

2003 SENATE BILL 476

February 20, 2004 – Introduced by Senator RISSER, cosponsored by Representatives BLACK, MILLER, BERCEAU, J. LEHMAN, POCAN and BOYLE. Referred to Committee on Energy and Utilities.

1 **AN ACT** *to repeal* 196.491 (2) (a) 3m.; *to renumber* 196.491 (2) (a) 3g. and
2 196.491 (2) (a) 3r., 4., 7., 9., 10., 11., 12. and 13.; *to renumber and amend*
3 196.491 (2) (a) (intro.) and 196.491 (2) (a) 3.; *to amend* 196.491 (title), 196.491
4 (1) (d), 196.491 (2) (title), 196.491 (2) (ag), 196.491 (2) (b) (intro.), 196.491 (2) (b)
5 10., 196.491 (2) (e), 196.491 (2) (f), 196.491 (2) (g), 196.491 (2) (gm), 196.491 (3)
6 (d) 2., 196.491 (3) (dm) and 196.491 (3) (g); and *to create* 196.03 (7), 196.491
7 (2) (ac) (intro.), 196.491 (2) (ac) 3e., 196.491 (2) (ac) 11. to 14., 196.491 (2) (ae),
8 196.491 (3) (d) 3g. and 196.491 (3e) of the statutes; **relating to:** strategic energy
9 plans regarding electricity, certificates of public convenience and necessity for
10 electric generation and transmission facilities, approval of electric power
11 purchase contracts, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

As described below, this bill does all of the following: 1) changes the requirements for the Public Service Commission (PSC) to prepare a strategic energy assessment; 2) changes the requirements for the PSC to grant certificates of public convenience and necessity (CPCNs) for electric generating facilities and

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high-voltage transmission lines; 3) requires the PSC to approve certain power purchase contracts; and 4) prohibits electric utilities from recovering certain costs in rates.

Strategic energy assessments. Under current law, every two years, the PSC must prepare a strategic energy assessment that evaluates the adequacy and reliability of the state's current and future electrical supply. The assessment must describe large electric generating facilities and high-voltage transmission lines that electric utilities plan to construct within three years. Current law defines a "large electric generating facility" as a facility with a capacity of 100 megawatts or more.

Current law requires the PSC to assess the following in the assessment: 1) the adequacy and reliability of purchased generation capacity and energy; 2) the regional bulk-power market; 3) certain effects of competition; and 4) the sufficiency and price of electric capacity and energy. The assessment must also describe the following: 1) plans for assuring the ability to transfer electric power into the state; 2) the projected demand for electric energy; 3) activities to discourage inefficient and excessive power use; and 4) existing and planned generating facilities that use renewable sources of energy. In addition, the assessment must consider the public interest in economic development, public health and safety, protection of the environment, and diversification of sources of energy supplies.

This bill changes the name of the strategic energy assessment to a strategic energy plan, and requires the PSC to prepare a plan every year or every two years. As under current law, the plan must evaluate the adequacy and reliability of the state's current and future electrical supply. However, the bill specifies that the future periods that must be considered are the next five and ten years. The plan must include all of the components described above that must be included in an assessment under current law. In addition, the plan must describe wholesale merchant plants that any person plans to construct within the next five and ten years. Current law defines "wholesale merchant plant" to mean electric generating equipment and associated facilities that do not provide service to retail customers and that are operated by a public utility affiliate or a person that is not a public utility.

Also, the bill requires the PSC's plan to do the following in evaluating the energy supply over the next five years: 1) describe the power purchase contracts into which electric utilities propose to enter; 2) explain how each electric utility will satisfy reliability needs at the least cost; 3) identify the specific resources and facilities that each electric utility will use to satisfy system load and reserve requirements; and 4) identify the reasonable needs of the public for an adequate supply of electric energy. In evaluating the energy supply over the next ten years, the PSC's plan must do the following: 1) evaluate the projected trends for generation, transmission, load, and conservation; 2) forecast the performance of electricity markets; 3) evaluate the economic impacts, projected costs (including costs of externalities), and environmental impacts of the current system for supplying electricity and of alternatives to that system; and 4) determine the mix of resources and facilities necessary to satisfy the projected demand for electricity. Regarding the mix of resources, the PSC must consider renewable and nonrenewable resources,

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traditional and nontraditional sources of electric generation, and alternatives to electric generation. Regarding alternatives, the PSC must consider investments in energy conservation to the maximum extent that is reasonable.

Under current law, the PSC must comply with certain requirements for preparing a strategic energy assessment in draft form, holding hearings on the draft, and issuing a final version of the assessment. The bill does not affect these requirements, except to refer to a plan, rather than to an assessment.

CPCNs. Under current law, a person may not construct a large electric generating facility or high-voltage transmission line unless the PSC has issued a CPCN for the facility. As noted above, a “large electric generating facility” under current law is defined as a facility with a capacity of 100 megawatts or more.

The bill prohibits the PSC from issuing a CPCN unless a large electric generating facility or transmission line satisfies a reasonable need of the public for an adequate supply of electric energy that is identified in the most recent strategic energy plan prepared by the PSC. In addition, the bill prohibits the PSC from issuing a CPCN for a wholesale merchant plant unless the plant satisfies the same need. Current law also requires the PSC to make a finding regarding reasonable need, but does not relate the requirement to the strategic energy assessment. Also, under current law, wholesale merchant plants are exempt from the requirement regarding need.

The bill also prohibits the PSC from issuing a CPCN unless a facility or line does not have higher costs or greater environmental impacts than other facilities and lines identified in the most recent strategic energy plan prepared by the PSC.

In addition, under current law, if the PSC does not make a final determination on an application for a CPCN within 180 days after an application is completed, or within a court-approved extension of up to an additional 180 days, the PSC is considered to have issued a CPCN. Under this bill, the PSC must make a final determination within 360 days after an application is completed. No court approval is required for the PSC to take the entire 360 days. In addition, the bill eliminates the requirement that, if the PSC does not meet the deadline, the PSC is considered to have issued the CPCN.

Power purchase contracts. The bill requires an electric utility to obtain the PSC’s approval before entering into a contract for the purchase of electric power. The PSC must promulgate rules for such approvals. In addition, the PSC may not approve such a contract unless the contract satisfies a reasonable need of the public for an adequate supply of electric energy that is identified in the most recently prepared strategic energy plan. These requirements do not apply to a municipal electric utility or a cooperative association.

Prohibition on recovering certain costs in rates. The bill prohibits the PSC from allowing an electric utility to recover in rates charged to customers any costs associated with a large electric generating facility, high-voltage transmission line, or power purchase contract unless the PSC has previously identified the facility, line, or contract in a strategic energy plan. However, the prohibition does not apply if the utility demonstrates to the PSC’s satisfaction that an unforeseen emergency prevented such identification.

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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:

1 **SECTION 1.** 196.03 (7) of the statutes is created to read:

2 196.03 (7) The commission may not authorize a public utility to recover in rates
3 charged to customers any costs associated with a facility, as defined in s. 196.491 (1)
4 (e), or a power purchase contract unless the commission has previously identified the
5 facility or power purchase contract in a strategic energy plan under s. 196.491 (2) (ac)
6 1. or 11. This subsection does not apply if the public utility demonstrates to the
7 satisfaction of the commission that an unforeseen emergency has prevented the
8 previous identification of the facility or power purchase contract.

9 **SECTION 2.** 196.491 (title) of the statutes is amended to read:

10 **196.491 (title) Strategic energy assessment plan; electric generating**
11 **facilities and transmission lines.**

12 **SECTION 3.** 196.491 (1) (d) of the statutes, as affected by 2003 Wisconsin Act
13 (Assembly Bill 735), is amended to read:

14 196.491 (1) (d) “Electric utility” means any public utility, as defined in s.
15 196.01, which is involved in the generation, distribution and sale of electric energy,
16 and any corporation, company, individual or association, and any cooperative
17 association, which owns or operates, or plans within the next 7 5 or 10 years to
18 construct, own or operate, facilities in the state.

19 **SECTION 4.** 196.491 (2) (title) of the statutes is amended to read:

20 196.491 (2) (title) STRATEGIC ENERGY ASSESSMENT PLAN.

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1 **SECTION 5.** 196.491 (2) (a) (intro.) of the statutes is renumbered 196.491 (2) (a)
2 and amended to read:

3 196.491 (2) (a) The commission shall prepare ~~a~~ an annual or biennial strategic
4 energy assessment plan that evaluates the adequacy and reliability of the state's
5 current and future electrical supply. ~~The strategic energy assessment shall do all of~~
6 ~~the following:~~ and the state's future electrical supply over the next 5 and 10 years.

7 **SECTION 6.** 196.491 (2) (a) 3. of the statutes, as affected by 2003 Wisconsin Act
8 (Assembly Bill 735), is renumbered 196.491 (2) (ac) 1. and amended to read:

9 196.491 (2) (ac) 1. Identify and describe the large electric generating facilities
10 and high-voltage transmission lines on which ~~an~~ each electric utility plans to
11 commence construction ~~within 7 years~~ during the 5-year period.

12 **SECTION 7.** 196.491 (2) (a) 3g. of the statutes is renumbered 196.491 (2) (ac) 3m.

13 **SECTION 8.** 196.491 (2) (a) 3m. of the statutes, as affected by 2003 Wisconsin
14 Act (Assembly Bill 735), is repealed.

15 **SECTION 9.** 196.491 (2) (a) 3r., 4., 7., 9., 10., 11., 12. and 13. of the statutes are
16 renumbered 196.491 (2) (ac) 3s., 4., 5., 6., 7., 8., 9. and 10.

17 **SECTION 10.** 196.491 (2) (ac) (intro.) of the statutes is created to read:

18 196.491 (2) (ac) (intro.) In evaluating the state's future electrical supply over
19 the next 5 years, the commission shall do each of the following in a plan under par.
20 (a):

21 **SECTION 11.** 196.491 (2) (ac) 3e. of the statutes is created to read:

22 196.491 (2) (ac) 3e. Identify and describe wholesale merchant plants on which
23 any person plans to commence construction within the 5-year period.

24 **SECTION 12.** 196.491 (2) (ac) 11. to 14. of the statutes are created to read:

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1 196.491 (2) (ac) 11. Identify and describe the power purchase contracts that
2 each electric utility proposes to enter into during the 5-year period.

3 12. Explain how each electric utility will satisfy reliability needs at the least
4 cost.

5 13. Identify the specific resources and facilities that each electric utility will use
6 to satisfy system load and reserve requirements. A resource or facility may not be
7 identified unless it is consistent with the mix of resources and facilities determined
8 by the commission in par. (ae) 6.

9 14. Identify the reasonable needs of the public for an adequate supply of electric
10 energy that an electric utility must show for purposes of satisfying sub. (3) (d) 2. and
11 (3e).

12 **SECTION 13.** 196.491 (2) (ae) of the statutes is created to read:

13 196.491 (2) (ae) In evaluating the state's future electrical supply over the next
14 10 years, the commission shall perform the acts described in par. (ac) 3m. to 10. and
15 do each of the following in a plan under par. (a):

16 1. Identify and describe large electric generating facilities and high-voltage
17 transmission lines, other than those facilities and lines identified and described
18 under par. (ac) 1., on which each electric generating facility plans to commence
19 construction during the 10-year period.

20 2. Identify and describe wholesale merchant plants, other than those plants
21 identified and described under par. (ac) 3e., on which any person plans to commence
22 construction within the 10-year period.

23 3. Evaluate the projected trends for generation, transmission, load, and
24 conservation.

25 4. Forecast the performance of electricity markets.

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1 5. Evaluate the economic impacts, projected costs, including costs of
2 externalities, and environmental impacts of the facilities identified in subds. 1. and
3 2. and par. (ac) 1. and 3e., the current system for supplying electricity, and
4 alternatives to that system. In evaluating economic impacts, the commission shall
5 consider the impacts in this state of obtaining fuels and purchasing electric power
6 from out-of-state sources.

7 6. Determine the mix of resources and facilities that is necessary to satisfy the
8 projected demand for electricity, as well as the timing for initiating the utilization of
9 those resources and facilities. In making this determination, the commission shall
10 consider renewable and nonrenewable resources and traditional and nontraditional
11 sources of electric generation. The commission shall also consider alternatives to
12 electric generation, including investments in energy conservation to the maximum
13 extent that is reasonable.

14 **SECTION 14.** 196.491 (2) (ag) of the statutes is amended to read:

15 196.491 (2) (ag) The commission shall promulgate rules that establish
16 procedures and requirements for reporting information that is necessary for the
17 commission to prepare strategic energy assessments plans under par. (a).

18 **SECTION 15.** 196.491 (2) (b) (intro.) of the statutes is amended to read:

19 196.491 (2) (b) (intro.) ~~On or before July 1, 2000, and on or before July 1 of each~~
20 ~~even-numbered year thereafter~~ No later than July 1 of the year in which the
21 commission prepares a strategic energy plan under par. (a), the commission shall
22 issue a draft of the ~~biennial strategic energy assessment that it prepares under par.~~
23 ~~(a) plan~~ plan to each of the following:

24 **SECTION 16.** 196.491 (2) (b) 10. of the statutes is amended to read:

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1 196.491 (2) (b) 10. The clerk of each city, village, town and county that, as
2 determined by the commission, is affected by the assessment plan.

3 **SECTION 17.** 196.491 (2) (e) of the statutes, as affected by 2003 Wisconsin Act
4 33, is amended to read:

5 196.491 (2) (e) Any state agency, as defined in s. 560.9810 (1), county,
6 municipality, town or person may submit written comments to the commission on a
7 strategic energy assessment plan within 90 days after copies of the draft are issued
8 under par. (b).

9 **SECTION 18.** 196.491 (2) (f) of the statutes is amended to read:

10 196.491 (2) (f) Section 1.11 (2) (c) shall not apply to a strategic energy
11 assessment plan prepared under par. (a) but the commission shall prepare a single
12 environmental assessment on the strategic energy assessment plan, which shall
13 include a discussion of generic issues and environmental impacts. The commission
14 shall make the environmental assessment available to the public at least 30 days
15 prior to the hearing under par. (g).

16 **SECTION 19.** 196.491 (2) (g) of the statutes, as affected by 2003 Wisconsin Act
17 (Assembly Bill 735), is amended to read:

18 196.491 (2) (g) No sooner than 30 and no later than 90 days after copies of the
19 draft are issued under par. (b), the commission shall hold a hearing on the draft
20 which may not be a hearing under s. 227.42 or 227.44. The hearing shall be held in
21 an administrative district, established by executive order 22, issued
22 August 24, 1970, which the commission determines will be significantly affected by
23 facilities on which an electric utility plans to commence construction within 7 5
24 years. The commission may thereafter adjourn the hearing to other locations or may
25 conduct the hearing by interactive video conference or other electronic method.

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1 Notice of such hearing shall be given by class 1 notice, under ch. 985, published in
2 the official state newspaper and such other regional papers of general circulation as
3 may be designated by the commission. At such hearing the commission shall briefly
4 describe the strategic energy assessment plan and give all interested persons an
5 opportunity, subject to reasonable limitations on the presentation of repetitious
6 material, to express their views on any aspect of the strategic energy assessment
7 plan. A record of the hearing shall be made and considered by the commission as
8 comments on the strategic energy assessment plan under par. (e).

9 **SECTION 20.** 196.491 (2) (gm) of the statutes is amended to read:

10 196.491 (2) (gm) Based on comments received on a draft, the commission shall
11 prepare a final strategic energy assessment plan within 90 days after a hearing
12 under par. (g). The commission shall provide copies of the final strategic energy
13 assessment plan to any state agency, county, municipality, town or other person who
14 submitted comments on the draft under par. (e) and to the persons specified in par.
15 (b).

16 **SECTION 21.** 196.491 (3) (d) 2. of the statutes is amended to read:

17 196.491 (3) (d) 2. The proposed facility satisfies the reasonable ~~needs of the~~
18 ~~public for an adequate supply of electric energy.~~ This subdivision does not apply to
19 a wholesale merchant plant need identified under sub. (2) (ac) 14.

20 **SECTION 22.** 196.491 (3) (d) 3g. of the statutes is created to read:

21 196.491 (3) (d) 3g. The proposed facility does not have higher costs or greater
22 environmental impacts than those for other facilities evaluated under sub. (2) (ae)
23 5. in the strategic energy plan most recently prepared by the commission.

24 **SECTION 23.** 196.491 (3) (dm) of the statutes is amended to read:

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1 196.491 (3) (dm) In making a determination required under par. (d), except for
2 a determination under par. (d) 2. or 3g., the commission may not consider a factual
3 conclusion in a strategic energy assessment plan unless the conclusion is
4 independently corroborated in the hearing under par. (b).

5 **SECTION 24.** 196.491 (3) (g) of the statutes, as affected by 2003 Wisconsin Act
6 89, is amended to read:

7 196.491 (3) (g) The commission shall take final action on an application filed
8 under par. (a) 1. within ~~180~~ 360 days after the application is determined or
9 considered to be complete under par. (a) 2. ~~If the commission fails to take final action~~
10 ~~within the 180-day period, the commission is considered to have issued a certificate~~
11 ~~of public convenience and necessity with respect to the application, unless the~~
12 ~~commission, within the 180-day period, petitions the circuit court for Dane County~~
13 ~~for an extension of time for taking final action on the application and the court grants~~
14 ~~an extension. Upon a showing of good cause, the court may extend the 180-day~~
15 ~~period for no more than an additional 180 days . If the commission fails to take final~~
16 ~~action within the extended period, the commission is considered to have issued a~~
17 ~~certificate of public convenience and necessity with respect to the application.~~

18 **SECTION 25.** 196.491 (3e) of the statutes is created to read:

19 196.491 (3e) POWER PURCHASE CONTRACTS. (a) In this subsection, “electric
20 utility” does not include a public utility that is a city, village, or town or is wholly
21 owned or operated by a city, village or town; a municipal electric company, as defined
22 in s. 66.0825 (3) (d); or a cooperative association.

23 (b) An electric utility may not enter into a contract for the purchase of electric
24 power without the prior approval of the commission. The commission shall
25 promulgate rules establishing requirements and procedures for applying for such

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1 approval. The commission may not approve such a contract unless the contract
2 satisfies the need identified under sub. (2) (ac) 14. in the strategic energy plan most
3 recently prepared by the commission under sub. (2) (a).

4 **SECTION 26. Effective dates.** This act takes effect on the day after publication,
5 except as follows:

6 (1) The treatment of sections 196.03 (7) and 196.491 (3) (d) 2. and 3g., (dm), and
7 (g) 1., and (3e) of the statutes takes effect on the first day of the 19th month beginning
8 after publication.

9 (END)