

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB389)

Received: 06/21/99

Received By: **kunkemd**

Wanted: **Soon**

Identical to LRB:

For: **Lorraine Seratti (608) 266-3780**

By/Representing: **Tim**

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

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Public Util. - misc.**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Separation between utilities and affiliated interests

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kunkemd 06/21/99	wjackson 06/22/99		_____			
/1	kunkemd 06/23/99	wjackson 06/23/99	kfollet 06/22/99	_____	lrb_docadmin 06/22/99	lrb_docadmin 06/22/99	
/2			martykr 06/23/99	_____	lrb_docadmin 06/23/99	lrb_docadmin 06/23/99	

FE Sent For:

<END>

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/?	kunkemd 06/21/99	wjackson 06/22/99		_____			
/1		1/2 Wlj 6/23	kfollet 06/22/99	_____	lrb_docadmin 06/22/99	lrb_docadmin 06/22/99	

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/?	kunkemd	/1 WLJ 6/22	KJF 6/22	KJF/mc 6/22			

FE Sent For:

<END>

1999

Date (time) needed

6/22 TUES
4:00pm

LRB a 0501 1 1

AMENDMENT

MOK: WLj: RM
NOT
RUN

See form AMENDMENTS — COMPONENTS & ITEMS.

S A AMENDMENT

~~TO S A AMENDMENT~~ (LRBa 1),

~~TO S A SUBSTITUTE AMENDMENT~~ (LRBs 1),

TO 1999 SB SJR SR (AB) AJR AR 389 ~~LRB~~

At the locations indicated, amend the bill as follows:
(fill ONLY if "engrossed" or "as shown by")

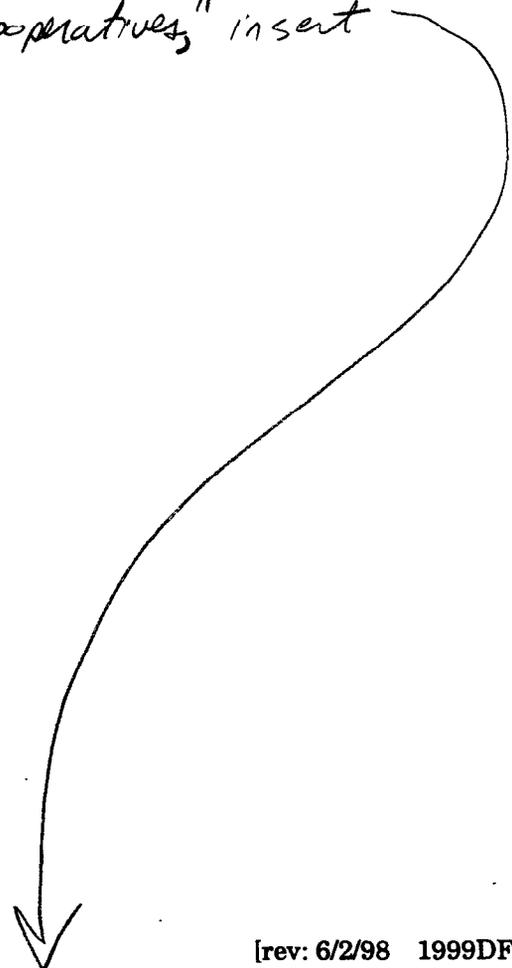
#. Page 3, line 1: after "cooperatives," insert

~~#. Page, line~~

~~#. Page, line~~

~~#. Page, line~~

~~#. Page, line~~



1999 BILL

1 **AN ACT to repeal** 196.795 (5) (q) 1., 196.795 (5) (q) 2. a., 196.795 (5) (q) 2. b.,
 2 196.795 (5) (q) 2. c., 196.795 (5) (q) 3. and 196.795 (5) (q) 4.; **to renumber and**
 3 **amend** 196.52 (3) (a) and 196.795 (5) (q) 2. (intro.); **to amend** 196.52 (3) (b) 1.,
 4 196.52 (3) (c) 1., 196.52 (3) (c) 2., 196.52 (4) (a), 196.52 (6), 196.59, 196.795 (1)
 5 (b) and 196.795 (9m); and **to create** 196.035, 196.52 (3) (a) 2., 196.52 (3) (am)
 6 1., 196.52 (3) (d), 196.52 (7m), 196.795 (1) (fm), 196.795 (1) (ik) and 196.795 (1)
 7 (im) of the statutes; **relating to:** separation between certain public utilities and

8 affiliated interests, nonutility activities by public utilities and public utility
 9 affiliates, subsidies between utility and nonutility affiliates, utility energy
 10 conservation programs and duties and providing a penalty.

Analysis by the Legislative Reference Bureau

Subject to certain exceptions, this bill prohibits public utilities from engaging in activities related to selling and servicing appliances and from performing energy conservation, plumbing, electrical, heating and other services. The bill also imposes restrictions on the relationship between certain public utilities and affiliated interests that engage in such activities or perform such services.

BILL

Relationship between public utilities and affiliated interests

The bill imposes certain restrictions on the relationship between a nonmunicipal public utility that provides heat, light, power or natural gas and its affiliated interests, which the bill defines as certain persons that are under common control or ownership with the public utility and that engage in activities related to selling and servicing appliances or that perform energy conservation, plumbing, electrical, heating, ventilating or other specified services. The bill's restrictions on such a public utility and its affiliated interests include the following:

1. They may not share with or transfer to each other any building, office space, equipment or research, or any service or system related to appliances or energy conservation, plumbing, electrical, heating, ventilating or other specified services.
2. They may not allow each other access to their computer or other information systems.
3. They may not jointly purchase goods or services or subsidize the cost of each other's research and development activities.
4. They must maintain separate books and records.
5. They may sell real property to each other only through public sales or offerings to the highest bidder.
6. They may not lease to each other or employ certain of each other's employees or, under certain circumstances, former employees.
7. They are subject to certain restrictions regarding marketing activities and providing certain information about each other.
8. They may not treat each other's customers any differently than any other customers.

Within six months after the effective date of the bill, a nonmunicipal public utility may submit a plan to the PSC that describes the actions necessary for the public utility and its affiliated interests to comply with the above restrictions. If a public utility does not submit such a plan, then the restrictions first apply to the public utility and its affiliated interests six months after the effective date of the bill. If a public utility submits a plan, then the bill's restrictions first apply to the public utility and its affiliated interests six months after the PSC approves or modifies the plan. However, if the PSC does not approve or modify a plan within six months after receiving a plan from a public utility, the bill's restrictions first apply to the public utility and its affiliated interests six months after the PSC receives the plan.

The bill establishes a forfeiture of \$2,000 for a violation of any of the above restrictions. In addition, a public utility or affiliated interest that violates a restriction is liable for treble damages to a person who is injured by the violation.

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

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

Page 27, line 5: after that line insert:

SECTION 196.035 of the statutes is created to read:

21m
Ⓢ

BILL

1 **196.035 Nonutility activities and services; relationship with affiliated**
2 **interests. (1) DEFINITIONS. In this section:**

3 (a) “Affiliated interest” means a person that is engaged in the performance of
4 energy conservation, plumbing, electrical, heating, ventilating, air conditioning or
5 sheet metalworking contracting services or in an activity related to the sale, lease
6 or service of appliances in this state and that, with respect to a public utility or
7 out-of-state utility, is any of the following:

8 1. A person owning or holding directly or indirectly 5% or more of the voting
9 securities of the public utility or out-of-state utility.

10 2. A person in any chain of successive ownership of 5% or more of voting
11 securities of the public utility or out-of-state utility.

12 3. A corporation 5% or more of whose voting securities is owned by any person
13 owning 5% or more of the voting securities of the public utility or out-of-state utility
14 or by any person in any chain of successive ownership of 5% or more of voting
15 securities of the public utility or out-of-state utility.

16 4. A corporation operating the public utility or out-of-state utility or a
17 servicing organization for furnishing supervisory, construction, engineering,
18 accounting, legal and similar services to the public utility or out-of-state utility, has
19 one or more officers or one or more directors in common with the public utility or
20 out-of-state utility, and any other corporation that has directors in common with the
21 public utility or out-of-state utility if the number of such directors of the corporation
22 is more than one-third of the total number of the public utility’s or out-of-state
23 utility’s directors.

24 5. A person that the commission determines as a matter of fact after
25 investigation and hearing to be actually exercising any substantial influence over

BILL

1 the policies and actions of the public utility or out-of-state utility even if the
2 influence is not based upon stockholding, stockholders, directors or officers as
3 specified under subds 1. to 4.

4 6. A person that the commission determines as a matter of fact after
5 investigation and hearing to be actually exercising substantial influence over the
6 policies and actions of the public utility or out-of-state utility in conjunction with
7 one or more other persons that are related by ownership or blood relationship or by
8 action in concert and that together are affiliated with the public utility or
9 out-of-state utility, even though no one of them alone is so affiliated under subds.
10 1. to 5.

11 7. A person 5% or more of the securities of which are directly or indirectly owned
12 by the public utility or out-of-state utility.

13 (b) “Appliance” has the meaning given in s. 196.795 (1) (b).

14 (bg) “Cooperative association” means a cooperative association organized
15 under ch. 185 for the purpose of producing, transmitting, delivering or furnishing
16 heat, light, power, natural gas or water to its members only.

17 (bh) “Holding company system” has the meaning given in s. 196.795 (1) (i).

18 (bL) “Municipal electric company” has the meaning given in s. 66.073 (3) (d).

19 (bm) “Municipality” means a city, village or town.

20 (bp) “Nonutility affiliate” has the meaning given in s. 196.795 (1) (j).

21 (br) 1. “Out-of-state utility” means a person that is not a public utility and that
22 is any of the following:

23 a. A person that is engaged in the production, transmission, delivery or
24 furnishing of heat, light, power or natural gas either directly or indirectly to or for
25 the use of the public in another state.

BILL

1 b. A lessee, trustee or court-appointed receiver of a person specified in subd.

2 1. a.

3 c. A person that, in any chain of successive ownership, directly or indirectly as
4 a beneficial owner, owns, controls or holds 5% or more of the outstanding voting
5 securities or other voting interest of a person specified in subd. 1. a., with the
6 unconditional power to vote the securities or interest.

7 2. “Out-of-state utility” does not include a person specified in subd. 1. a. that
8 is, or is owned or wholly operated by, a municipal electric company, municipality or
9 cooperative association.

10 (c) 1. “Public utility” means any of the following:

11 a. A person that is engaged in the production, transmission, delivery or
12 furnishing of heat, light, power or natural gas either directly or indirectly to or for
13 the use of the public in this state.

14 b. A lessee, trustee or court-appointed receiver of a person specified in subd.
15 1. a.

16 2. “Public utility” does not include a person specified in subd. 1. a. that is, or
17 is owned or wholly operated by, a municipal electric company, municipality or
18 cooperative association.

19 (d) “Public utility affiliate” has the meaning given in s. 196.795 (1) (L).

20 (2) IN GENERAL. Except as provided in subs. (2m), (3) and (5):

21 (a) A public utility may not engage in an activity related to the sale, leasing or
22 service of appliances.

23 (b) A public utility may not engage in the performance of an energy
24 conservation, plumbing, electrical, heating, ventilating, air conditioning or sheet

BILL

1 metalworking contracting service unless the service is performed in or on exempt
2 real property, as defined in s. 196.795 (1) (fm).

3 **(2m) STREET LIGHTING.** A public utility may provide, operate or maintain
4 lighting systems on public streets on behalf of a municipality.

5 **(3) EMERGENCY SERVICES.** A public utility shall respond to emergency service
6 requests related to gas odor or pressure, carbon monoxide, fire or other
7 circumstances that reasonably appear to the public utility to endanger property or
8 human health or life and may engage in emergency appliance service work in
9 response to such requests.

10 **(5) CONTRACTS OR ARRANGEMENTS WITH AFFILIATED INTERESTS.** Except as provided
11 in sub. (6), a public utility may provide services to an affiliated interest pursuant to
12 a contract or arrangement approved under s. 196.52.

13 **(5m) VOTING SECURITIES.** A public utility may acquire the voting securities or
14 other voting interest of an affiliated interest only in exchange for cash.

15 **(6) SEPARATION BETWEEN PUBLIC UTILITIES AND AFFILIATED INTERESTS.** (a) *In*
16 *general.* 1. A public utility may not do any of the following:

17 a. Except as provided in subd. 4. a., share with or lease, sell or transfer to an
18 affiliated interest any building, office space, equipment or research.

19 am. Share with or lease, sell or transfer to an affiliated interest any service or
20 system related to appliances or any energy conservation, plumbing, electrical,
21 heating, ventilating, air conditioning or sheet metalworking contracting service or
22 system.

23 b. Allow an affiliated interest access to the public utility's computer or other
24 information systems.

BILL

1 c. Share or subsidize the costs of an affiliated interest's research and
2 development activities.

3 d. Jointly purchase with an affiliated interest any goods or services.

4 e. Jointly use with an affiliated interest any system for support or corporate
5 oversight or governance.

6 1m. An affiliated interest may not do any of the following:

7 a. Except as provided in subd. 4. b., share with or lease, sell or transfer to a
8 public utility or out-of-state utility any building, office space, equipment or research
9 in this state.

10 am. Share with or lease, sell or transfer to a public utility or out-of-state utility
11 any service or system in this state related to appliances or energy conservation,
12 plumbing, electrical, heating, ventilating, air conditioning or sheet metalworking
13 contracting service or system in this state.

14 b. Allow a public utility or out-of-state utility access to the affiliated interest's
15 computer or other information systems in this state.

16 c. Share or subsidize the costs of the research and development activities in this
17 state of a public utility or out-of-state utility.

18 d. Jointly purchase with a public utility or out-of-state utility any goods or
19 services for use in this state.

20 e. Jointly use in this state with a public utility or out-of-state utility any
21 system for support or corporate oversight or governance.

22 3. An affiliated interest and a public utility or out-of-state utility shall
23 maintain separate books and records.

24 4. a. A public utility may sell real property to an affiliated interest only by a
25 public sale or by offering the real property to the highest qualified bidder.

BILL

1 b. An affiliated interest may sell real property in this state to a public utility
2 or out-of-state utility only by a public sale or by offering the real property to the
3 highest qualified bidder.

4 (b) *Restrictions on employes.* 1. A public utility may not do any of the following:

5 a. Lease any of its employes to an affiliated interest.

6 b. Employ the employes or officers of an affiliated interest.

7 c. Employ a person who was formerly employed by an affiliated interest during
8 the 6-month period immediately prior to the person's employment by the public
9 utility if the person was not employed by the affiliated interest for the entire
10 6-month period.

11 1m. An affiliated interest may not do any of the following:

12 a. Lease any of its employes in this state to a public utility or out-of-state
13 utility.

14 b. Employ in this state the employes, board members or officers of a public
15 utility or out-of-state utility.

16 c. Employ a person in this state who was formerly employed by a public utility
17 or out-of-state utility with which the affiliated interest is affiliated during the
18 6-month period immediately prior to the person's employment by the affiliated
19 interest if the person was not employed by the public utility or out-of-state utility
20 for the entire 6-month period.

21 3. A public utility shall provide an annual report to the commission that
22 describes its employment of persons formerly employed by an affiliated interest of
23 the public utility.

24 (bm) *Exception for director, chief executive officer and certain personnel.*

25 Notwithstanding par. (b), a public utility may share a member of a board of directors,

BILL

1 a chief executive officer or any personnel engaged solely in legal, accounting or
2 payroll services with an affiliated interest.

3 (c) *Marketing activities.* 1. A public utility may not do any of the following:

4 a. Promote or advertise its affiliation with an affiliated interest.

5 b. Use the brand name, trademark or logo of an affiliated interest.

6 c. Use any type of marketing identification that resembles a type used by an
7 affiliated interest.

8 d. Provide any information about its customers to an affiliated interest.

9 e. Participate with an affiliated interest in any marketing activity, including
10 advertising, sales calls, proposals to existing or potential customers or trade shows,
11 conferences or similar events.

12 1m. An affiliated interest may not do any of the following:

13 a. Use the corporate or trade name or a portion of the corporate or trade name
14 of the public utility with which it is affiliated in the affiliated interest's corporate or
15 trade name, except that an affiliated interest may indicate its affiliation, if any, with
16 a holding company, as defined in s. 196.795 (1) (h).

17 b. Use in this state the brand name, trademark or logo of a public utility or
18 out-of-state utility.

19 c. Use in this state any type of marketing identification that resembles a type
20 used by a public utility or out-of-state utility.

21 d. Provide any information about its customers in this state to a public utility
22 or out-of-state utility.

23 e. Participate with a public utility or out-of-state utility in any marketing
24 activity in this state, including advertising, sales calls, proposals to existing or
25 potential customers or trade shows, conferences or similar events.

BILL

1 2. A public utility may not provide an affiliated interest with advertising or
2 promotional space on any form of communication, including a bill envelope, to a
3 customer or potential customer of the public utility.

4 (d) *Nondiscrimination.* 1. A public utility may not treat its customers who are
5 also customers of an affiliated interest any differently than the public utility treats
6 its customers who are not also customers of an affiliated interest.

7 2. An affiliated interest may not treat its customers in this state who are also
8 customers of a public utility or out-of-state utility with which the affiliated interest
9 is affiliated any differently than the affiliated interest treats its customers who are
10 not customers of the public utility or out-of-state utility.

11 (e) *Providing certain information to customers.* Except as directed by the
12 commission, a public utility may not provide its customers with any information
13 about persons who provide heating, ventilating, air conditioning, plumbing or
14 electrical services or who sell, lease or repair appliances.

15 (f) *Applicability.* 1. In this paragraph, “plan approval date” means the date on
16 which the commission approves or modifies a plan submitted by a public utility
17 under subd. 2., except that if the commission fails to approve or modify a plan within
18 the deadline specified under subd. 2., “plan approval date” means the first day of the
19 6th month beginning after the date on which the plan is received by the commission.

20 2. No later than the first day of the 6th month beginning after the effective date
21 of this subdivision [revisor inserts date], a public utility may submit a plan to the
22 commission that describes the actions necessary for the public utility and its
23 affiliated interests to comply with pars. (a) to (e). No later than the first day of the
24 6th month beginning after the date on which a plan under this subdivision is received
25 by the commission, the commission shall approve or modify the plan.

BILL

1 3. Paragraphs (a) to (e) first apply to a public utility on the first day of the 6th
 2 month beginning after the effective date of this subdivision [revisor inserts date],
 3 except that if a public utility submits a plan to the commission under subd. 2., pars.
 4 (a) to (e) first apply to the public utility on the first day of the 6th month beginning
 5 after the plan approval date. Paragraphs (a) to (e) first apply to an affiliated interest
 6 of a public utility on the date on which pars. (a) to (e) first apply to the public utility.

7 (7) PRIVATE CAUSE OF ACTION AND FORFEITURE. A public utility or affiliated
 8 interest that violates this section is liable to any person injured by the violation for
 9 3 times the amount of damages incurred as a result of the violation, together with
 10 costs and, notwithstanding s. 814.04 (1), reasonable attorney fees, and shall forfeit
 11 \$2,000 for each violation. Each day of violation is a separate violation.

12 SECTION 196.52 (3) (a) of the statutes is renumbered 196.52 (3) (a) (intro.)
 13 and amended to read:

14 196.52 (3) (a) (intro.) In this subsection, "contract:

15 1. "Contract or arrangement" means a contract or arrangement providing for
 16 the furnishing of management, supervisory, construction, engineering, accounting,
 17 legal, financial, research, development or similar services and any contract or
 18 arrangement for the purchase, sale, lease or exchange of any property, right, or thing,
 19 or for the furnishing of any service, property, right, or thing, other than management,
 20 supervisory, construction, engineering, accounting, legal, financial or similar
 21 services.

22 (am) Except as provided under par. (b), unless and until the commission gives
 23 its written approval, any contract or arrangement is not valid or effective if the
 24 contract or arrangement is made between a public utility and an affiliated interest
 25 after June 7, 1931. Every public utility shall file with the commission a verified copy

11

#. Page 57, line 17: after that line insert: V/O
68.b
as affected by 1999

*Wisconsin Act...
 = (Ehr's act)*

INSERT 12-21

BILL

1 of any contract or arrangement, a verified summary of any unwritten contract or
 2 arrangement, and any contract or arrangement, written or unwritten, which was in
 3 effect on June 7, 1931. The commission shall may approve a contract or arrangement
 4 made or entered into after June 7, 1931, only if ~~it shall clearly appear and be~~
 5 ~~established upon~~ all of the following conditions are met:

6 2. After investigation, the commission determines that it the contract or
 7 arrangement is reasonable and consistent with the public interest and does not
 8 result in a violation of s. 196.035 (6) or 196.795 (5) (f). The commission may not
 9 approve any contract or arrangement unless satisfactory proof is submitted to the
 10 commission of the cost to the affiliated interest of rendering the services or of
 11 furnishing the property or service to each public utility or of the cost to the public
 12 utility of rendering the services or of furnishing the property or service to each
 13 affiliated interest. No proof is satisfactory under this ~~paragraph~~ subdivision unless
 14 it includes the original (or verified copies) of the relevant cost records and other
 15 relevant accounts of the affiliated interest, or an abstract of the records and accounts
 16 or a summary taken from the records and accounts if the commission deems the
 17 abstract or summary adequate. The accounts shall be properly identified and duly
 18 authenticated. The commission, where reasonable, may approve or disapprove a
 19 contract or arrangement without submission of the cost records or accounts.

20 SECTION ^{68 d ← ⑥} 196.52 (3) (a) 2. of the statutes is created to read:

21 196.52 (3) (a) 2. "Exempt real property" has the meaning given in s. 196.795
 22 (1) (fm).

23 SECTION ^{68 e ← ⑥} 196.52 (3) (am) 1. of the statutes is created to read:

24 196.52 (3) (am) 1. If the contract or arrangement involves an activity related
 25 to the sale, lease or service of appliances, as defined in s. 196.795 (1) (b), or the

BILL

SECTION 4

1 performance of energy conservation, plumbing, electrical, heating, ventilating, air
2 conditioning or sheet metalworking contracting services, the activity or service is
3 performed in or on exempt real property.

4 SECTION ~~6. 196.52~~ ^{68ft} (3) (b) 1. of the statutes is amended to read:

5 196.52 (3) (b) 1. The Except for a contract or arrangement specified in par. (am)
6 1. that involves an activity or service that is performed on exempt real property, the
7 requirement for written approval under par. (a) shall (am) does not apply to any a
8 contract or arrangement if the amount of consideration involved is not in excess of
9 \$25,000 or 5% of the equity of the public utility, whichever is smaller. The
10 requirement under par. (a) (am) also does not apply to a telecommunications utility
11 contract or arrangement or to contracts or arrangements with joint local water
12 authorities under s. 66.0735. Regularly recurring payments under a general or
13 continuing arrangement which aggregate a greater annual amount may not be
14 broken down into a series of transactions to come within the exemption under this
15 paragraph. Any transaction exempted under this paragraph shall be valid or
16 effective without commission approval under this section.

17 SECTION ~~6. 196.52~~ ^{68ht} (3) (c) 1. of the statutes is amended to read:

18 196.52 (3) (c) 1. May not waive the requirement of the submission of cost
19 records or accounts under par. (a) (am);

20 SECTION ~~6. 196.52~~ ^{68ka} (3) (c) 2. of the statutes is amended to read:

21 196.52 (3) (c) 2. Shall review the accounts of the affiliated interest as they relate
22 to the contract or arrangement prior to the commission approving or disapproving
23 the contract or arrangement under par. (a) (am); and

24 SECTION ~~6. 196.52~~ ^{68m} (3) (d) of the statutes is created to read:

BILL

1 196.52 (3) (d) On the effective date of this paragraph [revisor inserts date],
2 each public utility and affiliated interest that, before the effective date of this
3 paragraph [revisor inserts date], have entered into a contract or arrangement that
4 involves an activity related to the sale, lease or service of appliances, or that involves
5 the performance of energy conservation, plumbing, electrical, heating, ventilating,
6 air conditioning or sheet metalworking contracting services, shall terminate the
7 contract or arrangement if the activity or service is not performed in or on exempt
8 real property. In this paragraph, "public utility" does not include a public utility that
9 is, or is owned or wholly operated by, a municipal electric company, as defined in s.
10 66.073 (3) (d), or a city, village or town.

11 ⁶⁸⁰ SECTION 9. 196.52 (4) (a) of the statutes is amended to read:

12 196.52 (4) (a) In any proceeding, whether upon the commission's own motion
13 or upon application or complaint, involving the rates or practices of any public utility,
14 the commission may exclude from the accounts of the public utility any payment or
15 compensation to or from an affiliated interest for any services rendered or property
16 or service furnished under an existing contract or arrangement with an affiliated
17 interest under sub. (3) (a) ~~unless the public utility establishes the reasonableness of~~
18 ~~the payment or compensation (am).~~

19 ⁶⁸⁰ SECTION 10. 196.52 (6) of the statutes is amended to read:

20 196.52 (6) If the commission finds upon investigation that a public utility, other
21 than a telecommunications utility, is giving effect to a contract or arrangement
22 without the commission's approval under this section, the commission shall issue a
23 summary order directing that public utility to cease and desist from making any
24 payments, receiving compensation, providing any service or otherwise giving any
25 effect to the contract or arrangement until the contract or arrangement receives the

BILL

1 approval of the commission. The circuit court of Dane county may enforce the order
2 to cease and desist by appropriate process, including the issuance of a preliminary
3 injunction, upon the suit of the commission and may require a public utility to forfeit
4 \$2,000 for each day that the public utility has given effect to a contract or
5 arrangement without the commission's approval.

6

⁶⁸⁵¹⁶
SECTION ~~14~~. 196.52 (7m) of the statutes is created to read:

7 196.52 (7m) A public utility who violates sub. (3) (am) is liable to any person
8 injured as a result of the violation for 3 times the amount of damages incurred as a
9 result of the violation, together with costs and, notwithstanding s. 814.04 (1),
10 reasonable attorney fees.

11

^{68 u 10}
SECTION ~~14~~. 196.59 of the statutes is amended to read:

12 **196.59 Merchandising by utilities.** Each public utility engaged in the
13 production, transmission, delivery or furnishing of heat, light or power either
14 directly or indirectly to or for the use of the public shall keep separate accounts to
15 show any profit or loss resulting from the sale of ~~appliances or other~~ merchandise.
16 The commission may not take the profit or loss into consideration in arriving at any
17 rate to be charged for service by the public utility.

18

^{68 wt 6}
SECTION ~~14~~. 196.795 (1) (b) of the statutes is amended to read:

19 196.795 (1) (b) "Appliance" means any equipment used directly for lighting,
20 cooking, drying, water tempering, space heating, space cooling or space ventilation.
21 "Appliance" does not include equipment or devices which monitor or control the
22 primary energy supply or source for any equipment used directly for lighting,
23 cooking, drying, water tempering, space heating, space cooling or space ventilation.

24

^{68 y 6}
SECTION ~~14~~. 196.795 (1) (fm) of the statutes is created to read:

BILL

1 196.795 (1) (fm) "Exempt real property" means real property that satisfies any
2 of the following:

3 1. A public utility has an ownership or leasehold interest in the real property.

4 2. Except for real property that is an improvement, a public utility has an
5 easement in the real property.

6 3. A public utility that is owned or operated wholly by a municipality or
7 municipal electric company or a municipality or municipal electric company has an
8 ownership or leasehold interest in the real property.

9 4. A cooperative association, as defined in s. 196.035 (1) (bg), has an ownership
10 or leasehold interest in the real property. ^{1/10}

11 *#. Page 58, line 4: after that line insert:*
SECTION 15. 196.795 (1) (ik) of the statutes is created to read:

12 196.795 (1) (ik) "Municipal electric company" has the meaning given in s.
13 66.073 (3) (d). ^{7/10}

14 SECTION 16. 196.795 (1) (im) of the statutes is created to read:

15 196.795 (1) (im) "Municipality" means a city, village or town. ^{1/10}

16 *#. Page 59, line 10: after that line insert:*
SECTION 17. 196.795 (5) (q) 1. of the statutes is repealed. ^{1/10}

17 SECTION 18. 196.795 (5) (q) 2. (intro.) of the statutes is renumbered 196.795 (5)
18 (q) and amended to read: ^{8/02}

19 196.795 (5) (q) ~~Except as provided under subd. 3., no~~ No public utility affiliate
20 ~~or its subsidiary or a joint venture or partnership having a utility affiliate or its~~
21 ~~subsidiary as a member or partner may, in the service territory of the public utility~~
22 ~~affiliate, sell at retail, lease, install, maintain or service any appliance that uses as~~
23 ~~its primary energy source energy supplied by that public utility affiliate under rates~~
24 ~~and tariffs approved by the commission, unless the appliance is located in facilities~~
25 ~~owned or operated by that public utility affiliate or its subsidiary or unless the~~

BILL

SECTION 18

1 ~~appliance is sold, leased, installed, maintained or serviced;~~ located on exempt real
2 property.

3 SECTION 19. 196.795 (5) (q) 2. a. of the statutes is repealed.

4 SECTION 20. 196.795 (5) (q) 2. b. of the statutes is repealed.

5 SECTION 21. 196.795 (5) (q) 2. c. of the statutes is repealed.

6 SECTION 22. 196.795 (5) (q) 3. of the statutes is repealed.

7 SECTION 23. 196.795 (5) (q) 4. of the statutes is repealed.

#. Page 61, line 14: *note that line insert.*

8 SECTION 24. 196.795 (9m) of the statutes is amended to read:

9 196.795 (9m) (title) PRIVATE CAUSE OF ACTION AND FORFEITURE. Any company in
10 a holding company system which does, causes or permits to be done any prohibited
11 action under sub. (5) (c) to (dr), (f), (h), (k), (n), (q), (r) or (s), or fails to comply with
12 any term, limitation or condition imposed under sub. (2) (e) or (f) consistent with sub.
13 (5) (c) to (dr), (f), (h), (k), (n), (q), (r) or (s), is liable to any person injured thereby ~~in~~
14 treble for 3 times the amount of damages sustained in consequence incurred as a
15 result of the prohibited action or failure to act, together with costs and,
16 notwithstanding s. 814.04 (1), reasonable attorney fees, and shall forfeit \$2,000 for
17 each violation or failure to comply. Each day of violation or failure to comply is a
18 separate violation or failure to comply.

19 ~~SECTION 25. Initial applicability.~~

INSERT 18-19 ✓

20 (1) ^{de} CONTRACTS OR ARRANGEMENTS WITH AFFILIATES. The treatment of sections
21 196.52 (3) (am) 1. and 196.795 (1) (b) of the statutes, the renumbering and
22 amendment of section 196.52 (3) (a) of the statutes and the creation of section 196.52
23 (3) (a) 2. of the statutes first apply to contracts or arrangements entered into,
24 renewed, extended or modified on the effective date of this subsection.

INIT
APP

BILL

1 ^{2m}
 (1) (4) SEPARATION BETWEEN PUBLIC UTILITIES AND AFFILIATED INTERESTS. The
 2 treatment of sections 196.035, 196.52 (3) (a) 2. and 196.795 (1) (b) of the statutes first
 3 applies to contracts for leases, sales or purchases or transactions that are entered
 4 into, renewed, extended or modified on the effective date of this subsection.

5 ^{2s}
 (5) FORFEITURES AND ATTORNEY FEES.
 6 (a) The treatment of section 196.795 (9m) of the statutes first applies to
 7 violations or failures to comply that occur on the effective date of this paragraph.

8 (b) The treatment of section 196.52 (6) and (7m) of the statutes first applies to
 9 contracts to which a public utility gives effect on, and violations that occur on, the
 10 effective date of this paragraph.

~~SECTION 26. Effective date~~

11
 12 (1) This act takes effect on the first day of the 12th month beginning after
 13 publication.

(END)

14
 INSERT 19-10 ↓

1 **INSERT 12-21:**

2 *No ff*, but "contract or arrangement" does not include a contract or arrangement
3 under which a transmission utility, as defined in s. 196.485 (1) (i), sells or transfers
4 securities, as defined in s. 196.485 (1) (fe), that have been issued by a transmission
5 company, as defined in s. 196.485 (1) (ge)

6 **INSERT 18-19:**

7 *# 4.* Page 67, line 7: after "(1)" insert "CERTIFICATE APPLICATIONS."

8 *# 10.* Page 67, line 10: before "The" insert "LICENSE FEE."

9 *# 16.* Page 67, line 16: after that line insert:

10 **INSERT 19-10:**

11 **SECTION 95m. Effective dates.** This act takes effect on the day after
12 publication, except as follows:

13 (1m) The treatment of sections 196.035, 196.52 (3) (a) 2., (am) 1., (b) 1., (c) 1.
14 and 2. and (d), (4) (a), (6) and (7m), 196.59 and 196.795 (1) (b), (fm), (ik) and (im), (5)
15 (q) 1., 2. (intro.), a., b. and c., 3. and 4. and (9m) of the statutes and the renumbering
16 and amendment of section 196.52 (3) (a) of the statutes take effect on the first day
17 of the 12th month beginning after publication."



ASSEMBLY AMENDMENT,
TO 1999 ASSEMBLY BILL 389

~~p. 1 l. 10~~
~~p. 4 l. 17-20 + add Subject 2~~
~~p. 7 l. 1, l. 10 + add Subject 1~~
~~p. 5 l. 5~~
~~p. 6 l. 5~~

1 At the locations indicated, amend the bill as follows:

2 1. Page 3, line 1: after "cooperatives," insert "separation between certain
3 public utilities and affiliated interests, nonutility activities by public utilities and
4 public utility affiliates, subsidies between utility and nonutility affiliates,".

5 2. Page 27, line 5: after that line insert:

6 "SECTION 21m. 196.035 of the statutes is created to read:

7 **196.035 Nonutility activities and services; relationship with affiliated**
8 **interests. (1) DEFINITIONS.** In this section:

9 (a) "Affiliated interest" means a person that is engaged in the performance of
10 ~~energy conservation~~, plumbing, electrical, heating, ventilating, air conditioning or
11 sheet metalworking contracting services or in an activity related to the sale, lease
12 or service of appliances in this state and that, with respect to a public utility or
13 out-of-state utility, is any of the following:

1 1. A person owning or holding directly or indirectly 5% or more of the voting
2 securities of the public utility or out-of-state utility.

3 2. A person in any chain of successive ownership of 5% or more of voting
4 securities of the public utility or out-of-state utility.

5 3. A corporation 5% or more of whose voting securities is owned by any person
6 owning 5% or more of the voting securities of the public utility or out-of-state utility
7 or by any person in any chain of successive ownership of 5% or more of voting
8 securities of the public utility or out-of-state utility.

9 4. A corporation operating the public utility or out-of-state utility or a
10 servicing organization for furnishing supervisory, construction, engineering,
11 accounting, legal and similar services to the public utility or out-of-state utility, has
12 one or more officers or one or more directors in common with the public utility or
13 out-of-state utility, and any other corporation that has directors in common with the
14 public utility or out-of-state utility if the number of such directors of the corporation
15 is more than one-third of the total number of the public utility's or out-of-state
16 utility's directors.

17 5. A person that the commission determines as a matter of fact after
18 investigation and hearing to be actually exercising any substantial influence over
19 the policies and actions of the public utility or out-of-state utility even if the
20 influence is not based upon stockholding, stockholders, directors or officers as
21 specified under subds 1. to 4.

22 6. A person that the commission determines as a matter of fact after
23 investigation and hearing to be actually exercising substantial influence over the
24 policies and actions of the public utility or out-of-state utility in conjunction with
25 one or more other persons that are related by ownership or blood relationship or by

1 action in concert and that together are affiliated with the public utility or
2 out-of-state utility, even though no one of them alone is so affiliated under subs.
3 1. to 5.

4 7. A person 5% or more of the securities of which are directly or indirectly owned
5 by the public utility or out-of-state utility.

6 (b) “Appliance” has the meaning given in s. 196.795 (1) (b).

7 (bg) “Cooperative association” means a cooperative association organized
8 under ch. 185 for the purpose of producing, transmitting, delivering or furnishing
9 heat, light, power, natural gas or water to its members only.

10 (bh) “Holding company system” has the meaning given in s. 196.795 (1) (i).

11 (bL) “Municipal electric company” has the meaning given in s. 66.073 (3) (d).

12 (bm) “Municipality” means a city, village or town.

13 (bp) “Nonutility affiliate” has the meaning given in s. 196.795 (1) (j).

14 (br) 1. “Out-of-state utility” means a person that is not a public utility and that
15 is any of the following:

16 a. A person that is engaged in the production, transmission, delivery or
17 furnishing of heat, light, power or natural gas either directly or indirectly to or for
18 the use of the public in another state.

19 b. A lessee, trustee or court-appointed receiver of a person specified in subd.
20 1. a.

21 c. A person that, in any chain of successive ownership, directly or indirectly as
22 a beneficial owner, owns, controls or holds 5% or more of the outstanding voting
23 securities or other voting interest of a person specified in subd. 1. a., with the
24 unconditional power to vote the securities or interest.

1 2. "Out-of-state utility" does not include a person specified in subd. 1. a. that
2 is, or is owned or wholly operated by, a municipal electric company, municipality or
3 cooperative association.

4 (c) 1. "Public utility" means any of the following:

5 a. A person that is engaged in the production, transmission, delivery or
6 furnishing of heat, light, power or natural gas either directly or indirectly to or for
7 the use of the public in this state.

8 b. A lessee, trustee or court-appointed receiver of a person specified in subd.
9 1. a.

10 2. "Public utility" does not include a person specified in subd. 1. a. that is, or
11 is owned or wholly operated by, a municipal electric company, municipality or
12 cooperative association.

13 (d) "Public utility affiliate" has the meaning given in s. 196.795 (1) (L).

14 (2) IN GENERAL. Except as provided in subs. (2m), (3) and (5):

15 (a) A public utility may not engage in an activity related to the sale, leasing or
16 service of appliances.

17 (b) *Except as provided in (2p)* A public utility may not engage in the performance of ~~an energy~~
18 ~~conservation~~, plumbing, electrical, heating, ventilating, air conditioning or sheet
19 metalworking contracting service unless the service is performed in or on exempt
20 real property, as defined in s. 196.795 (1) (fm).

21 (2m) STREET LIGHTING. A public utility may provide, operate or maintain
lighting systems on public streets on behalf of a municipality.

23 (3) EMERGENCY SERVICES. A public utility shall respond to emergency service
24 requests related to gas odor or pressure, carbon monoxide, fire or other
25 circumstances that reasonably appear to the public utility to endanger property or

Incar
(2p)
Subject 32

1 human health or life and may engage in emergency appliance service work in
2 response to such requests.

3 (5) CONTRACTS OR ARRANGEMENTS WITH AFFILIATED INTERESTS. Except as provided
4 in sub. (6), a public utility may provide services to an affiliated interest pursuant to
5 a contract or arrangement approved under s. 196.52.

6 (5m) VOTING SECURITIES. A public utility may acquire the voting securities or
7 other voting interest of an affiliated interest only in exchange for cash.

8 (6) SEPARATION BETWEEN PUBLIC UTILITIES AND AFFILIATED INTERESTS. (a) *In*
9 *general*. 1. A public utility may not do any of the following:

10 a. Except as provided in subd. 4. a., share with or lease, sell or transfer to an
11 affiliated interest any building, office space, equipment or research.

12 am. Share with or lease, sell or transfer to an affiliated interest any service or
13 system related to appliances or any ~~energy conservation~~, plumbing, electrical, ✓
14 heating, ventilating, air conditioning or sheet metalworking contracting service or
15 system.

16 b. Allow an affiliated interest access to the public utility's computer or other
17 information systems.

18 c. Share or subsidize the costs of an affiliated interest's research and
19 development activities.

20 d. Jointly purchase with an affiliated interest any goods or services.

21 e. Jointly use with an affiliated interest any system for support or corporate
22 oversight or governance.

23 1m. An affiliated interest may not do any of the following:

1 a. Except as provided in subd. 4. b., share with or lease, sell or transfer to a
2 public utility or out-of-state utility any building, office space, equipment or research
3 in this state.

4 am. Share with or lease, sell or transfer to a public utility or out-of-state utility
5 any service or system in this state related to appliances or energy conservation,
6 plumbing, electrical, heating, ventilating, air conditioning or sheet metalworking
7 contracting service or system in this state.

8 b. Allow a public utility or out-of-state utility access to the affiliated interest's
9 computer or other information systems in this state.

10 c. Share or subsidize the costs of the research and development activities in this
11 state of a public utility or out-of-state utility.

12 d. Jointly purchase with a public utility or out-of-state utility any goods or
13 services for use in this state.

14 e. Jointly use in this state with a public utility or out-of-state utility any
15 system for support or corporate oversight or governance.

16 3. An affiliated interest and a public utility or out-of-state utility shall
17 maintain separate books and records.

18 4. a. A public utility may sell real property to an affiliated interest only by a
19 public sale or by offering the real property to the highest qualified bidder.

20 b. An affiliated interest may sell real property in this state to a public utility
21 or out-of-state utility only by a public sale or by offering the real property to the
22 highest qualified bidder.

23 (b) *Restrictions on employes.* 1. A public utility may not do any of the following:

24 a. Lease any of its employes to an affiliated interest.

25 b. Employ the employes or officers of an affiliated interest.

Except as provided in 4

1 *▼* c. Employ a person who was formerly employed by an affiliated interest during
2 the 6-month period immediately prior to the person's employment by the public
3 utility if the person was not employed by the affiliated interest for the entire
4 6-month period.

5 1m. An affiliated interest may not do any of the following:

6 a. Lease any of its employes in this state to a public utility or out-of-state
7 utility.

8 b. Employ in this state the employes, board members or officers of a public
9 utility or out-of-state utility.

10 *Except as provided in 5.*
10 *▼* c. Employ a person in this state who was formerly employed by a public utility
11 or out-of-state utility with which the affiliated interest is affiliated during the
12 6-month period immediately prior to the person's employment by the affiliated
13 interest if the person was not employed by the public utility or out-of-state utility
14 for the entire 6-month period.

15 3. A public utility shall provide an annual report to the commission that
16 describes its employment of persons formerly employed by an affiliated interest of
17 the public utility.

18 (bm) *Exception for director, chief executive officer and certain personnel.*
19 Notwithstanding par. (b), a public utility may share a member of a board of directors,
20 a chief executive officer or any personnel engaged solely in legal, accounting or
21 payroll services with an affiliated interest.

22 (c) *Marketing activities.* 1. A public utility may not do any of the following:

23 a. Promote or advertise its affiliation with an affiliated interest.

24 b. Use the brand name, trademark or logo of an affiliated interest.

*Insert
R 4
and
P 5*

1 c. Use any type of marketing identification that resembles a type used by an
2 affiliated interest.

3 d. Provide any information about its customers to an affiliated interest.

4 e. Participate with an affiliated interest in any marketing activity, including
5 advertising, sales calls, proposals to existing or potential customers or trade shows,
6 conferences or similar events.

7 1m. An affiliated interest may not do any of the following:

8 a. Use the corporate or trade name or a portion of the corporate or trade name
9 of the public utility with which it is affiliated in the affiliated interest's corporate or
10 trade name, except that an affiliated interest may indicate its affiliation, if any, with
11 a holding company, as defined in s. 196.795 (1) (h).

12 b. Use in this state the brand name, trademark or logo of a public utility or
13 out-of-state utility.

14 c. Use in this state any type of marketing identification that resembles a type
15 used by a public utility or out-of-state utility.

16 d. Provide any information about its customers in this state to a public utility
17 or out-of-state utility.

18 e. Participate with a public utility or out-of-state utility in any marketing
19 activity in this state, including advertising, sales calls, proposals to existing or
20 potential customers or trade shows, conferences or similar events.

21 2. A public utility may not provide an affiliated interest with advertising or
22 promotional space on any form of communication, including a bill envelope, to a
23 customer or potential customer of the public utility.

1 (d) *Nondiscrimination.* 1. A public utility may not treat its customers who are
2 also customers of an affiliated interest any differently than the public utility treats
3 its customers who are not also customers of an affiliated interest.

4 2. An affiliated interest may not treat its customers in this state who are also
5 customers of a public utility or out-of-state utility with which the affiliated interest
6 is affiliated any differently than the affiliated interest treats its customers who are
7 not customers of the public utility or out-of-state utility.

8 (e) *Providing certain information to customers.* Except as directed by the
9 commission, a public utility may not provide its customers with any information
10 about persons who provide heating, ventilating, air conditioning, plumbing or
11 electrical services or who sell, lease or repair appliances.

12 (f) *Applicability.* 1. In this paragraph, “plan approval date” means the date on
13 which the commission approves or modifies a plan submitted by a public utility
14 under subd. 2., except that if the commission fails to approve or modify a plan within
15 the deadline specified under subd. 2., “plan approval date” means the first day of the
16 6th month beginning after the date on which the plan is received by the commission.

17 2. No later than the first day of the 6th month beginning after the effective date
18 of this subdivision [revisor inserts date], a public utility may submit a plan to the
19 commission that describes the actions necessary for the public utility and its
20 affiliated interests to comply with pars. (a) to (e). No later than the first day of the
21 6th month beginning after the date on which a plan under this subdivision is received
22 by the commission, the commission shall approve or modify the plan.

23 3. Paragraphs (a) to (e) first apply to a public utility on the first day of the 6th
24 month beginning after the effective date of this subdivision [revisor inserts date],
25 except that if a public utility submits a plan to the commission under subd. 2., pars.

1 (a) to (e) first apply to the public utility on the first day of the 6th month beginning
2 after the plan approval date. Paragraphs (a) to (e) first apply to an affiliated interest
3 of a public utility on the date on which pars. (a) to (e) first apply to the public utility.

4 (7) PRIVATE CAUSE OF ACTION AND FORFEITURE. A public utility or affiliated
5 interest that violates this section is liable to any person injured by the violation for
6 3 times the amount of damages incurred as a result of the violation, together with
7 costs and, notwithstanding s. 814.04 (1), reasonable attorney fees, and shall forfeit
8 \$2,000 for each violation. Each day of violation is a separate violation.”.

9 **3.** Page 57, line 17: after that line insert:

10 “SECTION 68b. 196.52 (3) (a) of the statutes, as affected by 1999 Wisconsin Act
11 ... (this act), is renumbered 196.52 (3) (a) (intro.) and amended to read:

12 196.52 (3) (a) (intro.) In this subsection, ~~“contract;~~

13 1. “Contract or arrangement” means a contract or arrangement providing for
14 the furnishing of management, supervisory, construction, engineering, accounting,
15 legal, financial, research, development or similar services and any contract or
16 arrangement for the purchase, sale, lease or exchange of any property, right, or thing,
17 or for the furnishing of any service, property, right, or thing, other than management,
18 supervisory, construction, engineering, accounting, legal, financial or similar
19 services, but “contract or arrangement” does not include a contract or arrangement
20 under which a transmission utility, as defined in s. 196.485 (1) (i), sells or transfers
21 securities, as defined in s. 196.485 (1) (fe), that have been issued by a transmission
22 company, as defined in s. 196.485 (1) (ge).

23 (am) Except as provided under par. (b), unless and until the commission gives
24 its written approval, any contract or arrangement is not valid or effective if the

1 contract or arrangement is made between a public utility and an affiliated interest
2 after June 7, 1931. Every public utility shall file with the commission a verified copy
3 of any contract or arrangement, a verified summary of any unwritten contract or
4 arrangement, and any contract or arrangement, written or unwritten, which was in
5 effect on June 7, 1931. The commission ~~shall~~ may approve a contract or arrangement
6 made or entered into after June 7, 1931, only if ~~it shall clearly appear and be~~
7 ~~established upon~~ all of the following conditions are met:

8 2. After investigation, the commission determines that it the contract or
9 arrangement is reasonable and consistent with the public interest and does not
10 result in a violation of s. 196.035 (6) or 196.795 (5) (f). The commission may not
11 approve any contract or arrangement unless satisfactory proof is submitted to the
12 commission of the cost to the affiliated interest of rendering the services or of
13 furnishing the property or service to each public utility or of the cost to the public
14 utility of rendering the services or of furnishing the property or service to each
15 affiliated interest. No proof is satisfactory under this ~~paragraph~~ subdivision unless
16 it includes the original (or verified copies) of the relevant cost records and other
17 relevant accounts of the affiliated interest, or an abstract of the records and accounts
18 or a summary taken from the records and accounts if the commission deems the
19 abstract or summary adequate. The accounts shall be properly identified and duly
20 authenticated. The commission, where reasonable, may approve or disapprove a
21 contract or arrangement without submission of the cost records or accounts.

22 **SECTION 68d.** 196.52 (3) (a) 2. of the statutes is created to read:

23 196.52 (3) (a) 2. “Exempt real property” has the meaning given in s. 196.795
24 (1) (fm).

25 **SECTION 68e.** 196.52 (3) (am) 1. of the statutes is created to read:

1 196.52 (3) (am) 1. If the contract or arrangement involves an activity related
2 to the sale, lease or service of appliances, as defined in s. 196.795 (1) (b), or the
3 performance of energy conservation, plumbing, electrical, heating, ventilating, air
4 conditioning or sheet metalworking contracting services, the activity or service is
5 performed in or on exempt real property.

6 **SECTION 68f.** 196.52 (3) (b) 1. of the statutes is amended to read:

7 196.52 (3) (b) 1. The Except for a contract or arrangement specified in par. (am)
8 1. that involves an activity or service that is performed on exempt real property, the
9 requirement for written approval under par. (a) ~~shall~~ (am) does not apply to any a
10 contract or arrangement if the amount of consideration involved is not in excess of
11 \$25,000 or 5% of the equity of the public utility, whichever is smaller. The
12 requirement under par. (a) ~~(am)~~ also does not apply to a telecommunications utility
13 contract or arrangement or to contracts or arrangements with joint local water
14 authorities under s. 66.0735. Regularly recurring payments under a general or
15 continuing arrangement which aggregate a greater annual amount may not be
16 broken down into a series of transactions to come within the exemption under this
17 paragraph. Any transaction exempted under this paragraph shall be valid or
18 effective without commission approval under this section.

19 **SECTION 68h.** 196.52 (3) (c) 1. of the statutes is amended to read:

20 196.52 (3) (c) 1. May not waive the requirement of the submission of cost
21 records or accounts under par. (a) (am);

22 **SECTION 68k.** 196.52 (3) (c) 2. of the statutes is amended to read:

23 196.52 (3) (c) 2. Shall review the accounts of the affiliated interest as they relate
24 to the contract or arrangement prior to the commission approving or disapproving
25 the contract or arrangement under par. (a) (am); and

1 **SECTION 68m.** 196.52 (3) (d) of the statutes is created to read:

2 196.52 (3) (d) On the effective date of this paragraph [revisor inserts date],
3 each public utility and affiliated interest that, before the effective date of this
4 paragraph [revisor inserts date], have entered into a contract or arrangement that
5 involves an activity related to the sale, lease or service of appliances, or that involves
6 the performance of energy conservation, plumbing, electrical, heating, ventilating,
7 air conditioning or sheet metalworking contracting services, shall terminate the
8 contract or arrangement if the activity or service is not performed in or on exempt
9 real property. In this paragraph, “public utility” does not include a public utility that
10 is, or is owned or wholly operated by, a municipal electric company, as defined in s.
11 66.073 (3) (d), or a city, village or town.

12 **SECTION 68o.** 196.52 (4) (a) of the statutes is amended to read:

13 196.52 (4) (a) In any proceeding, whether upon the commission’s own motion
14 or upon application or complaint, involving the rates or practices of any public utility,
15 the commission may exclude from the accounts of the public utility any payment or
16 compensation to or from an affiliated interest for any services rendered or property
17 or service furnished under an existing contract or arrangement with an affiliated
18 interest under sub. (3) (a) ~~unless the public utility establishes the reasonableness of~~
19 ~~the payment or compensation~~ (am).

20 **SECTION 68q.** 196.52 (6) of the statutes is amended to read:

21 196.52 (6) If the commission finds upon investigation that a public utility, other
22 than a telecommunications utility, is giving effect to a contract or arrangement
23 without the commission’s approval under this section, the commission shall issue a
24 summary order directing that public utility to cease and desist from making any
25 payments, receiving compensation, providing any service or otherwise giving any

1 effect to the contract or arrangement until the contract or arrangement receives the
2 approval of the commission. The circuit court of Dane county may enforce the order
3 to cease and desist by appropriate process, including the issuance of a preliminary
4 injunction, upon the suit of the commission and may require a public utility to forfeit
5 \$2,000 for each day that the public utility has given effect to a contract or
6 arrangement without the commission's approval.

7 **SECTION 68s.** 196.52 (7m) of the statutes is created to read:

8 196.52 (7m) A public utility who violates sub. (3) (am) is liable to any person
9 injured as a result of the violation for 3 times the amount of damages incurred as a
10 result of the violation, together with costs and, notwithstanding s. 814.04 (1),
11 reasonable attorney fees.

12 **SECTION 68u.** 196.59 of the statutes is amended to read:

13 **196.59 Merchandising by utilities.** Each public utility engaged in the
14 production, transmission, delivery or furnishing of heat, light or power either
15 directly or indirectly to or for the use of the public shall keep separate accounts to
16 show any profit or loss resulting from the sale of ~~appliances or other~~ merchandise.
17 The commission may not take the profit or loss into consideration in arriving at any
18 rate to be charged for service by the public utility.

19 **SECTION 68w.** 196.795 (1) (b) of the statutes is amended to read:

20 196.795 (1) (b) "Appliance" means any equipment used directly for lighting,
21 cooking, drying, water tempering, space heating, space cooling or space ventilation.
22 "Appliance" does not include equipment or devices which monitor or control the
23 primary energy supply or source for any equipment used directly for lighting,
24 cooking, drying, water tempering, space heating, space cooling or space ventilation.

25 **SECTION 68y.** 196.795 (1) (fm) of the statutes is created to read:

1 196.795 (1) (fm) “Exempt real property” means real property that satisfies any
2 of the following:

3 1. A public utility has an ownership or leasehold interest in the real property.

4 2. Except for real property that is an improvement, a public utility has an
5 easement in the real property.

6 3. A public utility that is owned or operated wholly by a municipality or
7 municipal electric company or a municipality or municipal electric company has an
8 ownership or leasehold interest in the real property.

9 4. A cooperative association, as defined in s. 196.035 (1) (bg), has an ownership
10 or leasehold interest in the real property.”.

11 **4.** Page 58, line 4: after that line insert:

12 “**SECTION 71g.** 196.795 (1) (ik) of the statutes is created to read:

13 196.795 (1) (ik) “Municipal electric company” has the meaning given in s.
14 66.073 (3) (d).

15 **SECTION 71r.** 196.795 (1) (im) of the statutes is created to read:

16 196.795 (1) (im) “Municipality” means a city, village or town.”.

17 **5.** Page 59, line 10: after that line insert:

18 “**SECTION 80b.** 196.795 (5) (q) 1. of the statutes is repealed.

19 **SECTION 80e.** 196.795 (5) (q) 2. (intro.) of the statutes is renumbered 196.795
20 (5) (q) and amended to read:

21 196.795 (5) (q) ~~Except as provided under subd. 3., no~~ No public utility affiliate
22 or ~~its subsidiary or a joint venture or partnership having a utility affiliate or its~~
23 ~~subsidiary as a member or partner may, in the service territory of the public utility~~
24 affiliate, sell at retail, lease, install, maintain or service any appliance that uses as

1 its primary energy source energy supplied by that public utility affiliate ~~under rates~~
2 ~~and tariffs approved by the commission~~, unless the appliance is located in facilities
3 ~~owned or operated by that public utility affiliate or its subsidiary or unless the~~
4 ~~appliance is sold, leased, installed, maintained or serviced~~; located on exempt real
5 property.

6 **SECTION 80h.** 196.795 (5) (q) 2. a. of the statutes is repealed.

7 **SECTION 80L.** 196.795 (5) (q) 2. b. of the statutes is repealed.

8 **SECTION 80o.** 196.795 (5) (q) 2. c. of the statutes is repealed.

9 **SECTION 80r.** 196.795 (5) (q) 3. of the statutes is repealed.

10 **SECTION 80u.** 196.795 (5) (q) 4. of the statutes is repealed.”.

11 **6.** Page 61, line 14: after that line insert:

12 “**SECTION 87m.** 196.795 (9m) of the statutes is amended to read:

13 196.795 (**9m**) (title) PRIVATE CAUSE OF ACTION AND FORFEITURE. Any company in
14 a holding company system which does, causes or permits to be done any prohibited
15 action under sub. (5) (c) to (dr), (f), (h), (k), (n), (q), (r) or (s), or fails to comply with
16 any term, limitation or condition imposed under sub. (2) (e) or (f) consistent with sub.
17 (5) (c) to (dr), (f), (h), (k), (n), (q), (r) or (s), is liable to any person injured thereby in
18 treble for 3 times the amount of damages sustained in consequence incurred as a
19 result of the prohibited action or failure to act, together with costs and,
20 notwithstanding s. 814.04 (1), reasonable attorney fees, and shall forfeit \$2,000 for
21 each violation or failure to comply. Each day of violation or failure to comply is a
22 separate violation or failure to comply.”.

23 **7.** Page 67, line 7: after “(1)” insert “CERTIFICATE APPLICATIONS.”.

24 **8.** Page 67, line 10: before “The” insert “LICENSE FEE.”.

1 **9.** Page 67, line 16: after that line insert:

2 “(2e) **CONTRACTS OR ARRANGEMENTS WITH AFFILIATES.** The treatment of sections
3 196.52 (3) (am) 1. and 196.795 (1) (b) of the statutes, the renumbering and
4 ~~amendment of section 196.52 (3) (a) of the statutes and the creation of section 196.52~~
5 (3) (a) 2. of the statutes first apply to contracts or arrangements entered into,
6 renewed, extended or modified on the effective date of this subsection.

7 (2m) **SEPARATION BETWEEN PUBLIC UTILITIES AND AFFILIATED INTERESTS.** The
8 treatment of sections 196.035, 196.52 (3) (a) 2. and 196.795 (1) (b) of the statutes first
9 applies to contracts for leases, sales or purchases or transactions that are entered
10 into, renewed, extended or modified on the effective date of this subsection.

11 (2s) **FORFEITURES AND ATTORNEY FEES.**

12 (a) The treatment of section 196.795 (9m) of the statutes first applies to
13 violations or failures to comply that occur on the effective date of this paragraph.

14 (b) The treatment of section 196.52 (6) and (7m) of the statutes first applies to
15 contracts to which a public utility gives effect on, and violations that occur on, the
16 effective date of this paragraph.

17 **SECTION 95m. Effective dates.** This act takes effect on the day after
18 publication, except as follows:

19 (1m) The treatment of sections 196.035, 196.52 (3) (a) 2., (am) 1., (b) 1., (c) 1.
20 and 2. and (d), (4) (a), (6) and (7m), 196.59 and 196.795 (1) (b), (fm), (ik) and (im), (5)
21 (q) 1., 2. (intro.), a., b. and c., 3. and 4. and (9m) of the statutes and the renumbering
22 and amendment of section 196.52 (3) (a) of the statutes take effect on the first day
23 of the 12th month beginning after publication.”.

24

(END)

SUBJECT #2

(Insert between lines 4 and 5, pg. 7)

car p. 4 l. 27

(2p) Limited Contracting Services Allowed

A public utility ~~that either owns an affiliated interest engaged in 2(b) activities nor is part of a holding company system that includes an affiliated interest engaged in 2(b) activities~~ *may annually perform* residential contracting services otherwise prohibited by 2(b) provided that:

1. Except as allowed by 3, *(below)* the number of hours of 2(b) contracting service annually performed by public utility employees does not exceed the total number of hours of service reported by the public utility to the commission in any one of the three calendar years immediately preceding the passage of this act. *contracting*
2. The number of hours of contracting services reported to the commission shall include all public utility ~~training~~ *employee* travel time, on-premises work, truck stocking, cost estimating ~~and performance of repeat calls for residential service customers.~~ *and*
3. The number of hours of ~~residential~~ *open to effective* contracting services allowed a public utility during a calendar year shall be adjusted annually to reflect the percentage change, if any, in the number of customers served by the public utility during the prior calendar year. *date of this act*

SUBJECT #1

- Insert at p. 7 after line 17*
4. A public utility may employ or re-employ a person, who was formerly employed by an affiliated interest and whose primary occupation while so employed was the performance of ~~appliance service work at the residences of~~ ^{FAE} the affiliated interest's customers, on no more than ten separate occasions during each calendar year. *2(b)*
 5. An affiliated interest may employ or re-employ a person, who was formerly employed by a public utility and whose primary occupation while so employed was the performance of ~~appliance service work at the residences of~~ ^{FAE} the public utility's customers, on no more than ten separate occasions during each calendar year. *2(b)*

~~Explanation of 4 and 5~~

- GA*
1. This provides the 10 times per year transfer of service technicians.
 2. The transfer applies ~~only to employees in residential work~~ ^{all work} because these are the employees who need the training and experience necessary to do the emergency service work needed to protect consumers.
 3. The "Except as provided in" language inserted at line 7 and line 16 clarifies that the 10 times per year transfer applies only to persons described in new 4 and new 5. All other employees must abide by the 6-month wait provision.

Now

2

ASSEMBLY AMENDMENT,
TO 1999 ASSEMBLY BILL 389

RM NOT
RUN

1 At the locations indicated, amend the bill as follows:

2 1. Page 3, line 1: after "cooperatives," insert "separation between certain
3 public utilities and affiliated interests, nonutility activities by public utilities and
4 public utility affiliates, subsidies between utility and nonutility affiliates,".

5 2. Page 27, line 5: after that line insert:

6 "SECTION 21m. 196.035 of the statutes is created to read:

7 196.035 Nonutility activities and services; relationship with affiliated
8 interests. (1) DEFINITIONS. In this section:

9 (a) "Affiliated interest" means a person that is engaged in the performance of
10 energy conservation, plumbing, electrical, heating, ventilating, air conditioning or
11 sheet metalworking contracting services or in an activity related to the sale, lease
12 or service of appliances in this state and that, with respect to a public utility or
13 out-of-state utility, is any of the following:

11 accounting, legal and similar services to the public utility or out-of-state utility, has
12 one or more officers or one or more directors in common with the public utility or
13 out-of-state utility, and any other corporation that has directors in common with the
14 public utility or out-of-state utility if the number of such directors of the corporation
15 is more than one-third of the total number of the public utility's or out-of-state
16 utility's directors.

17 5. A person that the commission determines as a matter of fact after
18 investigation and hearing to be actually exercising any substantial influence over
19 the policies and actions of the public utility or out-of-state utility even if the
20 influence is not based upon stockholding, stockholders, directors or officers as
21 specified under subds 1. to 4.

22 6. A person that the commission determines as a matter of fact after
23 investigation and hearing to be actually exercising substantial influence over the
24 policies and actions of the public utility or out-of-state utility in conjunction with

1 action in concert and that together are affiliated with the public utility or
2 out-of-state utility, even though no one of them alone is so affiliated under subds.
3 1. to 5.

4 7. A person 5% or more of the securities of which are directly or indirectly owned
5 by the public utility or out-of-state utility.

6 (b) “Appliance” has the meaning given in s. 196.795 (1) (b).

7 (bg) “Cooperative association” means a cooperative association organized
8 under ch. 185 for the purpose of producing, transmitting, delivering or furnishing
9 heat, light, power, natural gas or water to its members only.

10 (bh) “Holding company system” has the meaning given in s. 196.795 (1) (i).

11 (bL) “Municipal electric company” has the meaning given in s. 66.073 (3) (d).

12 (bm) “Municipality” means a city, village or town.

13 (bp) “Nonutility affiliate” has the meaning given in s. 196.795 (1) (j).

14 (br) 1. “Out-of-state utility” means a person that is not a public utility and that
15 is any of the following:

16 a. A person that is engaged in the production, transmission, delivery or
17 furnishing of heat, light, power or natural gas either directly or indirectly to or for
18 the use of the public in another state.

19 b. A lessee, trustee or court-appointed receiver of a person specified in subd.
20 1. a.

21 c. A person that, in any chain of successive ownership, directly or indirectly as
22 a beneficial owner, owns, controls or holds 5% or more of the outstanding voting
23 securities or other voting interest of a person specified in subd. 1. a., with the
24 unconditional power to vote the securities or interest.

1 2. "Out-of-state utility" does not include a person specified in subd. 1. a. that
2 is, or is owned or wholly operated by, a municipal electric company, municipality or
3 cooperative association.

4 (c) 1. "Public utility" means any of the following:

5 a. A person that is engaged in the production, transmission, delivery or
6 furnishing of heat, light, power or natural gas either directly or indirectly to or for
7 the use of the public in this state.

8 b. A lessee, trustee or court-appointed receiver of a person specified in subd.
9 1. a.

10 2. "Public utility" does not include a person specified in subd. 1. a. that is, or
11 is owned or wholly operated by, a municipal electric company, municipality or
12 cooperative association.

13 (d) "Public utility affiliate" has the meaning given in s. 196.795 (1) (L).

14 (2) IN GENERAL. Except as provided in subs. (2m), (3) and (5):

15 (a) A public utility may not engage in an activity related to the sale, leasing or
16 service of appliances.

17 (b) A public utility may not engage in the performance of ^aan energy

18 ~~conservation~~ plumbing, electrical, heating, ventilating, air conditioning or sheet
19 metalworking contracting service unless the service is performed in or on exempt
20 real property, as defined in s. 196.795 (1) (fm).

21 (2m) STREET LIGHTING. A public utility may provide, operate or maintain
22 lighting systems on public streets on behalf of a municipality.

23 (3) EMERGENCY SERVICES. A public utility shall respond to emergency service
24 requests related to gas odor or pressure, carbon monoxide, fire or other
25 circumstances that reasonably appear to the public utility to endanger property or

INSERT 4-20 ✓

(2g) ✓

a

1 human health or life and may engage in emergency appliance service work in
2 response to such requests.

3 (5) CONTRACTS OR ARRANGEMENTS WITH AFFILIATED INTERESTS. Except as provided
4 in sub. (6), a public utility may provide services to an affiliated interest pursuant to
5 a contract or arrangement approved under s. 196.52.

6 (5m) VOTING SECURITIES. A public utility may acquire the voting securities or
7 other voting interest of an affiliated interest only in exchange for cash.

8 (6) SEPARATION BETWEEN PUBLIC UTILITIES AND AFFILIATED INTERESTS. (a) *In*
9 *general*. 1. A public utility may not do any of the following:

10 a. Except as provided in subd. 4. a., share with or lease, sell or transfer to an
11 affiliated interest any building, office space, equipment or research.

12 am. Share with or lease, sell or transfer to an affiliated interest any service or
13 system related to appliances or any ~~energy conservation~~ plumbing, electrical,
14 heating, ventilating, air conditioning or sheet metalworking contracting service or
15 system.

16 b. Allow an affiliated interest access to the public utility's computer or other
17 information systems.

18 c. Share or subsidize the costs of an affiliated interest's research and
19 development activities.

20 d. Jointly purchase with an affiliated interest any goods or services.

21 e. Jointly use with an affiliated interest any system for support or corporate
22 oversight or governance.

23 1m. An affiliated interest may not do any of the following:

1 a. Except as provided in subd. 4. b., share with or lease, sell or transfer to a
2 public utility or out-of-state utility any building, office space, equipment or research
3 in this state.

4 am. Share with or lease, sell or transfer to a public utility or out-of-state utility
5 any service or system in this state related to appliances or ~~energy conservation~~
6 plumbing, electrical, heating, ventilating, air conditioning or sheet metalworking
7 contracting service or system in this state.

8 b. Allow a public utility or out-of-state utility access to the affiliated interest's
9 computer or other information systems in this state.

10 c. Share or subsidize the costs of the research and development activities in this
11 state of a public utility or out-of-state utility.

12 d. Jointly purchase with a public utility or out-of-state utility any goods or
13 services for use in this state.

14 e. Jointly use in this state with a public utility or out-of-state utility any
15 system for support or corporate oversight or governance.

16 3. An affiliated interest and a public utility or out-of-state utility shall
17 maintain separate books and records.

18 4. a. A public utility may sell real property to an affiliated interest only by a
19 public sale or by offering the real property to the highest qualified bidder.

20 b. An affiliated interest may sell real property in this state to a public utility
21 or out-of-state utility only by a public sale or by offering the real property to the
22 highest qualified bidder.

23 (b) *Restrictions on employes.* 1. A public utility may not do any of the following:

24 a. Lease any of its employes to an affiliated interest.

25 b. Employ the employes or officers of an affiliated interest.

(-7-)

Except as provided in par. (b g) 1, 2

1 c/ Employ a person who was formerly employed by an affiliated interest during
2 the 6-month period immediately prior to the person's employment by the public
3 utility if the person was not employed by the affiliated interest for the entire
4 6-month period.

5 1m. An affiliated interest may not do any of the following:

6 a. Lease any of its employees in this state to a public utility or out-of-state
7 utility.

8 b. Employ in this state the employees, board members or officers of a public
9 utility or out-of-state utility.

10 c. *Except as provided in par. (b g) 1, 2*
Employ a person in this state who was formerly employed by a public utility
11 or out-of-state utility with which the affiliated interest is affiliated during the
12 6-month period immediately prior to the person's employment by the affiliated
13 interest if the person was not employed by the public utility or out-of-state utility
14 for the entire 6-month period.

15 3. A public utility shall provide an annual report to the commission that
16 describes its employment of persons formerly employed by an affiliated interest of
17 the public utility.

(INSERT 7-17)

18 (bm) *Exception for director, chief executive officer and certain personnel.*
19 Notwithstanding par. (b), a public utility may share a member of a board of directors,
20 a chief executive officer or any personnel engaged solely in legal, accounting or
21 payroll services with an affiliated interest.

22 (c) *Marketing activities.* 1. A public utility may not do any of the following:

23 a. Promote or advertise its affiliation with an affiliated interest.

24 b. Use the brand name, trademark or logo of an affiliated interest.

1 c. Use any type of marketing identification that resembles a type used by an
2 affiliated interest.

3 d. Provide any information about its customers to an affiliated interest.

4 e. Participate with an affiliated interest in any marketing activity, including
5 advertising, sales calls, proposals to existing or potential customers or trade shows,
6 conferences or similar events.

7 1m. An affiliated interest may not do any of the following:

8 a. Use the corporate or trade name or a portion of the corporate or trade name
9 of the public utility with which it is affiliated in the affiliated interest's corporate or
10 trade name, except that an affiliated interest may indicate its affiliation, if any, with
11 a holding company, as defined in s. 196.795 (1) (h).

12 b. Use in this state the brand name, trademark or logo of a public utility or
13 out-of-state utility.

14 c. Use in this state any type of marketing identification that resembles a type
15 used by a public utility or out-of-state utility.

16 d. Provide any information about its customers in this state to a public utility
17 or out-of-state utility.

18 e. Participate with a public utility or out-of-state utility in any marketing
19 activity in this state, including advertising, sales calls, proposals to existing or
20 potential customers or trade shows, conferences or similar events.

21 2. A public utility may not provide an affiliated interest with advertising or
22 promotional space on any form of communication, including a bill envelope, to a
23 customer or potential customer of the public utility.

1 (d) *Nondiscrimination.* 1. A public utility may not treat its customers who are
2 also customers of an affiliated interest any differently than the public utility treats
3 its customers who are not also customers of an affiliated interest.

4 2. An affiliated interest may not treat its customers in this state who are also
5 customers of a public utility or out-of-state utility with which the affiliated interest
6 is affiliated any differently than the affiliated interest treats its customers who are
7 not customers of the public utility or out-of-state utility.

8 (e) *Providing certain information to customers.* Except as directed by the
9 commission, a public utility may not provide its customers with any information
10 about persons who provide heating, ventilating, air conditioning, plumbing or
11 electrical services or who sell, lease or repair appliances.

12 (f) *Applicability.* 1. In this paragraph, “plan approval date” means the date on
13 which the commission approves or modifies a plan submitted by a public utility
14 under subd. 2., except that if the commission fails to approve or modify a plan within
15 the deadline specified under subd. 2., “plan approval date” means the first day of the
16 6th month beginning after the date on which the plan is received by the commission.

17 2. No later than the first day of the 6th month beginning after the effective date
18 of this subdivision [revisor inserts date], a public utility may submit a plan to the
19 commission that describes the actions necessary for the public utility and its
20 affiliated interests to comply with pars. (a) to (e). No later than the first day of the
21 6th month beginning after the date on which a plan under this subdivision is received
22 by the commission, the commission shall approve or modify the plan.

23 3. Paragraphs (a) to (e) first apply to a public utility on the first day of the 6th
24 month beginning after the effective date of this subdivision [revisor inserts date],
25 except that if a public utility submits a plan to the commission under subd. 2., pars.

1 (a) to (e) first apply to the public utility on the first day of the 6th month beginning
 2 after the plan approval date. Paragraphs (a) to (e) first apply to an affiliated interest
 3 of a public utility on the date on which pars. (a) to (e) first apply to the public utility.

4 (7) PRIVATE CAUSE OF ACTION AND FORFEITURE. A public utility or affiliated
 5 interest that violates this section is liable to any person injured by the violation for
 6 3 times the amount of damages incurred as a result of the violation, together with
 7 costs and, notwithstanding s. 814.04 (1), reasonable attorney fees, and shall forfeit
 8 \$2,000 for each violation. Each day of violation is a separate violation.”.

9 **3.** Page 57, line 17: after that line insert:

10 “SECTION 68b. 196.52 (3) (a) of the statutes, as affected by 1999 Wisconsin Act
 11 (this act), is renumbered 196.52 (3) (a) (intro.) and amended to read:

12 196.52 (3) (a) (intro.) In this subsection, ~~“contract;~~

13 1. “Contract or arrangement” means a contract or arrangement providing for
 14 the furnishing of management, supervisory, construction, engineering, accounting,
 15 legal, financial, research, development or similar services and any contract or
 16 arrangement for the purchase, sale, lease or exchange of any property, right, or thing,
 17 or for the furnishing of any service, property, right, or thing, other than management,
 18 supervisory, construction, engineering, accounting, legal, financial or similar
 19 services, but “contract or arrangement” does not include a contract or arrangement
 20 under which a transmission utility, as defined in s. 196.485 (1) (i), sells or transfers
 21 securities, as defined in s. 196.485 (1) (fe), that have been issued by a transmission
 22 company, as defined in s. 196.485 (1) (ge).

23 (am) Except as provided under par. (b), unless and until the commission gives
 24 its written approval, any contract or arrangement is not valid or effective if the

1 contract or arrangement is made between a public utility and an affiliated interest
2 after June 7, 1931. Every public utility shall file with the commission a verified copy
3 of any contract or arrangement, a verified summary of any unwritten contract or
4 arrangement, and any contract or arrangement, written or unwritten, which was in
5 effect on June 7, 1931. The commission ~~shall~~ may approve a contract or arrangement
6 made or entered into after June 7, 1931, only if ~~it shall clearly appear and be~~
7 ~~established upon~~ all of the following conditions are met:

8 2. After investigation, the commission determines that it the contract or
9 arrangement is reasonable and consistent with the public interest and does not
10 result in a violation of s. 196.035 (6) or 196.795 (5) (f). The commission may not
11 approve any contract or arrangement unless satisfactory proof is submitted to the
12 commission of the cost to the affiliated interest of rendering the services or of
13 furnishing the property or service to each public utility or of the cost to the public
14 utility of rendering the services or of furnishing the property or service to each
15 affiliated interest. No proof is satisfactory under this ~~paragraph~~ subdivision unless
16 it includes the original (or verified copies) of the relevant cost records and other
17 relevant accounts of the affiliated interest, or an abstract of the records and accounts
18 or a summary taken from the records and accounts if the commission deems the
19 abstract or summary adequate. The accounts shall be properly identified and duly
20 authenticated. The commission, where reasonable, may approve or disapprove a
21 contract or arrangement without submission of the cost records or accounts.

22 **SECTION 68d.** 196.52 (3) (a) 2. of the statutes is created to read:

23 196.52 (3) (a) 2. “Exempt real property” has the meaning given in s. 196.795
24 (1) (fm).

25 **SECTION 68e.** 196.52 (3) (am) 1. of the statutes is created to read:

1 196.52 (3) (am) 1. If the contract or arrangement involves an activity related
2 to the sale, lease or service of appliances, as defined in s. 196.795 (1) (b), or the
3 performance of ~~energy conservation~~ plumbing, electrical, heating, ventilating, air
4 conditioning or sheet metalworking contracting services, the activity or service is
5 performed in or on exempt real property.

6 **SECTION 68f.** 196.52 (3) (b) 1. of the statutes is amended to read:

7 196.52 (3) (b) 1. The Except for a contract or arrangement specified in par. (am)
8 1. that involves an activity or service that is performed on exempt real property, the
9 requirement for written approval under par. (a) shall (am) does not apply to any a
10 contract or arrangement if the amount of consideration involved is not in excess of
11 \$25,000 or 5% of the equity of the public utility, whichever is smaller. The
12 requirement under par. (a) (am) also does not apply to a telecommunications utility
13 contract or arrangement or to contracts or arrangements with joint local water
14 authorities under s. 66.0735. Regularly recurring payments under a general or
15 continuing arrangement which aggregate a greater annual amount may not be
16 broken down into a series of transactions to come within the exemption under this
17 paragraph. Any transaction exempted under this paragraph shall be valid or
18 effective without commission approval under this section.

19 **SECTION 68h.** 196.52 (3) (c) 1. of the statutes is amended to read:

20 196.52 (3) (c) 1. May not waive the requirement of the submission of cost
21 records or accounts under par. (a) (am);

22 **SECTION 68k.** 196.52 (3) (c) 2. of the statutes is amended to read:

23 196.52 (3) (c) 2. Shall review the accounts of the affiliated interest as they relate
24 to the contract or arrangement prior to the commission approving or disapproving
25 the contract or arrangement under par. (a) (am); and

1 **SECTION 68m.** 196.52 (3) (d) of the statutes is created to read:

2 196.52 (3) (d) On the effective date of this paragraph ... [revisor inserts date],
3 each public utility and affiliated interest that, before the effective date of this
4 paragraph ... [revisor inserts date], have entered into a contract or arrangement that
5 involves an activity related to the sale, lease or service of appliances, or that involves
6 the performance of ~~energy conservation~~ plumbing, electrical, heating, ventilating,
7 air conditioning or sheet metalworking contracting services, shall terminate the
8 contract or arrangement if the activity or service is not performed in or on exempt
9 real property. In this paragraph, “public utility” does not include a public utility that
10 is, or is owned or wholly operated by, a municipal electric company, as defined in s.
11 66.073 (3) (d), or a city, village or town.

12 **SECTION 68o.** 196.52 (4) (a) of the statutes is amended to read:

13 196.52 (4) (a) In any proceeding, whether upon the commission’s own motion
14 or upon application or complaint, involving the rates or practices of any public utility,
15 the commission may exclude from the accounts of the public utility any payment or
16 compensation to or from an affiliated interest for any services rendered or property
17 or service furnished under an existing contract or arrangement with an affiliated
18 interest under sub. (3) (a) ~~unless the public utility establishes the reasonableness of~~
19 ~~the payment or compensation~~ (am).

20 **SECTION 68q.** 196.52 (6) of the statutes is amended to read:

21 196.52 (6) If the commission finds upon investigation that a public utility, other
22 than a telecommunications utility, is giving effect to a contract or arrangement
23 without the commission’s approval under this section, the commission shall issue a
24 summary order directing that public utility to cease and desist from making any
25 payments, receiving compensation, providing any service or otherwise giving any

1 effect to the contract or arrangement until the contract or arrangement receives the
2 approval of the commission. The circuit court of Dane county may enforce the order
3 to cease and desist by appropriate process, including the issuance of a preliminary
4 injunction, upon the suit of the commission and may require a public utility to forfeit
5 \$2,000 for each day that the public utility has given effect to a contract or
6 arrangement without the commission's approval.

7 **SECTION 68s.** 196.52 (7m) of the statutes is created to read:

8 196.52 (7m) A public utility who violates sub. (3) (am) is liable to any person
9 injured as a result of the violation for 3 times the amount of damages incurred as a
10 result of the violation, together with costs and, notwithstanding s. 814.04 (1),
11 reasonable attorney fees.

12 **SECTION 68u.** 196.59 of the statutes is amended to read:

13 **196.59 Merchandising by utilities.** Each public utility engaged in the
14 production, transmission, delivery or furnishing of heat, light or power either
15 directly or indirectly to or for the use of the public shall keep separate accounts to
16 show any profit or loss resulting from the sale of ~~appliances or other~~ merchandise.
17 The commission may not take the profit or loss into consideration in arriving at any
18 rate to be charged for service by the public utility.

19 **SECTION 68w.** 196.795 (1) (b) of the statutes is amended to read:

20 196.795 (1) (b) "Appliance" means any equipment used directly for lighting,
21 cooking, drying, water tempering, space heating, space cooling or space ventilation.
22 "Appliance" does not include equipment or devices which monitor or control the
23 primary energy supply or source for any equipment used directly for lighting,
24 cooking, drying, water tempering, space heating, space cooling or space ventilation.

25 **SECTION 68y.** 196.795 (1) (fm) of the statutes is created to read:

1 196.795 (1) (fm) “Exempt real property” means real property that satisfies any
2 of the following:

- 3 1. A public utility has an ownership or leasehold interest in the real property.
4 2. Except for real property that is an improvement, a public utility has an
5 easement in the real property.
6 3. A public utility that is owned or operated wholly by a municipality or
7 municipal electric company or a municipality or municipal electric company has an
8 ownership or leasehold interest in the real property.
9 4. A cooperative association, as defined in s. 196.035 (1) (bg), has an ownership
10 or leasehold interest in the real property.”.

11 **4.** Page 58, line 4: after that line insert:

12 “**SECTION 71g.** 196.795 (1) (ik) of the statutes is created to read:

13 196.795 (1) (ik) “Municipal electric company” has the meaning given in s.
14 66.073 (3) (d).

15 **SECTION 71r.** 196.795 (1) (im) of the statutes is created to read:

16 196.795 (1) (im) “Municipality” means a city, village or town.”.

17 **5.** Page 59, line 10: after that line insert:

18 “**SECTION 80b.** 196.795 (5) (q) 1. of the statutes is repealed.

19 **SECTION 80e.** 196.795 (5) (q) 2. (intro.) of the statutes is renumbered 196.795
20 (5) (q) and amended to read:

21 196.795 (5) (q) ~~Except as provided under subd. 3., no~~ No public utility affiliate
22 or its subsidiary or a joint venture or partnership having a utility affiliate or its
23 subsidiary as a member or partner may, in the service territory of the public utility
24 affiliate, sell at retail, lease, install, maintain or service any appliance that uses as

1 its primary energy source energy supplied by that public utility affiliate ~~under rates~~
2 ~~and tariffs approved by the commission~~, unless the appliance is located in facilities
3 ~~owned or operated by that public utility affiliate or its subsidiary or unless the~~
4 ~~appliance is sold, leased, installed, maintained or serviced:~~ located on exempt real
5 property.

6 **SECTION 80h.** 196.795 (5) (q) 2. a. of the statutes is repealed.

7 **SECTION 80L.** 196.795 (5) (q) 2. b. of the statutes is repealed.

8 **SECTION 80o.** 196.795 (5) (q) 2. c. of the statutes is repealed.

9 **SECTION 80r.** 196.795 (5) (q) 3. of the statutes is repealed.

10 **SECTION 80u.** 196.795 (5) (q) 4. of the statutes is repealed.”.

11 **6.** Page 61, line 14: after that line insert:

12 “**SECTION 87m.** 196.795 (9m) of the statutes is amended to read:

13 196.795 (9m) (title) PRIVATE CAUSE OF ACTION AND FORFEITURE. Any company in
14 a holding company system which does, causes or permits to be done any prohibited
15 action under sub. (5) (c) to (dr), (f), (h), (k), (n), (q), (r) or (s), or fails to comply with
16 any term, limitation or condition imposed under sub. (2) (e) or (f) consistent with sub.
17 (5) (c) to (dr), (f), (h), (k), (n), (q), (r) or (s), is liable to any person injured thereby ~~in~~
18 ~~treble for 3 times~~ the amount of damages sustained in consequence incurred as a
19 result of the prohibited action or failure to act, together with costs and,
20 notwithstanding s. 814.04 (1), reasonable attorney fees, and shall forfeit \$2,000 for
21 each violation or failure to comply. Each day of violation or failure to comply is a
22 separate violation or failure to comply.”.

23 **7.** Page 67, line 7: after “(1)” insert “CERTIFICATE APPLICATIONS.”.

24 **8.** Page 67, line 10: before “The” insert “LICENSE FEE.”.

1 **9.** Page 67, line 16: after that line insert:

2 “(2e) **CONTRACTS OR ARRANGEMENTS WITH AFFILIATES.** The treatment of sections
3 196.52 (3) (am) 1. and 196.795 (1) (b) of the statutes, the renumbering and
4 amendment of section 196.52 (3) (a) of the statutes and the creation of section 196.52
5 (3) (a) 2. of the statutes first apply to contracts or arrangements entered into,
6 renewed, extended or modified on the effective date of this subsection.

7 (2m) **SEPARATION BETWEEN PUBLIC UTILITIES AND AFFILIATED INTERESTS.** The
8 treatment of sections 196.035, 196.52 (3) (a) 2. and 196.795 (1) (b) of the statutes first
9 applies to contracts for leases, sales or purchases or transactions that are entered
10 into, renewed, extended or modified on the effective date of this subsection.

11 (2s) **FORFEITURES AND ATTORNEY FEES.**

12 (a) The treatment of section 196.795 (9m) of the statutes first applies to
13 violations or failures to comply that occur on the effective date of this paragraph.

14 (b) The treatment of section 196.52 (6) and (7m) of the statutes first applies to
15 contracts to which a public utility gives effect on, and violations that occur on, the
16 effective date of this paragraph.

17 **SECTION 95m. Effective dates.** This act takes effect on the day after
18 publication, except as follows:

19 (1m) The treatment of sections 196.035, 196.52 (3) (a) 2., (am) 1., (b) 1., (c) 1.
20 and 2. and (d), (4) (a), (6) and (7m), 196.59 and 196.795 (1) (b), (fm), (ik) and (im), (5)
21 (q) 1., 2. (intro.), a., b. and c., 3. and 4. and (9m) of the statutes and the renumbering
22 and amendment of section 196.52 (3) (a) of the statutes take effect on the first day
23 of the 12th month beginning after publication.”.

24

(END)

1 2. An affiliated interest may employ a person who was formerly employed by
2 a public utility or out-of-state utility with which the affiliated interest is affiliated
3 if the person's primary occupation during his or her former employment was the
4 performance of plumbing, electrical, heating, ventilating, air conditioning or sheet
5 metalworking contracting services for the public utility's or out-of-state utility's
6 customers on no more than 10 separate occasions during a calendar year.

Barman, Mike

From: Barman, Mike
Sent: Wednesday, June 23, 1999 10:58 AM
To: Fiocchi, Timothy
Cc: Kunkel, Mark
Subject: 99a0521/2 (per your request)



99a0521/2

Mike Barman

Mike Barman - Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

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