

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 99-131**

### **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.]**

#### **2. Form, Style and Placement in Administrative Code**

a. To avoid ambiguity and facilitate any future amendments to the rule, lists of items should be drafted in the standard format that includes the use of “following” in the introductory clause to the list, delineation of whether the list is exclusive or inclusive through the use of terms such as “any of” versus “all of” in the introductory clause and ending each item in the list with a period. This format was not followed in numerous lists in the rule, including lists in ss. PSC 111.01 (4) and 111.21 (1).

b. The rule should be drafted in the active voice. [See s. 1.01 (1), Manual.] Examples of provisions that are not in the active voice include s. PSC 111.03 (2) (a) and (b).

c. The second and third sentences in s. PSC 111.03 (3) (a) relate to the period covered by the initial historical data requirements. As such, they should be placed in s. PSC 111.03 (2) rather than s. PSC 111.03 (3).

d. Section PSC 111.11 (2) (intro.) should be rewritten so that it grammatically leads into the following subunits. This can be accomplished by stating: “Each electricity provider . . . shall submit all of the following data, except that information . . . factor group:”. [See also ss. PSC 111.43 (intro.) and 111.53 (1) (d) (intro.).]

e. The defined terms “capacity sale including reserves,” “capacity purchase including reserves” and “capacity swap including reserves” should be used in s. PSC 111.11 (2) (d) to (f),

respectively, rather than “firm capacity sale including reserves,” “firm capacity purchase including reserves” and “firm capacity swap including reserves.”

### **3. Conflict With or Duplication of Existing Rules**

The definition of “NO<sub>x</sub>” in s. PSC 111.01 (12) conflicts with the definition of “NO<sub>x</sub>” in s. NR 400.02 (59m). The Department of Natural Resources’ definition of “NO<sub>x</sub>” excludes nitrous oxide and includes the plural form of nitrogen oxides.

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

a. If the commission intends to use information that is submitted to it under the rule in implementing the state energy policy under s. 1.12, Stats., then the list of statutes interpreted by the rule that is presented in the analysis accompanying the rule should include ss. 1.12 and 196.025, Stats.

b. The cross-references to Wisconsin Administrative Code provisions in s. PSC 111.03 (2) should be written in the following format: “ss. PSC 111.11, 111.23 and 111.41.”

c. The references in s. PSC 111.06 (3) (a) 1. to 3. to the types of Wisconsin-specific information that an electric provider with multistate operations must provide to the commission are vague. Which provision in the rule does each of these requirements refer to?

d. The reference in s. PSC 111.09 to “public records laws” is vague. Can the commission be more specific?

e. Most of the references in the rule to the definitions of various types of capacity purchases, swaps or sales are incomplete. For example, the first reference in s. PSC 111.13 (1) should be to “s. PSC 111.11 (1) (a) and (c)” rather than “s. PSC 111.11 (1).” The first reference in s. PSC 111.25 (2) should be to “s. PSC 111.23 (1) (a)” rather than “s. PSC 111.23 (1).” Alternatively, the commission could place these definitions in s. PSC 111.01 and have them apply to all of ch. PSC 111.

f. The reference at the end of s. PSC 111.43 (2) (b) to “this subsection” should be to “this paragraph.”

g. The reference in s. PSC 111.43 (3) (b) to “this subsection” should be to “par. (a).”

h. The reference in s. PSC 111.43 (4) to “open-access transmission obligations under 18 CFR Part 37” is vague. Can the commission be more specific?

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

a. The commission should review the following undefined terms and determine whether a definition is necessary to ensure consistent application of the rule or to assist readers of the rule not familiar with jargon from the electric power industry:

- (1) “Station” in s. PSC 111.01 (10).
- (2) “Wholesale electricity provider” in s. PSC 111.05 (2).
- (3) “Firm,” as used to modify “electric generating capacity,” “capacity transfer” or “transmission path” or to describe the “firmness” of a “native load,” such as in s. PSC 111.11 (1) (a) (intro.) and 1. and (c) and (2) (e).
- (4) “Sink” in s. PSC 111.11 (1) (a) 1.
- (5) “Demand factor group” in s. PSC 111.11 (2) (intro.).
- (6) “Transmission and distribution loss responsibility” in s. PSC 111.11 (2) (a).
- (7) “Native load” in s. PSC 111.11 (2) (e).

b. The definition of “self-provider” in s. PSC 111.01 (14) is ambiguous. It includes a person generating the specified amount of electricity for the person’s own use or “external use.” Under one reading, it appears to include all types of electric generation since there is no qualification of the “external use.” Under this interpretation, the distinction between a self-provider and the first type of electricity provider under the definition of “electricity provider” in s. PSC 111.01 (4) (a) is not apparent. Also, since some provisions in the rule refer to “operator of a wholesale merchant plant,” see ss. PSC 111.25 (2) and 111.31 (intro.), the commission should review the use of “self-provider” and “operator of a wholesale merchant plant,” to ensure that these terms are being used as intended and that the distinction between these terms is clearly set forth in the rule.

c. The duration of a strategic energy assessment is potentially ambiguous, given the various two- and three-year periods specified in s. PSC 111.03 (1) (a) to (c). Also, the duration of the first strategic energy assessment is unnecessarily repeated in s. PSC 111.03 (1) (b) and (c). It appears that pars. (a) to (c) should specify that each strategic energy assessment covers three calendar years; the first assessment commences on January 1, 2000; and subsequent assessments commence on January 1 of succeeding even-numbered years.

d. The commission should review all of the periods specified in the rule for which current and historical data must be submitted for a strategic energy assessment to ensure that there are no conflicts between the general requirements in s. PSC 111.03 (1) (a) and (2) and the specific requirements in ss. PSC 111.11 to 111.43. An example of a potential conflict is the inclusion of the reference to the three-year period encompassing the strategic energy assessment in s. PSC 111.11 (2) (a) to (g). These references may be interpreted to be more specific than the general requirements and imply that no historical data would have to be submitted by an

electricity provider to the commission under these paragraphs. This interpretation is contrary to the requirements in s. PSC 111.03 (1) (a) and (2) (a) that data for the upcoming assessment as well as historical data must be submitted under s. PSC 111.11.

e. Section PSC 111.11 (1) (a) 3. differs from s. PSC 111.23 (1) (a) 3. in that it does not include the phrase “except for specified contingencies.” Why is there a difference between the two provisions?

f. The use of “such as” in s. PSC 111.21 (1) (b) implies that there are more types of facilities than the three listed types. The commission should either identify the additional types of facilities or change “such as” in this paragraph.

g. The reference to “effluent discharges and emissions of particulates, ash, SO<sub>2</sub>, CO<sub>2</sub>, N<sub>2</sub>O and Hg, per kWh of output” in s. PSC 111.21 (1) (f) and (4) (f) is open to interpretation. It is not clear if the list of materials modifies “effluent discharges.” In a similar list in s. PSC 111.33, specific materials in the effluent discharges are clearly not listed. Also, since “effluent discharges” and “emissions” are not defined, it is not clear if they are limited to wastewater and airborne discharges, respectively, or include solid or hazardous waste or thermal pollution generated at a facility.

h. Does “commence” in s. PSC 111.21 (4) (intro.) refer to the commencement of construction or operation of a generating addition?

i. In s. PSC 111.25 (2), the phrase “if the effect of the swap harms an electricity providers supply situation” is somewhat vague. Should the “effect” simply refer to a decrease in the electricity provider’s supply, similar to the phrasing used in the next sentence?

j. Section PSC 111.35 (1) is ambiguous. Does it refer to dollars spent by an electricity provider only on those energy conservation activities that affect all of the provider’s customers in Wisconsin, or does it refer to the dollars spent by an electricity provider on any energy conservation activity that affects any of the provider’s Wisconsin customers?

k. Section PSC 111.35 (2) directs an electricity provider to report “energy savings in . . . kW (Kilowatts) . . . . “kW” is a measure of power and not energy, and, thus, it is not appropriate to request the reporting of energy savings in “kW.”

l. Since s. 196.491 (1) (f), Stats., defines a “high-voltage transmission line” to be a transmission line designed for operation at a nominal voltage of 100 kilovolts (kV) or more, the reference in s. PSC 111.43 (1) (intro.) to each “high-voltage transmission line over 100 kV” has the effect of excluding from sub. (1) high-voltage transmission lines operating at 100 kV. Is that the commission’s intent?

m. Since s. PSC 111.43 (2) (b) uses the phrase “long-term transmission study,” the term defined in s. PSC 111.43 (2) (a) should be “long-term transmission study” rather than “long-term study” and the phrase should be used consistently.

n. Should s. PSC 111.43 (2) (c) refer to “documents or data not published by the commission” or to “documents or data not received by the commission”?

o. On its face, s. PSC 111.51 (1) establishes that construction on a large power plant or high-voltage transmission line may not commence until the commission issues a Certificate of Public Convenience of Need (CPCN) for any facility irrespective of whether the CPCN is for the facility for which application is being made. Subsection (1) should be modified to indicate that construction on a facility may not commence until the commission issues a CPCN for the facility.

p. The term “concerning” at the ends of ss. PSC 111.53 (1) (intro.) and 111.55 (intro.) is superfluous and should be deleted from these provisions.

q. Section PSC 111.53 (1) (a) contains two terms in addition to the statutorily defined “large electric generating facility” to identify electric generating facilities subject to the CPCN application requirements in the rule, “project” in par. (a) (intro.) and “plant” in par. (a) (2). The commission should either clarify the text if there is a reason for using all three terms or should just use the defined term. In addition s. PSC 111.53 (1) (a) 1. and 5. use the term “generating unit.” The rule does not, but should, specify the distinction between a generating facility and a generating unit.

r. The reference to the “permits required” in s. PSC 111.53 (1) (f) 1. is not clear. Are these “permits” limited to regulatory approvals labeled permits, such as an air pollution construction permit issued under s. 285.61, Stats., or does it refer to all types of approvals by regulatory agencies that are required as a condition of operating the facility? In addition, do permits include construction as well as operating permits?

s. The commission should review, and refine as necessary, its specification of the information that must be included in an application for a CPCN for a large electric generating facility or a high-voltage transmission line to ensure the clarity of these requirements. In particular, much of the information required under ss. PSC 111.53 (1) (f) 6. and 7. and 111.55 (10), appears to be open to interpretation. For example, does s. PSC 111.53 (1) (f) 6. d. refer to characterizing the quantity or quality of water resources at the site? What should the description of geology under s. PSC 111.55 (10) (b) include?

t. In s. PSC 111.53 (2), the phrase “as the commission may require” should be replaced by the phrase “required by the commission.”