

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 98-172

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section 196.03 (5m), Stats., requires the commission to promulgate rules relating to the sale of electric service to customers outside the state that the public utility does not have a duty to serve. The rule appears to do this. However, s. PSC 117.02 authorizes the commission to apply the rule to sales to in-state customers as well. Presumably, the commission has the authority to regulate these sales to in-state customers under its general regulatory authority. However, since the rule does not indicate, in the text or analysis, what statutes other than s. 196.03 (5m), Stats., it is interpreting, it is not clear from the text of the rule what authority it operates under to regulate these sales to in-state customers. The rule should better identify its statutory authority in this regard. Also, see comment 2. a.

2. Form, Style and Placement in Administrative Code

a. The arrangement of the rule should be reviewed. Rules are required to have an introductory clause, which consists of a relating clause stating the subject matter of the rule and an enumeration of the sections treated by the rule. Rules must also contain a plain language analysis, which describes the rule and includes a reference to any statute that the rule interprets, each statute that authorizes promulgation of the rule and any related statute or rule. The rule must also contain a fiscal estimate, at least one treatment clause and, in many instances, a regulatory flexibility analysis. This rule contains none of these items. Section 1.02, Manual, should be reviewed and the rule made to conform to the requirements of the Manual.

- b. In s. PSC 117.02, “the rules under” should be deleted.
- c. In s. PSC 117.03 (1) and (2), the parenthetical acronyms for megawatts, kilowatthours, magawatthours and gigawatthours do not appear to be used again in the rule and, it appears, could be deleted. [See s. 1.01 (6) and (8), Manual.]
- d. The definition of “existing capacity” in s. PSC 117.03 (4) should end after the first sentence. The remaining two sentences appear to be either definitions of other terms that ought to be placed in separate definitional provisions, or substantive provisions that should be placed in separate substantive provisions of the rule. [See s. 1.01 (7), Manual.] This comment applies also to the second sentence of s. PSC 117.03 (5).
- e. Section PSC 117.03 (6) should end after the citation to ch. PSC 116. The remainder of the material appears to be unnecessary material.
- f. The second sentence of s. PSC 117.03 (8) should be removed to a note to the rule since its purpose appears to be explanatory. [See s. 1.09, Manual.]
- g. Section PSC 117.03 (12) (a) (intro.) is improperly drafted as introductory material. It does not end with a colon and lead into the subsequent subdivisions. [See s. 1.03 (8), Manual.]
- h. The second sentence of s. PSC 117.03 (14) appears to be a definition of the term “expected annual peak demand.” Accordingly, the second sentence should be redrafted to read: “In this subsection, “public utility’s expected annual peak demand” includes”
- i. In the titles to ss. PSC 117.04 and 117.05, only the first letter should be capitalized.
- j. In s. PSC 117.04 (1) (intro.), “all of” should be inserted after “includes.”
- k. In s. PSC 117.04 (1) (c), “shall” should replace “must.”
- l. Generally, when any unit of a rule is divided into subunits, at least two subunits must be created. Thus, in ss. PSC 117.04 and 117.05, for every sub. (1), there must be a sub. (2). In s. PSC 117.04, it is suggested that the “(1)” be eliminated, thus creating an introductory provision, and pars. (a) through (c) be renumbered subs. (1) to (3). In s. PSC 117.05, it appears that pars. (a) and (b) can be renumbered subs. (2) and (3).
- m. The rule should contain an effective date provision. [See s. 1.02 (4), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

- a. The use of the phrase “Wis. Adm. Code” in s. PSC 117.03 (6), and elsewhere throughout the rule, should be deleted. The reference to the code is unnecessary because material relating to ch. PSC 116 can only be found in the Wisconsin Administrative Code.
- b. In s. PSC 117.03 (10), the phrase “obligation to serve” should be clarified by including a cross-reference to the statutory or rule provision establishing this obligation.

c. In s. PSC 117.03 (13), the citations to “Wis. Stats.” should be changed to “Stats.”

d. Section PSC 117.05 (1) (a) and (b) refer to a public utility’s “Wisconsin retail revenue requirement.” It is not clear from the text of the rule to what this phrase refers. An appropriate cross-reference to this requirement, or an explanatory note to the rule, should be provided.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. PSC 117.01, the word “that” after the statutory citation should be “which.”

b. In s. PSC 117.02, the term “s.” should be inserted before “PSC 117.01.” Also, the word “above” should be deleted.

c. It appears that the term “commission” should be defined in the rule for purposes of ch. PSC 117.

d. In s. PSC 117.03 (4), it is not clear what is meant by the term “purchased firm capacity.” Perhaps the term “firm capacity” could be defined to better enhance the understanding of the rule. In any event, the rule should be clarified.

e. In s. PSC 117.03 (11), it appears that a comma should be inserted after the word “energy.”

f. In s. PSC 117.03 (12) (a) 1. to 3., the term “will” should be changed to “shall.” In subd. 3., what is “native load”? The term should be defined. Also, subd. 3. refers to “this sale.” Which sale is being referred to?

g. The beginning of the second and third sentences of s. PSC 117.03 (13) should be rewritten substantially as follows: ““Planned additional capacity” does not include”

h. In s. PSC 117.04 (1), what does it mean to request “opportunity sales treatment”? The meaning of the phrase should be clarified.

i. The word “Such” in the third sentence of s. PSC 117.04 (1) (c) should be changed to “The.”

j. Section PSC 117.05 (1) (intro.) refers to the public utility “making the sale.” What sale is being referred to? A retail sale to a non-native customer? The rule should be clarified.

k. In s. PSC 117.05 (1) (b), does the term “its” refer to “the commission” or “the sale”? The rule should be clarified.