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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 06-139

#### 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 January 2005.]**

#### 1. Statutory Authority

a. Section PSC 137.05 (4) implements s. 196.374 (2) (a) 2. b., Stats., too narrowly. The statute requires that the amount set aside for local governments and agriculture programs be not less than 10% “of the amount utilities are required to spend under subd. 1. or sub. (3) (b) 2.” Section 196.374 (3) (b) 2., Stats., requires utilities to spend 1.2% of annual operating revenues to fund “the utility’s programs under sub. (2) (b) 1., the utility’s ordered programs, and the utility’s share of the statewide energy efficiency and renewable resource programs under sub. (2) (a) 1.” In other words, the set-aside is 10% of 1.2% of the total annual operating revenues of all utilities, not 10% of the moneys contracted for statewide programs. In addition, s. PSC 137.05 (4) does not require that any amount of the set-aside that cannot be used cost-effectively on those programs must be used instead for commercial, institutional, and industrial programs, as required in s. 196.374 (2) (a) 2. b.

b. Section PSC 137.07 (2) (c) 1. limits certain program participants to “large commercial, industrial, institutional, or agricultural customers, as defined by the commission ....” How does the commission intend to define this, if not in this rule? The rule should include any further definition of those entities that is needed. The same applies to “the statewide evaluation standards that the commission establishes,” cited in ss. PSC 137.07 (2) (c) 7. and 137.08 (2) (c) 6. and to the “commission standards” and the “statewide evaluation standards ...., as determined by the commission,” referred to in s. PSC 137.07 (3) (b) 1. and 3., respectively.

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

- a. The rule preface should follow the format found in s. 1.02 (2) (a), Manual.
- b. The rule's treatment of the fiscal agent is incomplete. Unlike its treatment of the program administrator, the rule does not indicate who designates the fiscal agent, and how. It should specify these details and then define the term as "... the agent designated under s. PSC 137.\_\_\_\_." See the definition of "program administrator" for a model. If the commission does *not* take this approach, note that the definition in the draft is incomplete; presumably, it should refer to *the utility funds expended under s. 196.374 (3) (b) 2., Stats.*, for the programs under s. 196.374 (2) (a) 1., Stats., not the programs themselves.
- c. The definition of "net cost-effectiveness" is not so much a definition as a description of how to calculate it. The substance in this definition should be moved to a separate section or subsection and elaborated to give a fuller description of the calculation. Section PSC 137.05 (13) and other provisions where the term is applied, could refer to a determination of cost-effectiveness under s. \_\_\_\_\_. If a definition is needed, the term could be defined by a similar reference.
- d. The structure of s. PSC 137.05 is cumbersome and confusing. It requires each of 13 subsections to follow from the introduction: "The portfolio of statewide programs shall:". However, the subsections are more heterogeneous than this introduction would suggest, and that introduction is not appropriate for some of them. Further, shoe-horning these diverse provisions into the same format leads to some very terse and not very descriptive language. Finally, the subsections are not arranged in a logical sequence. Those provisions that establish required program elements or that specify required program outcomes should be grouped together and described sufficiently to provide useful guidance beyond repeating statutory language. Those provisions that establish obligations of the program administrator or another party should be presented either singly or in groups of related subject, and should be elaborated in greater detail. In very general terms, subs. (1) to (4) and (8), (10), (11), and (13) describe required attributes of the program, either specific elements or required outcomes, while subs. (5) to (7), (9), and (12) describe specific tasks or obligations of the program administrator (not the program, itself). The latter group, especially, require more specifically tailored treatment. It is suggested that the introduction be abandoned and that each subsection begin with a declaratory sentence in the form of "X (the program administrator, in most cases) shall do Y." This comment applies, as well, to ss. PSC 137.07 (2) (c) and 137.08 (2) (c), in which "energy utility" and "large customer" would replace "program administrator."
- e. Section PSC 137.05 (2) incorrectly treats utility-administered programs and self-directed programs as part of the statewide programs established collectively by the utilities. The substance of that subsection should be moved to ss. PSC 137.07 and 137.08, which address those programs.

f. The second, third, and fourth sentence of s. PSC 137.05 (12) reproduces material in ss. PSC 137.07 and 137.08, and so should be omitted. If the commission wants any of these sentences included for clarity or explanatory purposes, they can be placed in a note.

g. Section PSC 137.05 (12) appears to implement s. 196.374 (5m) (b), Stats. (except that the statute requires “equivalent opportunity” and the rule requires “equal opportunity”), but not s. 196.374 (5m) (a), Stats.

h. “Achievable potential study,” used in s. PSC 137.07 (2) (b) 3., is insider jargon. The rule should either define the term or replace it with more descriptive language that makes clear what is meant. If the term is used just once or twice, the latter is the preferred option.

i. It appears that s. PSC 137.08 (2) (b) 1. should be rewritten as follows: A description of the program, including descriptions of targeted buildings, equipment and operations; eligible (or proposed?) energy efficiency measures; and expected energy savings, itemized by technology.

j. The first part of s. PSC 137.08 (2) (c) 2. is redundant with s. PSC 137.08 (1), and the second portion would more appropriately be combined with s. PSC 137.08 (2) (c) 5.

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

Sections PSC 137.02 (5), 137.05 (7), and 137.07 (2) (c) 4. refer to forms. The requirements of s. 227.14 (3), Stats., should be met.

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

a. The rule needs to be more clear and much more consistent in how it refers to the various programs under s. 196.374 (2), Stats. The commission should select clear, descriptive terms, such as “statewide programs,” “utility-administered programs,” “supplemental (or “additional”) utility-administered programs,” and “self-directed programs,” define the terms by cross-reference to s. 196.374 (2) (a), (b) 1. and 2., and (c), respectively, and use them exclusively throughout the rule. (We recognize that the first of these terms is so defined, and appears to be used consistently.)

b. It is not at all clear that the “proposed subcontractors” referenced in s. PSC 157.03 (1) (a) and (b) are essentially sub-administrators. As those paragraphs are written, it appears that an applicant for the program administrator contract must anticipate in advance all subcontractors who will be used in the program. These provisions need clarification.

c. The rule, in s. PSC 137.05 (7), directs the program administrator to establish annual and multi-year goals, based on statewide performance standards. How does this relate to the “goals, priorities, and measurable targets for the programs” the commission is directed to set and revise in the quadrennial review required in s. 196.374 (3) (b) 1., Stats.? Language such as that in s. PSC 137.07 (2) (b) 4. (“that are consistent with the commission’s ...”) might be helpful. Also, who establishes the performance standards, the program administrator, again?

d. To avoid confusion with the *submission* of funds under sub. (2) (d), it appears that s. PSC 137.06 (2) (a) should say "... shall *inform* the fiscal agent of the dollar amount ...". Also, should s. PSC 137.06 (3) refer to "cumulative *contributions*"?

e. In s. PSC 137.07 (2) (c) 8., "of the energy utility" should be inserted following "affiliate."

f. Section PSC 137.07 (2) (d) 4. should make clear that the required comparison is to the funding level for the described elements of the statewide programs.

g. It appears that ss. PSC 137.07 (6) and 137.08 (5) should require the payment to the fiscal agent of any unspent amount of the funds available for the particular program, specified in sub. (1) of each of those sections, rather than the narrower language in the rule.

h. Section PSC 137.08 (1) should specify that, for utility customers that are not determined to be large customers under SECTION 102 (8) (b) of 2005 Wisconsin Act 141 but that the commission later determines to be large customers, the funding available to that customer for a self-directed program is the amount determined under s. 196.374 (5) (b) 2., Stats. The whole thing could be stated in far fewer words, though, by referring to the amount specified (as opposed to determined) in s. 196.374 (5) (b) 1. or 2., Stats.

i. The last clause of s. PSC 137.08 (2) (d) should be moved to follow "7." and the words "as well as" should be replaced by "and."