

REPORT TO THE LEGISLATURE

A. NEED FOR THE RULE

PSC Chapter 118 was created to establish a renewable resource credit (RRC) tracking system, as required by 1999 Wisconsin Act 9. New legislation, 2005 Wisconsin Act 141, has changed some of the requirements for the RRC tracking system. Section 196.378 (3), Stats., requires the Commission to promulgate rules for the use of an RRC.

B. PLAIN LANGUAGE ANALYSIS

See Attachment A1.

C. TEXT OF THE RULE

See Attachment A1.

D. PUBLIC HEARING ATTENDEES

The following person appeared or registered at the Commission's public hearing held on December 4, 2006.

As Interest May Appear:

WE Energies
Atty. Rebecca Valcq
231 West Michigan Street
Milwaukee, WI 53203

Written Comments

The Commission also received written comments from several persons. These comments and the Commission's responses are grouped by subject matter and described below:

1. Creation and ownership of RRCs

Wisconsin Electric Power Company (WEPCO) recommended that the Commission modify its proposed rules to specify that electric providers can create and trade RRCs without actually delivering the energy at retail to their customers. RENEW Wisconsin agreed that RRCs should initially be the property of the renewable resource generator and should be created as soon as the generator produces a megawatt-hour (MWh) of renewable energy.

Commission response: State law does not allow such a change in Commission rules. Section 196.378 (3) (a) 1., Stats., specifies that an RRC may only be created by an electric provider, not by a renewable resource generator, and only by providing total renewable energy to

its retail electric customers or members in excess of the minimum renewable portfolio standard. A change in law would be needed to allow the generator to create an RRC for each MWh of renewable energy it produces.

2. Measuring renewable energy

Xcel Energy suggested that the Commission should define an RRC as a MWh of renewable energy measured at the bus bar of the generating facility, with retail sales measured at the customer's meter.

Commission response: The Commission agrees. It has modified the definition of "renewable resource credit" in s. PSC 118.02 (10) to include this suggestion.

3. Delegating the certification of renewable facilities to the program administrator

Current Commission rules require that a renewable generating facility must be certified to produce renewable energy that will meet an electric provider's statutory minimum renewable percentage or that can be used to create an RRC. Xcel Energy and Dairyland Power Cooperative commented that if the Commission delegates to the program administrator the function of certifying renewable facilities it should also create a method of appealing these decisions to the Commission.

Commission response: The Commission agrees. It has amended s. PSC 118.05 (1) (a) to include a method of appealing a program administrator's decisions regarding the certification of renewable facilities.

4. RRCs created by "old" renewable facilities on or after January 1, 2004

WEPCO commented that the Commission's draft rule does not recognize RRCs that may have been created by an "old" generating facility on or after January 1, 2004. Section 196.378 (3) (a) 2., Stats., requires that the amount of RRCs from a renewable facility that was placed into service before January 1, 2004, must be limited to "the incremental increase in output from the renewable facility that is due to capacity improvements made on or after January 1, 2004." This means that the MWh of renewable energy produced by an "old" facility on or after January 1, 2004, cannot be used to create RRCs. Recognizing this statutory restriction, WEPCO proposed that the statute should be changed.

Commission response: The Commission agrees that without a change in state law, it is prohibited from recognizing the MWh of renewable energy that "old" facilities have produced from January 1, 2004, through December 31, 2005. The Commission also notes, however, that the loss of these RRCs is offset by the fact that an electric provider's statutory "baseline renewable percentage" that it must meet is set according to the provider's average renewable energy percentage for the years 2001, 2002, and 2003 instead of the years immediately preceding enactment of 2005 Wis. Act 141 (the years 2003, 2004, and 2005). This means that while any extra RRCs that "old" facilities created in the years 2004 and 2005 cannot be used to meet an electric provider's minimum statutory renewable percentage, the Legislature has mitigated this

loss by setting the minimum statutory renewable percentage at a lower level that disregards any extra production of renewable energy in the years 2004 and 2005.

5. Aggregation of renewable energy's environmental attributes

Wisconsin Public Service Corporation (WPSC) commented that the Commission rules should not define an RRC as including all of the environmental attributes associated with renewable energy that are represented by that RRC. The effect of aggregating the environmental attributes with an RRC could be, for example, that if an electric provider retires an RRC it would also be required to retire all or part of a sulfur dioxide emission allowance that it had received from the U.S. Environmental Protection Agency because renewable energy does not produce sulfur dioxides.

Commission response: The Commission agrees. Its rules do not aggregate the environmental attributes of renewable energy with RRCs.

6. Electronic tracking certificates for renewable energy

WPSC commented that requiring unique electronic certification for each MWh of renewable energy produced goes beyond the requirements of Act 141. Under s. PSC 118.06 (2) (d) 1., the proposed rules would establish an RRC tracking system that issues such a certificate for each MWh of renewable energy measured at the bus bar of certified renewable facilities.

In Wisconsin's neighboring states, a renewable energy credit (REC) is produced when a renewable generating facility produces a MWh of renewable energy. These states do not include the additional requirement, which is found in Wisconsin's RRC program, that an electric provider must deliver the MWh at retail to its customers. WPSC suggests that issuing a certificate for every MWh of renewable energy would be appropriate if Wisconsin were participating in a multi-state REC trading program. WPSC comments that since Wisconsin's RRC program will be a small, self-contained market, however, requiring a unique electronic certification for every MWh of energy is an unnecessary administrative burden.

Commission response: The purpose of issuing electronic certificates for each MWh of renewable energy that a certified facility produces is to allow these facilities to participate in the larger, multi-state REC market. Such certificates create the opportunity for certified renewable facilities either to produce MWh of renewable energy for Wisconsin's RRC market (in which case the MWh must be delivered to a Wisconsin retail customer) or for the REC market in neighboring states. The electronic certificate will expand the markets in which these facilities can participate.

7. Duties of the program administrator

Wisconsin Public Power, Inc. (WPPI) commented that when the program administrator creates an account for each certified renewable facility, it is not necessary to require that this account record each MWh sold at retail that is reported for the facility.

Commission response: The Commission agrees. It has removed this phrase from s. PSC 118.06 (2) (b).

8. Ignoring transmission and distribution losses

WPPI commented that the Commission should recognize the fact that the MWh of renewable energy measured at the bus bar of a certified facility will, due to transmission and distribution losses, differ from the amount of MWh ultimately delivered to a retail customer.

Commission response: The Commission agrees. It has modified the definition of “renewable resource credit” in s. PSC 118.02 (10) to specify that while net generation is measured at the generator bus bar and retail sales are measured at the customer meter, any transmission or distribution losses must be ignored.

9. Using RRCs to meet minimum percentage requirements

WPPI commented that the Commission’s proposed rules are written in a manner that appears to allow an electric provider to create an RRC and use it to meet its current minimum percentage requirement, contrary to statutory provisions that only permit an electric provider to create an RRC after it has fulfilled its minimum percentage requirement.

Commission response: The Commission agrees with WPPI’s construction of the statutes. It has modified the definition of “renewable resource credit” in s. PSC 118.02 (10) to make clear that an RRC can only be created after an electric provider has fulfilled its minimum percentage requirement.

10. Other changes

In addition to responding to comments from others, the Commission has added a few modifications to the proposed rules. These are:

a. The Commission has created s. PSC 118.08 to prohibit double-counting by the sale and resale of renewable energy. This section specifies that any electric provider that sells or conveys a MWh of renewable energy or an RRC at wholesale may not use the MWh or RRC to meet its minimum percentage requirement.

b. The Commission has amended the definition of “retail customer” in s. PSC 118.02 (11) to make clear that retail sales must involve the delivery of electricity in Wisconsin, rather than simply being sales to a person who resides in Wisconsin.

c. The Commission has amended s. PSC 118.03 (3) (b), which addresses biomass co-fired facilities. The current rule states that such a biomass co-fired facility would “create RRCs,” whereas state law provides that only an electric provider can create an RRC. The Commission has amended this rule to conform to state law.

E. RESPONSE TO LEGISLATIVE COUNCIL REPORT

On November 14, 2006, the Commission received the Clearinghouse Report to Agency. The report contains comments on statutory authority, form, style and placement in administrative code, adequacy of references, and clarity, grammar, punctuation and use of plain language. The Commission has made all of the changes suggested by the Rules Clearinghouse. A copy of the Legislative Council's report is included with this Report as Attachment A2.

F. FINAL REGULATORY FLEXIBILITY ANALYSIS

The rules are not expected to affect small business as defined in s. 227.114 (1), Stats.

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