

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2740/P3dn
MDK:cjs:md

October 29, 2009

Rep. Mason:

Please note the following about this version of the draft, which is based on the material you provided at our recent meeting:

1. As you requested, I eliminated the requirements that the PSC submit a proposal to Joint Finance. Instead, this version allows the PSC to authorize a program by an electric, natural gas, or water utility.

2. Because 2009 Wisconsin Act 11 allows cities, villages, towns, and counties to make loans for energy efficiency improvements, and collect loan repayments as special charges, I eliminated the requirements in the previous version relating to cities, villages, towns, and counties. Also, you asked whether 2009 Wisconsin Act 11 applies to water utilities. Note that 2009 Wisconsin Act 11 refers to loans by cities, villages, towns, and counties, rather than than to loans by utilities. See s. 66.0627 (1) (a) and (b) and (8), created by 2009 Wisconsin Act 11.

3. I refer to the program as an "investment program," rather than a "loan program," because I think "investment program" more accurately reflects the nature of the program.

4. I eliminated the requirements in the previous version that only contractors and subcontractors on the prequalification list must be used for programs under current law in ss. 16.26 and 196.374. Is that okay, or did you want to maintain those requirements?

5. Regarding contractors and subcontractors:

A. Are proposed s. 196.3745 (5) (a) 11. (independent contractor certification), (b) (exception to apprenticeship requirements), and (i) (25 percent rule) okay? These provisions were included in the previous version, but not in the material you provided at our meeting.

B. Regarding proposed s. 196.3745 (5) (a) 12., the material you provided also states: "The applicant shall provide an explanation to Focus on Energy of any [of the disciplinary or legal violation] disclosures ..., and Focus on Energy shall determine if such incidents are of such a nature as to disqualify the applicant." I did not include such language because I don't think it gives sufficient direction to the PSC on when it

should disqualify an applicant. You could require the PSC to promulgate rules for such disqualifications. Please let me know what you think.

C. Regarding proposed s. 196.3745 (5) (a) 3. and 4., as noted in the previous version, I think the reference to contract specification is potentially confusing. Does this refer to future contracts? If so, how can the PSC determine that an applicant will comply with a future contract?

D. Regarding proposed s. 196.3745 (5) (h), unless you clarify your intent, the PSC will have to determine what constitutes “good cause” to revoke inclusion in the prequalification list. With respect to qualifications, I think the issue is relatively straightforward. If the PSC determines that a contractor or subcontractor no longer satisfies the criteria in proposed s. 196.3745 (5) (a), the PSC would have good cause to revoke inclusion. However, with respect to performance, the bill doesn’t impose any requirements on performance. Therefore, it isn’t clear what constitutes “good cause” to revoke inclusion on the basis of performance.

6. Regarding audits under proposed s. 196.3745 (4), is the requirement regarding savings and costs okay? If not, what must an audit show in order for an improvement or application to be eligible? Also, as noted in the previous version of the draft, you mentioned that you want audits before and after an improvement or application is made or installed. However, I did not include a requirement for an audit after an improvement is made or installed because I don’t know what consequences should follow from the results of such an audit. Please let me know your intent on this issue.

7. In the material you provided, the loan program for utilities is incorporated into s. 196.374. However, in this version of the draft, I continued to create a new section for the program in proposed s. 196.3745. I did so because I’m not sure about your intent on the following issues:

A. The material includes language, which I have not incorporated into this draft, that requires the PSC to ensure in rate-making orders that a utility recovers the amounts spent on the loan program under the bill. However, proposed s. 196.3745 (6) (a) allows a utility to collect loan program costs as a separate line item on bills, which does not seem compatible with collecting costs via rates. Is the line item approach okay, or do you want to do something different?

B. The material includes the following language: “The cost of [the loan program under the bill and the supplemental utility programs under s. 196.374 (2) (b) 2.] will be recovered from the amounts collected under [s. 196.374] (3) (b) 2., to the extent that those collections exceed 1.2% of revenues.” I’m not sure what this language is intended to accomplish. Do you want a utility’s spending on the loan program under the bill, as well as supplemental utility programs under current law, to count toward the 1.2 percent requirement? Also, I don’t understand the phrase beginning “to the extent that...” Also note that the language is inconsistent with proposed s. 196.3745 (6) (b), which states that the costs of the loan program are in addition to amounts required to be spent under s. 196.374 (3) (b) 2.

C. Proposed s. 196.3745 (6) (c) prohibits a utility from recovering bad debt related to nonutility service from ratepayers. Is that okay?

8. In proposed s. 196.3745 (6) (a), I refer to a separate line item on a bill that compares, rather than offsets, the cost of a program borne by a customer with energy savings. I made this change because I think "offsets" is potentially confusing.

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