



## 2023 ASSEMBLY BILL 681

November 27, 2023 - Introduced by Representatives GUSTAFSON, NEYLON, BALDEH, DITTRICH, KRUG, MURPHY, O'CONNOR, RETTINGER, ROZAR, SPIROS, TITTL and TRANEL, cosponsored by Senators COWLES, STROEBEL, BALLWEG and NASS. Referred to Committee on Energy and Utilities.

1     **AN ACT** *to amend* 196.371 (3) (b); and *to create* 196.371 (3) (bs), 196.49 (5r) (d)  
2             and 196.491 (3) (L) of the statutes; **relating to:** amending certain orders and  
3             certificates issued by the Public Service Commission.

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### *Analysis by the Legislative Reference Bureau*

This bill authorizes the Public Service Commission to rescind, alter, or amend an advance order specifying the rate-making principles applicable to a public utility's recovery of capital costs for purchasing or constructing an electric generating facility. Under the bill, PSC may amend such an order if it determines that market conditions related to the facility have changed and that the actual costs of the facility have substantially decreased since the order was issued. The public utility has at least 60 days to accept or waive acceptance of an order altered or amended under the bill. If the public utility waives acceptance of that order, PSC must withdraw that order and any other prior advance order specifying rate-making principles for recovery of the facility's capital costs, and must consider the facility's capital costs in all future rate-making proceedings as if no advance order had been issued.

Under current law, a public utility may apply to PSC for an advance order specifying the rate-making principles for recovery of capital costs of a facility. If the public utility accepts the advance order, PSC is bound by that order in its treatment of the recovery of the facility's capital costs in all future rate-making proceedings involving the public utility. If the public utility waives acceptance of the advance order, PSC must withdraw the order and consider the facility's capital costs in all future rate-making proceedings as if no advance order had been issued.

**ASSEMBLY BILL 681**

The bill also requires PSC to reopen proceedings that resulted in the issuance of a certificate of public convenience and necessity (CPCN) or a certificate of authority (CA) for a facility or project if it determines that the actual cost of constructing the facility or project is 5 percent or more above the construction cost approved by PSC in issuing the CPCN or CA. PSC must hold a public hearing and public comment period of at least 15 days on the reasons for the increase in construction costs. If in the public interest, PSC may rescind, alter, or amend the CPCN or CA for the facility or project. Under current law, a person seeking to construct a large electric generating facility or high-voltage transmission line must obtain a CPCN from PSC. In addition, a public utility must obtain a CA from PSC to construct certain other facilities and projects.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 196.371 (3) (b) of the statutes is amended to read:

2           196.371 (3) (b) If Except as provided in par. (bs), if the public utility accepts the  
3 order, then, in all future rate-making proceedings regarding the public utility, the  
4 order shall be binding on the commission in its treatment of the recovery of the  
5 capital costs of the facility that is subject to the order and the commission may not  
6 consider the order or the effects of the order in its treatment of the recovery of any  
7 other cost of the public utility.

8           **SECTION 2.** 196.371 (3) (bs) of the statutes is created to read:

9           196.371 (3) (bs) 1. The commission may at any time, upon notice to the public  
10 utility and after a hearing, rescind, alter, or amend an order under this section if the  
11 commission determines that market conditions related to the facility have  
12 substantially changed and the actual costs of the facility have substantially  
13 decreased since the time that the order was issued.

14           2. The commission shall specify in an altered or amended order under this  
15 paragraph a deadline at least 60 days after the date of issuance of the order for the

**ASSEMBLY BILL 681**

1 public utility to notify the commission in writing whether the public utility accepts  
2 or waives acceptance of the order. If the public utility does not make the notification  
3 by the deadline specified in the order, the public utility is considered to have waived  
4 acceptance of the order.

5 3. Except as provided in subd. 1., if the public utility accepts the order under  
6 subd. 1., then, in all future rate-making proceedings regarding the public utility, the  
7 order shall be binding on the commission in its treatment of the recovery of the  
8 capital costs of the facility that is subject to the order, and the commission may not  
9 consider the order or the effects of the order in its treatment of the recovery of any  
10 other cost of the public utility.

11 4. If the public utility waives or is considered to have waived acceptance of the  
12 order under subd. 1., the commission shall withdraw that order and any other prior  
13 order under this section regarding the facility and consider the capital costs of the  
14 facility in all future rate-making proceedings in the same manner as the commission  
15 considers capital costs for which no order has been issued under this section.

16 **SECTION 3.** 196.49 (5r) (d) of the statutes is created to read:

17 196.49 (5r) (d) 1. The commission shall reopen the proceeding that resulted in  
18 the issuance of a certificate sub. (3) or (5) if the commission determines that the  
19 actual cost of constructing the project, plant, equipment, property, or facility for  
20 which the certificate was issued is 5 percent or more above the construction cost  
21 approved by the commission in issuing the certificate.

22 2. The commission shall hold a public hearing on the reasons for the increase  
23 in construction costs of the project, plant, equipment, property, or facility for a  
24 proceeding reopened under subd. 1. and shall hold a public comment period of at least  
25 15 days on the reasons for the increase in construction costs.

