SENATE BILL 79 (LRB -0336)

An Act to create 196.37 (3m), 196.371 and 196.39 (5) of the statutes; relating to: specifying the rate-making principles applicable to certain electric generating facilities, providing an exemption from emergency rule procedures, and granting rule-making authority. (FE)

2005

03-29.	S.	Introduced by Senators **Cowles**, **Leibham**, **Kanavas**, **Plale**, **Kapanke**, **Wirch**, **Erpenbach**, **Breske**, **Olsen** and **Hansen**; cosponsored by Representatives **Montgomery**, **Jensen**, **Krawczyk**, **Davis**, **Hahn**, **Nischke**, **Travis**, **Honadel**, **Staskunas**, **Nerison**, **Townsend**, **Ott**, **Ainsworth**, **Albers**, **Vos**, **Bies**, **Gunderson**, **Mursau**, **Hines** and **Gottlieb**.	
02-24.	S.	Read first time and referred to committee on Energy, Utilities and Information Technology	96
02-28.	S.	Senate amendment 1 offered by Senator Cowles **(LRB a0240)**	100
03-01.	S.	Public hearing held.	
03-02.	S.	LRB correction (Senate Amendment 1)	106
03-08.	S.	Executive action taken.	
03-08.	S.	Report adoption of Senate Amendment 1 recommended by committee on Energy, Utilities and Information Technology, Ayes 5, Noes 0	115
03-08.	S.	Report passage as amended recommended by committee on Energy, Utilities and Information Technology, Ayes 5, Noes 0	115
03-08.	S.	Available for scheduling.	
03-08.	S.	Placed on calendar 3-10-2005 by committee on Senate Organization.	
03-10.	S.	Senators Brown and A. Lasee added as coauthors	121
03-10.	S.	Fiscal estimate received.	
03-10.	S.	Read a second time	121
03-10.	S.	Senate amendment 1 **adopted**	121
03-10.	S.	Ordered to a third reading	121
03-10.	S.	Rules suspended	121
03-10.	S.	Read a third time and **passed**, Ayes 32, Noes 0	121
03-10.	S.	Senator Darling added as a coauthor	121
03-10.	S.	Ordered immediately messaged	122
03-14.	A.	Received from Senate	127
03-14.	A.	Read first time and referred to committee on Energy and Utilities	128
03-29.	A.	Public hearing held.	
03-29.	A.	Executive action taken.	
03-30.	A.	Report concurrence recommended by committee on Energy and Utilities, Ayes 10, Noes 0	154
03-30.	A.	Referred to committee on Rules	154
03-31.	A.	Placed on calendar 4-5-2005 by committee on Rules.	
04-05.	A.	Read a second time	164
04-05.	A.	Ordered to a third reading	164
04-05.	A.	Rules suspended	164
04-05.	A.	Read a third time and **concurred in**, Ayes 86, Noes 12	164
04-05.	A.	Ordered immediately messaged	164
04-06.	S.	Received from Assembly concurred in.	

2005
ENROLLED BILL

05en SB-79

ADOPTED DOCUMENTS:

☒ Orig ☐ Engr ___ SubAmdt ___ 05-0334/2

Amendments to above (if none, write "NONE"): SA1 (a0240/1)

Corrections – show date (if none, write "NONE"): 3-02-05

Topic

4/6/05
Date

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2005 SENATE BILL 79

February 24, 2005 – Introduced by Senators COWLES, LEIBHAM, KANAVAS, PLALE, KAPANKE, WIRCH, ERPENBACH, BRESKE, OLSEN and HANSEN, cosponsored by Representatives MONTGOMERY, JENSEN, KRAWCZYK, DAVIS, HAHN, NISCHKE, TRAVIS, HONADEL, STASKUNAS, NERISON, TOWNSEND, OTT, AINSWORTH, ALBERS, VOS, BIES, GUNDERSON, MURSAU, HINES and GOTTLIEB. Referred to Committee on Energy, Utilities and Information Technology.

1 AN ACT ***to create*** 196.37 (3m), 196.371 and 196.39 (5) of the statutes; **relating**
2 **to:** specifying the rate–making principles applicable to certain electric
3 generating facilities, ~~providing an exemption from emergency rule procedures,~~ SA1
4 and granting rule–making authority.

Analysis by the Legislative Reference Bureau

Under current law, a public utility may not change its rates for electric service unless the Public Service Commission (PSC) has approved the change in a rate–making proceeding. This bill allows a public utility that proposes to purchase or construct an electric generating facility to apply to the PSC for an order that specifies in advance the rate–making principles that the PSC will apply to facility costs in future rate–making proceedings.

The bill allows the PSC to issue such an order if the PSC determines both of the following: 1) that the order will provide a sufficient degree of certainty to the public utility, investors, and rate payers with respect to future recovery of the facility's costs; and 2) that the order is otherwise in the public interest. If the PSC issues an order, the public utility has the option of accepting or waiving acceptance of the order. If the public utility accepts the order, the rate–making principles specified in the order are binding on the PSC in all future rate–making proceedings regarding the public utility. In addition, unlike other orders under current law, the PSC may not subsequently rescind or alter the order. If the public utility waives acceptance of the order, the PSC must withdraw the order and consider the costs of the facility in all

future rate–making proceedings in the same manner as the PSC considers costs for which no such order has been issued.

The bill requires a public utility that applies for an order to describe the public utility's proposal for recovering the costs of the facility. The proposal must describe all of the following: 1) the facility's economic useful life; 2) the facility's proposed return on equity; 3) the facility's proposed financing mechanisms; 4) the proposed method for determining the costs that may be recovered in rates; 5) any other proposals or information that the public utility determines are necessary for providing certainty regarding cost recovery to the public utility, investors, and rate payers; and 6) any information specified by rule by the PSC.

The bill requires the PSC to hold a hearing on an application for an order. The hearing requirements depend on whether the public utility has proposed to purchase or construct the facility. If the public utility proposes to purchase the facility, the PSC must hold a hearing and determine whether to issue an order within 180 days after determining that the application for the order is complete. If the public utility proposes to construct the facility, current law requires the public utility to apply to the PSC for a certificate approving the construction. Depending on the generating capacity of the facility, current law may also require the PSC to hold a hearing on the application for the construction certificate. The bill allows the PSC to hold a hearing on an application for an order in conjunction with the hearing, if any, that is required under current law for the construction certificate. In addition, the PSC must determine whether to issue the order no later than the date the PSC is required to take final action on the construction certificate.

The bill also does the following: 1) prohibits the PSC from requiring that a public utility apply for an order under the bill or that a public utility accept or waive acceptance of the order; and 2) requires the PSC to promulgate rules for administering the bill's requirements.

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.** 196.37 (3m) of the statutes is created to read: SA1

2 196.37 **(3m)** If the commission has issued an order to a public utility under s.
3 196.371, the commission, in issuing an order under this section regarding the public
4 utility, is bound by the rate–making principles specified in the order issued under s.
5 196.371.

6 **SECTION 2.** 196.371 of the statutes is created to read:

3-8 (SA1)

196.371 Rate–making principles for electric generation facilities. (1) DEFINITION. In this section, "certificate" means a certificate issued under s. 196.49 (3) or 196.491 (3).

3-9 (SA1)

(2) APPLICATION. A public utility that proposes to purchase an electric generating facility or that applies for a certificate for the construction of an electric generating facility may apply to the commission for an order specifying in advance the rate–making principles that the commission shall apply to the public utility's recovery of facility costs, including the purchase price and any necessary modifications or improvements to the facility, in future rate–making proceedings. In applying for an order under this section, a public utility shall describe the public utility's proposal for cost recovery, including all of the following:

3-11 (SA1)

(a) The economic useful life of the facility.

3-13 (SA1)

(b) The proposed return on equity for the facility.

(c) The proposed financing mechanisms for the facility.

(d) The proposed method for determining the costs that may be recovered in rates.

(SA1)

(e) Any other proposals or information regarding the recovery of facility costs that the public utility determines are necessary for providing certainty to the public utility, investors, and ratepayers in future rate–making proceedings.

(f) Any other information specified by rule by the commission.

(3) PROCEDURE. (a) The commission shall conduct a hearing on an application for an order under this section. The commission may hold the hearing in conjunction with a hearing, if any, on the application for the certificate or the commission may hold a separate hearing on the application for the order. If the public utility has applied for a certificate for the facility, the commission shall determine whether to

4-9

deny an application for an order or to issue an order no later than the date that the commission takes final action on the application for the certificate. If the public utility has not applied for a certificate, the commission shall determine whether to deny an application for an order or to issue an order no later than 180 days after the commission determines that the application for the order is complete using the method and deadlines specified under s. 196.491 (3) (a) 2. The commission may issue an order if the commission determines that the order will provide a sufficient degree of certainty to the public utility, investors, and ratepayers with respect to future recovery of the facility's capital costs and that the order is otherwise in the public interest.

(b) If the public utility notifies the commission that the public utility has accepted the order, the rate–making principles specified in the order shall be binding on the commission in all future rate–making proceedings regarding the public utility. If the public utility notifies the commission that the public utility waives acceptance of the order, the commission shall withdraw the order and consider the capital costs of the facility in all future rate–making proceedings in the same manner as the commission considers capital costs for which no order has been issued under this section.

(c) The commission may not require a public utility to apply for an order under this section and may not require a public utility to accept or waive acceptance of an order under this section.

(4) RULES. The commission shall promulgate rules for administering this section.

4-17 4-21

SECTION 3. 196.39 (5) of the statutes is created to read:

196.39 **(5)** This section does not apply to an order issued under s. 196.371.

SECTION 4. Nonstatutory provisions.

4-10

(1) EMERGENCY RULES. The public service commission shall, using the procedure under section 227.24 of the statutes, promulgate the rules required under section 196.371 (4) of the statutes, as created by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the commission is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection. The public service commission shall promulgate the rules required under this subsection no later than the first day of the 4th month beginning after the effective date of this subsection.

(2) PROPOSED RULES. The public service commission shall submit in proposed form the rules required under section 196.371 (4) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 4th month beginning after the effective date of this subsection.

SECTION 5. Effective dates. This act takes effect on the first day of the 4th month beginning after publication, except as follows:

(1) Section 4 (1) and (2) of this act takes effect on the day after publication.

(END)

State of Wisconsin
2005–2006 LEGISLATURE

CORRECTIONS IN:

SENATE AMENDMENT 1,

TO 2005 SENATE BILL 79

Prepared by the Legislative Reference Bureau
(March 1, 2005)

1. Page 2, line 6: before "public" insert "the".

(END)

LRBa0240/1ccc–1
WLJ:ch

Minor clerical corrections in legislation are authorized under s. 35.17, stats.; Senate Rule 31; Assembly Rule 36; and Joint Rule 56.

State of Wisconsin
2005–2006 LEGISLATURE

CORRECTIONS IN:

SENATE AMENDMENT 1,

TO 2005 SENATE BILL 79

Prepared by the Legislative Reference Bureau
(April 7, 2005)

In enrolling, the following correction was made:

1. Page 1, line 2: delete "providing" and substitute ", providing".

(END)

LRBa0240/1ccc–2
KJF:ch

Minor clerical corrections in legislation are authorized under s. 35.17, stats.; Senate Rule 31; Assembly Rule 36; and Joint Rule 56.

SENATE AMENDMENT 1,

TO 2005 SENATE BILL 79

February 28, 2005 – Offered by Senator COWLES.

At the locations indicated, amend the bill as follows:

1. Page 1, line 3: delete "providing an exemption from emergency rule procedures,".

2. Page 2, line 1: delete lines 1 to 5.

3. Page 3, line 8: delete "facility costs" and substitute "the capital costs of the facility".

4. Page 3, line 9: after "facility" insert "at the time of the purchase".

5. Page 3, line 11: delete "cost recovery" and substitute "the recovery of such costs".

6. Page 3, line 13: after "equity" insert "and rate of return".

7. Page 3, line 17: delete "facility" and substitute "the".

8. Page 3, line 20: delete "by rule".

the CCC

9. Page 4, line 9: on lines 9, 14 and 16, before "costs" insert "capital".

10. Page 4, line 9: after that line insert:

"(am) The commission shall specify in an order under this section a deadline at least 60 days after the date of issuance of the order for the public utility to notify the commission in writing about whether the public utility accepts or waives acceptance of the order. If public utility does not make the notification by the deadline specified in the order, the public utility is considered to have waived acceptance of the order.".

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11. Page 4, line 10: delete lines 10 to 13 and substitute:

"(b) If the public utility accepts the order, then, in all future rate–making proceedings regarding the public utility, the order shall be binding on the commission in its treatment of the recovery of the capital costs of the facility that is subject to the order and the commission may not consider the order or the effects of the order in its treatment of the recovery of any other cost of the public utility.

4-10

(bm) If the public utility waives or is considered to have waived acceptance".

12. Page 4, line 17: delete lines 17 to 19 and substitute:

"(c) The commission may not require a public utility to apply for or accept an order under this section.".

4-17

13. Page 4, line 21: after "section" insert ", including rules specifying the information that must be included in an application for an order under this section".

4-21

14. Page 5, line 1: delete lines 1 to 11.

15. Page 5, line 19: delete "Section 4 (1) and (2)" and substitute "SECTION 4 (2)".

(END)