LRB-2735

2003 DRAFTING REQUEST

Bill

Received: **05/16/2003**

Received By: **jkreye**

Wanted: **Soon**

Identical to LRB:

For: **Robert Cowles (608) 266-0484**

By/Representing: **jennifer**

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

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Shared Revenue**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Cowles@legis.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Public utility aid payments

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P1							S&L
/1	jkreye 05/21/2003 jkreye 05/21/2003	wjackson 05/21/2003 wjackson 05/21/2003	chaskett 05/21/2003		lemery 05/21/2003		S&L

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
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/3			rschluet 05/22/2003	_____ _____	mbarman 05/22/2003	lemery 05/22/2003	S&L

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
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	jkreye 05/21/2003	wjackson 05/21/2003					

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/2		/3 WLJ 5/22	rschluet 05/21/2003	_____ _____	sbasford 05/21/2003		S&L

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/P1	jkreye	/1 WLJ 5/21	1 cpc 5/21	cph/jf ~~5/21~~			

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PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

Under this bill, for public utilities that began operation before January 1, 2004, municipalities and counties in which such utilities are located will continue to receive payments from the shared revenue account as described above.

AN ACT ***to renumber*** 79.005 (1); ***to amend*** 20.835 (1) (d), 79.005 (3), 79.04 (1) (intro.), 79.04 (2) (a), 79.04 (2) (am) 1. and 79.04 (4); and ***to create*** 20.835 (1) (dm), 79.005 (1d), 79.005 (1f), 79.005 (3m), 79.01 (2m), 79.04 (5), 79.04 (6) and 79.04 (7) of the statutes; **relating to:** payments to local governments for public utilities and making an appropriation.

Analysis by the Legislative Reference Bureau

Under current law, generally, the property of a public utility is subject to a state tax rather than local property taxes. Instead of collecting property taxes on such property, municipalities and counties receive payments from the shared revenue account based on the value of public utility property located in the municipalities and counties. The amount of a municipality's payment is equal to the value of public utility property located in the municipality, not exceeding $125,000,000 for each utility, multiplied by either three mills, for a town, or six mills, for a city or village. However, the payment may not exceed an amount that is equal to $300 multiplied by the municipality's population. The amount of a county's payment is equal to the value of public utility property located in each municipality within the county, not exceeding $125,000,000 for each utility, multiplied by either three mills, for a city or village located within the county, or six mills, for a town located within the county. However, the amount of the county's payment may not exceed an amount that is equal to $100 multiplied by the county's population.

Under ~~this~~ the bill, beginning in 2005, the payments to municipalities and counties related to public utility property ~~is~~ are paid from the public utility distribution account,

production plants that begin operation after December 31, 2003,

The total payment is equal to the production plant's megawatt capacity multiplied by $2,000.

production plants

which is created by the bill, instead of from the shared revenue account, and the amount of such payments is based on the megawatt capacity of all ~~electric generating units~~ located in the municipality and county, rather than on the value of the public utility property multiplied by the municipality's or county's mill rate. If a production plant is located in a city or village, the city or village in which the plant is located receives two–thirds of the amount of the payment determined by megawatt capacity, and the county in which the plant is located receives one–third of the amount of the payment determined by megawatt capacity. If a production plant is located in a town, the town in which the plant is located receives one–third of the amount of the payment determined by megawatt capacity, and the county in which the plant is located receives two–thirds of the amount of the payment determined by megawatt capacity.

~~Under the bill, in 2005, a municipality's payment related to public utility property may not exceed the municipality's population multiplied by $450. In 2006, a municipality's payment related to public utility property may not exceed the municipality's population multiplied by $650. In 2007, a municipality's payment related to public utility property may not exceed the municipality's population multiplied by $950. In 2008 and subsequent years, a municipality's payment related to public utility property may not exceed the municipality's population multiplied by $1,200.~~

~~Under the bill, in 2005, a county's payment related to public utility property may not exceed the county's population multiplied by $225. In 2006, a county's payment related to public utility property may not exceed the county's population multiplied by $325. In 2007, a county's payment related to public utility property may not exceed the county's population multiplied by $475. In 2008 and subsequent years, a county's payment related to public utility property may not exceed the county's population multiplied by $600.~~

For production plants that begin operation for December 31, 2003,

Under the bill, beginning in 2005, a municipality and county in which a production plant is located will receive additional payments based on the megawatt capacity of the ~~electric generating units~~ located in the municipality or county, if the production plant meets any of the following criteria: 1) it is not ~~a baseload electric generating facility or~~ a nuclear–powered production plant and it is built on the site of, or adjacent to, an existing or decommissioned production plant, on the site of, or adjacent to, brownfields, or on a site purchased by a public utility before January 1, 1980, and identified in an advance plan as a proposed production plant site; 2) it is a baseload electric generating facility, as determined by the Public Service Commission; or 3) it is a production plant that derives energy from a renewable resource.

production plant

Under current law, if public utility property is decommissioned and thereby subject to local property taxes, the municipalities and counties in which the property is located no longer receive shared revenue payments based on the value of that property. Under the bill, shared revenue payments related to decommissioned utility property are phased out over five years.

The amount of the payment under the first criterion equals the production plant's megawatt capacity multiplied by $600 and the amount of the payment under the second and third criteria is equal to the production plant's megawatt capacity multiplied by $1000.

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

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

SECTION 1. 20.835 (1) (d) of the statutes is amended to read:

20.835 **(1)** (d) *Shared revenue account.* A sum sufficient to meet the requirements of the shared revenue account established under s. 79.01 (2) to provide for the distributions from the shared revenue account to counties, towns, villages and cities under ss. 79.03, 79.04 (1) to (4) and 79.06. No moneys may be encumbered or expended from this appropriation after December 31, 2004.

SECTION 2. 20.835 (1) (dm) of the statutes is created to read:

20.835 **(1)** (dm) *Public utility distribution account.* Beginning in 2005, a sum sufficient to make the payments under s. 79.04 (5), (6), and (7).

~~**SECTION 3.** 79.005 (1) of the statutes is renumbered 79.005 (1m).~~

SECTION 4. 79.005 (1d) of the statutes is created to read:

79.005 **(1d)** "Baseload electric generating facility" means an electric generating facility that has a capacity factor that is greater than 60%.

SECTION 5. 79.005 (1f) of the statutes is created to read:

79.005 **(1f)** "Capacity factor" means the actual output of an electric generating facility over a period of time, as determined by the public service commission, expressed as a percentage of the facility's potential output.

SECTION 6. 79.005 (3) of the statutes is amended to read:

79.005 **(3)** "Production plant" ~~also includes~~ does not include substations and general structures.

SECTION 7. 79.005 (3m) of the statutes is created to read:

79.005 **(3m)** "Unit" means a complete set of electric generating equipment, as defined in s. 196.52 (9) (a) 1., that, collectively, is sufficient to generate electric power.

SECTION 8. 79.01 (2m) of the statutes is created to read:

79.01 **(2m)** There is established an account in the general fund entitled the "Public Utility Distribution Account," referred to in this chapter as the "public utility account." There shall be appropriated to the public utility account the sums specified in s. 79.04 (5), (6), and (7).

SECTION 9. 79.04 (1) (intro.) of the statutes is amended to read:

79.04 **(1)** (intro.) Annually, ~~ending with the distributions in 2004,~~ the department of administration, upon certification by the department of revenue, shall distribute to a municipality having within its boundaries a production plant or a general structure, including production plants and general structures under construction, used by a light, heat, or power company assessed under s. 76.28 (2) or 76.29 (2), except property described in s. 66.0813 unless the production plant is owned or operated by a local governmental unit located outside of the municipality, or by an electric cooperative assessed under ss. 76.07 and 76.48, respectively, or by a municipal electric company under s. 66.0825 the amount determined as follows:

SECTION 10. 79.04 (2) (a) of the statutes is amended to read:

79.04 **(2)** (a) Annually, ~~ending with the distributions in 2004,~~ the department of administration, upon certification by the department of revenue, shall distribute from the shared revenue account to any county having within its boundaries a production plant or a general structure, including production plants and general structures under construction, used by a light, heat or power company assessed under s. 76.28 (2) or 76.29 (2), except property described in s. 66.0813 unless the production plant is owned or operated by a local governmental unit that is located

outside of the municipality in which the production plant is located, or by an electric cooperative assessed under ss. 76.07 and 76.48, respectively, or by a municipal electric company under s. 66.0825 an amount determined by multiplying by 6 mills in the case of property in a town and by 3 mills in the case of property in a city or village the first $125,000,000 of the amount shown in the account, plus leased property, of each public utility except qualified wholesale electric companies, as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for either "production plant, exclusive of land" and "general structures", or "work in progress" for production plants and general structures under construction, in the case of light, heat and power companies, electric cooperatives or municipal electric companies, for all property within the municipality in accordance with the system of accounts established by the public service commission or rural electrification administration, less depreciation thereon as determined by the department of revenue and less the value of treatment plant and pollution abatement equipment, as defined under s. 70.11 (21) (a), as determined by the department of revenue plus an amount from the shared revenue account determined by multiplying by 6 mills in the case of property in a town, and 3 mills in the case of property in a city or village, of the total original cost of production plant, general structures and work–in–progress less depreciation, land and approved waste treatment facilities of each qualified wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the department of revenue of all property within the municipality. The total of amounts, as depreciated, from the accounts of all public utilities for the same production plant is also limited to not more than $125,000,000. The amount distributable to a county in any year shall not exceed $100 times the population of the county.

~~**SECTION 11.** 79.04 (2) (am) 1. of the statutes is amended to read:~~

~~79.04 **(2)** (am) 1. Beginning with the distribution under this subsection in 1991, and ending with the distribution under this subsection in 2004,~~ the amount determined under par. (a) to value ~~property~~ used by a light, heat or power company in a county may not be less than the amount determined to value the property for the distribution to the county under this subsection in 1990, subject to ~~subds.~~ 2. and 3.

SECTION 12. 79.04 (4) of the statutes is amended to read:

79.04 **(4)** (a) Annually, in addition to the ~~amount~~ amounts distributed under ~~sub. (1)~~ subs. (1), (5), (6), and (7), the department of administration shall distribute $50,000 to a municipality if spent nuclear fuel is stored within the municipality on December 31 of the preceding year. If a spent nuclear fuel storage facility is located within one mile of a municipality, that municipality shall receive $10,000 annually and the municipality where that storage facility is located shall receive $40,000 annually.

(b) Annually, in addition to the ~~amount~~ amounts distributed under ~~sub. (2)~~ subs. (2), (5), (6), and (7), the department of administration shall distribute $50,000 to a county if spent nuclear fuel is stored within the county on December 31 of the preceding year. If a spent nuclear fuel storage facility is located at a production plant located in more than one county, the payment shall be apportioned according to the formula under sub. (1) (c) 2., except that the formula, as it applies to municipalities in that subdivision, applies to counties in this paragraph. The payment under this paragraph may not be less than $10,000 annually.

SECTION 13. 79.04 (5) of the statutes is created to read:

79.04 **(5)** (a) Beginning with the distributions in 2005, if property that was exempt from the property tax under s. 70.112 (4) and that was used to generate power by a light, heat, or power company, except property under s. 66.0813, or by an electric

cooperative, is decommissioned, the municipality shall be paid, from the public utility account, an amount calculated by subtracting an amount equal to the property taxes paid for that property during the current year to the municipality for its general operations from the following percentages of the payment that the municipality received under this section during the last year that the property was exempt from the property tax:

1. In the first year that the property is taxable, 100%.
2. In the 2nd year that the property is taxable, 80%.
3. In the 3rd year that the property is taxable, 60%.
4. In the 4th year that the property is taxable, 40%.
5. In the 5th year that the property is taxable, 20%.

(b) Beginning with the distributions in 2005, if property that was exempt from the property tax under s. 70.112 (4) and that was used to generate power by a light, heat, or power company, except property under s. 66.0813, or by an electric cooperative, is decommissioned, the county shall be paid, from the public utility account, an amount calculated by subtracting an amount equal to the property taxes paid for that property during the current year to the county for its general operations from the following percentages of the payment the county received under this section during the last year that the property was exempt from the property tax:

1. In the first year that the property is taxable, 100%.
2. In the 2nd year that the property is taxable, 80%.
3. In the 3rd year that the property is taxable, 60%.
4. In the 4th year that the property is taxable, 40%.
5. In the 5th year that the property is taxable, 20%.

SECTION 14. 79.04 (6) of the statutes is created to read:

operating at a name-plate capacity of at least 1 megawatt and

79.04 **(6)** (a) Annually, beginning in 2005, the department of administration, upon certification by the department of revenue, shall distribute payments from the public utility account, as determined under par. (b), to each municipality and county in which a production plant is located, if the production plant is used by a light, heat, or power company assessed under s. 76.28 (2) or 76.29 (2); except property described in s. 66.0813, unless the production plant is owned or operated by a local governmental unit located outside of the municipality; a qualified wholesale electric company, as defined in s. 76.28 (1) (gm), a wholesale merchant plant, as defined in s. 196.491 (1) (w), an electric cooperative assessed under ss. 76.07 and 76.48, respectively, or a municipal electric company under s. 66.0825.

In production plant that began operation on or after January 1, 2004,

(b) Subject to pars. (c) and (d), each municipality entitled to a payment under par. (a) ~~shall receive a payment equal to a portion of the amount determined as follows; and, subject to pars. (c) and (f) to (h),~~ and each county in which such a municipality is located shall receive a payment equal to a portion of ~~the~~ an amount ~~determined as follows:~~

~~1. If the total name–plate capacity of the units located in the municipality is at least 5 megawatts but less than 10 megawatts, $10,000.~~

~~2. If the total name–plate capacity of the units located in the municipality is at least 10 megawatts but less than 25 megawatts, $25,000.~~

~~3. If the total name–plate capacity of the units located in the municipality is at least 25 megawatts but less than 50 megawatts, $50,000.~~

~~4. If the total name–plate capacity of the units located in the municipality is at least 50 megawatts but less than 100 megawatts, $150,000.~~

~~5. If the total name–plate capacity of the units located in the municipality is at least 100 megawatts but less than 200 megawatts, $350,000.~~

equal to the production plant's name-plate capacity multiplied by $2,000.

megawatt

6. If the total name–plate capacity of the units located in the municipality is at least 200 megawatts but less than 300 megawatts, $500,000.

7. If the total name–plate capacity of the units located in the municipality is at least 300 megawatts but less than 400 megawatts, $700,000.

8. If the total name–plate capacity of the units located in the municipality is at least 400 megawatts but less than 800 megawatts, $1,000,000.

9. If the total name–plate capacity of the units located in the municipality is at least 800 megawatts but less than 1,300 megawatts, $1,150,000.

10. If the total name–plate capacity of the units located in the municipality is at least 1,300 megawatts but less than 1,800 megawatts, $1,300,000.

12. If the total name–plate capacity of the units located in the municipality is at least 1,800 megawatts but less than 2,400 megawatts, $1,500,000.

13. If the total name–plate capacity of the units located in the municipality is 2,400 megawatts or more, $2,000,000.

(c) If the production plant is located in a city or village, the city or village receives a payment equal to two–thirds of the amount determined under par. (b) and the county in which the city or village is located receives a payment equal to one–third of the amount determined under par. (b). If the production plant is located in a town, the town receives a payment equal to one–third of the amount determined under par. (b), and the county in which the town is located receives a payment equal to two–thirds of the amount determined under par. (b). If a municipality is located in more than one county, the county in which the production plant is located shall receive the county portion of the payment.

(d) Subject to pars. (e) and (f), annually, beginning in 2005, the department of administration, upon certification by the department of revenue, shall distribute

payments from the public utility account to each municipality and county in which a substation or general structure is located in an amount based on the net book value of the substation or general structure and as determined under sub. (1), for a municipality, or sub. (2), for a county, if the substation or general structure is used by a light, heat, or power company assessed under s. 76.28 (2) or 76.29 (2); except property described in s. 66.0813, unless the substation or general structure is owned or operated by a local governmental unit located outside of the municipality; a qualified wholesale electric company, as defined in s. 76.28 (1) (gm), a wholesale merchant plant, as defined in s. 196.491 (1) (w), an electric cooperative assessed under ss. 76.07 and 76.48, respectively, or a municipal electric company under s. 66.0825.

(e) Except as provided in par. (h), the total amount distributable to a municipality under this subsection and subs. (1) and (7) shall not exceed ~~the following:~~

~~1. For the distribution in 2005,~~ an amount equal to the municipality's population multiplied by ~~$450.~~

~~2. For the distribution in 2006, an amount equal to the municipality's population multiplied by $650.~~

~~3. For the distribution in 2007, an amount equal to the municipality's population multiplied by $950.~~

~~4. For the distribution in 2008 and subsequent years, an amount equal to the municipality's population multiplied by $1,200.~~ $300 and

~~(f) Except as provided in par. (h),~~ the total amount distributable to a county under this subsection and subs. (2) and (7) shall not exceed ~~the following~~:

~~1. For the distribution in 2005,~~ an amount equal to the county's population multiplied by ~~$225.~~ $1/100

2. For the distribution in 2006, an amount equal to the county's population multiplied by $325.

3. For the distribution in 2007, an amount equal to the county's population multiplied by $475.

4. For the distribution in 2008 and subsequent years, an amount equal to the county's population multiplied by $600.

~~(g) For the purpose of determining the amount of the payment under par. (b), if a production plant is located in more than one municipality, the name–plate capacity of the production plant is attributable to the municipality in which the majority of the plant is physically located and the payment amount that would result under par. (b) as if there are no other plants in that municipality shall be divided among the municipalities in which the plant is located based on the net book value of that portion of the plant located in each municipality as of December 31, 2004, or as of the date on which the plant is operational, whichever is later. This paragraph applies to property that is classified as "production plant" under the system of accounts established by the public service commission and that is not an electric generating facility, if the net book value of the property exceeds $800,000.~~

(h) The total amount of the combined payments distributed to a municipality and county under par. (b) may not be less than the amount of the combined payments the municipality and county would have received on the value of production plants, exclusive of substations and general structures, under s. 79.04, 2001 stats., in 2005, provided such production plants remain in operation.

SECTION 15. 79.04 (7) of the statutes is created to read:

79.04 **(7)** (a) Beginning with payments in 2005, if a production plant, as described in sub. (6) (a), other than a ~~baseload electric generating facility or~~ for production plants that begin operation on or after January 1, 2004, and subject to sub. (6)(b),

nuclear–powered production plant, is built on the site of, or on a site adjacent to, an existing or decommissioned production plant; or on a site purchased by a public utility before January 1, 1980, that was identified in an advance plan as a proposed site for a production plant; or on, or on a site adjacent to, brownfields, as defined in s. 560.13 (1) (a), on or after January 1, 2004, and is operating at a name–plate capacity of at least ~~50~~ 1 megawatts, each municipality and county in which such a production plant is located shall receive annually from the public utility account a payment in an amount equal to ~~the amount determined as follows:~~ the production plant's name-plate capacity multiplied by $600.

~~1. For each unit with a name–plate capacity of at least 50 megawatts but less than 100 megawatts, $45,000.~~

~~2. For each unit with a name–plate capacity that is at least 100 megawatts but less than 200 megawatts, $90,000.~~

~~3. For each unit with a name–plate capacity that is at least 200 megawatts but less than 400 megawatts, $180,000.~~

~~4. For each unit with a name–plate capacity that is at least 400 megawatts but less than 600 megawatts, $300,000.~~

~~5. For each unit with a name–plate capacity that is 600 megawatts or more, $420,000.~~

(b) Beginning with payments in 2005, for production plants that begin operation on or after January 1, 2004, and subject to sub. (6)(a), if a production plant, as described in sub. (6) (a), that is a baseload electric generating facility, as determined by the public service commission, is built on or after January 1, 2004, and is operating at a name–plate capacity of at least 50 megawatts, each municipality and county in which such a production plant is located shall receive annually from the public utility account a payment in an amount equal to ~~the amount determined as follows:~~ the production plant's name-plate capacity multiplied by $1,000.

~~1. For each unit with a name–plate capacity of at least 50 megawatts but less than 100 megawatts, $45,000.~~

~~2. For each unit with a name–plate capacity that is at least 100 megawatts but less than 200 megawatts, $90,000.~~

~~3. For each unit with a name–plate capacity that is at least 200 megawatts but less than 400 megawatts, $180,000.~~

~~4. For each unit with a name–plate capacity that is at least 400 megawatts but less than 600 megawatts, $300,000.~~

~~5. For each unit with a name–plate capacity that is 600 megawatts or more, $420,000~~ to the county.

(c) Beginning with payments in 2005, if a production plant, as described in sub. (6) (a), that derives energy from a renewable resource, as defined in s. 196.378 (1) (h), is built after January 1, 2004, and is operating at a name–plate capacity of at least 1 megawatt, each municipality and county in which such a production plant is located shall receive annually from the public utility account a payment equal to ~~the amount determined as follows:~~

~~1. For each unit with a name–plate capacity of at least one megawatt but less than 5 megawatts, $10,000.~~

~~2. For each unit with a name–plate capacity that exceeds 5 megawatts but is less than 10 megawatts, $25,000.~~

~~3. For each unit with a name–plate capacity that exceeds 10 megawatts but is less than 50 megawatts, $50,000.~~

~~4. For each unit with a name–plate capacity that exceeds 50 megawatts but is less than 100 megawatts, $100,000.~~

5. For each unit with a name–plate capacity that exceeds 100 megawatts but is less than 200 megawatts, $200,000.

6. For each unit with a name–plate capacity that exceeds 200 megawatts but is less than 300 megawatts, $400,000.

7. For each unit with a name–plate capacity that exceeds 300 megawatts, $500,000.

SECTION 16. Initial applicability.

(1) This act first applies to distributions made on the 4th Monday in July 2005.

(END)

5-20-03

Jennifer — Cowles office

1) See Rick memo for today — Option 3 = exclude the per capita limit on all incentives (retain for the new bore)

2) Mitigation payments — use filing of CPCN application as deadline — talk to Brett

3) engineering threshold — keep as is for now (may need to address later)

Kreye, Joseph

From: Lovell, David
Sent: Tuesday, May 20, 2003 4:37 PM
To: Kreye, Joseph
Cc: Kunkel, Mark; Stolzenberg, John; Healy, Brett; Halbur, Jennifer
Subject: RE: mitigation payments

Joe,

I should have kept my finger off the send button just a moment longer--as I sent this, my phone was ringing, and it was PSC staff, who informed me that the PSC has determined (last November) that the CPCN application for the Oak Creek plants is complete. The up-shot of that is that, in my sub. (3), you should use the second of the two bracketted options.

David

David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537

-----Original Message-----
From: Lovell, David
Sent: Tuesday, May 20, 2003 4:30 PM
To: Kreye, Joseph
Cc: Kunkel, Mark; Stolzenberg, John
Subject: mitigation payments

Joe,

Try this. I think that my par. (2) (b) covers both the situation of a lease or other contract between a utility and its non-utility affiliate and the situation of a power purchase agreement between a utility and an independent power producer, wholesale merchant plant, qualified wholesale generator, fish monger, or anyone else who may be out there selling power to utilities.

I am sure you will wnat to massage this language some. You might want to run it by Mark for his reaction, too. I'll copy him and John.

196.___ Mitigation Payments Not Recoverable in Rates.

(1) In this section, "mitigation payment" means a payment made by the owner of an electric power generation facility to the municipality in which the facility is located to mitigate impacts of the facility on the municipality.

(2) The commission may not allow an electric public utility to recover in rates any of the following:

alternative intro: An electric public utility may not recover in rates any of the following:

(a) The cost of mitigation payments paid by the utility to the municipality.

(b) The cost of mitigation payments paid by the owner of the facility, if the owner is different from the utility [is this clause necessary?], to the municipality and recovered by the owner from the utility in sale of electric power from the facility, rent of the facility to the utility, or any other agreement between the owner and the utility.

(3) Subsection (2) does not apply to mitigation payments related to any electric generation facility [for which an application has been filed with the commission under s. 196.491 (3)] [for which the commission has determined that an application filed under s. 196.491 (3) is complete] prior to the effective date of this subsection ...

David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537

Kreye, Joseph

From: Lovell, David
Sent: Tuesday, May 20, 2003 4:30 PM
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Subject: mitigation payments

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David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537

1) affiliated interest agreements
public utility
- gets to cover from an affiliated interest or losing a subsidiary from an affiliated interest

*owner of the plant pays the mitigation payment

- gets from IPP under wholesale market
- long term contract

IPP = indep. power producer

Kreye, Joseph

From: Lovell, David
Sent: Thursday, May 15, 2003 5:59 PM
To: Kreye, Joseph
Cc: Halbur, Jennifer; Healy, Brett; Stolzenberg, John
Subject: RE: Rate recovery; public utility aid draft

Joe,

John and I talked with Brett after he had talked with the WE Energies folks about this element of the draft. They raised two additional ideas which Brett asked to have included in the draft.

First, they want to apply the concept to purchased power contracts, as well as rates. I think that this would mean that the PSC could not approve a contract for the purchase of power by a public utility from either an unaffiliated merchant power plant (e.g., Calpine selling to WE) ~~or from a non-utility affiliate of the utility~~ (which would require PSC approval under 196.52, but not as a leased generation contract--I was mistaken when I raised that in the meeting this morning). What we need to confirm is that the PSC approves such contracts in advance--if not, this gets dicier.

Second, it turns out that there is "good" mitigation and "bad" mitigation, and they suggest that we not prohibit rate recovery of "good" mitigation. The good mitigation is investments that the facility developer makes at the request of the host community that directly off-set impacts of the facility. This may include fencing and lanscaping around a facility to reduce visual impacts, investments of some sort to reduce noise coming from the facility, etc. The bad mitigation includes direct cash payments (what I think we were thinking of in our discussions today) and investments at the request of the host community that do not directly off-set impacts of the facility. Examples of this latter category can be hard to distinguish if they have some remote tie to the facility and its impacts, They could range from building a new community swimming pool (no conceivable connection) to buying a new fire truck (could be needed to provide fire protection to the new facility, but looks like a stretched argument) to installation of traffic controls at the facility entrance to prevent accidents caused by truck traffic entering and leaving the site (could be argued to be directly mitigating impacts).

To implement this idea, it looks like we would need a second provision relating to investments, parallel to the one you proposed related to direct payments. It might say that cost recovery is prohibited for investments that the facility developer makes as a result of negotiations with the host community that do not directly mitigate impacts of the facility.

David

language that addresses affiliated interest
C 196.52 The com may not approve
the grant of an affiliated interest contract

David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537

-----Original Message-----
From: Kreye, Joseph
Sent: Thursday, May 15, 2003 3:28 PM
To: Halbur, Jennifer
Cc: Lovell, David
Subject: FW: Rate recovery; public utility aid draft

Int check
- not approved = not sure
when will be approved

Jennifer,

I proposed the following language related to prohibiting rate recovery related to negotiated agreements:

"s. 196.20 (7) An electric public utility may not recover in rates any costs that were incurred or a result of any negotiated payment that the utility pays to a municipality in which the utility is located related to the generation, transmission, or distribution of electricity." *— David Lovell — filed after the effective date*

Please see David's feedback below. I incorporated the changes under # 1 but would appreciate your feedback (and David's) related to # 2. I want to make sure that the language is consistent with your intent.

Joseph T. Kreye

the utility doesn't actually own the plant

the one that has been approved — affiliated interest case not a rate case (lease agreement)

Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

-----Original Message-----
From: Lovell, David
Sent: Thursday, May 15, 2003 2:54 PM
To: Kreye, Joseph
Cc: Stolzenberg, John
Subject: RE: Rate recovery; public utility aid draft

Joe,

That sure looks like what we're talking about. In addition to changing it from permission to a prohibition, I would consider two other changes:

1. The question of whether the costs were prudently incurred doesn't matter in a prohibition, so you can omit the word "prudently."

2. The amendment language applies to generation, transmission and distribution facilities, while the main subject of our current project is just generation. It may make sense to apply the prohibition to all three types of facilities, especially if it is a stand-alone provision in ch. 196, but you may want to check with the authors to be sure of their intent. Let me know if you want my involvement in that.

At this point, do you need feedback on the topic of how to determine when renovation of an old facility subject to the old formula makes it a new facility subject to the new formula?

David

David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537

-----Original Message-----
From: Kreye, Joseph
Sent: Thursday, May 15, 2003 2:42 PM
To: Lovell, David
Subject: Rate recovery; public utility aid draft

<< File: 01a0897/2 >>

David,

The attachment is an amendment that Mark Kunkel and I prepared last session related to AB 584. Is this what you had in mind related to rate recovery? [Obviously, I'd have to change the language so it reads "may NOT recover."]

Joe

Joseph T. Kreye
Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

Joel, included is the latest EPRI and EPA (Sec 402) definitions. The EPA definition pertains to clean coal technology and the EPRI definitions pertain to combustion turbines. These just happen to be the subject of the fuel types being evaluated. From a true engineering perspective (and as agreed to by Jim Loock when he was at the PSCW) the technology shouldn't matter. A repowering with nuclear, gas, coal, hydro or anything else is still a repowering. The basic idea of repowering is to reuse an existing site and existing equipment (the EPRI brownfield repowering scenario) independent of technology and fuel type so more green field is not gobbled up.

Debbie said she would get you a copy of Jeff Kitsembel's direct with his analysis for Port

EPRI
TR-106908

3

REPOWERING TECHNOLOGIES

The power generation industry often equates "repowering" with one of the three following scenarios:

1. Replacing the boiler on an existing fossil steam unit with a combustion turbine and heat recovery steam generator (CT/HRSG), reusing the steam turbine and heat rejection system.

2. Adding a heat recovery steam generator (HRSG/ST) to a simple cycle combustion turbine.

3. Demolishing or abandoning the existing unit and adding a new combustion turbine and heat recovery steam generator and steam turbine (CT/HRSG/ST). This is sometimes called "site repowering or a "brown field" unit. The new combined-cycle power plants are designed to reuse much of the plant support infrastructure at existing power plant sites.

The selection of the first two approaches is most often based on an assessment that the useful life of steam turbines generally exceed that of their boilers. High operating costs are common for older, often smaller, less efficient units. In addition the cost of any required new emission control equipment is difficult to recover because there is no production cost savings. The wisdom of making capital investments in older existing units to meet new environmental limits, at a sacrifice in efficiency is being questioned. This often leads to the assumption that the installation of a new high efficient combustion turbine and heat recovery steam generator utilizing the existing steam turbine, cooling system, auxiliaries and switchyard will result in an economical repowering plan.

The emerging competitive market provides the opportunity for more creative approaches to repowering. New greenfield combined cycle units with high efficiency gas turbines are making many of the older Rankine cycle units non-competitive and CT/HRSG repowering is being used as one way to obtain nearly the same the efficiency as a greenfield combined cycle, reuse existing assets, and minimize siting problems. Situations are being evaluated where integrating new peaking capacity into a base load unit can reduce the cost of peaking capacity and increase the efficiency of the base load unit. Also, opportunities to make use of low cost waste products as fuels

SEC. 402. DEFINITIONS.

As used in this title:

(1) The term "affected source" means a source that includes one or more affected units.

(2) The term "affected unit" means a unit that is subject to emission reduction requirements or limitations under this title.

(3) The term "allowance" means an authorization, allocated to an affected unit by the Administrator under this title, to emit, during or after a specified calendar year, one ton of sulfur dioxide.

(4) The term "baseline" means the annual quantity of fossil fuel consumed by an affected unit, measured in millions of British Thermal Units ("mmBtu's"), calculated as follows:

(A) For each utility unit that was in commercial operation prior to January 1, 1985, the baseline shall be the annual average quantity of mmBtu's consumed in fuel during calendar years 1985, 1986, and 1987, as recorded by the Department of Energy pursuant to Form 767. For any utility unit for which such form was not filed, the baseline shall be the level specified for such unit in the 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory, Version 2, National Utility Reference File (NURF) or in a corrected data base as established by the Administrator pursuant to paragraph (3). For non-utility units, the baseline is the NAPAP Emissions Inventory, Version 2. The Administrator, in the Administrator's sole discretion, may exclude periods during which a unit is shutdown for a continuous period of four calendar months or longer, and make appropriate adjustments under this paragraph. Upon petition of the owner or operator of any unit, the Administrator may make appropriate baseline adjustments for accidents that caused prolonged outages.

(B) For any other nonutility unit that is not included in the NAPAP Emissions Inventory, Version 2, or a corrected data base as established by the Administrator pursuant to paragraph (3), the baseline shall be the annual average quantity, in mmBtu consumed in fuel by that unit, as calculated pursuant to a method which the administrator shall prescribe by regulation to be promulgated not later than eighteen months after enactment of the Clean Air Act Amendments of 1990.

(C) The Administrator shall, upon application or on his own motion, by December 31, 1991, supplement data needed in support of this title and correct any factual errors in data from which affected Phase II units' baselines or actual 1985 emission rates have been calculated. Corrected data shall be used for purposes of issuing allowances under the title. Such corrections shall not be subject to judicial review, nor shall the failure of the Administrator to correct an alleged factual error in such reports be subject to judicial review.

(5) The term "capacity factor" means the ratio between the actual electric output from a unit and the potential electric output from that unit.

(6) The term "compliance plan" means, for purposes of the requirements of this title, either-

(A) a statement that the source will comply with all applicable requirements under this title, or

(B) where applicable, a schedule and description of the method or methods for compliance and certification by the owner or operator that the source is in compliance with the requirements of this title.

(7) The term "continuous emission monitoring system" (CEMS) means the equipment as required by section 412, used to sample, analyze, measure, and provide on a continuous basis a permanent record of emissions and flow (expressed in pounds per million British thermal units (lbs/mmBtu), pounds per hour (lbs/hr) or such other form as the Administrator may prescribe by regulations under section 412).

(8) The term "existing unit" means a unit (including units subject to section 111) that commenced commercial operation before the date of enactment of the Clean Air Act Amendments of 1990. Any unit that commenced commercial operation before the date of enactment of the Clean Air Act Amendments of 1990 which is modified, reconstructed, or repowered after the date of enactment of the Clean Air Act Amendments of 1990 shall continue to be an existing unit for the purposes of this title. For the purposes of this title, existing units shall not include simple combustion turbines, or units which serve a generator with a nameplate capacity of 25MWe or less.

(9) The term "generator" means a device that produces electricity and which is reported as a generating unit pursuant to Department of Energy Form 860.

(10) The term "new unit" means a unit that commences commercial operation on or after the date of enactment of the Clean Air Act Amendments of 1990.

(11) The term "permitting authority" means the Administrator, or the State or local air pollution control agency, with an approved permitting program under part B of title III of the Act.

(12) The term "repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magneto-hydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of the date of enactment of the Clean Air Act Amendments of 1990. Notwithstanding the provisions of section 409(a), for the purpose of this title, the term "repowering" shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(13) The term "reserve" means any bank of allowances established by the Administrator under this title.

(14) The term "State" means one of the 48 contiguous States and the District of Columbia.

(15) The term "unit" means a fossil fuel-fired combustion device.

(16) The term "actual 1985 emission rate", for electric utility units means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emissions Inventory, Version 2, National Utility Reference File. For nonutility units, the term "actual 1985 emission rate" means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emission Inventory, Version 2.

(17)(A) The term "utility unit" means-

(i) a unit that serves a generator in any State that

Public Service Commission of Wisconsin
Direct Testimony of Jeffery Kitsembel
Electric Division

Wisconsin Energy Corporation
Dockets 05-AE-109, 05-CE-117,
6650-CG-211 and 137-CE-104

August 28, 2002

Q. Please state your name, business address and occupation.

A. My name is Jeffery Kitsembel. My business address is 610 North Whitney Way, Madison, WI 53707. I am an engineer in the Electric Division of the Public Service Commission of Wisconsin (Commission). I am a 1986 graduate of the University of Wisconsin - Madison with a Bachelor of Science degree in Nuclear Engineering. I have been employed with the Commission since April 1989.

Q. Did you review the issue of repowering, relative to the conversion of the Port Washington power plant from a coal-fired facility to a combined-cycle gas-fired facility?

A. Yes, I did. In the executive summary and in Volume 2 of Wisconsin Energy Corporation's original application, the applicant describes the replacement of the Port Washington coal-fired units with natural gas-fired combined-cycle units as a repowering. The filing requirements under Wis. Admin. Code § PSC 111.53 are different for repowering projects than for projects that are not a repowering. However, there is no definition of "repowering" in Wis. Admin. Code ch. PSC 111.

Q. How did you go about reviewing the applicant's assertion that replacing the Port Washington coal-fired units with natural gas-fired combined-cycle units is a repowering?

A. In an effort to determine whether the proposed Port Washington conversion is a repowering, I reviewed the definitions of repowering used by several entities. I examined

the definitions of repowering used by the Wisconsin Department of Natural Resources (DNR), the United States Environmental Protection Agency (EPA), the United States Department of Energy (DOE) and the Electric Power Research Institute (EPRI).

The DNR (Wis. Admin. Code § NR 405.02 (25m)) and EPA (40 CFR § 72.2) definitions of repowering are quite similar and tend to define repowering as replacement of an existing coal-fired boiler with any of a number of clean coal technologies. These definitions allow that repowering may also include replacement of coal-fired boilers with "other" technology that is capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency. Although not specifically enumerated, it is possible that this "other" technology could include natural gas-fired combined-cycle generating units.

The repowering definitions used by DOE and EPRI also suggest that the replacement of the Port Washington coal-fired boilers with natural gas-fired combined cycle units is a repowering. In its "Energy Partnerships for a Strong Economy - Climate Challenge Options" Workbook, DOE states, "Repowering can take several forms. It can involve the replacement of the boiler with a new steam-producing facility, or it can involve a totally new steam production process involving a combustion turbine and heat recovery steam generator and additional generating equipment." The workbook also states, "Greenhouse gas emissions could be reduced as natural gas is lower in carbon than the fuel previously used." This suggests that DOE interprets repowering to include a change in the type of fuel used at the plant.

In "Strategic Assessment of Repowering" (TR-106908, 1997) EPRI states that "brownfield" repowering is "where the existing unit is demolished or abandoned and only

the plant infrastructure is reused." In "Major Options and Considerations for Repowering With Gas Turbines" (GS-6156, 1989) EPRI also defined "station repowering" as the "siting of a new gas turbine combined-cycle plant on an existing plant site without integration with the existing steam cycle." This report also states that retirement of a unit can be an opportunity for station repowering as station repowering makes use of existing site infrastructure.

Given the definitions of repowering set out above, I believe that the replacement of the existing Port Washington coal fired units with natural gas-fired combined-cycle units on the existing Port Washington Coal Plant site could reasonably be considered a repowering.

Q. Does this conclude your direct testimony?

A. Yes.

JAK:bap:g:\PTF\ptf - jak direct testimony (repowering).doc

5-19-03

STATE OF WISCONSIN – LEGISLATIVE REFERENCE BUREAU – LEGAL SECTION
(608–266–3561)

Jennifer

(1) Option #1 = threshold level = "recovering"

(2) cut back in the per capita for new
county payments