the notice has been given the commission may set a time and place for a hearing.

2. The commission shall give the telecommunications carrier which is the subject of a complaint and the complainant at least 10 days' notice of the time and place of a hearing and the subject of the hearing. The commission may subpoena any witness at the request of the telecommunications carrier or complainant.

3. Notice under subds. 1. and 2. may be combined. The combined notice may not be given less than 10 days before a hearing.

(d) If the commission finds by a preponderance of the evidence that existing rates, tolls, charges or schedules violate sub. (2) or (3) (a), the commission may issue its order requiring compliance with sub. (2) or (3) (a).

(6) INVESTIGATIONS AND HEARINGS. (a) If the commission believes that any rate or charge violates sub. (2) or (3) (a), the commission on its own motion summarily may investigate with or without notice.

(b) If after an investigation under par. (a) the commission determines that sufficient grounds exist to warrant a hearing, the commission shall set a time and place for a hearing. The hearing shall be conducted as a hearing under sub. (5). Notice of the time and place for a hearing under this paragraph shall be given to the telecommunications carrier, and to any other interested person as the commission considers necessary.

(7) PETITIONS. A telecommunications carrier may file a petition for relief with the commission on any matter affecting the telecommunications carrier's product or service.

(8) DEPOSITIONS. The commission or any party in any investigation or hearing may take the depositions of witnesses in the manner prescribed for civil actions. Any expense incurred by or authorized by the commission in taking a deposition may be charged to the appropriation under s. 20.155 (1) (g).

(9) RECORDS AND TRANSCRIPTS. Sections 196.34 and 196.36, as they apply to records and transcripts relating to public utility hearings, apply to records and transcripts relating to telecommunications carrier hearings.

(11) REVIEW. Any order or determination of the commission may be reviewed under ch. 227.

(12) ENFORCEMENT. (a) The commission shall inquire into the neglect or violation of this section by telecommunications carriers, or by their officers, agents or employees or by persons operating telecommunications carriers, and shall enforce all laws relating to this section and report any violation to the attorney general.

(b) Upon request of the commission, the attorney general or a district attorney may aid in any investigation, hearing or trial under this section and shall prosecute any proceeding for the enforcement of laws relating to telecommunications carriers.

(c) A civil action to enforce this section shall be brought in the name of the state in the circuit court for Dane County or in the county that would be the proper place of trial under s. 801.50.

(d) This section and rules and orders of the commission promulgated or adopted under this section may be enforced by an action to recover forfeitures, an action for injunction, an action to compel performance or by other appropriate actions.

(13) CRISIS SITUATIONS. (a) If a sheriff, a police chief or a law enforcement officer designated by a sheriff or police chief to respond in a crisis situation has probable cause to believe that a person is holding a hostage or is resisting apprehension through the use or threatened use of force, the sheriff, police chief or law enforcement officer may order a telecommunications carrier to interrupt or reroute telecommunications service to or from the suspected person for the duration of the crisis situation to prevent the person from communicating with anyone other than a person authorized by the sheriff, police chief or law enforcement officer.

(b) A telecommunications carrier may not be held liable for any action that it takes under par. (a).

(13m) EMERGENCY SERVICES. A telecommunications carrier may not unreasonably refuse, restrict or delay access by any person to a telecommunications emergency service.

(14) EXTENSION OF FACILITIES. Any telecommunications carrier may extend its facilities into or through any municipality for the furnishing of its services, subject to the reasonable regulation of the governing body of the municipality relative to the location of poles and wires and the preservation of the safe and convenient use of streets and alleys to the public. Upon a petition for relief made by a telecommunications carrier, the commission shall set a hearing and if it finds a contract, ordinance or resolution under this subsection to be unreasonable, the contract, ordinance or resolution shall be void.

Cross−reference: See also ch. PSC 130, Wis. adm. code.

(15) CERTIFICATES. A telecommunications carrier that is not authorized to provide intrastate telecommunications service on January 1, 1994, may not commence the construction of any plant, extension or facility, or provide intrastate telecommunications service directly or indirectly to the public, unless the telecommunications carrier obtains a certificate from the commission authorizing the telecommunications carrier to provide intrastate telecommunications. The commission may issue a certificate if the telecommunications carrier demonstrates that it possesses sufficient technical, financial and managerial resources to provide intrastate telecommunications services. A telecommunications

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carrier that is authorized to provide intrastate telecommunications service on January 1, 1994, is not required to be recertified under this subsection.

(16) ACCESS SERVICE AUTHORIZATION. If a telecommunications utility with 150,000 or less access lines in use in this state is authorized in a geographic area to provide access service to the public or business access line and usage service within a local calling area, a telecommunications carrier may not offer in that same geographic area access service to the public or business access line and usage service within a local calling area without the authorization of the commission. The commission may authorize a telecommunications carrier to offer those services if, after notice and opportunity for hearing, the commission finds that public convenience and necessity require the offering of those services by the telecommunications carrier. The commission may not require a telecommunications carrier to meet a more stringent standard for authorization than the standard applied to any telecommunications provider seeking the same authority.

(17) FORFEITURES. (a) A telecommunications carrier who violates a provision of this section or rule or order of the commission promulgated or adopted under this section may be required to forfeit not less than $100 nor more than $1,000 for each violation. Each day of continued violation constitutes a separate offense.

(b) A telecommunications carrier that knowingly and intentionally violates sub. (2) or (3) (a) may be required to forfeit not less than $100 nor more than $5,000 for each violation.

History: 1993 a. 496; 1997 a. 27, 218; 2001 a. 105; 2009 a. 28.

196.50 Competing public utilities; indeterminate permits; telecommunications utility certification. (1) CERTIFICATE OF NECESSITY. (a) The commission may not grant any person a license, permit or franchise to own, operate, manage or control any plant or equipment for the production, transmission, delivery or furnishing of heat, light, water or power in the municipality, if there is in operation under an indeterminate permit a public utility engaged in similar service in the municipality, unless the person seeking the license, permit or franchise secures from the commission a declaration, after a public hearing of any interested party, that public convenience and necessity require the delivery of service by the applicant.

(b) If the commission authorizes a telecommunications carrier to provide access service to the public or business access line and usage service within a local calling area under s. 196.499 (16), the commission shall consider if or to what extent a telecommunications utility with 150,000 or less access lines in use in this state may be relieved of its obligation to be the provider of last resort. The commission shall consider the extent of competition in the relevant geographic area for the service, the revenues that have been or may be lost by the telecommunications utility, the ability of competing telecommunications providers to serve the existing or projected demand and any other factors that it considers to be relevant.

(c) Any provision in an agreement or municipal franchise that prohibits entry into the telecommunications or video services market after September 1, 1994, is void.

(2) CERTIFICATION OF TELECOMMUNICATIONS UTILITIES. (a) Alternative telecommunications utilities shall be certified under s. 196.203. All other telecommunications utilities shall be certified under this subsection.

(b) A certificate, franchise, license or permit, indeterminate or otherwise, in effect on September 1, 1994, for a telecommunications utility shall remain in effect and shall have the effect of a certificate of authority. A telecommunications utility is not required to apply for a new certificate of authority to continue offering or providing service to the extent of the prior authorization. Each telecommunications utility shall have on file with the commission a map that defines the geographical limits of the service territory that the telecommunications utility is obliged to serve.

(c) After August 31, 1994, a person who does not possess authority from the commission to provide telecommunications services may not provide services in this state as a telecommunications utility until the person obtains a certificate of authority under this subsection. A certified alternative telecommunications utility or any other certified telecommunications utility may also apply for certification or amended certification under this subsection.

(d) No later than 45 days after the commission receives an application for a certificate of authority or an amended certificate of authority, the commission shall determine if the application is complete. If the commission determines that the application is complete, the commission shall docket the application and issue a final order no later than the expiration date of the temporary license under par. (e). If the commission determines that the application is incomplete, the commission shall notify the applicant in writing of the commission's determination, identify any part of the application which the commission has determined to be incomplete and state the reasons for the determination. An applicant may supplement and refile an application which the commission has determined to be incomplete. There is no limit on the number of times that an applicant may refile an application before a final order on the application. If the commission fails to make a determination within 15 days after receiving a refiled application regarding the completeness of an application previously determined to be incomplete, the refiled application shall be considered to be complete.

(e) 1. Pending the determination on an application for a certificate of authority or an amended certificate of authority, the commission may issue, without notice and hearing, a temporary license for a period not to exceed one year. The issuance of a temporary license does not bind the commission in the final determination on the application.

2. An application for a certificate of authority or amended certificate of authority that is filed after June 30, 1994, shall identify the geographical area to be served and the classification for which it is filed. The application shall be served by the applicant on all affected telecommunications providers.

(f) The commission shall issue a certificate of authority or an amended certificate of authority if it finds, after notice and opportunity for hearing, that the applicant possesses sufficient technical, financial and managerial resources to provide telecommunications service to any person within the identified geographic area. In making this determination, the commission shall consider the factors identified in s. 196.03 (6).

(g) 1. The authority of every telecommunications utility with a certificate under this subsection is statewide and nonexclusive. The existence of or issuance of a certificate of authority or amended certificate of authority to any telecommunications utility and the approval of any tariff for the telecommunications utility shall not preclude the commission from authorizing additional telecommunications utilities to provide the same or equivalent service or to serve the same geographical area as any previously authorized utility or approved tariff.

2. A telecommunications utility's obligation to serve is defined by the map that the utility files under par. (b).

(i) A telecommunications utility certified under this subsection is exempt from ss. 196.02 (2) and (6), 196.05, 196.06, 196.07, 196.08, 196.09, 196.10, 196.12, 196.13, 196.16, 196.18, 196.19, 196.20, 196.21, 196.219 (3) (c), (e), (g), and (L), (4d), (4m), and (5), 196.24, 196.395 (1), 196.49, 196.52, 196.58, 196.60, 196.64, 196.78, and 196.79 and, except with respect to wholesale telecommunications service, is exempt from s. 196.219 (4).

(j) 1. A telecommunications utility certified under this subsection may do any of the following:

a. Provide notice to the commission to terminate the certification under this subsection and certify the telecommunications utility as an alternative telecommunications utility under s. 196.203.

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No later than 30 days after receiving notice under this subd. 1. a., the commission shall issue an order granting a certification under s. 196.203. The granting of such certification shall operate to terminate the certification under this subsection. All regulatory requirements in or related to the certification under this subsection that are inconsistent with the requirements of or regulation allowed under s. 196.203, including all such requirements imposed by the certification and all such requirements imposed by the commission, whether by statute or commission rule or order, on the telecommunications utility are terminated on the effective date of the order, unless the telecommunications utility, in its notice to the commission seeking certification under s. 196.203, requests to remain subject to one or more requirements of its prior certification under this subsection that do not violate the telecommunications utility's requirements or obligations under this chapter and the commission does not deny the request in its order pursuant to this subd. 1. a. granting certification under s. 196.203.

b. Provide notice to the commission to recertify the telecommunications utility under this subsection and impose on the telecommunications utility only those provisions of this chapter specified in this subd. 1. b. No later than 30 days after receiving notice under this subd. 1. b., the commission shall issue an order that grants recertification under this subsection and that imposes on the telecommunications utility only those provisions of this chapter specified in this subd. 1. b. The telecommunications utility shall be exempt from all provisions of this chapter, except ss. 196.01, 196.016, 196.025 (6), 196.191, 196.206, 196.212, 196.219 (2r), and 196.503; and except those provisions in s. 196.203 (4m) (a) that are imposed on all alternative telecommunications utilities under s. 196.203 (3); and except, with respect to its wholesale telecommunications services only, ss. 196.03 (1) and (6), 196.219 (4), 196.28, and 196.37. If required by the public interest, the commission may, with respect only to intrastate switched access services, impose on the telecommunications utility s. 196.03 (1) and (6) and 196.37, except that the commission may not impose s. 196.03 (1) or (6) without also imposing s. 196.37 on the telecommunications utility. The granting of the recertification shall operate to terminate the telecommunications utility's prior certification. All regulatory requirements related to the prior certification that are inconsistent with the requirements of or regulation allowed under this subd. 1. b., including all such requirements imposed by the certification, and all such requirements imposed by the commission, whether by statute or commission rule or order, on the telecommunications utility are terminated on the effective date of the order unless the telecommunications utility, in its notice to the commission seeking recertification under this subd. 1. b., requests to remain subject to one or more requirements of its prior certification that do not violate the telecommunications utility's requirements or obligations under this chapter and the commission does not deny the request in its recertification order.

2. Issuance of a commission order under subd. 1. shall operate as a limited waiver of the telecommunications utility's right to an exemption under 47 USC 251 (f) (1), which shall apply only to all of the following:

a. The requirements of 47 USC 251 (c) (1) and (2).

b. The requirements of 47 USC 251 (c) (5), but only with respect to the requirements of 47 CFR 51.325 (a) (1) and (2).

3. Issuance of a commission order under subd. 1. shall operate as a limited waiver of the telecommunications utility's right to petition the commission for suspension or modification under 47 USC 251 (f) (2), which shall apply only to all of the following:

a. The requirements of 47 USC 251 (b) and (c) (1) and (2).

b. The requirements of 47 USC 251 (c) (5), but only with respect to the requirements of 47 CFR 51.325 (a) (1) and (2).

(3) SECOND UTILITY. Any certificate, permit, license or franchise issued to a public utility, other than a telecommunications utility, which contains any term interfering with the existence of a 2nd public utility, other than a telecommunications utility, is amended to permit any municipality to grant a franchise for the operation of the 2nd public utility.

(4) MUNICIPALITY RESTRAINED. No municipality may construct any public utility if there is in operation under an indeterminate permit in the municipality a public utility engaged in similar service other than a telecommunications service, unless it secures from the commission a declaration, after a public hearing of all parties interested, that public convenience and necessity require the municipal public utility.

(5) INJUNCTION. Pending investigation and finding by the commission as to whether public convenience and necessity require a 2nd public utility, the furnishing of any public utility service, other than a telecommunications service, in any municipality contrary to the provisions of this section may be enjoined at the suit of the state or of any public utility having an interest in the issue.

(6) NO DENIAL ON FEDERAL FINANCING. No certificate of convenience and necessity or permit to any public utility under ss. 196.49 and 196.50 shall be denied because of the amount of the public utility's notes, bonds or other evidences of indebtedness issued to the United States in connection with loans to rural telecommunications utilities made under the rural electrification act of 1936, 7 USC 901 to 950aaa−5, as amended, or by reason of the ratio of such indebtedness to the value of the public utility's property or to its other classes of securities.

(7) INTERLATA CERTIFICATION. (a) This subsection applies to any telecommunications utility that is restricted under federal law or under any consent decree approved by a federal district court.

(b) Upon application by a telecommunications utility subject to this subsection for a certificate to provide interlata services, the commission shall consider all of the following factors in determining whether to grant a certificate of authority:

1. Whether granting the certificate is in the public interest.

2. Whether the utility will provide interconnection to its local exchange network under reasonable terms and conditions.

3. Whether the utility will permit appropriate resale and sharing of its services.

4. Whether the utility will provide unbundled services under reasonable terms and conditions.

5. Whether the utility provides its services in compliance with s. 196.204.

6. Whether competition in the interlata marketplace will be enhanced or hindered by granting the certificate.

(c) The commission may impose terms and conditions upon the grant of a certificate under par. (b) that are necessary to protect the public interest and promote competition.

(d) The commission, after providing notice and opportunity for hearing, shall issue its decision on the application within 180 days after the filing. The time period may be extended upon agreement of the commission and the applicant.

(e) An applicant may not be authorized to provide interlata service before the availability of dial−1 presubscription on an intralata basis in all of its exchanges except where it is technically infeasible to offer intralata dial−1 presubscription due to the action or inaction of a switch vendor.

History: 1977 c. 418; 1983 a. 53; 1985 a. 297 ss. 52 to 54, 76; 1993 a. 496; 1995 a. 409; 1999 a. 150 s. 672; 2005 a. 441; 2007 a. 42; 2011 a. 22, 155.

Cross−reference: For division of service between competing utilities, see s. 197.01 (4).

Cross−reference: See also ch. PSC 166, Wis. adm. code.

196.503 Telecommunications provider of last−resort obligations. (1) DEFINITIONS. In this section, "basic voice service" means the provision to residential customers of 2−way voice communication within a local calling area. "Basic voice service" includes extended community calling and extended area service. "Basic voice service" does not include the offering of Internet access service or any discretionary or optional services that are

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provided to a residential customer, even if provided in a bundle or package with basic voice service.

(2) INCUMBENT LOCAL EXCHANGE CARRIER OBLIGATIONS. (a) Notwithstanding any other provision in this chapter, and except as provided in sub. (3), an incumbent local exchange carrier shall make basic voice service available to all residential customers within a local exchange area in which it operates as an incumbent local exchange carrier.

(b) An incumbent local exchange carrier may satisfy its obligations under par. (a) through an affiliate and through the use of any available technology or mode.

(3) WAIVERS. (a) An incumbent local exchange carrier may apply to the commission for a waiver from compliance with sub. (2) (a) in a local exchange area.

(b) The commission shall grant a waiver requested under par. (a) for a local exchange area if any of the following is satisfied:

1. The commission finds that the incumbent local exchange carrier demonstrates that the waiver is in the public interest or that effective competition exists for basic voice service in the local exchange.

2. The commission has made a previous finding of effective competition under s. 196.195 (2), 2009 stats., for basic local exchange service in the local exchange. The commission may not grant a waiver under this subdivision until after June 1, 2012.

(c) The commission's review of a waiver requested under par. (a) shall be strictly limited to determining whether any of the criteria specified in par. (b) 1. or 2. is satisfied.

(d) 1. Within 120 days of the filing of a waiver request based on par. (b) 1., the commission shall grant or deny the request and, if denied, the commission shall issue a written decision identifying the reasons for its denial. If the commission fails to grant or deny the waiver request within 120 days of its filing, the waiver request is considered granted by operation of law.

2. The commission shall grant a waiver based on par. (b) 2. as soon as the commission verifies that the commission has previously made the finding specified in par. (b) 2., but no later than 20 days after the filing of the waiver request. If the commission fails to grant a waiver request based on par. (b) 2. within 20 days of its filing, the waiver request is considered granted by operation of law. If the commission denies a waiver based on par. (b) 2., the commission shall issue a written decision identifying the reasons for its denial.

(4) EFFECT ON OTHER REQUIREMENTS. (a) Notwithstanding any other provision of this chapter, a commission decision prior to June 9, 2011, eliminating an incumbent local exchange carrier's provider of last−resort obligations, by operation of law or otherwise, remains in force and in effect as to the elimination of those obligations.

(b) Except to enforce this section, nothing in this section provides the commission with any authority to regulate, or any jurisdiction over, incumbent local exchange carriers and the rates, terms, and conditions of their services that the commission does not otherwise have under this chapter.

(5) SUNSET. This section does not apply after April 30, 2013.

History: 2011 a. 22.

196.505 Construction of chapter. (1) Nothing in this chapter may be construed to deny a foreign corporation the privilege of offering telecommunications services in this state if it has received a certificate of authority under ch. 180 and any other authorization from the commission required under this chapter.

(2) Nothing in this chapter may be construed to permit chapter 184 or this chapter to apply differently to a foreign corporation which offers telecommunications services in this state than to a similarly situated domestic corporation which offers telecommunications services in this state.

History: 1985 a. 297; 1993 a. 496.

196.51 Prior permits and franchises validated. Any license, permit or franchise to own, operate, manage or control any plant or equipment for the production, transmission, delivery or furnishing of heat, light, water or power in any municipality is valid and shall not be affected by s. 196.50 (1), if the license, permit or franchise was granted prior to April 3, 1911, to any public utility or was under consideration prior to April 3, 1911, in the governing body of any municipality at the time another public utility operating in the municipality obtained an indeterminate permit.

History: 1983 a. 53.

196.52 Relations with affiliated interests; definition; contracts with affiliates filed and subject to commission control. (1) In this section, "person" includes but is not limited to trustees, lessees, holders of beneficial equitable interest, voluntary associations, receivers, partnerships and corporations; and "affiliated interests" means, with respect to a public utility:

(a) Any person owning or holding directly or indirectly 5% or more of the voting securities of the public utility.

(b) Any person in any chain of successive ownership of 5% or more of voting securities of the public utility.

(c) Every corporation 5% or more of whose voting securities is owned by any person owning 5% or more of the voting securities of the public utility or by any person in any chain of successive ownership of 5% or more of voting securities of the public utility.

(d) Any person who is an officer or director of the public utility or of any corporation in any chain of successive ownership of 5% or more of voting securities of the public utility.

(e) Any corporation operating a public utility, a railroad, or a servicing organization for furnishing supervisory, construction, engineering, accounting, legal and similar services to public utilities or railroads, which has one or more officers or one or more directors in common with the public utility, and any other corporation which has directors in common with the public utility if the number of such directors of the corporation is more than one−third of the total number of the public utility's directors.

(f) Any person whom the commission determines as a matter of fact after investigation and hearing to be actually exercising any substantial influence over the policies and actions of the public utility even if such influence is not based upon stockholding, stockholders, directors or officers as specified under pars. (a) to (e).

(g) Any other person whom the commission determines as a matter of fact after investigation and hearing to be actually exercising substantial influence over the policies and actions of the public utility in conjunction with one or more other persons with whom they are related by ownership, by blood or adoption or by action in concert that together they are affiliated with such public utility for the purpose of this section, even though no one of them alone is so affiliated under pars. (a) to (f).

(h) Any subsidiary of the public utility. In this paragraph, "subsidiary" means any person 5% or more of the securities of which are directly or indirectly owned by a public utility.

(3) (a) In this subsection, "contract or arrangement" means a contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial or similar services and any contract or arrangement for the purchase, sale, lease or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than management, supervisory, construction, engineering, accounting, legal, financial or similar services, but "contract or arrangement" does not include a contract or arrangement under which a transmission utility, as defined in s. 196.485 (1) (i), sells or transfers securities, as defined in s. 196.485 (1) (fe), that have been issued by a transmission company, as defined in s. 196.485 (1) (ge). Except as provided under par. (b), unless and until the commission gives its written approval, any contract or arrange-

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ment is not valid or effective if the contract or arrangement is made between a public utility and an affiliated interest after June 7, 1931. Every public utility shall file with the commission a verified copy of any contract or arrangement, a verified summary of any unwritten contract or arrangement, and any contract or arrangement, written or unwritten, which was in effect on June 7, 1931. The commission shall approve a contract or arrangement made or entered into after June 7, 1931, only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest. The commission may not approve any contract or arrangement unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service to each public utility or of the cost to the public utility of rendering the services or of furnishing the property or service to each affiliated interest. No proof is satisfactory under this paragraph unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or an abstract of the records and accounts or a summary taken from the records and accounts if the commission deems the abstract or summary adequate. The accounts shall be properly identified and duly authenticated. The commission, where reasonable, may approve or disapprove a contract or arrangement without submission of the cost records or accounts.

(b) 1. The requirement for written approval under par. (a) shall not apply to any contract or arrangement if the amount of consideration involved is not in excess of the threshold amount under subd. 1m. or 5% of the equity of the public utility, whichever is smaller. The requirement under par. (a) also does not apply to contracts or arrangements with joint local water authorities under s. 66.0823. Regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount may not be broken down into a series of transactions to come within the exemption under this paragraph. Any transaction exempted under this paragraph shall be valid or effective without commission approval under this section.

1m. The threshold amount under subd. 1. is $250,000, except that in 2014 and biennially thereafter, the commission shall adjust such threshold amount to reflect adjustments to the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, and disseminate the adjusted threshold on the commission's Web site.

2. In any proceeding involving the rates or practices of the public utility, the commission may exclude from the accounts of the public utility any payment or compensation made pursuant to a transaction exempted under this paragraph unless the public utility establishes the reasonableness of the payment or compensation.

(c) If the value of a contract or arrangement between an affiliated interest and a public utility exceeds $1,000,000, the commission:

1. May not waive the requirement of the submission of cost records or accounts under par. (a);

2. Shall review the accounts of the affiliated interest as they relate to the contract or arrangement prior to the commission approving or disapproving the contract or arrangement under par. (a); and

3. May determine the extent of cost records and accounts which it deems adequate to meet the requirements for submission and review under subds. 1. and 2.

(d) 1. If a hearing is held on an application under this subsection, the commission shall take final action on the application within 180 days after the commission issues a notice of hearing on the application. The chairperson of the commission may extend the time period for an additional 180 days for good cause. If the commission fails to take final action within the initial 180−day period, or the extended 180−day time period, the commission is considered to have approved the application.

2. If a hearing is not held on an application under this subsection, the commission shall take final action on the application within 90 days after the commission issues a notice opening a docket on the application. If the commission fails to take final action within the initial 90−day period, the commission is considered to have approved the application.

(4) (a) In any proceeding, whether upon the commission's own motion or upon application or complaint, involving the rates or practices of any public utility, the commission may exclude from the accounts of the public utility any payment or compensation to or from an affiliated interest for any services rendered or property or service furnished under an existing contract or arrangement with an affiliated interest under sub. (3) (a) unless the public utility establishes the reasonableness of the payment or compensation.

(b) The commission shall disallow the payment or compensation described in par. (a), in whole or in part, in the absence of satisfactory proof that the payment or compensation is reasonable in amount.

(c) The commission may not approve or allow any payment or compensation described in par. (a), in whole or in part, unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the service or furnishing the property or service to each public utility or of the cost to the public utility of rendering the service or furnishing the property or service to each affiliated interest.

(d) No proof shall be satisfactory under this subsection unless it includes the original or verified copies of the relevant cost records and other relevant accounts of the affiliated interest, or an abstract of the records and accounts or a summary taken from the records and accounts if the commission deems the abstract or summary adequate. The accounts shall be properly identified and duly authenticated. The commission, where reasonable, may approve or disapprove a contract or arrangement without submission of the cost records or accounts.

(5) The commission shall have continuing supervisory control over the terms and conditions of contracts and arrangements under this section as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as it has over original contracts or arrangements. Commission approval of a contract or arrangement under this section shall not preclude disallowance or disapproval of a payment under the contract or arrangement if upon actual experience under the contract or arrangement it appears that the payments provided for or made were or are unreasonable. Every order of the commission approving a contract or arrangement shall be expressly conditioned upon the reserved power of the commission to revise and amend the terms and conditions of the contract or arrangement to protect and promote the public interest.

(6) If the commission finds upon investigation that a public utility is giving effect to a contract or arrangement without the commission's approval under this section, the commission shall issue a summary order directing that public utility to cease and desist from making any payments, receiving compensation, providing any service or otherwise giving any effect to the contract or arrangement until the contract or arrangement receives the approval of the commission. The circuit court of Dane County may enforce the order to cease and desist by appropriate process, including the issuance of a preliminary injunction, upon the suit of the commission.

(7) If the commission finds upon investigation that a public utility is making a payment to, providing a service to or receiving compensation from an affiliated interest, although the payment, service or compensation has been disallowed and disapproved by the commission in a proceeding involving the public utility's rates or practices, the commission shall issue a summary order directing the public utility to cease and desist from making the payment,

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providing the service or receiving the compensation. The circuit court of Dane County may enforce the order to cease and desist by appropriate process, including the issuance of a preliminary injunction, upon the suit of the commission.

(8) Nothing in this section prevents a public utility from investing equity capital which is in excess of the level of equity that the commission has determined to be appropriate for the utility's capital structure in a subsidiary without commission approval.

(9) (a) In this subsection:

1. "Electric generating equipment" means any of the following:

a. An electric generator.

b. A machine that drives an electric generator, including an engine, turbine, water wheel, or wind mill.

c. Equipment that converts a fuel or source of energy into energy that powers a machine that drives an electric generator, including a boiler, but not including a nuclear reactor.

d. A fuel or photovoltaic cell.

2. "Electric generating facility" means electric generating equipment and associated facilities that, together, constitute a complete facility for the generation of electricity.

3. "Leased generation contract" means a contract or arrangement or set of contracts or arrangements under which an affiliated interest of a public utility agrees with the public utility to construct or improve an electric generating facility and to lease to the public utility land and the facility for operation by the public utility.

(b) The commission may approve a leased generation contract under sub. (3) only if all of the following apply:

1. The commission has not issued a certificate under s. 196.49 or a certificate of public convenience and necessity under s. 196.491 (3) before January 1, 2002, for any construction or improvement that is subject to the leased generation contract.

2. Construction or improvement of the electric generating facility that is subject to the leased generation contract commences on or after January 1, 2002.

3. Except as provided in s. 196.795 (5) (k) 3., no electric generating facility, electric generating equipment, or associated facilities, held or used by the public utility for the provision of electric service, is transferred to the affiliated interest.

4. The estimated gross cost of the construction or improvement that is subject to the leased generation contract is at least $10,000,000.

5. The construction or improvement is not to a nuclear−powered facility.

6. Any real property that the public utility transfers to the affiliated interest for the purpose of implementing the leased generation contract is transferred at book value, which is determined on the basis of the regulated books of account at the time of the transfer.

7. If the public utility transfers real property to the affiliated interest for the purpose of implementing the leased generation contract, the leased generation contract provides for transferring that real property back to the public utility, on the same terms and conditions as the original transfer, if the commission determines that the construction or improvement that is subject to the leased generation contract has not been completed.

8. The leased generation contract provides that, upon termination of the contract, all of the following apply:

a. The public utility shall have the option, subject to commission approval, to extend the contract, or purchase the electric generating facility or the improvements to an electric generating facility, at fair market value as determined by a valuation process that is conducted by an independent 3rd party and that is specified in the contract.

b. If the public utility exercises the option specified in subd. 8. a., the affiliated interest may require the public utility to extend the contract, rather than purchase the facilities or improvements, if the affiliated interest demonstrates to the commission that the extension avoids material adverse tax consequences and that the extension provides terms and conditions that are economically equivalent to a purchase.

9. For any gas−fired electric generating facility that is constructed under the leased generation contract, the term of the lease is 20 years or more.

10. For any coal−fired electric generating facility that is constructed under the leased generation contract, the term of the lease is 25 years or more.

11. The leased generation contract does not take effect until the date on which the affiliated interest commences construction or improvement of the electric generating facility, except that, if the leased generation contract relates to the construction or improvement of more than one electric generating facility, the leased generation contract does not take effect with respect to the construction or improvement of an individual electric generating facility until the date on which the affiliated interest commences construction or improvement on that electric generating facility.

(c) Except as provided in par. (d), the commission may not increase or decrease the retail revenue requirements of a public utility on the basis of any income, expense, gain, or loss that is received or incurred by an affiliated interest of the public utility and that arises from the ownership of an electric generating facility or an improvement to an electric generating facility by an affiliated interest under a leased generation contract.

(d) The commission shall allow a public utility that has entered into a leased generation contract that has been approved by the commission under sub. (3) to recover fully in its retail rates that portion of any payments under the leased generation contract that the commission allocates to the public utility's retail electric service, and that portion of all other costs that is prudently incurred in the public utility's operation and maintenance of the electric generating facility or improvement that is subject to the leased generation contract and that the commission allocates to the public utility's retail electric service.

(e) Notwithstanding sub. (5), the commission may not modify or terminate a leased generation contract approved under sub. (3) except as specified in the leased generation contract or the commission's order approving the leased generation contract.

(f) The commission shall maintain jurisdiction to ensure that the construction or improvement under a leased generation contract approved under sub. (3) is completed as provided in the leased generation contract.

(g) Nothing in this subsection prohibits a cooperative association organized under ch. 185, a municipal utility, as defined in s. 196.377 (2) (a) 3., or a municipal electric company, as defined in s. 66.0825 (3) (d), from acquiring an interest in an electric generating facility that is constructed pursuant to a leased generation contract or from acquiring an interest in land on which such an electric generating facility is located.

History: 1981 c. 390; 1983 a. 53, 538; 1985 a. 297; 1993 a. 496; 1995 a. 225; 1997 a. 184; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 162; 2001 a. 16; 2005 a. 253; 2011 a. 22, 155.

Cross−reference: See also chs. PSC 100 and 113, Wis. adm. code.

196.525 Loans to officers or directors and loans to and investments in securities of holding companies; penalty. (1) Except under rules prescribed by the commission, a public utility may not lend funds or credit to any of its officers or directors by any of the following and a public utility other than a telecommunications utility may not lend funds or credit to any corporation, except a public utility subject to the regulatory powers of the commission, if the corporation holds, directly or indirectly through any chain of ownership, 5% or more of the voting stock of the public utility or renders any managerial, supervising, engineering, legal, accounting or financial service to the public utility by any of the following:

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(a) Becoming surety, guarantor or endorser upon any obligations, contingent or otherwise, of the officer, director or corporation.

(b) Loaning funds, securities or other like assets to the officer, director or corporation.

(c) Purchasing in the open market, or otherwise, any obligation upon which the officer, director or corporation may be liable solely or jointly with others.

(2) Any contract made in violation of this section shall be void and subject to cancellation and recoupment by action at law. If a contract is made contrary to the provisions of this section, the commission, after notice and hearing, may order the public utility to take steps within 30 days to recover the funds or assets thus illegally loaned or transferred by action at law or other proceedings which will effectively release the public utility from the contract as surety, guarantor or endorser.

(3) Any director, treasurer or other officer or agent of a public utility who makes or votes to authorize a transaction in violation of this section may be fined not more than $10,000.

(4) The provisions of this section shall extend to the renewal or extension of existing contracts.

History: 1983 a. 53; 1993 a. 496.

196.53 Franchise, foreign corporation not to have. No license, permit or franchise to own, operate, manage or control any plant or equipment for the production, transmission, delivery or furnishing of heat, light, water or power may be granted or transferred to a foreign corporation. This section does not apply to an independent system operator, as defined in s. 196.485 (1) (d), or an independent transmission owner, as defined in s. 196.485 (1) (dm), that is approved by the applicable federal agency, as defined in s. 196.485 (1) (c), and that controls transmission facilities, as defined in s. 196.485 (1) (h), in this and another state.

History: 1985 a. 297; 1993 a. 496; 1997 a. 204.

This section does not violate the interstate commerce clause of the U. S. constitution. Alliant Energy Corporation v. Bie, 330 F.3d 904 (2003).

196.54 Indeterminate permits. (1) GRANTS TO BE INDETERMINATE. Every license, permit or franchise granted after July 11, 1907, to any public utility shall have the effect of an indeterminate permit subject to this chapter and ch. 197.

(2) FRANCHISES MADE INDETERMINATE. Every license, permit or franchise granted prior to July 11, 1907, by the state or by a municipality authorizing and empowering the grantee to own, operate, manage or control within this state, either directly or indirectly, a public utility or any part of a public utility is altered and amended to constitute and be an indeterminate permit which is subject to this chapter and ch. 197. The license, permit or franchise shall have the same force and effect as a license, permit or franchise granted after July 11, 1907, to any public utility, except as provided under s. 197.02.

(3) VALIDATION OF FRANCHISES AND PERMITS. (a) No franchise affected by sub. (2) and no indeterminate permit shall be declared invalid if:

1. The franchise or permit was not obtained by fraud, bribery or corrupt practices.

2. When the franchise or permit was granted, no officer of the municipality granting the franchise or permit was directly or indirectly interested in the franchise or permit or in the corporation obtaining the franchise or permit.

(b) Any franchise affected by sub. (2) and any indeterminate permit is valid if:

1. The corporation having the franchise or permit, prior to surrendering of the franchise or at the beginning of its public service under the permit, in good faith has purchased or constructed any public utility, or any part of a public utility authorized by the franchise.

2. The corporation, in obtaining the franchise or permit, has substantially complied with the requirements provided by law for obtaining the franchise or permit.

(4) GRANTS AFTER JULY 11, 1907; CONSENT TO MUNICIPAL PURCHASE. If a public utility accepts or operates under any license, permit or franchise granted after July 11, 1907, the public utility shall be deemed to have consented under its indeterminate permit to a future purchase of its property actually used and useful for the convenience of the public by the municipality in which the major part of it is situated for the compensation and under the terms and conditions determined by the commission. The public utility shall be deemed to have waived the right to require that the necessity of taking be established by the verdict of a jury, and any other remedy or right relative to condemnation, except any remedy or right under this chapter and ch. 197.

(5) MUNICIPAL PURCHASE INVALIDATES PERMIT. An indeterminate permit shall be invalid if a municipality exercises its option to purchase the public utility being operated under the permit or if the permit is otherwise terminated according to law.

(6) APPLICABILITY. This section does not apply to a telecommunications utility.

History: 1981 c. 390; 1983 a. 53 ss. 69 to 73; 1983 a. 192; 1993 a. 496.

196.58 Municipality to regulate utilities; appeal. (1) The governing body of every municipality may:

(a) Determine by contract, ordinance or resolution the quality and character of each kind of product or service to be furnished or rendered by any public utility within the municipality and all other terms and conditions, consistent with this chapter and ch. 197, upon which the public utility may be permitted to occupy the streets, highways or other public places within the municipality. The contract, ordinance or resolution shall be in force and on its face reasonable.

(b) Require of any public utility any addition or extension to its physical plant within the municipality as shall be reasonable and necessary in the interest of the public, and designate the location and nature of the addition or extension, the time within which it must be completed, and any condition under which it must be constructed, subject to review by the commission under sub. (4).

(c) Provide a penalty for noncompliance with the provisions of any ordinance or resolution adopted under this subsection.

(4) Upon complaint made by a public utility or by any qualified complainant under s. 196.26, the commission shall set a hearing and if it finds a contract, ordinance or resolution under sub. (1) to be unreasonable, the contract, ordinance or resolution shall be void.

(5) The commission shall have original and concurrent jurisdiction with municipalities to require extensions of service and to regulate service of public utilities. Nothing in this section shall limit the power of the commission to act on its own motion to require extensions of service and to regulate the service of public utilities.

(6) No public utility furnishing and selling gaseous fuel or undertaking to furnish or sell gaseous fuel in a municipality where the fuel has not been sold previously to the public shall change the character or kind of fuel by substituting for manufactured gas any natural gas or any mixture of natural and manufactured gas for distribution and sale in any municipality, or undertake the sale of natural gas in any municipality where no gaseous fuel was previously sold, unless the governing body of the municipality, by authorization, passage or adoption of appropriate contract, ordinance or resolution, approves and authorizes the change in fuel or commencement of sale. No contract, ordinance or resolution enacted under this subsection may be inconsistent or in conflict with any certificate granted under s. 196.49.

(7) (a) If a municipality operating a water system seeks to serve consumers of an area which is part of the municipality and in the same county, but in order to serve such consumers it is necessary or economically prudent for the municipality to install mains, transmission lines, pipes or service connections through, upon or under a public street, highway, road, public thoroughfare or alley located within the boundaries of any adjacent municipality, the municipality seeking the installation may file a petition

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with the clerk of the legislative body of the adjacent municipality requesting approval for the installation of the mains, transmission lines, pipes or service connections. The governing body of the adjacent municipality shall act on the petition within 15 days after the petition is filed. If the governing body of the adjacent municipality fails to act within the 15−day period, the petition shall be deemed approved and the municipality may proceed with the installations required for service to its consumers. If, however, the governing body of the adjacent municipality rejects the petition, the municipality may make application to the commission for authority to install within the boundaries of the adjacent municipality the installations necessary to provide service to its consumers. The commission shall hold a hearing upon the application of the municipality. If the commission determines that it is necessary or economically prudent that the municipality seeking to serve its consumers make the installations within the boundaries of the adjacent municipality, the commission shall promptly issue an order authorizing the municipality to proceed to make the installation. In the order, the commission may establish the manner of making the installation.

(b) A municipality making an installation under this section shall restore the land on or in which such installation has been made to the same condition as it existed prior to the installation. Failure to make the restoration shall subject the municipality to an action for damages by the adjacent municipality. The adjacent municipality may require a performance bond from the municipality seeking to make the installation. If no agreement can be effected between the municipalities as to the amount of the performance bond, the commission shall determine the amount of the bond. If the commission issues an order authorizing an installation under this subsection, the commission shall determine the amount of the performance bond which shall be required of the applicant municipality.

History: 1981 c. 390; 1983 a. 53; 1995 a. 378.

Cross−reference: See also ch. PSC 130, Wis. adm. code.

196.59 Merchandising by utilities. Each public utility engaged in the production, transmission, delivery or furnishing of heat, light or power either directly or indirectly to or for the use of the public shall keep separate accounts to show any profit or loss resulting from the sale of appliances or other merchandise. The commission may not take the profit or loss into consideration in arriving at any rate to be charged for service by the public utility.

History: 1983 a. 53.

196.595 Utility advertising practices. (1) In this section:

(a) "Advertising" means:

1. Printed and published material and descriptive literature of a utility used in newspapers, magazines, radio and TV scripts, billboards and similar displays.

1m. Any material which provides information favorable to a public utility on any issue about which the utility is attempting to influence legislative or administrative action by direct oral or written communication with any elective state official, agency official or legislative employee if the practice is regulated under subch. III of ch. 13.

2. Descriptive literature and sales aids of all kinds issued by a utility for presentation to utility consumers and other members of the public, including but not limited to any material enclosed with or added to a utility billing statement, circulars, leaflets, booklets, depictions, illustrations and form letters.

3. Prepared sales talks to the public and public informational facilities.

4. Other materials and procedures enumerated by rule of the commission which promote or provide information to the public about a public utility.

(b) "Expenditure" means any cost of advertising directly incurred by a utility and any cost of advertising incurred by contribution to parent or affiliated companies or to trade associations.

(c) "Public utility" in this section means any public utility, as defined in s. 196.01, engaged in the transmission, delivery or furnishing of natural gas by means of pipes or mains, heat, light or power. "Public utility" does not include any cooperative association organized under ch. 185.

(2) A public utility may not charge its ratepayers for any expenditure for advertising unless the advertising:

(b) Produces a demonstrated, direct and substantial benefit for ratepayers. Advertising which produces a direct and substantial benefit for ratepayers is limited to advertising which:

1. Demonstrates energy conservation methods;
2. Conveys safety information on the use of energy;
3. Demonstrates methods of reducing ratepayer costs;
4. Otherwise directly and substantially benefits ratepayers; or
5. Is required by law.

(3) The commission shall make rules to carry out the purposes of and to enforce this section.

History: 1983 a. 27, 235; 1985 a. 297; 1989 a. 338; 1993 a. 496.

196.60 Discrimination prohibited; penalty. (1) (a) No public utility and no agent, as defined in s. 196.66 (3) (a), or officer of a public utility, directly or indirectly, may charge, demand, collect or receive from any person more or less compensation for any service rendered or to be rendered by it in or affecting or relating to the production, transmission, delivery or furnishing of heat, light, water, or power or for any service in connection therewith, than that prescribed in the published schedules or tariffs then in force, or established under this chapter, or than it charges, demands, collects or receives from any other person for a like contemporaneous service.

(b) A public utility or an agent that violates par. (a) shall be deemed guilty of unjust discrimination and shall forfeit not less than $100 nor more than $5,000 for each offense. An officer who violates par. (a) shall be fined not less than $50 nor more than $2,500 for each offense.

(3) If a public utility gives an unreasonable preference or advantage to any person or subjects any person to any unreasonable prejudice or disadvantage, the public utility shall be deemed guilty of unjust discrimination. A public utility violating this subsection shall forfeit not less than $50 nor more than $5,000 for each offense.

History: 1977 c. 418; 1983 a. 53 ss. 77, 78, 82; 1985 a. 297; 1989 a. 49; 2011 a. 22.

Cross−reference: See also chs. PSC 113, 134, and 164, Wis. adm. code.

196.604 Rebates, concessions and discriminations unlawful. No person may knowingly solicit, accept or receive any rebate, concession or discrimination from a public utility for any service in or affecting or relating to the production, transmission, delivery or furnishing of heat, light, water or power within this state or for any connected service whereby the service is rendered or is to be rendered free or at a rate less than the rate named in the schedules and tariffs in force, or whereby any other service or advantage is received. Any person violating this section shall be fined not less than $50 nor more than $5,000 for each offense.

History: 1983 a. 53 s. 84; 1989 a. 49; 1995 a. 409; 2011 a. 22.

196.605 Telecommunications cooperatives with federal loans. (1) A public utility which is a cooperative association incorporated under ch. 185 or 193 to furnish telecommunications service in rural areas on a nonprofit basis with a telecommunications utility financed in part through a loan from the United States under the rural electrification act of 1936, 7 USC 901 to 950aaa−5, as amended, may require each of its local service telecommunications patrons to deposit with the association the amount of the membership fee or other form of capital representing the proportional share of the total equity capital of the association required as a condition of federal financing. The membership fee or other form of equity capital attributable to each local service patron may be collected by the association in installments in con-

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nection with billings for service. The required deposits of equity capital shall be segregated in the billing from service charges and shall be credited when received on the membership or equity capital account of the patron.

(2) The amount of the membership fee or equity capital to be so required of each local service telecommunications patron under sub. (1) may be based upon reasonable classifications of service and appropriate factors relating to the cost of rendition of the service. The amounts, classifications and manner of collecting the amounts shall be subject to the approval of the commission. The commission may promulgate rules under this subsection.

History: 1979 c. 110 s. 60 (11); 1983 a. 53; 1985 a. 297 s. 76; 1993 a. 496; 2005 a. 441.

196.61 Facilities in exchange for compensation prohibited. A public utility may not demand, charge, collect or receive from any person less compensation for any service rendered or to be rendered by the public utility in return for the furnishing by that person of any part of the facilities incident to the service. This section may not be construed to prohibit any public utility from renting any facility relating to the production, transmission, delivery or furnishing of heat, light, water, telecommunications service or power and from paying a reasonable rental for the facility. This section may not be construed to require any public utility to furnish any part of any appliance which is at the premises of any consumer, except meters and appliances for measurements of any product or service, unless the commission orders otherwise.

History: 1983 a. 53; 1985 a. 297; 1993 a. 496.

196.625 Discrimination by telecommunications utilities. Except as provided in s. 196.63, a telecommunications utility shall receive and transmit without discrimination messages from and for any person upon tender or payment of the usual or customary charges therefor, whenever requested to do so, without regard to the character of the messages to be transmitted unless a court of competent jurisdiction finds the messages to be in violation of s. 944.21 (3). Any telecommunications utility or agent, as defined in s. 196.66 (3) (a), neglecting or refusing to comply with any of the provisions of this section shall forfeit not less than $25 nor more than $5,000 for each day of such neglect or refusal. Any director or officer of a telecommunications utility neglecting or refusing to comply with any of the provisions of this section shall forfeit not less than $25 nor more than $2,500. Any employee of a telecommunications utility neglecting or refusing to comply with any of the provisions of this section shall forfeit not less than $25 nor more than $1,000. One−half of the forfeitures recovered under this section shall be paid to the person prosecuting under this section.

History: 1985 a. 297; 1987 a. 416; 1989 a. 49; 1991 a. 294.

Cross−reference: See also ch. PSC 165, Wis. adm. code.

A private person cannot commence a forfeiture action under this section and thus forcibly join the state as a plaintiff. State v. Wisconsin Telephone Co. 91 Wis. 2d 702, 284 N.W.2d 41 (1979).

196.63 Telecommunications interruption in crisis situation. (1) INTERRUPTION AUTHORITY. If a sheriff, a police chief or a law enforcement officer designated by a sheriff or police chief to respond in a crisis situation has probable cause to believe that a person is holding a hostage or is resisting apprehension through the use or threatened use of force, the sheriff, police chief or law enforcement officer may order a telecommunications utility to interrupt or reroute telecommunications service to or from the suspected person for the duration of the crisis situation to prevent the person from communicating with anyone other than a person authorized by the sheriff, police chief or law enforcement officer.

(2) UTILITY IMMUNITY. A telecommunications utility may not be held liable for any action it takes under sub. (1).

History: 1991 a. 294.

196.635 Unbilled utility service. All service supplied by a public utility must be billed within 2 years of such service. No customer shall be liable for unbilled service 2 years after the date of the service unless:

(1) The utility made a reasonable effort to measure the service, but the customer did not allow the utility access to any device, including but not limited to a meter, necessary to measure service.

(2) The customer obtained the service by fraud or deception, including but not limited to theft or tampering with any device, including but not limited to a meter, necessary to measure service.

(3) The customer obtained the service by negligent interference by the customer or the customer's agent with equipment necessary to measure service and the interference causes service to go unmeasured.

History: 1977 c. 62; 1981 c. 179, 391; 1989 a. 40.

Cross−reference: See also s. PSC 113.0924, Wis. adm. code.

196.64 Public utilities, liability for treble damages. (1) If a director, officer, employee or agent of a public utility, in the course of the discharge of his or her duties, willfully, wantonly or recklessly does, causes or permits to be done any matter, act or thing prohibited or declared to be unlawful under this chapter or ch. 197, or willfully, wantonly or recklessly fails to do any act, matter or thing required to be done under this chapter, the public utility shall be liable to the person injured thereby in treble the amount of damages sustained in consequence of the violation. No recovery as in this section provided shall affect a recovery by the state of the penalty prescribed for such violation.

(2) The burden of proof in an action under sub. (1) rests with the person injured to prove the case by clear and convincing evidence.

History: 1981 c. 390; 1983 a. 53; 1991 a. 39.

A treble damage claim is no longer a separate cause of action because gross negligence is to be compared like all other negligence. Kania v. Chicago & North Western Railway Co. 57 Wis. 2d 761, 204 N.W.2d 681 (1973).

An award of treble damages does not require proof of willful, wanton, or reckless behavior. This provision is constitutional. Peissig v. Wisconsin Gas. Co. 155 Wis. 2d 686, 456 N.W.2d 348 (1990).

Principles of subrogation law prevent insurers from recovering treble damages. Beacon Bowl v. Wisconsin Electric Power Co. 176 Wis. 2d 740, 501 N.W.2d 788 (1993).

This section does not establish a cause of action separate from one sounding in negligence and does not apply to contract actions. Recycle Worlds Consulting Corp. v. Wisconsin Bell, 224 Wis. 2d 586, 592 N.W.2d 637 (Ct. App. 1999), 98−0752.

196.642 Customer liability for treble damages. (1) In an action to collect the outstanding balance on a customer's account, a court may award a public utility furnishing gas or electricity 3 times the amount of that portion of the outstanding balance incurred after October 31 and before April 16 if all of the following conditions are met:

(a) The customer's payment on any portion of the outstanding balance incurred after October 31 and before April 16 is 80 or more days past due.

(b) The customer's quarterly household income exceeds 250% of the income poverty guidelines for the nonfarm population of the United States as prescribed by the federal office of management and budget under 42 USC 9902 (2) during a calendar year quarter in which any portion of the outstanding balance incurred after October 31 and before April 16 is billed.

(c) The customer exhibited an ability to pay the portion of the outstanding balance incurred after October 31 and before April 16 when billed.

(d) The public utility includes with the first billing statement for any portion of an outstanding balance incurred after October 31 and before April 16 a written notice informing the customer that a court may award the public utility 3 times the amount of that portion of the outstanding balance incurred after October 31 and before April 16 if the customer's payment on any portion of that amount is 80 or more days past due, the customer exhibited an ability to pay that amount and the customer's household income exceeds a threshold level.

(2) The finder of fact shall consider all of the following factors to determine if a customer exhibited an ability to pay:

(a) Size of the outstanding balance.

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(b) Customer's payment history.

(c) Period of time the balance is past due.

(d) Customer's reasons for the outstanding balance.

(e) Customer's household size, income and expenses.

(3) The finder of fact may consider other relevant factors concerning a customer's circumstances to determine if a customer exhibited an ability to pay.

(4) Nothing in this section prevents a public utility in an action to collect the outstanding balance on a customer's account from seeking damages other than damages that meet the conditions under sub. (1), but the treble damages provision applies only to damages that meet the conditions under sub. (1).

History: 1989 a. 40.

196.643 Owner responsibility for service to rental dwelling unit. (1) RESPONSIBLE PARTY. When a customer terminates service to the customer's rental dwelling unit, a public utility shall make reasonable attempt to identify the party responsible for service to the rental dwelling unit after the customer's termination. If a responsible party cannot be identified, the public utility may give the owner written notice by regular or other mail of the public utility's intent to hold the owner responsible for service to the rental dwelling unit. The owner shall not be responsible for service if the public utility does not give the notice under this subsection or if, within 15 days after the date the notice is mailed, the owner notifies the public utility of the name of the party responsible for service to the rental dwelling unit or notifies the public utility that service to the rental dwelling unit should be terminated and affirms that service termination will not endanger human health or life or cause damage to property.

(2) JOINT METERING. If gas, electric or water service is measured jointly for 2 or more rental dwelling units, the owner shall maintain the account for gas, electric or water service in the name of the owner or in the name of the agent responsible for the collection of rent and the management of the rental dwelling units.

History: 1989 a. 40.

Cross−reference: See also s. PSC 113.0802, Wis. adm. code.

196.645 Rate changes. (1) The commission, upon complaint or upon its own motion, may proceed to investigate and determine whether a public utility's rates should be changed by reason of a change in the cost of an energy, commodity or service resulting from a change in charges for the energy, commodity or service if:

(a) The rates of the public utility are based on the cost of the energy, commodity or service furnished to the public utility which the public utility furnishes or distributes to its consumers; and

(b) The charges for the energy, commodity and service are regulated by an authority of the federal government and the federal authority has prescribed the change in charges.

(2) The commission may make a change in rates under sub. (1) effective as of the effective date of the order of the federal authority prescribing the change in charges.

(3) Notwithstanding ss. 196.60 (3) and 196.604, the commission may determine and require payment by the public utility to its consumers of any sums which the public utility received from the consumers subsequent to the effective date of its order under this section and which are in excess of the rates prescribed by the commission under this section.

History: 1983 a. 53.

Cross−reference: See also ch. PSC 110, Wis. adm. code.

This section does not authorize the use of an excessive earnings test to determine whether a refund received by a utility when its wholesaler's rate was lowered is to be distributed or retained. Algoma, Eagle River, New Holstein, Stratford, Sturgeon Bay & Two Rivers v. PSC, 91 Wis. 2d 252, 283 N.W.2d 261 (Ct. App. 1978).

196.65 Penalties relating to information and records. (1) An officer of a public utility shall be fined not less than $100 nor more than $2,500, or an agent, as defined in s. 196.66 (3) (a), shall be fined not less than $100 nor more than $5,000 or an employee of a public utility shall be fined not less than $100 nor more than $1,000 for each offense if the officer, agent or employee does any of the following:

(a) Fails or refuses to fill out and return any questionnaire required under this chapter.

(b) Fails or refuses to answer any question in any questionnaire required under this chapter.

(c) Knowingly gives a false answer to any question in any questionnaire required under this chapter.

(d) Evades the answer to any question in any questionnaire required under this chapter, if the answer is within his or her knowledge.

(e) Upon proper demand, fails or refuses to exhibit to the commission or any commissioner or any person authorized to examine it any record of the public utility which is in the possession or under the control of the officer, agent or employee.

(f) Fails to properly use and keep the system of accounting prescribed by the commission.

(g) Refuses to do any act in connection with the system of accounting prescribed by the commission when so directed by the commission or its authorized representative.

(2) A penalty of not less than $500 nor more than $5,000 shall be recovered from the public utility for each offense under sub. (1) if the officer, agent or employee of the public utility acted in obedience to the direction, instruction or request of the public utility or any general officer of the public utility.

(3) (a) In this subsection, "agent" means an authorized person who acts on behalf of or at the direction of a telecommunications provider. "Agent" does not include a director, officer or employee of a telecommunications provider.

(b) An officer of a telecommunications provider shall be fined not less than $100 nor more than $2,500, an agent of a telecommunications provider shall be fined not less than $100 nor more than $25,000 or an employee of a telecommunications provider shall be fined not less than $100 nor more than $1,000 for each offense if the officer, agent or employee does any of the following:

1. Fails or refuses to fill out and return any questionnaire required under s. 196.25 (3).

2. Fails or refuses to answer any question in any questionnaire required under s. 196.25 (3).

3. Knowingly gives a false answer to any question in any questionnaire required under s. 196.25 (3).

4. Evades the answer to any question in any questionnaire required under s. 196.25 (3).

5. Upon proper demand, fails or refuses to exhibit to the commission, or any person authorized to examine records, any record of the telecommunications provider which is in the possession or under the control of the officer, agent or employee.

(c) A telecommunications provider shall be fined not less than $500 nor more than $25,000 for each violation under par. (b) if the officer, agent or employee of the telecommunications provider acted under the direction or request of the telecommunications provider or any general officer of the telecommunications provider.

(d) After notice and hearing, the commission may order a telecommunications utility to cease provision of interconnection or access services to a telecommunications provider who has violated par. (b).

History: 1977 c. 29 s. 1654 (10) (c); 1977 c. 273; 1981 c. 390; 1983 a. 53; 1989 a. 49; 1993 a. 496.

196.66 General forfeiture provisions. (1) GENERAL FORFEITURE; FAILURE TO OBEY. If any public utility violates this chapter or ch. 197 or fails or refuses to perform any duty enjoined upon it for which a penalty has not been provided, or fails, neglects or refuses to obey any lawful requirement or order of the commission or the governing body of a municipality or a sanitary commission or any judgment or decree of any court upon its application, for every violation, failure or refusal the public utility shall forfeit not less than $25 nor more than $5,000.

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(2) EACH DAY SEPARATE OFFENSE. Every day during which any public utility or any officer, agent, as defined in sub. (3) (a), or employee of a public utility fails to comply with any order or direction of the commission or to perform any duty enjoined by this chapter or ch. 197 shall constitute a separate and distinct violation under sub. (1). If the order is suspended, stayed or enjoined, this penalty shall not accrue.

(3) CONSIDERATIONS IN SETTING FORFEITURES. (a) In this subsection, "agent" means an authorized person who acts on behalf of or at the direction of a public utility. "Agent" does not include a director, officer or employee of a public utility.

(b) A court imposing a forfeiture on a public utility or an agent, director, officer or employee of a public utility under this chapter shall consider all of the following in determining the amount of the forfeiture:

1. The appropriateness of the forfeiture to the volume of business of the public utility.

2. The gravity of the violation.

3. Any good faith attempt to achieve compliance after the public utility, agent, director, officer or employee receives notice of the violation.

(4) TREBLE MAXIMUM FORFEITURES. (a) If an act or omission causes death or a life−threatening or seriously debilitating injury, and is subject to a forfeiture proceeding under this chapter, the maximum forfeiture that may be imposed shall be trebled.

(b) If a public utility fails to comply with any rule, order or direction of the commission after actual receipt by the public utility of written notice from the commission specifying the failure, the maximum forfeiture under sub. (1) shall be $15,000.

History: 1981 c. 390; 1983 a. 53; 1989 a. 49.

196.665 Unlawful combinations, trusts. (1) The state may take possession of any dam maintained under a permit granted under s. 31.06 or 31.08 by proceedings instituted by the commission if the dam:

(a) Is owned, leased, trusteed, possessed or controlled in any manner that makes it form a part of or in any way effect an unlawful combination.

(b) Is controlled by any combination in the form of an unlawful trust.

(c) Forms the subject of any contract or conspiracy to limit the output of any hydraulic or hydroelectric power derived from the dam.

(2) In proceedings under this section, the members of the commission shall be appointed to act as receivers during a period of time to be determined by the court.

History: 1983 a. 53.

196.67 Warning signs. (1) Any person constructing, operating or maintaining an overhead electrical supply line with a voltage of 6,000 or more between conductors or between conductors and the ground shall place warning signs from 4 to 6 feet above the ground, upon all poles or other structures supporting the line.

(1m) If it determines that it is necessary for public safety, the commission, by order or rule, may apply sub. (1) to any person constructing, operating or maintaining an overhead electrical supply line with a voltage of 2,000 or more.

(2) The commission shall establish standards for warning signs on overhead electrical supply line poles and structures.

(3) A public utility or an agent, as defined in s. 196.66 (3) (a), violating this section shall be fined not less than $50 nor more than $5,000 for each offense. A director or officer of a public utility violating this section shall be fined not less than $50 nor more than $2,500 for each offense. An employee of a public utility violating this section shall be fined not less than $50 nor more than $1,000 for each offense.

History: 1979 c. 171; 1983 a. 53, 238; 1989 a. 49; 1993 a. 246.

196.675 Unlawful for carriers and public utilities to employ assistant district attorneys or judicial officers. (1) No common carrier operating within this state and no public utility, except a municipal public utility, may retain or employ an assistant district attorney or any person holding a judicial office.

(2) If any assistant district attorney or any person holding a judicial office violates this section, the assistant district attorney's or judge's office shall be deemed vacant.

(3) This section does not apply to circuit or supplemental court commissioners.

History: 1977 c. 236; 1983 a. 53; 1987 a. 104; 1989 a. 31; 1991 a. 39; 2001 a. 61.

196.68 Municipal officers, malfeasance. If any officer of a municipality which owns or operates a public utility does, causes or permits to be done any matter, act or thing prohibited or declared to be unlawful under this chapter or ch. 197 or omits, fails, neglects or refuses to perform any duty which is enjoined upon him or her and which relates directly or indirectly to the enforcement of this chapter and ch. 197, or if the officer omits, fails, neglects or refuses to obey any lawful requirement or order of the commission or any judgment or decree of a court upon its application, for every such violation, failure or refusal the officer shall forfeit not less than $50 nor more than $2,500.

History: 1981 c. 390; 1983 a. 53; 1989 a. 49.

196.69 Interference with commission's equipment. (1) If any person destroys, injures or interferes with any apparatus or appliance owned, in the charge of or operated by the commission or its agent, the person shall be fined not more than $5,000 or imprisoned for not more than 30 days or both if the person is a public utility or an agent, as defined in s. 196.66 (3) (a), fined not more than $2,500 or imprisoned for not more than 30 days or both if the person is a director or officer of a public utility, or fined not more than $1,000 or imprisoned for not more than 30 days or both if the person is an employee of a public utility.

(2) Any public utility permitting a violation of this section shall forfeit not more than $5,000 for each offense.

History: 1983 a. 53; 1989 a. 49.

196.70 Temporary alteration or suspension of rates. (1) The commission, when it deems necessary to prevent injury to the business or interests of the people or any public utility in case of any emergency to be judged of by the commission, may by order temporarily alter, amend, or with the consent of the public utility concerned, suspend any existing rates, schedules and order relating to or affecting any public utility or part of any public utility.

(2) The commission may direct an order under sub. (1) to part of a public utility or to one or more public utilities and may prescribe when the order takes effect and for how long the order shall be in effect.

History: 1983 a. 53.

Temporary and emergency rates may be appropriately and widely used by the public service commission when justified by the circumstances. Friends of the Earth v. PSC, 78 Wis. 2d 388, 254 N.W.2d 299 (1977).

196.71 Municipal public utility contracts. If a municipality owns a public utility and if there is no other public utility furnishing the same service, the commission, after a public hearing and determination that the municipally owned public utility cannot be operated profitably, may authorize a contract between the municipality and any person not a public utility to furnish light, power or electric current to the municipality upon terms and conditions approved by the commission. The person contracting with the municipality is not a public utility solely due to the contract with the municipality.

History: 1983 a. 53.

Cross−reference: See also ch. PSC 114, Wis. adm. code.

196.72 Accidents; public utility report; investigation. (1) (a) The commission may issue orders or rules, after hearing, requiring public utilities to record or report accidents which occur upon the public utilities' premises or which arise directly or indirectly from, or are connected with, the public utilities' maintenance or operation.

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(b) Notwithstanding any statute to the contrary, any report filed with the commission under par. (a) shall be without prejudice to the person making the report and shall be for the sole information and use of the commission and its staff. Neither the report nor its content may be made available to any other person. The report may not be used as evidence in any trial, civil or criminal, arising out of the event concerning which the report is submitted.

(2) The commission shall investigate any accident under sub. (1) if the commission deems that the public interest requires it. The commission shall hold the investigation in the locality of the accident, unless it is more convenient to hold it at some other place. The commission may adjourn the investigation from place to place. The commission shall give the public utility reasonable notice of the time and place of the investigation.

History: 1983 a. 53; 1985 a. 297.

Cross−reference: See also chs. PSC 104 and 165, Wis. adm. code.

196.74 Electric lines; safety and interference. Each public utility and railroad which owns, operates, manages or controls along or across any public or private way any wires over which electricity or messages are transmitted shall construct, operate and maintain the wires and any related equipment in a manner which is reasonably adequate and safe and which does not unreasonably interfere with the service furnished by any other public utility or railroad. The commission may issue orders or rules, after hearing, requiring electric construction and operating of such wires and equipment to be safe. The commission may revise the orders or rules as may be required to promote public safety. If any interested party files a complaint with the commission indicating that public safety or adequate service requires changes in construction, location or methods of operation, the commission shall give notice to the parties in interest of the filing of the complaint. The commission shall proceed to investigate the complaint and shall order a hearing on it. After the hearing the commission shall order any change in construction or location or change of methods of operation required for public safety or to avoid service interference. The commission shall indicate in the order by whom the change shall be made. The commission shall fix the proportion of the cost and expense of the change, which shall be paid by the parties in interest. The commission shall fix reasonable terms and conditions related to the payment of the cost and expense.

History: 1983 a. 53.

Cross−reference: See also ch. PSC 114, Wis. adm. code.

196.745 Construction and operation; safety; commission orders. (1) (a) A person who owns, operates, manages or controls any facility for the production, transmission or distribution of gas shall construct, operate and maintain the facility in a reasonably adequate and safe manner. Except as provided in par. (b), the commission may issue orders or rules, after holding a hearing, requiring the construction and operation of the facility to be safe, and may revise the orders or rules as required to promote public safety. Except as provided under par. (b), upon complaint to the commission that a facility is unsafe, the commission may proceed under s. 196.26 or 196.28 (1). Sections 196.26 and 196.28 (1), as they apply to a public utility, apply to a person under this subsection. After holding a hearing the commission shall order any alteration in construction, maintenance or operation required in the interest of public safety.

(b) Paragraph (a) does not authorize the commission to do any of the following:

1. Issue an order or rule regarding the construction and operation of, or proceed under s. 196.26 or 196.28 (1) against, a propane gas distribution system that is not a public utility.

2. Unless specifically authorized by the federal department of transportation, proceed against an interstate pipeline company under s. 196.26 or 196.28 (1).

3. Issue an order or rule requiring prior approval for the construction of a facility for the production, transmission or distribution of gas.

(2) (a) Any person violating sub. (1) (a), or any order or rule issued under sub. (1) (a), shall forfeit an amount not exceeding $25,000. Each day of violation is a separate violation of sub. (1) (a). No person may forfeit an amount exceeding $500,000 for a single persisting violation of sub. (1) (a) or any order or any rule issued under sub. (1) (a).

(b) The commission may compromise any forfeiture assessed under par. (a).

(c) The commission shall consider the following in determining the amount of a forfeiture or whether a compromise is appropriate under this section:

1. The appropriateness of the forfeiture to the size of the business violating sub. (1) (a).

2. The gravity of the violation.

3. Any good faith attempt to achieve compliance after notification of the violation.

(3) The commission may seek injunctive relief for a violation of sub. (1) (a) or any order or rule issued under sub. (1) (a). The commission shall notify any person against whom the commission contemplates taking an action. The commission shall allow the person to present his or her views and shall give the person a reasonable opportunity to achieve compliance unless the person knowingly and willfully violates sub. (1) (a) or any order or rule issued under sub. (1) (a). The failure of the commission to give notice and opportunity to comply shall not preclude the granting of appropriate relief. The circuit court for Dane County has jurisdiction under s. 196.44 (3) to enforce sub. (1) (a) and to grant injunctive relief under this section.

(4) Any person may demand a jury trial when charged with contempt of court because he or she has violated an injunction issued under sub. (3). Chapter 785 is applicable to contempt proceedings for the violation, unless ch. 785 conflicts with the right to a jury trial.

History: 1977 c. 29 s. 1656 (43); 1977 c. 273; 1979 c. 32; 1983 a. 53; 1989 a. 49; 1993 a. 142; 1995 a. 430.

Cross−reference: See also ch. PSC 135, Wis. adm. code.

196.76 Other rights of action; penalties cumulative. This chapter and ch. 197 shall not have the effect of releasing or waiving any right of action by the state or by any person for any right, penalty or forfeiture which arises under any law of this state. All penalties and forfeitures accruing under this chapter and ch. 197 shall be cumulative. A suit for recovery of one penalty or forfeiture may not bar the recovery of any other penalty.

History: 1981 c. 390; 1983 a. 53.

196.78 Voluntary dissolution. No corporation or limited liability company owning or operating a public utility may be dissolved unless the commission consents. The commission may consent only after hearing. The commission shall give at least 30 days' notice to each municipality in which the public utility is operated and an opportunity to be heard to each municipality and to the stockholders in the corporation or members of a limited liability company.

History: 1983 a. 53; 1993 a. 112.

196.79 Reorganization subject to commission approval. The reorganization of any public utility shall be subject to the supervision and control of the commission. No reorganization may take effect without the written approval of the commission. The commission may not approve any plan of reorganization unless the applicant for approval establishes that the plan of reorganization is consistent with the public interest.

History: 1977 c. 29; 1983 a. 53; 1993 a. 496; 2011 a. 22.

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

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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 employee 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, other than a transmission company, 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 or a transmission company, 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 utility, unless such company also owns, operates, manages or controls a public utility which is not a telecommunications utility.

3. "Holding company" does not include a transmission company.

(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 employee" 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. 180.1130 (12).

(p) "Transmission company" has the meaning given in s. 196.485 (1) (ge).

(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 l0 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.

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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. 227.42 or 227.44.

(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 November 28, 1985, 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. 201 if the commission has made a determination under sub. (7) (a) which makes such holding company a public service corporation, as defined under s. 201.01 (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. 201, 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 record−keeping 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 and shall impute a capital structure to the public utility affiliate and establish a cost of capital for the public utility affiliate on a stand−alone basis;

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. or 3., no public utility affiliate may transfer, sell, or lease to any nonutility affiliate with

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which it is in a holding company system any real property which, on or after November 28, 1985, 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.

3. For the purpose of implementing a leased generation contract, as defined in s. 196.52 (9) (a) 3., that is approved under s. 196.52 (3), a public utility affiliate may transfer to a nonutility affiliate, at book value determined on the basis of the regulated books of account at the time of the transfer, any of the following:

a. Land that is held or used for the provision of utility service.

b. Electric generating equipment or associated facilities that are located on the land on which an electric generating facility subject to a leased generation contract is to be constructed, and that are part of an electric generating facility on that land that is no longer used or useful for the provision of utility service and that has been retired from the provision of utility service.

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

NOTE: Par. (L) was held to be unconstitutional by the U.S. 7th Circuit Court of Appeals in *Alliant Energy Corporation v. Bie*, 330 F.3d 904 (2003).

(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.

(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 employees or by the employees 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 November 28, 1985, 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 November 28, 1985, 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 November 28, 1985. 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 affil-

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iate 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 November 28, 1985, 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 November 28, 1985, 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 November 28, 1985. 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.

(6m) ASSET CAP. (a) *Definitions.* In this subsection:

1. "Contributor public utility affiliate" means a public utility affiliate that has contributed its transmission facilities to the transmission company under s. 196.485 (5) (b).

2. "Eligible asset" means an asset of a nonutility affiliate that is used for any of the following:

a. Producing, generating, transmitting, delivering, selling or furnishing gas, oil, electricity or steam energy.

b. Providing an energy management, conservation or efficiency product or service or a demand−side management product or service.

c. Providing an energy customer service, including metering or billing.

d. Recovering or producing energy from waste materials.

e. Processing waste materials.

f. Manufacturing, distributing or selling products for filtration, pumping water or other fluids, processing or heating water, handling fluids or other related activities.

g. Providing a telecommunications service, as defined in s. 196.01 (9m).

h. Providing an environmental engineering service.

3. "Foreign affiliate" means a person that is engaged in the production, transmission, delivery or furnishing of heat, light, power or natural gas either directly or indirectly to or for use of the public in another state, that is incorporated under the laws of another state, that is an affiliated interest, as defined in s. 196.52 (1), of a public utility and that is operated on an integrated system basis, as determined by the commission, with the public utility.

4. "Generation assets" means assets that are classified as electric generation assets on the books of account of a public utility, as determined by the commission.

5. "Reliability council area" means the geographic area that, on December 31, 1997, was served by the Mid−America Interconnected Network, Inc., Mid−Continent Area Power Pool, East Central Area Reliability Coordination Agreement or Southwest Power Pool reliability council of the North American Electric Reliability Council.

6. "Wholesale merchant plant" means a wholesale merchant plant, as defined in s. 196.491 (1) (w), except that its location is not limited to this state, that is located in the reliability council area and that is owned, operated or controlled by an affiliated interest of a public utility.

(b) *In general.* 1. The sum of the assets of all nonutility affiliates in a holding company system of any holding company formed on or after November 28, 1985, 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 November 28, 1985, may not have nonutility affiliate assets exceeding 40% of the maximum amount allowed under subd. 1.

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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.

(c) *Wholesale merchant plants.* The assets of a wholesale merchant plant shall not be included in the sum of the assets of a public utility affiliate under par. (b) 1. a., b. or c. and shall not be included in a nonutility affiliate's total assets under par. (b) 2. a. if the requirements specified in s. 196.491 (3m) (a) 1. and 2. are satisfied or if the wholesale merchant plant qualifies for the exemption under s. 196.491 (3m) (e) 1.

(d) *Foreign affiliates.* The assets of a foreign affiliate shall be included in the sum of the assets of a public utility affiliate under par. (b) 1. a., b. or c. and shall not be included in a nonutility affiliate's total assets under par. (b) 2. a.

(e) *Contributor public utility affiliates.* 1. The eligible assets of a nonutility affiliate in a holding company system that includes each of the contributor public utility affiliates in the holding company system shall not be included in the sum of the assets of the public utility affiliates under par. (b) 1. a., b. or c. and shall not be included in the nonutility affiliate's total assets under par. (b) 2. a.

2. For purposes of subd. 1., all of the assets of a nonutility affiliate shall be considered eligible assets if each of the following is satisfied:

a. The bylaws of the nonutility affiliate or a resolution adopted by its board of directors specifies that the business of the nonutility affiliate is limited to activities involving eligible assets.

b. Substantially all of the assets of the nonutility affiliate are eligible assets.

3. The net book value of transmission facility assets that a contributor public utility affiliate has contributed to a transmission company under s. 196.485 (5) (b) shall be included in the sum of the assets of the public utility affiliate under par. (b) 1. a., b. and c. In determining net book value under this subdivision, accumulated depreciation shall be calculated as if the contributor public utility affiliate had not contributed the assets.

4. The net book value of generation assets that a contributor public utility affiliate has transferred to a person that is not affiliated with the public utility affiliate pursuant to the order of the commission, a court or a federal regulatory agency shall be included in the sum of the assets of the public utility affiliate under par. (b) 1. a., b. and c. In determining net book value under this subdivision, accumulated depreciation shall be calculated as if the contributor public utility affiliate had not transferred the assets.

(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 November 28, 1985, on every public utility affiliate in the holding company system and shall determine whether each nonutility affiliate, except for the nonutility affiliates of a holding company that were affiliates of a holding company that was formed before November 28, 1985, 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 reports or has reported information to the commission under the rules promulgated under s. 196.491 (2) (ag).

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 chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2). Thereafter the commission shall, based on its existing investigative findings, rate reviews and other relevant information, submit to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), 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 November 28, 1985, 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 utility.

(9) PROTECTION OF BUSINESS INFORMATION. If the commission obtains business information from a holding company system which, if disclosed to the public, would put any nonutility affiliate in the holding company system at a material competitive disadvantage, the information is not subject to s. 19.35 and the commis-

sion shall protect such information from public disclosure as if it were a trade secret as defined in s. 134.90 (1) (c).

(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 regulation over the operations and assets of any public utility.

(b) This section shall be deemed to legalize and confirm the formation, prior to November 28, 1985, 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 the requirements of sub. (6m) (c) or (d) or 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 utility and does not also own, operate, manage or control a public utility which is not a telecommunications utility.

(c) The commission may not impose upon a holding company the formation of which is considered to be legalized and confirmed under par. (b) any term, limitation or condition under par. (b) that establishes the sum of the holding company's nonutility affiliate assets at less than 25% of the sum of the holding company's utility affiliate assets. For purposes of this paragraph, any term, limitation or condition on nonutility affiliate assets shall not apply to the ownership, operation, management or control of any eligible asset, as defined under sub. (6m) (a) 2.

History: 1985 a. 79; 1985 a. 297 ss. 67, 68, 76; 1985 a. 332; 1987 a. 186; 1987 a. 403 s. 256; 1989 a. 303; 1991 a. 269; 1993 a. 213; 1997 a. 140, 204; 1999 a. 9, 150; 2001 a. 16; 2011 a. 155.

NOTE: This section was created by 1985 Act 79. Section 1 of that Act is entitled "Findings and purpose."

The sub. (5) (L) requirement that a public utility holding company must be incorporated in Wisconsin violates the interstate commerce clause of the U. S. constitution. Alliant Energy Corporation v. Bie, 330 F.3d 904 (2003).

Subs. (3) and (6m) (b) do not violate the interstate commerce clause of the U. S. constitution. Alliant Energy Corporation v. Bie, 330 F.3d 904 (2003).

196.796 Real estate activities. (1) In this section:

(a) "Brownfields facility or site" means any abandoned, idle or underused industrial or commercial facility or site, the use, expansion or redevelopment of which is adversely affected by actual environmental contamination.

(b) 1. "Commercial construction" means the act of building any structure, or that part of any structure, that is not used as a home, residence or sleeping place by one or more persons maintaining a common household to the exclusion of all others.

2. "Commercial construction" does not include any of the following:

a. Any repair, maintenance, installation or construction of a structure owned or used by or for a public utility, or for a customer of a public utility, if the repair, maintenance, installation or construction is related to furnishing heat, light, water or power to the customer.

b. Any construction related to the evaluation, control or remediation of hazardous substances; solid, liquid or gaseous wastes; soils; air; or water.

c. Any construction performed in order to comply with federal, state or local environmental laws, regulations, orders or rules.

(c) "Economic development" means development that is designed to promote job growth or retention, expand the property tax base or improve the overall economic vitality of a municipality, as defined in s. 30.01 (4), or region.

(d) "Engage" means to actively participate in the daily operations or daily business decisions of an entity. "Engage" does not include taking an action necessary to protect an ownership interest in an entity.

(dg) "Entity" has the meaning given in s. 180.0103 (8).

(dr) "Financial support" includes investments, loans and grants.

(e) "Holding company system" has the meaning given in s. 196.795 (1) (i).

(f) "Improvements" means any valuable addition made to land, including excavations, gradings, foundations, structures, buildings, streets, parking lots, sidewalks, sewers, septic systems and drainage facilities. "Improvements" does not include any repair, maintenance, installation or construction of structures or facilities owned or used by or for a public utility, or by or for a customer of a public utility, if the repair, maintenance, installation or construction is related to furnishing heat, light, water or power to the customer.

(g) "Nonutility affiliate" means a subsidiary of a public utility or a company in a holding company system that is not a public utility. "Nonutility affiliate" does not include a passively held company.

(gm) "Passively held company" means an entity that satisfies each of the following:

1. Less than 50% of the ownership interest of the entity is directly or indirectly owned in any chain of successive ownership by a public utility or nonutility affiliate.

2. The entity engages in property management for a 3rd party, real estate practice, residential real estate development or residential or commercial construction.

(h) "Property management" means any activity associated with the care or maintenance of land or improvements, including business planning and budgeting, accounting, lease administration, tenant relations and retention, security, maintenance of common areas, rent collections, financial reporting, service contract administration and inspections.

(hm) "Public utility" means every corporation, company, individual or association and their lessees, trustees, or receivers appointed by any court or state or federal agency, 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 electricity directly to or for the public, except that "public utility" does not include any municipal utility or municipal electric company, as defined in s. 66.0825 (3) (d), or any cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power, or water to its members only.

(i) "Real estate practice" has the meaning given in s. 452.01 (6).

(j) "Residential construction" means the act of building any structure, or that part of any structure that is used as a home, residence or sleeping place by one or more persons maintaining a common household to the exclusion of all others.

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(k) "Residential real estate development" means the act of dividing or subdividing any parcel of land for residential construction or making improvements to facilitate or allow residential construction.

(L) "Third party" means any person other than a public utility or nonutility affiliate.

(2) PROHIBITED ACTIVITIES. Except as provided in sub. (4), a public utility or nonutility affiliate may not do any of the following in this state:

(a) Engage in real estate practice.

(b) Engage in residential real estate development.

(c) Engage in property management for a 3rd party.

(d) Engage in residential or commercial construction.

(3) PERMITTED ACTIVITIES. (a) Subsection (2) does not prohibit a public utility or nonutility affiliate from doing any of the following:

1. Repairing, maintaining, installing or constructing a structure that is owned or used by or for a public utility or nonutility affiliate, or for a customer of a public utility if the repair, maintenance, installation or construction is related to furnishing heat, light, water or power to the customer.

2. Engaging in construction that is specifically related to the evaluation, control or remediation of hazardous substances; solid, liquid or gaseous wastes; soils; air; or water.

3. Engaging in construction that is performed in order to comply with federal, state or local environmental laws, regulations, orders or rules.

4. Consulting or making other financial or business arrangements with one or more 3rd parties who will engage in commercial construction.

5. Consulting or making other financial or business arrangements with one or more 3rd parties who will engage in residential construction or residential real estate development, except that if a public utility or nonutility affiliate contracts for the development of more than one residential construction project or residential real estate development, the public utility or nonutility affiliate may not enter into an exclusive arrangement with a 3rd party for all such residential construction or residential real estate development.

6. Acquiring or disposing of property or interests in property if the acquisition or disposition is related to the operation of a public utility and the acquisition or disposition satisfies one of the following:

a. The acquisition or disposition is conducted under a contract with a 3rd party that is engaged in real estate practice.

b. The acquisition or disposition is conducted by an individual engaged in real estate practice or employed by a public utility.

7. Owning a passively held company.

(b) Subsection (2) does not prohibit a public utility that is not subject to the requirements of s. 196.795, or the nonutility subsidiary of such a public utility, from doing any of the following:

1. Engaging in commercial or residential real estate development or construction on property owned or acquired by the public utility or nonutility subsidiary for a public utility purpose if the total annual revenues from the development or construction do not exceed 3% of the total operating revenues of the public utility in any year.

2. Providing financial support for the purpose of economic development to 3rd parties that are engaged in an activity specified in sub. (2) (a) to (d). The public utility or nonutility subsidiary may profit directly from that activity only through receipt of profits that are incidental to the economic development project or interest earned on a loan.

(4) EXCEPTIONS. (a) A nonutility affiliate that has engaged in residential construction prior to, or is engaged in residential construction on, October 29, 1999, may directly or indirectly own in any chain of successive ownership 50% or more of the ownership interest of an entity that hires a 3rd party to engage in residential construction or commercial construction that is incidental to residential construction, except that the nonutility affiliate may not actively participate in the daily operations or daily business decisions of the entity.

(b) A public utility or nonutility affiliate may engage in residential real estate development at a brownfields facility or site.

(5) PRIVATE CAUSE OF ACTION. Any public utility or nonutility affiliate that does, causes or permits to be done any action prohibited under this section or fails to comply with any requirement specified in this section is liable to any person injured thereby in the amount of damages sustained in consequence of the prohibited action or failure to comply.

History: 1999 a. 9; 2003 a. 320.

196.80 Consolidation or merger of utilities. (1g) In this section, "public utility" does not include a telecommunications utility.

(1m) With the consent and approval of the commission but not otherwise a public utility may:

(a) Merge or consolidate with one or more other public utilities.

(b) Acquire the stock of any other public utility or any part thereof.

(d) Consolidate or merge with any Wisconsin corporation if substantially all of the assets of the corporation consist of the entire stock of the public utility. The total of the resulting securities outstanding of the possessor corporation which have not been authorized previously under ch. 201 shall require authorization under ch. 201 as a condition precedent to the merger or consolidation.

(e) Sell, acquire, lease or rent any public utility plant or property constituting an operating unit or system.

(2) Nothing in this section shall be construed to affect or limit the operation of ss. 197.01 to 197.10 or of ss. 62.69, 66.0621 and 66.0801 to 66.0827.

(3) The interested public utility shall make an application for the approval and consent of the commission under this section. The application shall contain a concise statement of the proposed action, the reasons for the action and any other information required by the commission. If an application is filed, the commission shall investigate the application. The investigation may be with or without public hearing. If the commission conducts a public hearing, the hearing shall be upon such notice as the commission may require. If the commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval in writing. In reaching its determination the commission shall take into consideration the reasonable value of the property and assets of the corporation to be acquired or merged.

(5) Any transaction required under this section to be submitted to the commission for its consent and approval shall be void unless the commission gives its consent and approval to the transaction in writing.

(6) Nothing in this section may be construed to limit any authority conferred by statute upon the commission before June 27, 1935.

History: 1977 c. 29; 1983 a. 53; 1993 a. 496; 1997 a. 140; 1999 a. 150 ss. 647, 672.

196.807 Energy affiliate and utility employees. (1) DEFINITIONS. In this section:

(a) "Affiliate or utility" means a nonutility affiliate, holding company system, public utility or cooperative association organized under ch. 185 or 193.

(b) "Energy unit" means a unit in this state that is engaged in activities related to the production, generation, transmission or distribution of electricity, gas or steam or the recovery of energy from waste materials.

(c) "Holding company system" has the meaning given in s. 196.795 (1) (i).

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(d) "Nonutility affiliate" has the meaning given in s. 196.795 (1) (j).

(e) "Public utility affiliate" has the meaning given in s. 196.795 (1) (L).

(f) "Sell an energy unit" means to sell, offer by lease, or otherwise transfer ownership or control of the energy unit.

(fg) "Transmission company" has the meaning given in s. 196.485 (1) (ge).

(fr) "Transmission utility" has the meaning given in s. 196.485 (1) (i).

(g) "Unit" means a division, department or other operational business unit of an affiliate or utility.

(2) OFFER OF EMPLOYMENT. (a) Except as provided in par. (b), a person may not sell an energy unit unless the terms of the transfer require the person to which the energy unit is transferred to offer employment to the nonsupervisory employees who are employed with the energy unit immediately prior to the transfer and who are necessary for the operation and maintenance of the energy unit.

(b) 1. A public utility affiliate may not sell an energy unit to a nonutility affiliate in the same holding company system unless the terms of the transfer require the nonutility affiliate to offer employment to all of the nonsupervisory employees who are employed with the energy unit immediately prior to the transfer.

2. A transmission company to which an energy unit is sold by a transmission utility shall, beginning on the expiration of the 3−year period specified in s. 196.485 (3m) (a) 1. b. or, if applicable, the expiration of any extension of such 3−year period, offer employment to the nonsupervisory employees who are employed with the energy unit immediately prior to the transfer and who are necessary for the operation and maintenance of the energy unit.

(3) EMPLOYMENT TERMS AND CONDITIONS. (a) Except as provided in par. (b), the employment that is offered under sub. (2) shall satisfy each of the following during the 30−month period beginning immediately after the transfer:

1. Wage rates shall be no less than the wage rates in effect immediately prior to the transfer.

2. Fringe benefits shall be substantially equivalent to the fringe benefits in effect immediately prior to the transfer.

3. Terms and conditions of employment, other than wage rates and fringe benefits, shall be substantially equivalent to the terms and conditions in effect immediately prior to the transfer.

(b) A collective bargaining agreement may modify or waive a requirement specified in par. (a).

(4) COMMISSION APPROVAL. Except for a cooperative association, as defined in s. 196.491 (1) (bm), or a transmission utility that sells an energy unit to a transmission company, no person may sell an energy unit unless the commission determines that the person has satisfied subs. (2) and (3).

History: 1999 a. 9; 2005 a. 441.

196.81 Abandonment; commission approval required. (1) No public utility may abandon or discontinue any line or extension or service thereon without first securing the approval of the commission. In granting its approval, the commission may impose any term, condition or requirement it deems necessary to protect the public interest. If a public utility abandons or discontinues a line or extension or service thereon upon receiving commission approval, the public utility shall be deemed to have waived any objection to any term, condition or requirement imposed by the commission in granting the approval.

(2) The commission may not approve a request by an electric or telecommunications utility to abandon a right−of−way, unless the commission requires the public utility to remove any pole at ground level from the right−of−way and any other structure which extends more than 3 feet above ground level and which belongs to the utility at the time of abandonment. If the commission approves a request under this section it shall require any part of the abandoned right−of−way which is in a rural area and which was obtained by the utility by condemnation to be disposed of by the utility within 3 years from the date of approval. The commission may rescind the disposal requirement if the utility applies for rescission within 6 months prior to the end of the 3−year period and if the commission finds that the requirement would subject the utility to undue hardship.

(3) This section does not apply to any of the following:

(a) A service discontinuance by a public utility that is a telecommunications provider.

(b) A public utility's removal, at the request of a customer, of the customer's electric service drop or electric or steam service lateral, including any primary voltage or steam line that is used exclusively to serve the customer requesting the removal.

History: 1973 c. 157; 1977 c. 29, 203, 418; 1983 a. 53; 1985 a. 297; 1993 a. 496; 2011 a. 22, 155.

196.84 Commission's holding company and nonutility affiliate 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 November 28, 1985. 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. For the purpose of calculating cost increases under this section, 90% of the cost increases determined shall be costs of the commission and 10% of the cost increases determined shall be costs of state government operations.

History: 1985 a. 79; 1991 a. 269.

Cross−reference: See also ch. PSC 6, Wis. adm. code.

196.85 Payment of commission's expenditures. (1) (a) If the commission in a proceeding upon its own motion, on complaint, or upon an application to it deems it necessary in order to carry out the duties imposed upon it by law to investigate the books, accounts, practices, and activities of, or make appraisals of the property of any public utility, power district, or sewerage system or to render any engineering or accounting services to any public utility, power district, or sewerage system, the public utility, power district, or sewerage system shall pay the expenses attributable to the investigation, including the cost of litigation, appraisal, or service. The commission shall mail a bill for the expenses to the public utility, power district, or sewerage system either at the conclusion of the investigation, appraisal, or services, or during its progress. The bill constitutes notice of the assessment and demand of payment. The public utility, power district, or sewerage system shall, within 30 days after the mailing of the bill, pay to the commission the amount of the special expense for which it is billed. Ninety percent of the payment shall be credited to the appropriation account under s. 20.155 (1) (g).

(b) Except as provided in sub. (1m) (a), the total amount in any one calendar year for which any public utility, power district, or sewerage system is liable under this subsection, by reason of costs incurred by the commission within the calendar year, including charges under s. 201.10 (3), may not exceed four−fifths of one percent of its gross operating revenues derived from intrastate operations in the last preceding calendar year.

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(c) Nothing in this subsection shall prevent the commission from rendering bills in one calendar year for costs incurred within a previous year.

(d) For the purpose of calculating the costs of investigations, appraisals, and other services under this subsection, 90% of the costs determined shall be costs of the commission and 10% of the costs determined shall be costs of state government operations.

(1m) (a) For the purpose of direct assessment under sub. (1) of expenses incurred by the commission in connection with its activities under s. 196.491, the term "public utility" includes electric utilities, as defined in s. 196.491 (1) (d). Subsection (1) (b) does not apply to assessments for the commission's activities under s. 196.491 related to the construction of wholesale merchant plants.

(b) For the purpose of direct assessment under sub. (1) of expenses incurred by the commission in connection with its activities under s. 196.04 (4), the term "public utility" includes a video service provider.

(c) For the purpose of direct assessment under sub. (1) of expenses incurred by the commission in connection with its activities under s. 66.0821 (5) (a) or 200.59 (5) (a) that are initiated under s. 281.49 (11) (d), the term "sewerage system" includes a licensed disposer as defined in s. 281.49 (1) (b).

(d) For the purpose of direct assessment under sub. (1) of expenses incurred by the commission in connection with its activities under s. 182.017, the term "public utility" includes a company, as defined in s. 182.017 (1g) (b).

(2) The commission shall annually, within 90 days of the commencement of each fiscal year, calculate the total of its expenditures during the prior fiscal year which are reasonably attributable to the performance of its duties relating to public utilities, sewerage systems and power districts under this chapter and chs. 66, 198 and 201 and expenditures of the state for state government operations to support the performance of such duties. For purposes of such calculation, 90% of the expenditures so determined shall be expenditures of the commission and 10% of the expenditures so determined shall be expenditures for state government operations. The commission shall deduct from this total all amounts chargeable to public utilities, sewerage systems and power districts under sub. (1) and s. 201.10 (3). The commission shall assess a sum equal to the remainder plus 10% of the remainder to the public utilities and power districts in proportion to their respective gross operating revenues during the last calendar year, derived from intrastate operations. If, at the time of payment, the prior year's expenditures made under this section exceeded the payment made under this section in the prior year, the commission shall charge the remainder to the public utilities and power districts in proportion to their gross operating revenues during the last calendar year. If, at the time of payment it is determined that the prior year's expenditures made under this section were less than the payment made under this section in the prior year, the commission shall credit the difference to the current year's payment. The assessment shall be paid within 30 days after the bill has been mailed to the public utilities and power districts. The bill constitutes notice of the assessment and demand of payment. Ninety percent of the payment shall be credited to the appropriation account under s. 20.155 (1) (g).

(2e) Annually, the commission shall assess a joint local water authority for the commission's costs under s. 66.0823 (8) directly attributable to that joint local water authority. The commission shall bill the joint local water authority for the amount of the assessment.

(3) If any public utility, sewerage system, joint local water authority, or power district is billed under sub. (1), (2), or (2e) and fails to pay the bill within 30 days or fails to file objections to the bill with the commission, as provided in this subsection, the commission shall transmit to the secretary of administration a certified copy of the bill, together with notice of failure to pay the bill, and on the same day the commission shall mail by registered mail to the public utility, sewerage system, joint local water authority, or power district a copy of the notice that it has transmitted to the state treasurer. Within 10 days after receipt of the notice and certified copy of the bill, the secretary of administration shall levy the amount stated on the bill to be due, with interest, by distress and sale of any property, including stocks, securities, bank accounts, evidences of debt, and accounts receivable belonging to the delinquent public utility, sewerage system, joint local water authority, or power district. The levy by distress and sale shall be governed by s. 74.10, 1985 stats., except that it shall be made by the secretary of administration and that goods and chattels anywhere within the state may be levied upon.

(4) (a) Within 30 days after the date of the mailing of any bill under sub. (1), (2), or (2e), the public utility, sewerage system, joint local water authority, or power district that has been billed may file with the commission objections setting out in detail the grounds upon which the objector regards the bill to be excessive, erroneous, unlawful, or invalid. The commission, after notice to the objector, shall hold a hearing upon the objections, from 5 to 10 days after providing the notice. If after the hearing the commission finds any part of the bill to be excessive, erroneous, unlawful, or invalid, it shall record its findings upon its minutes and transmit to the objector by registered mail an amended bill, in accordance with the findings. The amended bill shall have the same force and effect under this section as an original bill rendered under sub. (1), (2), or (2e).

(b) If after such hearing the commission finds the entire bill unlawful or invalid it shall notify the objector by registered mail of such determination, in which case said original bill shall be deemed null and void.

(c) If after such hearing the commission finds that the bill as rendered is neither excessive, erroneous, unlawful or invalid either in whole or in part it shall record such findings upon its minutes, and transmit to the objector by registered mail notice of such finding.

(d) If any bill against which objections have been filed is not paid within 10 days after notice of a finding that the objections have been overruled and disallowed by the commission has been mailed to the objector as provided in this subsection, the commission shall give notice of the delinquency to the secretary of administration and to the objector, in the manner provided in sub. (3). The secretary of administration shall then proceed to collect the amount of the delinquent bill as provided in sub. (3). If an amended bill is not paid within 10 days after a copy of the amended bill is mailed to the objector by registered mail, the commission shall notify the secretary of administration and the objector as in the case of delinquency in the payment of an original bill. The secretary of administration shall then proceed to collect the amount of the amended bill as provided in the case of an original bill.

(5) No suit or proceeding may be maintained in any court to restrain or delay the collection or payment of any bill rendered under sub. (1), (2), or (2e). Every public utility, sewerage system, joint local water authority, or power district that is billed shall pay the amount of the bill, and after payment may in the manner provided under this section, at any time within 2 years from the date the payment was made, sue the state to recover the amount paid plus interest from the date of payment, upon the ground that the assessment was excessive, erroneous, unlawful, or invalid in whole or in part. If the court finds that any part of the bill for which payment was made was excessive, erroneous, unlawful, or invalid, the secretary of administration shall make a refund to the claimant as directed by the court. The refund shall be charged to the appropriations to the commission.

(6) No action for recovery of any amount paid pursuant to this section shall be maintained in any court unless objections have been filed with the commission as herein provided. In any action

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for recovery of any payments made under this section the claimant shall be entitled to raise every relevant issue of law, but the commission's findings of fact made pursuant to this section shall be prima facie evidence of the facts therein stated.

(7) The following shall be deemed to be findings of fact of the commission, within the meaning of this section: (a) Determinations of fact expressed in bills rendered pursuant to this section; (b) determinations of fact set out in those minutes of the commission which record the action of the commission in passing upon said bills, and in passing upon objections thereto.

(8) The procedure by this section providing for determining the lawfulness of bills and the recovery back of payments made pursuant to such bills shall be exclusive of all other remedies and procedures.

History: 1971 c. 40 s. 93; 1971 c. 125; 1973 c. 243 s. 82; 1975 c. 68; 1977 c. 29 ss. 1359, 1360, 1654 (10) (f); 1977 c. 203, 418; 1979 c. 171; 1981 c. 390; 1987 a. 378; 1991 a. 269; 1993 a. 496; 1997 a. 27, 140, 184, 229, 254; 1999 a. 32, 53; 1999 a. 150 ss. 648, 649, 672; 1999 a. 186; 2001 a. 16, 30; 2003 a. 33; 2005 a. 347; 2007 a. 42.

Cross−reference: See also ch. PSC 5, Wis. adm. code.

NOTE: 2005 Wis. Act 347, which affected this section, contains extensive explanatory notes.

Revenue from "intrastate operations" under sub. (2) includes revenue from interstate telecommunications originating within the state. MCI Telecommunications Corp. v. State, 209 Wis. 2d 310, 562 N.W.2d 594 (1997), 95−0915.

196.855 Assessment of costs against municipalities. Any expense incurred by the commission in making any appraisal or investigation of public utility property under ch. 197 shall be charged directly to the municipality making the application. The commission shall ascertain the expense, and shall render and review any bill under s. 196.85 insofar as applicable. For the purpose of calculating the expense, 90% of the costs determined shall be costs of the commission and 10% of the costs determined shall be costs of state government operations. If a bill under this section is not paid within the time required by s. 196.85, the bill shall bear interest at the rate of 6% per year and the amount of the bill and the interest shall be certified to the department of administration and shall be levied and collected as a special charge in the same manner as a state tax.

History: 1979 c. 110 s. 60 (13); 1983 a. 53; 1991 a. 269.

196.857 Stray voltage program. (1g) PROGRAM ELEMENTS. (a) The commission shall establish and administer a stray voltage program. The program shall focus on regulation, education, inspection and investigation relating to stray voltage.

(b) The commission shall identify standardized test procedures check lists and equipment to be used by public utilities to investigate stray voltage. The commission may audit the results of investigations.

(c) The commission shall conduct classroom and on−farm stray voltage training sessions for public utilities, cooperatives, electricians or other interested parties.

(d) The commission shall conduct unannounced spot checks of on−farm stray voltage testing done by public utilities if the farmer gives permission for the check at the time the farm is visited. The commission may inspect the operation of public utility stray voltage programs to ensure that proper equipment and procedures are being used and to ensure that investigators are properly trained.

(e) In cooperation with the department of agriculture, trade and consumer protection, the commission shall investigate the causes of stray voltage on individual farms, recommend to farmers solutions to stray voltage problems and evaluate the effectiveness of on−site technical assistance.

(1m) ASSESSMENTS. The commission shall assess annually all of the following amounts to public utilities which produce electricity and which have annual gross operating revenues related to electricity in excess of $100,000,000 in proportion to their respective electric gross operating revenues during the last calendar year, derived from intrastate operations:

(a) The amount appropriated under s. 20.155 (1) (L), less any amount received under s. 20.155 (1) (Lb) and less any fees received under sub. (2k) and credited to the appropriation under s. 20.155 (1) (L). The amounts received under this paragraph shall be credited to the appropriation made in s. 20.155 (1) (L).

(b) The amount appropriated under s. 20.115 (3) (j), less any fees received from farmers under sub. (2g) and credited to the appropriation account under s. 20.115 (3) (j). The amounts received under this paragraph shall be credited to the appropriation account under s. 20.115 (3) (j).

(2) DUE DATE. A public utility shall pay the total amount that it is assessed under sub. (1m) within 30 days after it receives a bill for that amount from the commission. The bill constitutes notice of the assessment and demand of payment.

(2g) FARM SERVICES FEES. The commission may charge reasonable fees not to exceed $300 per farm for services provided to farmers under this section. The fees shall be in accordance with a standardized schedule of fees established by the commission by rule. The fees collected under this subsection shall be credited to the appropriation account under s. 20.115 (3) (j) in each fiscal year.

(2k) OTHER SERVICES FEES. The commission may charge a reasonable fee for services, other than on−farm site−related services, provided under this section. The fee may not exceed the actual costs of the services. The fees collected under this subsection shall be credited to the appropriation account under s. 20.155 (1) (L) in each fiscal year.

(2m) ADDITIONAL INVESTIGATIONS. If the commission, at the request of an electric cooperative organized under ch. 185 or any public utility which is not assessed under sub. (1m), conducts an investigation of the causes of stray voltage on any farm receiving electrical service from that electric cooperative or public utility, that electric cooperative or public utility shall pay reasonable fees assessed by the commission in accordance with a standardized schedule of fees established by the commission by rule. The amounts received under this subsection shall be credited to the appropriation account under s. 20.155 (1) (L).

History: 1987 a. 27, 399; 1991 a. 39; 1993 a. 16; 1995 a. 27; 1997 a. 27, 35.

Cross−reference: See also s. PSC 113.0506, Wis. adm. code.

PSC findings under this section regarding the level of traditional stray voltage that can harm cows did not prevent plaintiff farmers' alternative theory at trial that non−traditional stray voltage was harming their dairy herd and that traditional stray voltage is not the only kind of electrical current that can harm animals. Hoffmann v. Wisconsin Electric Power Co. 2003 WI 64, 262 Wis. 2d 264, 664 N.W.2d 55, 00−2703.

196.858 Assessment for telephone relay service. (1) The commission shall annually assess against local exchange and interexchange telecommunications utilities the total, not to exceed $5,000,000, of the amounts appropriated under s. 20.505 (1) (ir).

(2) The commission shall assess a sum equal to the annual total amount under sub. (1) to local exchange and interexchange telecommunications utilities in proportion to their gross operating revenues during the last calendar year. If total expenditures for telephone relay service exceeded the payment made under this section in the prior year, the commission shall charge the remainder to assessed telecommunications utilities in proportion to their gross operating revenues during the last calendar year. A telecommunications utility shall pay the assessment within 30 days after the bill has been mailed to the assessed telecommunication utility. The bill constitutes notice of the assessment and demand of payment. Payments shall be credited to the appropriation account under s. 20.505 (1) (ir).

(3) Section 196.85 (3) to (8), as it applies to assessments under s. 196.85 (1) or (2), applies to assessments under this section.

(5) A telecommunications utility may not recover the assessment under this section by billing a customer for the assessment on a separate line in a billing statement.

History: 1989 a. 336; 1991 a. 39; 2001 a. 16; 2003 a. 33.

196.859 Assessment for telecommunications utility trade practices. (1) The commission shall annually assess against telecommunications utilities the total of the amount appropriated under s. 20.115 (1) (jm).

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(2) The commission shall assess a sum equal to the annual total amount under sub. (1) to telecommunications utilities in proportion to their gross operating revenues during the last calendar year. A telecommunications utility shall pay the assessment within 30 days after the bill has been mailed to the assessed telecommunications utility. The bill constitutes notice of the assessment and demand of payment. Payments shall be credited to the appropriation account under s. 20.115 (1) (jm).

(3) Section 196.85 (3) to (8), as it applies to assessments under s. 196.85 (1) or (2), applies to assessments under this section.

(4) A telecommunications utility may not recover the assessment under this section by billing a customer for the assessment on a separate line in a billing statement.

History: 2009 a. 28.

196.86 Assessments for air quality improvement program. (1) In this section:

(a) "Department" means the department of natural resources.

(b) "Electric public utility affiliate" means a public utility affiliate, as defined in s. 196.795 (1) (L), that sells electricity in this state and owns electric generating facilities in the transmission area.

(c) "Heat throughput ratio" means the result obtained by dividing the total heat throughput of all electric generating facilities that use fossil fuel of an individual electric public utility affiliate by the total heat throughput of all electric generating facilities that use fossil fuel of all electric public utility affiliates.

(d) "Initial compliance date" means the date specified in a notice by the department of natural resources under s. 285.48 (2) by which electric generating facilities in the midcontinent area of this state are required to comply with initial nitrogen oxide emission reduction requirements.

(e) "Midcontinent area" has the meaning given in s. 16.958 (1) (e).

(f) "Transmission area" has the meaning given in s. 196.485 (1) (g).

(2) If the department of natural resources makes a notification to the commission under s. 285.48 (2), the commission shall assess against electric public utility affiliates a total of $2,400,000, or a decreased amount specified in a notice by the department of natural resources under s. 285.48 (3) (d) 3., in each fiscal year of the 10−year period that commences on July 1 of the fiscal year ending before the initial compliance date. An assessment in a fiscal year against an electric public utility affiliate under this subsection shall be in an amount that is proportionate to the electric public utility affiliate's heat throughput ratio for the prior fiscal year.

(3) An electric public utility affiliate shall pay an assessment required under sub. (2) within 30 days after the commission has mailed a bill for the assessment. The bill constitutes notice of the assessment and demand of payment. Payments shall be deposited in the air quality improvement fund.

(4) Section 196.85 (3) to (8), as it applies to assessments under s. 196.85 (1) or (2), applies to assessments under this section.

History: 1999 a. 9, 75, 185.

196.91 Acquisition of existing dams. (1) Except as provided under s. 196.92 (3) (c), every domestic corporation lawfully engaged in the business of producing, transmitting, delivering or furnishing heat, light, water or power to or for the public may acquire, for the purpose of developing power and generating energy for public use in the business:

(a) Any dam in or across any navigable waters of this state.

(b) All flowage and other rights and property necessary to the maintenance of any dam under par. (a).

(c) Any undeveloped water power or dam site upon any navigable waters within this state, except as provided under sub. (2).

(2) No award in any condemnation proceedings authorized by sub. (1) shall be effective, and no corporation may purchase or otherwise acquire any property under sub. (1) until it obtains from the commission a certificate that public convenience and necessity require the acquisition of the property, at the amount fixed by the award or agreed upon with the owner of the property.

History: 1983 a. 53; 1985 a. 187.

196.92 Procedure for acquiring dams. (1) If a corporation under s. 196.91 (1) desires to purchase or acquire any property under s. 196.91, the corporation shall apply to the commission for a certificate of public convenience and necessity. The application shall state:

(a) The name of any owner of the property sought to be acquired.

(b) The business in connection with which it is desired to utilize the property.

(c) The specific public purpose for which it is proposed to use the property.

(d) The compensation or price to be paid for the property.

(e) A statement to the effect that the corporation agrees to cancel all contracts for the sale of hydroelectric power outside this state, if the commission finds that the contract interferes with adequate service and reasonable rates to the people of this state.

(f) Any other information the commission requires.

(2) If the commission receives an application under sub. (1), the commission shall fix a convenient time and place for a public hearing on the application. The time may not be more than 8 weeks from the date of filing the application. The commission shall give notice of the time and place to the applicant. Prior to the hearing the applicant shall publish the time and place as a class 3 notice, under ch. 985. Not less than 20 days prior to that date, the applicant shall serve notice of the hearing upon any owner of the property personally, or by registered mail, if the post−office address of the owner, by due diligence, can be ascertained. Proof of the publication and service of the notice shall be filed with the commission.

(3) (a) At a hearing under this section or any adjournment of the hearing, the commission shall consider the application and shall receive the evidence offered by the applicant and any other person for or against the application.

(b) The commission may issue a certificate that public convenience and necessity require the utilization of the property as proposed by the applicant if the commission finds that:

1. The acquisition and use of the property in connection with the business of the applicant for the purpose or purposes and at the price or compensation set forth in the application would be a public convenience;

2. The applicant possesses the financial ability to utilize the property for its proposed purpose; and

3. Public necessity requires the proposed acquisition and use.

(c) Section 196.91 shall not apply to the acquisition of flowage rights necessary for the improvement or development of dams or dam sites previously acquired.

History: 1983 a. 53 ss. 109 to 111, 113.

196.975 Local access and transport area boundaries. (1g) In this section, "consumer" means a person billed for one or more local telecommunications service access lines not to exceed one person per access line. A person billed for more than one access line may not be considered a consumer for each access line for which he or she is billed.

(1r) One hundred fifty or more consumers who are residents of the same local exchange area for telecommunications service may file with the commission a petition requesting that commission staff, in cooperation with the affected telecommunications utilities and telecommunications carriers, petition the appropriate federal district court to include their local exchange area in a different local access and transport area. The petitioners shall include with the petition information explaining why the current boundaries of the local access and transport area which includes

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their local exchange area does not adequately reflect areas of common social, economic and other concerns.

(2) After receiving a petition under sub. (1r), the commission shall schedule a public hearing, to be held in the local exchange area of the petitioners, serving to receive testimony on the contents of the petition and any other matters deemed relevant by the commission. The commission shall publish a class 1 notice under ch. 985 in a newspaper serving the local exchange area at least 20 days prior to the hearing.

(3) If, after the hearing under sub. (2), the commission determines that there is sufficient evidence that current boundaries of the local access and transport area does not adequately reflect areas of common social, economic and other concerns and that there is substantial public support within the local exchange area to include the area in a different local access and transport area, the commission shall direct its staff, in cooperation with the affected telecommunications utilities and telecommunications carriers to petition the appropriate federal district court to revise the local access and transport area boundaries. All of the commission's expenses of petitioning the federal court shall be paid by the commission from its appropriation under s. 20.155 (1) (g).

History: 1985 a. 297; 1993 a. 496; 2011 a. 22.

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