

2001 DRAFTING REQUEST

Bill

Received: **01/19/2001**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Holden**

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

Drafter: **kunkemd**

May Contact: **Gordon Grant, PSC**

Alt. Drafters:

Subject: **Public Util. - electric**

Extra Copies:

Pre Topic:

DOA:.....Holden -

Topic:

PSC assessments for wholesale merchant plants

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	kunkemd 01/19/2001	gilfokm 01/19/2001	pgreensl 01/22/2001	_____	lrb_docadmin 01/22/2001		State

FE Sent For:

<END>

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/?	kunkemd	1-1/2 kmg 19-01	1/22 PG	1/22 PG/IS			

FE Sent For:

<END>

- 2154

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR

GEORGE LIGHTBOURN
SECRETARY



Division of Executive Budget and Finance
Post Office Box 7864
Madison, WI 53707-7864
Voice (608) 266-1736
Fax (608) 267-0372
TTY (608) 267-9629

Date: January 18, 2001
To: Steve Miller, LRB
From: Kerry Holden, DOA *KAH*
266-8593
Subject: Request to amend s. 196.85, Wisconsin Statutes.

Attached is a request from the PSC for a minor statutory change to s. 196.85, Wis. Stats. It is a copy of an electronic request I sent early today. Please let me know if you have any questions. Thanks!



Public Service Commission of Wisconsin

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

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

January 18, 2001

TO: Kerry Holden, State Budget Office

FROM: Gordon Grant, Director of Fiscal Services

RE: Request to Amend State Statute 196.85 (1M)

The PSC needs to amend 196.85 (1M) to clarify that entities applying for applications to build merchant plants under Wis. Stat. 196.491 must pay the costs incurred by the PSC for processing the case.

Currently, entities that apply under 196.491 to construct merchant plants in Wisconsin are subject to direct assessment under the provisions of 196.85 (1). However, this statute also contains provisions that state that the applicant for any PSC proceeding will be billed on the basis of their previous years gross intrastate operating revenues. In addition the statute goes on to indicate that the direct billing of the PSC cannot exceed four-fifths of one percent of these revenues.

The provisions contained in Wis. Stat. 196.85 (1) were originally intended to protect small utilities from being charged direct time from commission staff that might exceed the ability of the utility to pay without additional rate relief. These provisions were created when the utility industry consisted of long standing utilities well prior to recent statutes that move toward major regulatory policy changes.

Because of the current provisions contained in Wis. Stat. 196.85 (1), the PSC does not have clear authority to actually charge the costs of its staff to merchant plants because by their nature these proposed plants are being made by entities currently not operating as utilities in Wisconsin. For the cases that have been worked on so far under the new provisions of s. 196.491, the average cost in staff time is approximately \$180,000 - \$200,000. If this time cannot be billed to these entities then it is collected in the remainder assessment under 196.85 (2) from all utilities operating in Wisconsin including those in the gas, water and telephone industry. As a matter of equity, and because it was clear that s. 196.85 (1M) was created in WI Act 9 by the legislature intending that these entities be billed their fair share of direct costs; we are pursuing this amendment.

The amendment being proposed is to add a sentence to s. 196.85 (1M) that indicates that the limitations expressed in s. 196.85 (1) do not apply to the entities described in s. 196.85 (1M).

At the end of that section we would propose adding the following sentence:

The limitations set forth in s. 196.85 (1) are not applicable to entities proposing construction under s. 196.491.

This change has been approved for submittal at all of the appropriate levels of the organization. If I can be of any assistance to you or the drafter, please contact me at 7-9086.

gog:Chapter 196 revision Merchant Plants

cc: Eddie Marion, Chief Counsel



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2154/1

MDK: King

D-NOTE

DOA:.....Holden - PSC assessments for wholesale merchant plants

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

1 AN ACT ^{DNIT GEN. CAT.} relating to: the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

5451

PUBLIC UTILITY REGULATION

Under current law, ~~the public service commission~~ (PSC) is allowed to assess against a public utility the expenses incurred by the PSC in taking regulatory action with respect to the public utility. The PSC is allowed to make similar assessments against other entities under its jurisdiction, including a person seeking approval to construct a wholesale merchant plant. A "wholesale merchant plant" is defined as electric generating equipment that does not serve retail customers and that is owned and operated by either: 1) a person that is not a public utility, or 2) subject to PSC approval, an affiliate of a public utility.

Current law imposes a limit on the amount that the PSC may assess against a public utility or other entity under the PSC's jurisdiction. The total amount that the PSC may assess in a calendar year may not exceed four-fifths of one percent of the public utility's or entity's gross operating revenues derived from intrastate operations in the last preceding calendar year.

This bill creates an exception from the limit on assessments. Under this bill, the limit does not apply to assessments for the expenses incurred by the PSC in taking regulatory action with respect to approving construction of wholesale merchant plants.

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

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

1 **SECTION 1.** 196.07 (2) of the statutes is amended to read:

2 196.07 (2) If a public utility fails to file a report with the commission containing
3 its balance sheet and other information prescribed by the commission by the date the
4 report is due under sub. (1), the commission may prepare the report from the records
5 of the public utility. All expenses of the commission in preparing the report, plus a
6 penalty equal to 50% of the amount of the expenses, shall be assessed against and
7 collected from the public utility under s. 196.85. The amount of the charge to a public
8 utility shall not be limited by s. 196.85 (1) (b) and shall be in addition to any other
9 charges assessable under s. 196.85. The penalty provision of the charge shall be
10 credited to the general fund under s. 20.906.

History: 1983 a. 53.

11 **SECTION 2.** 196.85 (1) of the statutes is renumbered 196.85 (1) (a) and amended
12 to read:

13 196.85 (1) (a) If the commission in a proceeding upon its own motion, on
14 complaint, or upon an application to it deems it necessary in order to carry out the
15 duties imposed upon it by law to investigate the books, accounts, practices, and
16 activities of, or make appraisals of the property of any public utility, power district,
17 or sewerage system or to render any engineering or accounting services to any public
18 utility, power district, or sewerage system, the public utility, power district, or
19 sewerage system shall pay the expenses attributable to the investigation, including
20 the cost of litigation, appraisal, or service. The commission shall mail a bill for the
21 expenses to the public utility, power district, or sewerage system either at the

1 conclusion of the investigation, appraisal, or services, or during its progress. The bill
2 constitutes notice of the assessment and demand of payment. The public utility,
3 power district, or sewerage system shall, within 30 days after the mailing of the bill,
4 pay to the commission the amount of the special expense for which it is billed. Ninety
5 percent of the payment shall be credited to the appropriation account under s. 20.155

6 (1) (g). ~~The~~

7 (b) Except as provided in sub. (1m) (a), the total amount in any one calendar
8 year for which any public utility, power district, or sewerage system is liable under
9 this subsection, by reason of costs incurred by the commission within the calendar
10 year, including charges under s. 201.10 (3), may not exceed four-fifths of one percent
11 of its gross operating revenues derived from intrastate operations in the last
12 preceding calendar year.

13 (c) Nothing in this subsection shall prevent the commission from rendering
14 bills in one calendar year for costs incurred within a previous year.

15 (d) For the purpose of calculating the costs of investigations, appraisals, and
16 other services under this subsection, 90% of the costs determined shall be costs of the
17 commission and 10% of the costs determined shall be costs of state government
18 operations.

19 History: 1971 c. 40 s. 93; 1971 c. 125; 1973 c. 243 s. 82; 1975 c. 68; 1977 c. 29 ss. 1359, 1360, 1654 (10) (f); 1977 c. 203, 418; 1979 c. 171; 1981 c. 300; 1987 a. 378; 1991
a. 269; 1993 a. 496; 1997 a. 27, 140, 184, 229, 254; 1999 a. 32, 53; 1999 a. 150 ss. 648, 649, 672; 1999 a. 186.

19 **SECTION 3. 196.85 (1m) (a) of the statutes is amended to read:**

20 **196.85 (1m) (a) For the purpose of direct assessment under sub. (1) of expenses**
21 **incurred by the commission in connection with its activities under s. 196.491, the**
22 **term "public utility" includes electric utilities, as defined in s. 196.491 (1) (d).**

1 Subsection (1) (b) does not apply to assessments for the commission's activities under
2 s. 196.491 related to the construction of wholesale merchant plants.

History: 1971 c. 40 s. 93; 1971 c. 125; 1973 c. 243 s. 82; 1975 c. 68; 1977 c. 29 ss. 1359, 1360, 1654 (10) (f); 1977 c. 203, 418; 1979 c. 171; 1981 c. 390; 1987 a. 378; 1991 a. 269; 1993 a. 496; 1997 a. 27, 140, 184, 229, 254; 1999 a. 32, 53; 1999 a. 150 ss. 648, 649, 672; 1999 a. 186.

3 **SECTION 9342. Initial applicability; public service commission.**

4 (1) ASSESSMENTS FOR WHOLESALE MERCHANT PLANTS. The treatment of sections
5 196.07 (2)✓ and 196.85 (1)✓ and (1m) (a)✓ of the statutes first applies to activities of the
6 public service commission occurring on the effective date of this subsection.

7 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2154/1dn

MDK:j...
kmq

Kerry Holden:

I assume that you want the exception under the bill to apply only to the PSC's activities under s. 196.491, stats., that relate to approving wholesale merchant plants, and not to activities that relate to approving other types of electric generating facilities, such as those proposed for construction by public utilities. Is my assumption correct? If not, the bill should be redrafted.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2154/1dn
MDK:kmg:pg

January 22, 2001

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State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2154/1
MDK:kmg:pg

DOA:.....Holden – PSC assessments for wholesale merchant plants
FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

PUBLIC UTILITY REGULATION

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