PG&E Corporation

ELECTRIC RELIABILITY II

Testimony of PG&E Corporation
before the
Senate Committee on Health, Utilities, Veterans, and Military Affairs

June 9, 1999

Good afternoon Chairman Moen and members of the committee. My name is Joe Strohl. I am here representing PG&E Corporation.

PG&E is the parent holding company for 4 competitive energy business affiliates and one regulated utility, the Pacific Gas and Electric Company.

PG&E affiliates develop and operate competitive power plants throughout the US and broker or market electricity sales between the owners of generating plants and utility companies.

PG&E Generation Company operates power plants in more than 20 states with a capacity exceeding 7,700 megawatts. That's as much power as all generating plants in Wisconsin combined.

PG&E Energy Trading Company, another affiliate, sells electricity to some of Wisconsin's largest utility companies.

PG&E Generating Company currently has plans to develop a 1,000 megawatt natural gas generating plant for the Kenosha/Racine area to help Wisconsin with its energy reliability problems. The company hopes to have the plant in operation by mid-2002.

The proposed Kenosha/Racine plant is the direct result of Act 204 authored by you Chairman Moen. You will recall that your bill streamlined the regulatory process to encourage the development of new merchant plants to help the state meets it reliability problems.

I believe that PG&E is the only true merchant base load plant currently under consideration in Wisconsin. All the other independent plants under discussion have long term contracts with utility companies and are actually being planned or constructed due to regulatory action by the PSC.

As you know Mr. Chairman, PG&E has not been a party to the negotiations that you, Chairman Hoven and the Governor have lead. That doesn't mean that we don't have an interest in the outcome however.

The success of PG&E in helping Wisconsin to meet both its short term and long term energy needs is partially dependent on the success of the Moen-Hoven Electric Reliability II legislation.

We are therefore able to comment on the proposed legislation as an interested party that did not help to write the bill but as someone who will be directly impacted by it.

PG&E gives its unequivical support to the proposal!

We are most supportive of the transco provisions and the agreement to join the midwest ISO. These provisions are crucial for both the short term and the long term. As I mentioned earlier, PG&E Energy Trading Company already purchases power from other midwestern generators and resells it to various Wisconsin utilities. Constraints in the midwest transmission system limit our ability to provide the amount of power Wisconsin needs and that we have access to.

A truly integrated, independent midwestern transmission system should make it possible for PG&E and other trading companies to provide Wisconsin with reliable power from other areas of the midwest. This transco and midwest ISO should help us to do that.

In the long term, the transco will help the Kenosha/ Racine plant to deliver competitively priced power to utilities, municipalities, coops and eventually retail customers throughout the state without fearing unfair restrictions on the transmission system.

PG&E also supports the changes proposed for modifying the asset cap. PG&E operates and competes in every state, Canada, and Mexico. Nowhere else do we face competition with such restrictions on them.

You might think that PG&E would welcome the continued restrictions on their competition. We do not!

We believe that it is in the best interest of all Wisconsin consumers that there be real competition in the electric industry. We do not fear the competition, we welcome it!

For these reasons, PG&E supports the Moen-Hoven package.

We believe however, that this should not be the end of legislative involvement in the restructuring process. Electric Reliability I and Electric Reliability II are important steps but more needs to be done.

For example, Electric Reliability I did a good job in knocking down the regulatory barriers to encouraging merchant plants. Left undone was looking at the tax code to see how it impacted the economic viability of competitive plants. The current code could result in state taxes applying twice or three times to the same electricity.

Other restructuring issues that need addressing to bring about a truly competitive marketplace for electricity include issues of market power of the incumbant utility and how their stranded costs will be handled.

PG&E is committed to continuing to be a supplier of competitively priced electricity to Wisconsin and is working to become a competitive Wisconsin generator as well. We look foreward to working with you Chairman Moen and committee members to accomplish this.

TESTIMONY OF R. DREW GIBSON, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, BEFORE THE SENATE UTILITY COMMITTEE ON JUNE 9, 1999 REGARDING "FAIR COMPETITION" LANGUAGE IN BUDGET PACKAGE.

My name is Drew Gibson and I am the Executive Vice President of the Electrical Contractors Association in Milwaukee. Our association represents over 400 electrical contractors throughout Wisconsin and employ close to 5,000 electrical workers. Together these small businesses and their employees perform electrical construction projects of all sizes in all regions of the State of Wisconsin. The profile of the average electrical contractor is a small, family-owned business, employing 3 to 5 electricians and trying to survive in a very competitive marketplace.

One of the issues before this Committee today is of fair competition. It is not a new issue: it was reviewed and discussed by this committee on November 12, 1997. Fair competition language as we are requesting this committee to adopt would require utilities that wish to start a construction business to do it the same way everyone else does. What is so wrong with that? The language prevents a utility from using its monopoly generated assets, its customer data bases, its equipment and personnel from being used to unfairly compete with family-owned, small businesses. What is so wrong with that? Please do not allow our industry to be used as a loss leader by utilities who will now have to compete for market share.

Our fair competition language requires a utility to completely separate an affiliate which desires to operate as an independent contractor from the public utility. It applies equally to in-state and out-of-state utilities and is consistent with federal regulation SEC Rule 58.

The legislative intent of our fair competition language is well established in the Wisconsin Statutes. Section 133.01 states: "The intent of this chapter is to . . . foster and encourage competition by prohibiting unfair business practices which destroy or hamper competition . . . It is the intent of the legislature to make (fair) competition the fundamental economic policy of this state."

Our fair competition language is based on this legislative intent established decades ago. We are simply asking for fairness. We are not asking for favors, we are not asking for special treatment, we are not asking for exceptions, we are asking for fairness. If utilities want to compete in our small business construction industry, require them to compete on any equal playing field. That way, fair competition is assured. It's the right way to compete.

There are hundreds of small construction businesses and thousands of employees in Wisconsin whose livelihood is dependent on fair competition. They can compete on a daily basis as long as everyone is on a level playing field. Preserve this fairness for them and preserve the legislative intent by including our fair competition language in the budget package.

My name is Leon Burzynski. I reside in Merton, Wisconsin, and am here today as a representative of approximately 3000 electrical workers who are members of Local 494, the International Brotherhood of Electrical Workers. Our jurisdictional area encompasses the counties of Milwaukee, Waukesha, Ozaukee, Washington, Sheboygan, Fond du Lac, and the eastern half of Dodge County.

Of the 3000 men and women I alluded to in my introduction, over 2000 are directly employed in the electrical construction field, primarily as journeymen Wiremen. Their work includes electrical wiring for industrial, commercial, and residential occupancies as well as all types of sound and communication work.

I appear before you today to strongly urge that of ***Fair Competition*** language be included in connection with any utility accommodations addressed in the budget bill. Utilities are telling you they need a new structure WITH ASSET CAP RELIEF in which to conduct their operations. I am here to tell you that the structure envisioned by the utilities will significantly reduce the available work for the 3000 members of Local 494.

The small businesses that employ our members cannot begin to compete with a financial juggernaut like utilities throughout Wisconsin. Utility companies want to direct their tangible and intangible assets to compete against those who provide work for our members. Allowing them to do that creates a very uneven playing field. That is unacceptable.

There is no way our employers can compete with a large utility that has a guaranteed profit margin. Our electricians are the best that can be found. We have an apprenticeship program that is second to none. We accept the premise that our contractors must be able to make a profit so they can stay in business. What allows the system to work is the fact that they operate on an even playing field. Not having **Fair Competition** language included with utility accommodations removes that even playing field.

Thank You for your consideration of my concerns.

Leon Burzynski

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: June 16, 1999

TO: MEMBERS OF THE SENATE COMMITTEE ON HEALTH, UTILITIES, VETERANS AND MILITARY AFFAIRS

FROM: John Stolzenberg, Staff Scientist, and David L. Lovell, Senior Analyst

SUBJECT: Summary of 1999 Senate Bill 196, Relating to Public Utility Holding Companies, Electric Power Transmission, Public Benefits and Other Aspects of Electric Utility Regulation (the "Reliability 2000" Bill)

This memorandum was prepared at the request of Senator Rodney Moen, Chairperson of your committee. It summarizes 1999 Senate Bill 196 (LRB-3150/3), a bill developed through negotiations between the Customers First! Coalition, Energize Wisconsin and other interests in the state, relating to public utility holding companies, electric power transmission, public benefits and other aspects of electric utility regulation and introduced at the request of Governor Tommy G. Thompson. The bill is commonly referred to as the "Reliability 2000" bill. Senate Bill 196 is identical to 1999 Assembly Bill 389.

This summary is organized according to the following table of contents:

I. ASSET CAP

The state's public utility holding company law imposes a number of regulations upon public utility holding companies that are not exempt from its provisions or subject to grandfather treatment, including a limit on the amount of assets in nonutility affiliates that the holding company may own. This limit is commonly referred to as the "asset cap."

As implemented by the Public Service Commission (PSC), the asset cap establishes that the sum of the assets of all nonutility affiliates in a holding company system subject to the cap may not exceed 25% of the assets of the public utility affiliates in the system.

The asset cap presently applies to a number of holding companies, including the following companies that own large combined electric and natural gas public utilities (their utility affiliates are identified in parentheses): Alliant Energy Corporation (Wisconsin Power and Light Company, IES Utilities Inc. and Interstate Power Company); Wisconsin Energy Corporation (Wisconsin Electric); and WPS Resources Corporation (Wisconsin Public Service Corporation). Based on information provided by the PSC staff and the holding companies, Alliant Energy Corporation and Wisconsin Energy Corporation are presently approaching the 25% limit in their asset caps.

A. CHANGES IN THE ASSET CAP FORMULA

If each public utility affiliate in a holding company system takes the actions specified below with respect to the affiliate's electric transmission facilities ("transmission facilities" in the remainder of this memorandum), then the bill changes the asset cap for the holding company in the following three ways:

1. ***Eligible assets.*** The "eligible assets" of a nonutility affiliate in the holding company system are excluded from both the sum of the assets of the public utility affiliates and of the nonutility affiliates in the asset cap formula. An "eligible asset" is an asset of a nonutility affiliate that is used for any of the following:

   a. Producing, generating, transferring, delivering, selling or furnishing gas, oil, electricity or steam energy.

   b. Providing an energy management, conservation or efficiency product or service or a demand-side management product or service.

   c. Providing an energy customer service, including metering or billing.

   d. Recovering or producing energy from waste materials.

   e. Processing waste materials.

   f. Manufacturing, distributing or selling products for filtration, pumping water or other fluids, processing or heating water, handling fluids or other related activities.

g. Providing a telecommunication service.

All the assets of a nonutility affiliate are considered eligible assets if the bylaws of the nonutility affiliate or a resolution adopted by its board of directors specifies that the business of the nonutility affiliate is limited to activities involving eligible assets and substantially all the assets of the nonutility affiliate are eligible assets.

2. ***Contributed transmission facility assets.*** The net book value of the transmission facility assets that the public utility contributes to a transmission company as a condition of receiving this treatment of its asset cap (see below) is included in the sum of the assets of the public utility affiliate in the asset cap formula.

3. ***Transferred generation assets.*** If the PSC, a court or a federal regulatory agency orders the public utility affiliate contributing transmission assets to the transmission company to transfer generation assets to another person, the sum of these generation assets shall be included in the sum of the assets of the public utility affiliate in the asset cap formula.

In determining the net book value of transmission or generation assets under items 2. and 3., accumulated depreciation must be calculated as if the contributing public utility affiliate had not contributed these transmission assets or transferred these generation assets.

To be eligible for these three modifications to the asset cap, each public utility affiliate in the holding company system must do all of the following:

1. Petition the PSC and the Federal Energy Regulatory Commission (FERC) to approve the transfer of operational control of all of the public utility affiliate's transmission facilities, both in and outside Wisconsin, to the Midwest Independent System Operator (MISO).

2. File with the PSC an unconditional, irrevocable and binding commitment to contribute by June 30, 2000, all of its transmission facilities in Wisconsin and related land rights to the transmission company described in the next Section of this memorandum. The filing must include a date, no later than June 30, 2000, on which the contribution will be completed. As used in the bill, the "contribution" of transmission facilities to the transmission company means the transfer of the ownership of the transmission facilities to the company in exchange for ownership interests in the company.

3. File with the PSC an unconditional, irrevocable and binding commitment to contribute, and to cause each entity with which it merges or consolidates or to which it transfers substantially all of its assets to contribute, any transmission facility in Wisconsin it acquires after the effective date of this provision, and the related land rights, to the transmission company.

4. Notify the PSC in writing that the public utility affiliate has become a member of the MISO, has agreed to transfer its transmission facilities to the MISO and has committed not to withdraw its membership prior to the date on which the public utility affiliate contributes transmission facilities to the transmission company.

5. Petition the PSC and FERC to approve its transmission facility contributions, identified in items 3. and 4., and agree in the petition not to withdraw the petition if the PSC or FERC conditions its approval on changes that are consistent with state or federal law.

A public utility affiliate that fails to complete the contribution of its transmission facilities to the transmission company by the completion date that it specified in its filing with the PSC shall forfeit $25,000 for each day that completion of the contribution is delayed if the transmission company is legally able to accept the contribution. In addition, a wholesale or retail customer of a public utility affiliate may petition the Circuit Court of Dane County for specific performance of a commitment to contribute transmission facilities and land rights to the transmission company that is filed with the PSC or of a commitment to contribute, and to cause each entity into which it transfers substantially all of its assets to contribute, any transmission facility in Wisconsin it acquires after the effective date of this provision, and the related land rights, to the transmission company.

B. GRANDFATHERED HOLDING COMPANIES

Under the holding company law, a public utility holding company formed before the enactment of this law, which is not itself a public utility, is subject to a grandfather clause. Under the clause, the PSC may impose reasonable terms, limitations or conditions on a grandfathered holding company that are consistent with specified requirements in this law. In practice, the holding company subject to this grandfather clause is WICOR, the owner of Wisconsin Gas Company.

The bill establishes that the PSC may not impose upon a grandfathered holding company any condition that limits the sum of the holding company's nonutility affiliate assets to less than 25% of the sum of the holding company's utility affiliate assets. The bill also establishes that the PSC's conditions on nonutility affiliate assets shall not apply to the ownership, operation, management or control of any eligible asset, as defined above, or an asset that is used for manufacturing, distributing or selling swimming pools or spas.

II. TRANSMISSION COMPANY

The bill authorizes the creation of a transmission company that could own all of the electric transmission facilities in the eastern portion of the state and potentially own transmission facilities in other parts of the state and in neighboring states. It does not require any public utility to form or contribute its transmission facilities to the transmission company. However, as noted in Section 1., the bill does require such a transfer as a condition of changing a public utility holding company's asset cap as authorized by the bill. In addition, electric cooperatives and other public utilities may transfer their transmission facilities to the transmission company and transmission-dependent utilities and retail electric cooperatives may purchase equity interests in the transmission company. The bill prescribes basic terms of organization of the transmission company, requirements governing contribution of transmission assets and land assets to the transmission company, the duties and powers of the transmission company, the utility license fees to be paid by the transmission company and the PSC's jurisdiction over the transmission company.

As used in the bill, the "transmission company" is a corporation or limited liability company that has as its sole purpose the planning, constructing, operating, maintaining and expanding of transmission facilities that it owns to provide for an adequate and reliable transmission system that meets the needs of all users that are dependent on the transmission system and that supports effective competition in energy markets without favoring any market participant.

As a result of the purposes of the transmission company set forth in this definition, a transmission company is a public utility under the definition of "public utility" in s. 196.01 (5), Stats.

A. ORGANIZATION

The bill specifies that the articles of organization of the transmission company, if it is organized as a limited liability company, or the bylaws of the transmission company, if it is organized as a corporation, must provide for each of the following:

1. The transmission company has no less than five nor more than 14 managers or directors. The company's articles of organization or bylaws may modify this requirement by unanimous vote of the managers or directors during the 10-year period after the organizational start-up date or upon a 2/3 vote of the board after this 10-year period.

2. At least four managers or directors of the company have staggered four-year terms, are elected by a majority vote of the security holders of the company and are not directors, employes or independent contractors of a person engaged in the production, sale, marketing, transmission or distribution of electricity or natural gas or an affiliate of such a person.

3. During the 10-year period after the organizational start-up date, subject to the limit on the number of managers or directors in item 1., the shareholders of the transmission company may appoint the specified managers or directors to the transmission company. Each security holder that is an investor-owned public utility in eastern Wisconsin that has contributed a transmission facility to the company (a "transmission utility security holder") may appoint one manager or director. Each security holder that receives at least 5% of the voting securities of the company who is a public utility, other than a public utility affiliate, or a generation and transmission electric cooperative that has voluntarily transferred all of its integrated transmission facilities to the company or is a transmission-dependent utility or retail electric cooperative who has purchased an equity interest may appoint one manager or director. Each security holder that is not a transmission utility security holder that owns at least 10% of the outstanding voting securities may appoint one manager or director. Each group of security holders that do not include transmission utility security holders that, as a group, owns at least 10% of the outstanding voting securities may appoint one manager or director. All managers or directors serve for a one-year term. The requirements applicable to the third and fourth type of security holders listed above may be modified upon a unanimous vote of the managers or directors of the company.

4. During the five-year period after the organizational start-up date, no public utility affiliate that contributes transmission facility assets to the company and no affiliate of such a public utility affiliate may, in general, increase its percentage share of the outstanding securities

of the company prior to any initial issuance of securities by the company to any third party. An exception to this limit is provided for an issuance of securities to a third party who is a transmission-dependent utility or retail electric cooperative exercising its right to purchase equity interest in the company at a price that is equivalent to net book value and on terms and conditions that are comparable to those for public utility affiliates who have contributed transmission facilities to the company. This provision does not apply to securities that are issued by the company in exchange for transmission facilities that are contributed in addition to the transmission facilities that are contributed by a public utility affiliate. Furthermore, these requirements may be modified upon a unanimous vote of the managers or directors of the company.

5. Beginning three years after the organizational start-up date, any holder of 10% or more of the company's securities may require the company to comply with any state or federal law necessary for the holder to sell or transfer its share.

B. CONTRIBUTION OF TRANSMISSION ASSETS

The bill establishes that, in general, a public utility affiliate may not contribute a transmission facility to the transmission company unless the PSC has reviewed the terms and conditions of the transfer for compliance with the requirements in the bill. A PSC order that modifies the terms and conditions of a transfer as proposed to the PSC may allow a public utility affiliate to recover in its retail rates any adverse tax consequences of the transfer as a transition cost.

If a public utility affiliate is making a commitment to contribute transmission facilities to the transmission company in order to modify the asset cap of its parent holding company, as described in Section 1., then the transmission company and public utility affiliate must structure the transfer of the transmission facility to satisfy the following conditions:

1. The transfer must avoid or minimize the material adverse tax consequences to the public utility affiliate that result from the transfer and avoids or minimizes the adverse consequences or public utility rates that do not arise out of combining the transmission company's facilities into a single zone in the MISO.

2. To the extent practicable, the transfer must satisfy the requirements of the Federal Internal Revenue Service for tax-free transfer. If practicable this requirement shall be satisfied by the transmission company's issuance of a preferred class of securities that provides the fixed cost portion of the resulting capital structure of the transmission company. The transmission company must issue preferred securities under this provision on a basis that does not dilute the voting rights of the initial security holders relative to the value of their initial contributions.

3. If the transfer of transmission assets by a public utility affiliate results in a capital structure of the transmission company in which the percentage of common equity is materially higher than that of the public utility affiliate who made the transfer, or if the cost of the fixed-cost portion of the capital structure of the transmission company is materially higher than that of the public utility affiliates who made the transfer, then the public utility affiliates must enter into a contract with the transmission company. Under this contract, the public utility affiliates must agree to accept from the transmission company a return on common equity based

upon the equity rate of return approved by FERC and upon an imputed capital structure that assigns to a portion of the public utility affiliate's common equity holdings an imputed debt return that is consistent with the requirements of this provision. Public utility affiliates must accept this return on common equity until the FERC determines that the actual capital structure and capital costs of the transmission company are appropriate and consistent with industry practice for a regulated public utility that provides electric transmission service in interstate commerce.

4. If, at the time that a public utility affiliate files a commitment to transfer its transmission facilities, the public utility affiliate has applied for or obtained a certificate of public convenience and necessity (CPCN), or a certificate of authority (CA) under s. 196.49, Stats., from the PSC for the construction of a transmission facility, the affiliate must proceed with due diligence in obtaining this certificate and in constructing the transmission facility. If the PSC determines that the cost of the transmission facility is reasonable and prudent, the affiliate must transfer these facilities to the transmission company at net book value when the construction is completed in exchange for additional securities of the transmission company on a basis that is consistent with the securities that were initially issued to the affiliate. If the construction of the transmission facility is not completed within three years after the CPCN or CA is issued by the PSC, the transmission company may assume responsibility for completing construction of the transmission facility. If the transmission company assumes this responsibility, it must carry out any obligation under any contract entered into by the public utility with respect to the construction of the transmission facility until the contract is modified or rescinded by the company, to the extent allowed under the contract.

5. Any transmission facility that is contributed to the transmission company must be valued at net book value at the time of the transfer.

If a public utility affiliate is not able to contribute its transmission facilities to the transmission company due to merger-related accounting requirements, the affiliate must transfer the facilities to the company under a lease for the period of time during which the accounting requirements are in effect. Once these requirements are no longer in effect, the affiliate must then contribute the facilities to the company. An affiliate that transfers facilities under a lease under this provision does not qualify for the treatment of the asset cap described in Section I., unless during the term of the lease, the affiliate does not receive any voting interest in the transmission company.

Under the bill, the duty of any public utility or electric cooperative that has contributed its transmission facilities to a transmission company to finance, construct, maintain or operate a transmission facility terminates on the date, as determined by the PSC, that the transmission company is authorized to begin operations.

C. CONTRIBUTION OF LAND RIGHTS

The bill establishes that if a public utility affiliate commits to contributing land rights to the transmission company as part of its commitment to contribute transmission facilities in order to modify the asset cap applicable to the affiliate's parent holding company, as described in

Section I., then the public utility affiliate must take a number of actions with respect to the contribution of these land rights.

In general, if the land right is assigned to a transmission account for rate-making purposes and is not jointly used for electric and gas distribution facilities by the affiliate, the affiliate must convey at book value all of its interest in the land right to the transmission company, except that any conveyance or assignment under this provision must be subject to the rights of any joint user of the land right and to the right of the public utility affiliate to nondiscriminatory access to the real estate that is subject to the land right.

If the land right is jointly used or intended to be jointly used, for electric and gas distribution facilities by the affiliate, the affiliate must enter into a contract with the transmission company that grants the company a right to place, maintain, modify or replace the transmission company's transmission facilities on the property that is subject to the land right during the life of the facilities and the life of any replacements of the facilities. These rights must be paramount to the right of any other user of the land right except the right granted in the contract shall be on a par with the right of the public utility affiliate to use the land right for electric or gas distribution facilities.

If the public utility affiliate is prohibited from making the conveyance described in the preceding paragraph, the affiliate must enter into a contract with the transmission company that grants the company substantially the same rights as under such a conveyance.

The bill establishes that the PSC must resolve any dispute over the contribution of a land right under the above provisions, including a dispute over the valuation of the land rights, unless a federal agency exercises jurisdiction over the dispute. While any dispute is being resolved before the PSC or the federal agency, the transmission company is entitled to use the land right that is the subject to the dispute and is required to pay any compensation that is in dispute into an escrow account.

D. DUTIES

The bill assigns to the transmission company the following duties:

1. The company must apply for any state or federal approvals that are necessary for the company to begin operations no later than November 1, 2000. However, the company may not begin operations until it provides an opinion to the PSC from a nationally recognized investment banking firm that the company is able to finance, at a reasonable cost, its start-up costs, working capital, operating expenses and the cost of any new facilities that are planned.

2. Subject to any required state or federal approval, the company must contract with each transmission utility that has transferred transmission facilities to the company for the utility to provide reasonable and cost-effective operation and maintenance services to the company for three years after the company begins operations. The company and utility may, subject to any approval required under federal or state law, agree to extend this three-year period.

3. The company must assume the obligations of a transmission utility that has transferred ownership of transmission facilities to the company under any agreement to provide transmission service over their facilities, or credits for the use of transmission facilities.

4. The company must apply for membership in the MISO as a single zone for pricing purposes that includes the part of the state served by the Mid-American Interconnected Network, Inc., reliability council of the North American Electric Reliability Council (i.e., referred to as "eastern Wisconsin" in the remainder of this memorandum). Once the PSC determines that the MISO has begun operations, the company must transfer operational control of its transmission facilities to the MISO.

5. The company must remain a member of the MISO or a federally approved successor to the MISO for at least the six-year transition period that is specified in the agreement that establishes the MISO and that the FERC conditionally approved.

6. The company must elect to be included in a single zone for the purpose of any tariff administered by the MISO. This requirement does not apply during the phase in of a combined single zone described below.

7. After it begins operations, the company is the exclusive provider of transmission service in those areas in which transmission facilities have been contributed to it. This duty terminates when the MISO begins operations at which time the MISO assumes the exclusive duty to provide transmission service in eastern Wisconsin and the responsibility to ensure that each transmission facility in eastern Wisconsin that is under its operational control is planned, constructed, operated, maintained and controlled as part of a single transmission system. When the company begins operations, the bill also terminates the duty of any public utility or electric cooperative that has contributed transmission facilities to the company to finance, construct, maintain or operate a transmission facility.

In addition, the transmission company may not do any of the following:

1. Sell or transfer its assets to, or merge its assets with, another person, unless the assets are sold, transferred or merged on an integrated basis and in a manner that ensures that the transmission facilities in eastern Wisconsin are planned, constructed, operated, maintained and controlled as a single transmission system.

2. Bypass the distribution facilities of an electric utility or provide service directly to a retail customer.

3. Own electric generation facilities or sell, market or broker electric capacity or energy in a relevant wholesale or retail market as determined by the PSC. An exception to this prohibition is provided for when the transmission company is authorized or required by the FERC to procure or resell ancillary services obtained from third parties, engage in dispatch activities that are necessary to relieve transmission constraints or operate a control area.

If the transmission charges or rates of any transmission utility in eastern Wisconsin are 10% or more below the average transmission charges or rates of the transmission utilities in

eastern Wisconsin on the date that the last public utility affiliate files a commitment with the PSC to contribute transmission facilities as a condition of altering its parent holding company's asset cap, then the transmission company must after consulting with all of the public utility affiliates that have made a commitment to contribute transmission facilities to it, prepare a plan for phasing in a combined single zone rate for the purpose of a pricing network used by users of the transmission system operated by the MISO. The company must also seek plan approval by FERC and the MISO. This plan must phase in an average-cost price for the combined single zone in equal increments over a five-year period except that under the plan, transmission service must be provided to all users of the transmission system on a single-zone basis during the phase-in period.

E. POWERS

The bill specifies that the transmission company may do any of the following:

1. Subject to the PSC's approval of a CPCN, the company may construct and own transmission facilities in eastern Wisconsin or in any other area of the state in which transmission facilities have been contributed to the company.

2. Subject to any approval required under state or federal law, the company may purchase or acquire transmission facilities in addition to the transmission facilities that are contributed to it by public utility affiliates.

F. LICENSE FEES

Under current law, "light, heat and power companies" must pay an annual license fee to the Department of Revenue (DOR). For private light, heat and power companies, these fees are based upon apportioning the company's payroll, value of utility plant and sales in Wisconsin (the "apportionment" factor) and multiply this factor by the sum of: (1) gross revenues from the sale of gas services multiplied by 0.97%; and (2) all other gross revenues multiplied by 3.19%. The property of any light, heat and power company that is subject to the license fee is exempt from general property taxes.

The bill establishes that the transmission company is a light, heat and power company and applies the license fee applicable to private light, heat and power companies to the transmission company except that the gross revenues of the transmission company exclude revenues for transmission service over its facilities that it provides to public utilities subject to the license fee, public utilities regulated under ch. 196, Stats., and electric cooperatives organized under ch. 185, Stats.

G. EXCEPTIONS TO PSC JURISDICTION

As a public utility providing transmission services, the transmission company is subject to regulation by both the PSC and FERC. The bill states that the company is subject to the jurisdiction of the PSC except to the extent that it is subject to the exclusive jurisdiction of the FERC. The FERC's jurisdiction includes approving the company's tariffs that set forth rates for

and terms and conditions of service. The PSC has jurisdiction over activities such as the siting, construction and maintenance of transmission facilities.

The bill exempts the transmission company from certain PSC regulation that it would otherwise be subject to. In particular, the bill removes the requirement for the PSC to approve any issuance of securities by the company. That company is also excluded from the definition of a holding company and, thus, the state holding company law.

The bill also amends current law as it relates to certain transactions between the transmission company and transmission utilities. In particular, any dividends from the company received by a transmission utility or gain or profit of a transmission utility from the sale or disposition of securities in the company may not be credited against the retail revenue requirements of the utility. The bill also amends the affiliated interest statute to provide an exclusion of PSC review under that statute for the sale or disposition by transmission utilities of their securities in the transmission company. The PSC must still approve other affiliated interest contracts governing transactions between transmission utilities and the transmission companies, including service contracts.

III. TRANSMISSION FACILITY SITING, CONSTRUCTION AND OPERATION

A. TRANSFER OF OPERATIONAL CONTROL

Under current law, each transmission utility in Wisconsin (public utilities and cooperatives that own transmission facilities and provide transmission services in Wisconsin) must transfer control over its transmission facilities to an independent system operator (ISO) or divest its interest in its transmission facilities to an independent transmission owner (ITO). If a transmission utility does not voluntarily transfer or divest its transmission facilities with the applicable state and federal approvals, then the PSC must, by June 30, 2000, order the transmission utility to apply to the appropriate federal regulatory agency to do one of the following:

1. Transfer control of the transmission facilities to an ISO that has received federal regulatory agency approval to operate in the region;

2. Transfer control of the transmission facilities to an ISO that is intended to operate in the region, if the federal regulatory agency has not approved an ISO to operate in the region; or

3. Divest the transmission utility's interest in its transmission facilities to an ITO if the transmission utility does not, or is not able to, to the satisfaction of the PSC, transfer control of its transmission facilities to a proposed ISO under the previous provision.

The bill creates a new exception to the PSC's duty to order the transfer of control or the divestiture of transmission facilities described above. The PSC may not issue this order if the transmission utility shows to the PSC's satisfaction that a transfer of its transmission facilities to the MISO may jeopardize the tax-exempt status of the transmission utility or its securities under

the Federal Internal Revenue Code. This waiver remains in effect until the PSC determines that the proposed transfer does not have this effect.

The bill also requires that each transmission utility in eastern Wisconsin that is a public utility must become a member of MISO by June 30, 2000 and transfer operational control over its transmission facilities to the MISO. Each of these utilities that has not contributed its transmission facilities to the transmission company, described in the Section II., must elect to become a part of the single zone for pricing purposes within the MISO, including the phase-in plan applicable to the transmission company described in Section II. D.

If the MISO fails to start or ceases operations, the bill requires that the requirements under the bill that apply to the MISO apply to any other ISO or regional transmission organization authorized under federal law to operate in Wisconsin.

B. TRANSMISSION LINE IMPACT AND ENVIRONMENTAL FEES

The bill directs the PSC to condition the approval of a CPCN, filed after the effective date of the bill, for any new 345 kilovolt (kV) or larger high voltage transmission line upon payment of two fees to the Department of Administration (DOA). These fees also apply to a 345 kV or larger transmission line whose CPCN was approved by the PSC and filed between April 1, 1999 and the bill's effective date. One fee is an annual impact fee, set at 0.3% of the cost of the transmission facility, as determined by the PSC. The DOA must distribute the revenue from this fee to municipalities (cities, villages and towns) through which the new transmission line is routed in proportion to the amount of investment in the facility that the PSC allocates to each of these municipalities.

The second fee is a one-time environmental impact fee equal to 5% of the cost of the transmission line, as determined by the PSC. The DOA must distribute 50% of the revenue from these fees to counties and 50% to municipalities in proportion to the amount of investment in each county and municipality. Distribution of environmental impact fees may be used by counties and municipalities for park, conservancy, wetland restoration and other similar environmental programs. The person paying these fees may not use the payment to offset any other mitigation measure required in the PSC's CPCN order approving construction of the transmission line.

The impact fee and environmental impact fee first apply to a CPCN approved by the PSC on the effective date of the bill. In addition, the owner of a transmission line subject to these fees may recover the fees as reasonably incurred expenses of providing transmission service.

C. INTERSTATE TRANSMISSION COMPACT

The bill authorizes the Governor, on behalf of the state, to enter into a compact, with one or more states in the upper Midwest. The purpose of the compact is to create a joint process for the member states to determine the need for and siting of regional electric transmission facilities that may affect electric service in Wisconsin.

If formed, the compact must require compliance with each member state's environmental and siting standards for transmission facilities and provide for a regional determination of the need for transmission facilities and a mechanism to resolve transmission facility siting conflicts between the states.

D. PSC CONSTRUCTION ORDERS

Under current law, the PSC conducted a study on constraints in the intrastate and interstate electric transmission system that adversely affected the reliability of transmission service provided to electric customers in Wisconsin and submitted a report on the results of the study to the Legislature in September 1998. Current law also provides that, based on this study, no later than December 31, 2004, the PSC may issue an order requiring an investor-owned utility to construct or procure, on a competitive basis, the construction of transmission facilities specified by the PSC that are necessary to relieve a constraint on the transmission system and to materially benefit the customers of the utility, other investor-owned utilities, an ISO or an ITO.

The bill amends this order authority by: (1) removing the December 31, 2004 sunset for the order; (2) removing the requirement that the order be based upon the results of the September 1998 transmission constraint study; and (3) changing the PSC authority to issue the order to a duty to issue the order (converting "may" to "shall").

E. CPCN FOR TRANSMISSION FACILITIES

Under current law, no person may commence the construction of a 100 kV or larger high voltage transmission line and that is at least one mile in length unless the person has applied for and received a CPCN from the PSC. The bill amends the CPCN review and approval process applicable to these transmission facilities in two ways. First, it establishes that transmission facilities constructed to increase the transmission import capability into Wisconsin shall use existing rights-of-way to the extent practicable. Routing and design of these facilities must minimize environmental impacts in a manner that is consistent with achieving reasonable electric rates.

Second, the bill establishes that the PSC may not approve a CPCN for construction of any new 345 kV or larger high voltage transmission line or without first finding that the line provides usage, service or increased regional reliability benefits to the wholesale and retail utility customers or cooperative members in the state and the benefits of the line are reasonable in relation to its cost.

IV. PUBLIC BENEFITS

Public benefits are goods (or benefits) that are produced by a portion or sector of society but whose benefits flow to society as a whole. A variety of public benefits are produced by the electric power industry and made available to the public at least in part as a result of government regulation. An example of this is the availability to all members of society of a safe, reliable and affordable power supply. In the context of electric utility restructuring generally, and this draft specifically, "public benefits" refers to certain activities that have been performed by electric

(and natural gas) utilities for the public good under PSC direction or oversight, specifically, activities to: (a) help make energy affordable to low-income households; (b) promote energy conservation, efficient energy systems and renewable energy sources; and (c) evaluate and mitigate the environmental impacts of energy production and use.

A. PROGRAM ELEMENTS

The bill creates two individual programs, giving broad grants of authority to the DOA to design and implement them.

1. Low-Income Assistance Program

The bill creates a program for awarding grants to provide assistance to low-income households for weatherization and other energy conservation services, payment of energy bills and the early identification and prevention of energy crises. The program is similar in purpose to the Federal Low-Income Weatherization and Home Energy Assistance Programs. The bill directs the DOA to establish eligibility requirements for the low-income programs by rule. Individuals who receive low-income services under a commitment to community program (described in Section D., below) are not eligible to receive services under the low-income program. The bill requires that the program expend on weatherization and conservation services an amount equal to 47% of all low-income public benefit funds expended in this state. (See Section C., below, for a description of these funds.)

2. Energy Program

The bill creates a program for awarding grants for energy conservation and efficiency services and for renewable resource programs. The energy conservation and efficiency services portion of the program must give priority to proposals directed at: (a) sectors of the energy conservation and efficiency services market that are least competitive; and (b) promoting environmental protection, electric system reliability or rural economic development. The renewable resources portion of the program must focus specifically on encouraging the development or use of utility customer and electric cooperative member applications of renewable resources, including educating customers and members about renewable resources, encouraging use of renewable resources by customers and members or encouraging research technology transfers. Of the total funds available for energy programs, 4.5% must be expended for the renewable resources portion of the program. In addition, 1.75% must be used for research and development proposals regarding the environmental impacts of the electric industry.

The DOA is directed to establish requirements and grant application procedures for grants by rule. In awarding contracts for energy programs, the administrators may not discriminate against an electric provider, a wholesale electric supplier or an affiliate of one of these solely on the basis of its status as an electric provider, a wholesale electric supplier or an affiliate of one of these.

B. PROGRAM ADMINISTRATION

1. DOA

a. Administration; Contracts

The bill gives principal responsibility for program administration to the DOA, in consultation with the Council on Public Benefits (described below). It directs the DOA to establish each of the program elements after holding one or more public hearings. It specifies that the low-income programs are to be administered through the DOA's Division of Housing.

The bill directs the Division of Housing to contract with community action agencies, nonprofit corporations or local units of government to provide the low-income program services. It directs the DOA to contract with one or more nonprofit corporations to administer the energy programs. The administrative functions of the energy programs contractor shall include soliciting proposals, processing grant applications, selecting proposals to receive grants (on the basis of criteria specified by the DOA in rules) and distributing grants to recipients. All contracts must be awarded on the basis of competitive bids. The DOA is directed to establish criteria for the selection of a contractor to administer the energy programs by rule.

The bill directs the DOA to annually, beginning in fiscal year 2004-05, determine whether to continue, discontinue or reduce any of the programs related to energy conservation and efficiency and renewable resources. In addition, it must determine the amount of funding necessary for the programs that are continued or reduced and notify the PSC of this funding determination. The DOA is directed to promulgate rules to establish criteria for determining whether to continue, discontinue or reduce any of the programs and to determine the level of funding for the continued or reduced programs.

b. Other Duties

The bill directs the DOA to encourage customers to make voluntary contributions to help support public benefit programs. It must promulgate rules to require that electric utilities allow customers to include such voluntary payments with their bill payments. The rules may require special provisions on each bill for this purpose, including the ability of a customer to specify the types of programs for which a contribution is made and must establish procedures for transferring those contributions to the specified programs.

The bill requires that the DOA annually provide for an independent audit and submit a report to the Legislature describing the expenses of administering the public benefit programs, the effectiveness of the programs and any other topics identified by the Governor, the Speaker of the Assembly or the Majority Leader of the Senate.

c. Rule Making

The bill directs the DOA to promulgate rules on various topics, which are described along with the related subject matter. In each case, it directs the DOA to promulgate the rules as

emergency rules and to submit draft final rules to the Legislative Council Rules Clearinghouse for review within six months of the effective date of the bill.

2. Council on Public Benefits

The bill creates a Council on Public Benefits ("the Council"). The bill does not assign any specific powers or duties to the Council, but directs the DOA to execute its duties in administering the public benefit programs in consultation with the Council. The Council consists of the following 11 members:

a. Two members selected by the Governor.

b. Two members selected by the Senate Majority Leader.

c. One member selected by the Senate Minority Leader.

d. Two members selected by the Speaker of the Assembly

e. One member selected by the Assembly Minority Leader.

f. One member selected by the Secretary of the Department of Natural Resources (DNR).

g. One member selected by the Secretary of the DOA.

h. One member selected by the Chairperson of the PSC.

The members of the Council serve for three year terms. Their appointments are not subject to confirmation by the Senate. The Council is attached to the DOA for administrative purposes.

C. FUNDING FOR PUBLIC BENEFIT PROGRAMS

The bill relies on three sources of funds for the public benefits programs: the funds that investor-owned public utilities have been collecting through rates to pay for public benefit programs conducted under PSC oversight or direction; new fees that electric public utilities and retail electric cooperatives are required to collect through rates and remit to the state; and federal funds provided for low-income energy assistance and weatherization programs.

The attachment to this memorandum presents estimates of the revenues and fees for public benefit programs under the bill.

1. Continuation of Existing Utility Funding

The bill directs the PSC to determine the amount that each investor-owned electric or gas utility spent on public benefit programs in 1998, including the write-off of the unpaid utility bills of low-income households (i.e., low-income "uncollectibles"). It requires these utilities to

continue to collect these amounts through rates. It directs the PSC to devise a scheme to, in 1999, 2000 and 2001, phase the expenditure of these revenues out of the utilities' programs and into the programs administered by the DOA. Beginning in 2002, the utilities are required to contribute the entire amount to the DOA programs. Utilities may elect to continue public benefit activities, in addition to raising funds for the state programs. The PSC is required to reduce the amount of funds raised by this mechanism if the DOA reduces the required funding level of the energy public benefit programs, as described in Section B. 1. a., above.

2. New Fees

The bill establishes separate fees for investor-owned utilities and for municipal utilities and cooperatives.

a. Fees Collected by Investor-Owned Utilities

The DOA is required to set the fees collected by investor-owned utilities by rule. The fees are to be flat fees, not based on the amount of electricity used by the customer, but they may vary between customer classes. Seventy percent of the revenues collected by any utility must be from fees charged to residential customers and 30% must be from nonresidential customers. The total amount of fees paid by an individual customer is capped such that the fee will not increase the customer's bill by more than 3% or $750 per month, whichever is less. This limitation applies only through June 30, 2008. Utilities must include the fee in customers' bills and provide customers with an annual statement that identifies annual charges and describes the programs for which they are used. Utilities are allowed to recover, through rates, reasonable and prudent expenses they incur in collecting the fees.

(1) Fees for low-income programs

The fees collected by investor-owned utilities must be designed to raise specified amounts to fund low-income and energy programs. The total amount raised in fiscal year 1999-2000 for low-income programs must be $27 million minus 1/2 of the amount raised in fees collected by municipal utilities and cooperatives. In subsequent years, the total amount raised must be an amount referred to as the low-income need target minus all of the following: (a) 1/2 of the amount raised in fees collected by municipal utilities and cooperatives; (b) all federal funds received for low-income programs; and (c) all funds collected by utilities representing the 1998 level of program expenditures, as described under item 1., immediately above. "Low-income need" is the amount by which the cumulative energy bills of all low-income households in the state exceed 2.2% of the cumulative incomes of those households, which is a measure of the amount of those energy bills that are unaffordable to those households and so is a measure of the need for program funding. "Low-income need target" is the proportion of the low-income need funded in fiscal year 1999-2000 times the low-income need of a given year, and so is the target funding level for low-income programs in that year. Thus, the low-income need target is the same proportion of a given year's low-income need as is funded in the first year of the program; the fees are designed to raise the portion of this funding target that is not provided from other sources.

The DOA is required to determine the low-income need target for each fiscal year after 1998-99. It is directed to establish a method, by rule, for estimating the total of low-income energy bills, the average annual income of low-income households and the number of low-income households in this state in a fiscal year, for the purpose of determining the amount of low-income need in that fiscal year.

(2) Fees for energy programs

The total amount raised for energy programs must be $20 million minus 1/2 of the amount raised in fees collected by municipal utilities and cooperatives. After fiscal year 1999-2000, the DOA is required to reduce the amount of funds raised by this mechanism if it reduces the required funding level of the energy public benefit programs, as described in Section B. 1. a., above.

b. Fees Collected by Municipal Utilities and Cooperatives

The bill requires that municipal utilities and cooperatives collect fees from their customers that average $17 per electric meter per year. They may charge different fee levels for different customer classes. Again, the total amount of fees paid by an individual customer through June 30, 2008 may not increase the customer's bill by more than 3% or $750 per month, whichever is less.

3. Federal Revenue

The third source that the bill relies upon for public benefit funding is existing federal funding under the Low-Income Weatherization Assistance and Low-Income Home Energy Assistance Programs. The bill essentially views state and federal low-income programs as two sources of funding for the same purpose. As was described in the preceding description of fees, the amount of federal revenues received by this state is part of the formula used to set the fees. However, the administration of the federal funds is maintained as a separate program.

D. COMMITMENT TO COMMUNITY PROGRAMS

The bill gives municipal utilities and cooperatives the option to implement all or part of the public benefit programs for their customers in programs referred to as commitment to community programs. They may implement such programs individually or jointly with other municipal utilities or cooperatives. If a municipal utility or cooperative chooses to implement both components of the state public benefits program, it retains all of the revenues from the fees it collects and uses them for that purpose; if it chooses to implement one but not both components, it retains 1/2 of the revenues for its program and pays the other 1/2 to the state for the state program; if it chooses not to implement a commitment to community program, it pays all of the fee revenues to the state.

Within one year of the effective date of the bill and every three years thereafter, each municipal utility or cooperative must notify the DOA whether it intends to implement a commitment to community program. Once it has chosen to do so, it must continue the program for a period of three years.

If a municipal utility or cooperative that implements a commitment to community program is served by a wholesale electric supplier that has established a low-income assistance program or an energy conservation program, it may treat a portion of the revenues spent for the supplier's program toward its required expenditures under its commitment to community program. The municipal utility or cooperative may claim a credit in proportion to its purchases from the supplier.

A municipal utility and cooperative that implements a commitment to community program must annually submit a report to the DOA regarding its program. The report must provide an accounting of fees charged to customers, program expenditures and credits claimed for the programs of a wholesale electric supplier. In addition, it must provide a description of the program. The DOA is required to retain the reports for at least six years.

E. RENEWABLES PORTFOLIO STANDARD

One policy mechanism for promoting the implementation of renewable energy resources is the renewables portfolio standard (RPS). An RPS is a statutory requirement that suppliers of electric power include in their portfolio of generation facilities a specified amount or proportion of generation capacity that relies on renewable energy resources.

The bill requires that a retail electric utility or a retail electric cooperative provide the following proportions of its total retail energy sales in the form of renewable energy:

1. By December 31, 2000, 0.5%.
2. By December 31, 2002, 0.85%.
3. By December 31, 2004, 1.2%.
4. By December 31, 2006, 1.55%.
5. By December 31, 2008, 1.9%.
6. By December 31, 2010, 2.2%.

The bill considers the following sources of electricity to be renewable energy:

1. A fuel cell that uses a fuel determined by the PSC to be renewable.
2. Tidal or wave action.
3. Solar thermal electric or photovoltaic energy.
4. Wind power.
5. Geothermal technology.
6. Biomass.

7. A hydroelectric facility with a capacity of less than 60 megawatts.

For purposes of determining compliance with the RPS, an electric provider's retail energy sales are calculated on the basis of an average of the energy sales over the preceding three years. If a facility burns a biomass fuel along with conventional fuel, the amount of renewable energy produced by that facility is considered to be the same proportion of the total energy output of the facility as the proportion of the energy input provided by the biomass fuel.

The bill limits the amount of electricity derived from facilities that were placed in service and generating electricity from hydroelectric power before January 1, 1998 that may be counted toward meeting the requirement for providing renewable energy. A utility or cooperative may not count more than 0.6% of its total capacity from such sources toward meeting the requirement, even if the output of such a facility is used to satisfy the requirements of federal law.

A utility or cooperative is allowed to comply with the RPS in either or both of two ways. First, it may generate or purchase the electricity from renewable resources. Second, it may purchase credits from another utility or cooperative that has generated the credit by providing its customers or members electricity from renewable sources in excess of the amount required under the standard. The PSC is required to promulgate rules to establish requirements for calculating the amount of credits. It is directed to promulgate the rules as emergency rules and to submit draft final rules to the Legislative Council Rules Clearinghouse for review within six months of the effective date of the bill. The PSC is authorized to promulgate rules establishing requirements and procedures for the sale of credits, although it may not place restrictions on the sale price.

The RPS does not apply to an electric provider that provides more than 10% of its summer peak demand in this state from renewable sources in this state. Also, it does not apply to an electric provider that provides more than 10% of its summer peak demand in and outside this state from renewable sources that the provider owns and operates in or outside this state.

The bill requires each utility and cooperative to submit an annual report to the DOA documenting its compliance with the RPS. It also requires that the PSC allow utilities to fully recover the cost of complying with the standard through their rates. A utility may recover the costs by allocating the costs equally to all customers on a kilowatt hour basis, through alternative pricing structures, including pricing structures under which customers pay a premium for renewable energy, or any combination of these methods.

The Attorney General is directed to enforce the standard. A person who violates the standard or submits a false or misleading certification regarding the source or amount of energy provided to the utility or cooperative is subject to a forfeiture of not less than $5,000 nor more than $500,000. In imposing a forfeiture, the court is directed to consider the appropriateness of the forfeiture to the volume of the person's business, the gravity of the violation and whether a violation of the standard was beyond the person's control.

F. STUDY OF INCENTIVES FOR DISTRIBUTED ENERGY SYSTEMS

The bill directs the PSC, in consultation with the DOA and DOR, to study the establishment of a program of incentives for the development of highly efficient, small-scale generating facilities in the state. The program shall provide benefits in the form of support for the transmission and distribution system, power quality or environmental performance. It shall employ technologies, such as combined heat and power systems, fuel cells, microturbines and photovoltaic systems, that can be situated in, on or adjacent to buildings or other electric load centers. The PSC must report its study findings and recommendations to appropriate legislative study committees by January 1, 2001.

V. ENERGY AFFILIATE AND UTILITY EMPLOYE PROTECTIONS

The bill establishes that no person may sell an "energy unit" of an electric utility (including a generation and transmission cooperative), holding company system or nonutility affiliate unless the person has satisfied the following conditions relating to nonsupervisory employes who are employed with the energy unit immediately prior to the transfer:

a. The terms of the transfer require the person to which the unit is transferred to offer employment to those employes who are necessary for the operation and maintenance of the energy unit.

b. The employment that is offered under the preceding requirement must satisfy each of the following requirements during the 30-month period beginning immediately after the transfer: (1) wage rates must be no less than the wage rates in effect immediately prior to the transfer; (2) fringe benefits must be substantially equivalent to the fringe benefits in effect immediately prior to the transfer; and (3) terms and conditions of employment, other than wage rates and fringe benefits, must be substantially equivalent to the terms and conditions in effect immediately prior to the transfer. These requirements may be modified or waived by a collective bargaining agreement.

If the transaction involves a public utility affiliate selling an energy unit to a nonutility affiliate in the same holding company system, the terms of the transfer must require the nonutility affiliate to offer employment to all of the nonsupervisory employes who are employed with the energy unit immediately prior to the transfer.

The bill requires that, except for a sale of an energy unit by a cooperative association, no person may sell an energy unit unless the PSC determines that the person has satisfied the conditions listed above.

As used in these provisions, an "energy unit" is a division, department or other operational business unit in Wisconsin of a nonutility affiliate or in a holding company system, a public utility or an electric cooperative that is engaged in activities related to the production, generation, transmission or distribution of electricity, gas or steam or the recovery of energy from waste materials.

VI. OTHER ISSUES

A. RELIABILITY: REPORTS AND CONSTRUCTION ORDERS

The bill directs the PSC to require, by rule, that electric utilities report to the PSC, as frequently as the PSC determines to be as reasonably necessary, on their current reliability status. These reports shall include information on operating and planning reserves, available transmission capacity and outages of major operational units and transmission facilities. These reports shall be open to public inspection and copying, except that the PSC may delay public access for a reasonable time to prevent an adverse impact on the supply or price of energy in Wisconsin.

The bill also directs the PSC to order any public utility affiliate or the transmission company to make adequate investments in its facilities that are sufficient to ensure reliable electric service. The PSC must make this order if it determines that a public utility affiliate or the transmission company is not making investments in the facilities under its control that are sufficient to ensure reliable electric service. This order must require the affiliate or company to provide security in an amount and form that, to the PSC's satisfaction, is sufficient to ensure that the affiliate or company expeditiously makes any investment that is ordered. The PSC must allow an affiliate that is subject to an investment order to recover in its retail electric rates the costs that are prudently incurred in complying with the order.

B. OTHER HOLDING COMPANY REGULATIONS

Under the state's holding company law, the PSC must consider the public utility affiliate of a holding company as a wholly independent corporation when the PSC makes any determination on any rate change proposed by the affiliate. The bill expands this requirement and directs the PSC, when making this determination, to impute a capital structure to the public utility affiliate and establish a cost of capital for the public utility affiliate on a stand-alone basis.

C. MARKET POWER STUDY

The bill directs the PSC to contract with an expert economic consultant for a study on the potential of horizontal market power (including market power in the area of generation of electricity) to frustrate the creation of an effectively competitive retail electricity market in the state. The study must include recommendations of measures to eliminate such market power on a sustainable basis. For each recommendation made, the report shall include an assessment of the effect on utility workers, on utility shareholders and on the rates of each class of utility customers. The study must include an evaluation of the impact of transmission constraints on generation market power in local areas. The PSC is required to submit a report to the Legislature based on the study not later than January 1, 2001.

D. MARKET-BASED PRICING

The bill directs investor-owned electric utilities, that generates, distributes and sells electricity, to offer market-based rates to customers. They must offer: (a) rates that result in customers receiving market-based compensation for voluntary interruption of firm load during

peak demand; and (b) market-based pricing and individual contract options that allow customers to receive market benefits and subject themselves to market risks in purchasing capacity or energy from its existing public utility. The bill directs the PSC to approve market-based rates that are consistent with such market-based pricing options and individual contract options, except that it may not approve such rates if the rates will harm the utility's shareholders or customers who are not subject to the rates. Municipal utilities are authorized, but not required, to offer the same types of rates and contract options.

E. ENVIRONMENTAL IMPACT STATEMENTS

The bill directs the PSC to promulgate rules establishing requirements and procedures for the preparation of environmental impact statements regarding major actions of the PSC. The rules must establish standards for when an environmental impact statement is required, provide adequate time for members of the public to comment and be heard on environmental impact statements and establish time lines that permit thorough review of environmental issues and the processing of PSC dockets without undue delay in view of the need for additional transmission capacity.

F. NITROGEN OXIDE EMISSIONS

Currently, the state is required by the U.S. Environmental Protection Agency to prepare a plan to reduce nitrogen oxide emissions in Wisconsin for the control of atmospheric ozone in the northeastern portion of the U.S. as a whole. The requirement to prepare the plan is referred to as a call for a state implementation plan, or a SIP call, under the Federal Clean Air Act. The bill specifies that, for purposes of this SIP call, the DNR may not regulate nitrogen oxide emissions from electric generating facilities that are located in specified counties. The specified counties make up the service territories of Northern States Power of Wisconsin and Dairyland Power Cooperative and its member distribution cooperatives, in western Wisconsin. It further provides that the DNR may not require more stringent limitations on other large utility and industrial sources of nitrogen oxides to compensate for its inability to place limitations on electric energy generators in western Wisconsin.

G. INTERVENOR FINANCING

Under current law, the PSC may compensate nonutility intervenors in cases before it for all or a portion of the intervenor's costs of intervening if certain conditions are met. The bill requires the PSC to compensate intervenors if the conditions are met. The bill changes one of the conditions to establish that an adequate presentation of a significant position would not occur, rather than not be possible, without the compensation. In addition, the bill increases the funding for intervenor compensation from $250,000 per year to $500,000 per year.

If you have any questions regarding the bill summarized in this memorandum, please contact us at the Legislative Council Staff offices.

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Attachment

ATTACHMENT

PUBLIC BENEFIT PROGRAMS FUNDING AND FEES

The following is an estimate of the funding of the public benefit programs created or continued under the bill. The estimates are based on information contained in Memo No. 6 of the Special Committee on Utility Public Benefit Programs, *Expenditures on Public Benefits in 1993, 1995 and 1997* (revised January 21, 1999), Memo No. 8 of the Special Committee on Utility Public Benefit Programs, *Expenditures on Low-Income Programs* (April 15, 1999) and Memo No. 9 of the Special Committee on Utility Public Benefit Programs, *Profile Data Regarding Certain Energy Providers* (April 15, 1999). Funding estimates are based on 1997 expenditure and funding data, which is the most recent complete data available.

A. PROGRAM FUNDING

1. Low-Income Programs

As is described in the memorandum, the funding for the low-income programs is the sum of revenues collected by utilities representing a continuation of current funding (based on 1998 expenditures), revenues from new fees collected by utilities and federal revenues received by the state for low-income programs. The federal funds will be administered as a separate program. In addition, the continuation of current programs will be administered by the utilities initially and transferred to the DOA over a three-year period. As a result, in the first year after enactment of the bill, there will be three separate sets of programs. The continuing funds will be administered by the various utilities; the new funds will be administered by the state, except that municipal utilities and cooperatives have the option of administering their own programs using the revenues they raise in fees; the federal revenues will be administered by the state.

The expenditure of investor-owned gas and electric utilities in 1997 on low-income programs was $16.2 million. In addition, these utilities reported $35.9 million in uncollectible bills in that year. It is estimated that about 1/2 of this amount, or $18 million, is due to low-income customers. Thus, the total 1997 utility expenditures on low-income programs that would be required to continue is about $34.2 million. (Initial estimates prepared by the PSC staff suggest that 1998 expenditures may have been slightly less.)

The amount of new fees for low-income programs required by the bill is $27 million.

The federal revenues received in 1997 for the Low-Income Weatherization and Home Energy Assistance Programs totaled $54.1 million. It is impossible to know what level of funding the U.S. Congress will provide for this program in future years, but funding has declined in recent years.

2. Energy Programs

As described in the memorandum, the funding for the energy programs is the sum of revenues collected by investor-owned utilities representing a continuation of current funding

(based on 1998 expenditures) and revenues from new fees collected by utilities. The 1997 expenditures of utilities on energy programs totaled $56.7 million. (Initial estimates prepared by the PSC staff suggest that 1998 expenditures may have been about 10% more.) The amount of new fees for energy programs required by the bill is $20 million.

Table 1 -- Estimates of Initial Program Funding, Based on 1997 Data

	Low-Income Program	***Energy Program***
Continuing Expenditures	$34.2 million	$56.7 million
New Fees	$27 million	$20 million
Federal Revenues	$54.1 million	---
TOTAL	$115.3 million	$76.7 million

B. FEES

1. Municipal Utilities and Cooperatives

The bill requires municipal utilities and cooperatives to collect fees that average $17 per customer. With a total of about 437,000 customers, these entities will collect about $7.4 million in fee revenues. One-half of this amount ($3.7 million) will be applied to low-income programs and the other 1/2 to energy programs, as described in the text of the memorandum.

2. Investor-Owned Utilities

Investor-owned utilities collect fees that are calculated separately for low-income and energy programs. In the first year, the low-income component is calculated to raise an amount equal to $27 million minus the amount collected by municipal utilities and cooperatives for low-income programs. Thus, the fees will be set to collect $23.3 million. Seventy percent of this amount ($16.3 million) will be collected from residential customers and the balance ($7 million) from other customers.

In the first year, the energy component is calculated to raise an amount equal to $20 million minus the amount collected by municipal utilities and cooperatives for energy programs. Thus, the fees will be set to collect $16.3 million. Seventy percent of this amount ($11.4 million) will be collected from residential customers and the balance ($4.9 million) from other customers.

The average amount of the fees can be estimated based on these revenue goals and the number of customers, as shown in Table 2. The average fees appear to be well within the 3% and $750 caps specified by the bill, but the calculated fees of some very large industrial energy users could exceed the caps.

Table 2 -- Estimates of Initial Fees, Based on 1997 Data

	Revenue Goal	*Number of Customers*	*Average Annual Fees*
		Residential Customers	
Low-Income Programs	$16.3 million	1,830,000	$8.91
Energy Programs	$11.4 million	1,830,000	$6.22
TOTAL	$27.7 million	1,830,000	$15.13
		Nonresidential Customers	
Low-Income Programs	$7 million	231,000	$30.30
Energy Programs	$4.9 million	231,000	$21.21
TOTAL	$11.9 million	231,000	$51.51

Future fees cannot be estimated at this time. Fees for low-income programs will depend on a determination of the low-income need, which is not currently available. Fees for the energy program will depend on any reductions to the program made by the DOA.

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PG&E Corporation

ELECTRIC RELIABILITY 2000

Testimony of PG&E Corporation before the State Committee on Health, Utilities, Veterans, and Military Affairs.

June 16, 1999

Good afternoon Chairman Moen and members of the committee. My name is Joe Strohl. I am here representing PG&E Corporation.

PG&E is the parent holding company for 4 competitive energy business affiliates and one regulated utility, the Pacific Gas and Electric Company.

PG&E affiliates develop and operate competitive power plants throughout the US and broker or market electricity sales between the owners of generating plants and utility companies.

PG&E Generation Company operates power plants in more than 20 states with a capacity exceeding 7,700 megawatts. That's as much power as all generating plants in Wisconsin combined.

PG&E Energy Trading Company, another affiliate, sells electricity to some of Wisconsin's largest utility companies.

PG&E Generating Company currently has plans to develop a 1,000 megawatt natural gas generating plant for the Kenosha/Racine area to help Wisconsin with its energy reliability problems. The company hopes to have the plant in operation by mid-2002.

The proposed Kenosha/Racine plant is the direct result of Act 204 authored by you Chairman Moen. You will recall that your bill streamlined the regulatory process to encourage the development of new merchant plants to help the state meets it reliability problems.

I believe that PG&E is the only true merchant base load plant currently under consideration in Wisconsin. All the other independent plants under discussion have long term contracts with utility companies and are actually being planned or constructed due to regulatory action by the PSC.

As you know Mr. Chairman, PG&E has not been a party to the negotiations that you, Chairman Hoven and the Governor have lead. That doesn't mean that we don't have an interest in the outcome however.

The success of PG&E in helping Wisconsin to meet both its short term and long term energy needs is partially dependent on the success of the Moen-Hoven Electric Reliability 2000 legislation.

We are therefore able to comment on the proposed legislation as an interested party that did not help to write the bill but as someone who will be directly impacted by it.

PG&E gives its unequivical support to the proposal!

We are most supportive of the transco provisions and the agreement to join the midwest ISO. These provisions are crucial for both the short term and the long term. As I mentioned earlier, PG&E Energy Trading Company already purchases power from other midwestern generators and resells it to various Wisconsin utilities. Constraints in the midwest transmission system limit our ability to provide the amount of power Wisconsin needs and that we have access to.

A truly integrated, independent midwestern transmission system should make it possible for PG&E and other trading companies to provide Wisconsin with reliable power from other areas of the midwest. This transco and midwest ISO should help us to do that.

In the long term, the transco will help the Kenosha/ Racine plant to deliver competitively priced power to utilities, municipalities, coops and eventually retail customers throughout the state without fearing unfair restrictions on the transmission system.

PG&E also supports the changes proposed for modifying the asset cap. PG&E operates and competes in every state, Canada, and Mexico. Nowhere else do we face competition with such restrictions on them.

You might think that PG&E would welcome the continued restrictions on their competition. We do not!

We believe that it is in the best interest of all Wisconsin consumers that there be real competition in the electric industry. We do not fear the competition, we welcome it!

For these reasons, PG&E supports the Moen-Hoven package.

We believe however, that this should not be the end of legislative involvement in the restructuring process. Electric Reliability I and Electric Reliability 2000 are important steps but more needs to be done.

For example, Electric Reliability I did a good job in knocking down the regulatory barriers to encouraging merchant plants. Left undone was looking at the tax code to see how it impacted the economic viability of competitive plants. The current code could result in state taxes applying twice or three times to the same electricity.

Other restructuring issues that need addressing to bring about a truly competitive marketplace for electricity include issues of market power of the incumbant utility and how their stranded costs will be handled.

PG&E is committed to continuing to be a supplier of competitively priced electricity to Wisconsin and is working to become a competitive Wisconsin generator as well. We look foreward to working with you Chairman Moen and committee members to accomplish this.

Public Service Commission of Wisconsin

Ave M. Bie, Chairperson
Joseph P. Mettner, Commissioner
John H. Farrow, Commissioner

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RELIABILITY 2000 LEGISLATION
JUNE 16, 1999

TESTIMONY OF PATRICIA MCCORMACK
PUBLIC SERVICE COMMISSION

Thank you for providing me with the opportunity to provide information to the Committee on the Reliability 2000 legislation. The Public Service Commission has been a partner in the development of this proposal and believes it to be a balanced compromise, which will build upon the Commission's implementation of last year's Reliability Act, Wisconsin Act 204.

Strengthening our current infrastructure in order to provide energy reliability to the citizens of our state has been the Commission's number one priority. Our infrastructure needs are so great that we have been pursuing all avenues to achieve and maintain reliability, including conservation, utilization of renewable resources, and ordering construction.

Strengthening our transmission system is key to reliability. Wisconsin has witnessed a tremendous increase in the number of wholesale transactions on our transmission lines since the Federal Energy Regulatory Commission issued Order 888 which mandates equal access in the wholesale transmission marketplace. This growth in wholesale commerce has caused significant disagreement and litigation as the utilities vie for limited transmission capacity. Lack of transfer capabilities has resulted in serious reliability challenges for Wisconsin. The current reliability councils which Wisconsin utilities are a part of, MAPP and MAIN, were developed thirty years ago and provide different boundaries than the Midwest Independent System Operator (Midwest ISO).

The bill's creation of a statewide TRANSCO which will become a member of the Midwest ISO will provide for common terms of trade and ensure that the transmission system is open and fair to all users. This is essential to deliver reliable, competitively priced electricity. A statewide transmission company within the regional Midwest ISO will provide equal access to the regional transmission grid and smooth out the price spikes that can occur in the competitive wholesale market.

In order to ensure utility participation in this TRANSCO, this bill allows utilities to receive relief from the state asset cap that limits the amount of their non-energy holdings to 25 percent. This bill would allow Wisconsin utility holding companies to make investments in non-utility entities in energy and telecommunications assets without counting it against the 25 percent cap. The utilities believe that this will allow them to become more competitive with out-of-state holding companies.

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As I stated previously, reliability is a regional concern, which must be addressed at the regional level. As a result, the bill would authorize the Governor to negotiate and enter into a regional transmission need and siting compact with midwestern states. The member states would agree on environmental and siting standards. A regional determination of need would be agreed upon for transmission facilities and a mechanism would be developed to resolve transmission facility siting conflicts between states. This compact would enable the Commission to cut through the regulatory red tape on projects, which involve other states. The current process can cause delays in transmission facility construction orders because of coordination with another state's approval process.

The Commission's ability to authorize new transmission construction is also strengthened in this legislation by giving it permanent authority to meet transmission needs.

Construction projects are difficult issues for local communities and governments. This bill would provide compensation to local units of government to mitigate community opposition to the siting of transmission lines. Transmission owners would pay affected units of government an impact fee of five percent of the cost of new transmission construction projects.

The energy conservation, energy assistance and renewable energy programs established in this legislation will also strengthen reliability. State utilities would be required to spend $105 million to assist low-income residents pay their heating bills. In addition, the bill requires $84 million for energy conservation programs, which include building weatherization and installation of energy efficient appliances.

This bill also allows municipal utilities and cooperatives the option to implement their own commitment to community public benefit programs. This provides these organizations with the choice to tailor their programs to the particular needs of the communities they serve instead of contributing to the state public benefits program.

The funding for the public benefits and conservation programs includes $50 million in federal funds as well as funds from rates and fees. The bill caps any rate increase at three per cent of an individual customer's bill or $750 per month for a large industrial customer, whichever is lower. Estimates have been made that the average cost for a residential customer is $12-$15 per year and for a business customer could be $50-$60 per year. This is only true if the provisions are considered as stand-alone. The TRANSCO should enable the state to obtain cheaper power on the regional electric grid from Canada and the western states and prevent the price spikes we saw during the previous two summers. This increase in transfer capability will also allow businesses to expand which will in turn increase the customer base that will pay for these programs. Energy conservation should also take place.

Emphasizing the utilization of renewable resources will also assist on strengthening the state's energy reliability. Renewable resources have low or no energy costs; and so, they

keep more energy dollars in the state. This bill would establish a renewables portfolio standard, of 2.2 percent by the year 2010. This standard is a statutory requirement that suppliers of electric power must include in their portfolio of generation facilities a specified amount of generation capacity that relies on using renewable resources, such as wind, solar energy, or biomass. The percentage is calculated on the basis of a utility or cooperative's retail energy sales. Credits can also be purchased from the utilities and cooperatives that may generate renewable resources over and above the percentages which are required in the legislation.

This legislation also will build upon the rules the Commission is promulgating at this time to implement the provisions of Act 204. This bill directs the Commission to issue rules requiring public disclosure by utilities of their current reliability status, operating reserves and available transmission authority. The Commission is currently developing rules to implement the Strategic Energy Assessment which will determine if capacity will be available to meet future demand and a revision of the Service Quality Standards which requires that utilities provide information related to power outages and interruptions, and this language will strengthen the rules in progress.

Other provisions which should assist the Commission in identifying what measures need to be undertaken before retail competition could be reasonably be considered include a study on the potential for vertical and horizontal market power to curtail the creation of an effective retail electricity market in Wisconsin as well as provisions for developing and approving new market-based pricing options for consumers.

In summary, this bill will build upon the work the Legislature and Governor began last session in order to strengthen and maintain energy reliability for the state of Wisconsin.