

Clearinghouse Rule 06-139

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Creation of Rules Regarding Energy Efficiency and Renewable
Resource Programs

1-AC-220

NOTICE OF HEARING

Hearing Date:	Friday, January 26, 2007 - 1:30 p.m.
Hearing Location:	Public Service Commission, 610 North Whitney Way, Madison, WI (Amnicon Falls Hearing Room - 1st Floor)
This docket uses the Electronic Regulatory Filing system (ERF)	

Comments Due: Friday, January 26, 2007 - 4:00 p.m.	Address Comments To: Sandra J. Paske, Secretary to the Commission Public Service Commission P.O. Box 7854 Madison, WI 53707-7854 FAX (608) 266-3957
FAX Due: Thursday, January 25, 2007 - 4:00 p.m.	

The Public Service Commission of Wisconsin proposes an order to create ch. PSC 137 relating to energy efficiency and renewable resource programs.

**ANALYSIS PREPARED BY THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Statutory authority: ss. 196.02 (1) and (3), 196.374 (3) (f), and 227.11, Stats.
Statute interpreted: s. 196.374, Stats.

2005 Wisconsin Act 141 substantially revised Wisconsin law regarding the energy efficiency programs and renewable resource programs that public utilities offer to their customers and retail electric cooperatives offer to their members. This act, whose general effective date is July 1, 2007, replaces the programs that the Department of Administration had previously been administering, which were commonly known as the "Focus on Energy." The Department contracted with third parties to implement these programs and the customers of

electric and gas utilities paid for the programs either through public benefits fees or mandatory utility contributions.

Act 141 provides that the investor-owned electric and gas utilities must collectively establish and fund statewide energy efficiency and renewable resource programs. The energy utilities must contract with one or more program administrators to develop and run the programs, soliciting for program administrators on a competitive basis. The proposed rules specify the application requirements and procedures for conducting such a solicitation. The rules prescribe the procedures the energy utilities must use for contracting with program administrators, identifying the criteria for evaluating responses to their solicitation and discussing methods by which the energy utilities may appeal decisions of the Commission concerning their selection criteria and their contracts with program administrators.

The proposed rules also set forth minimum requirements for the portfolio of statewide programs. These programs must: serve all customers (except those served by a utility-administered program or by a large energy customer's self-directed program); deliver environmental benefits; allocate at least 10 percent of the available funds for energy efficiency programs that serve local government and agricultural producers; establish performance goals, collect appropriate data for tracking performance, and report on performance results; include strategies to overcome market barriers and support the effective delivery of statewide programs; fund research and development projects; ensure equal opportunities for eligible customers to participate; and deliver programs that pass a portfolio test of net cost-effectiveness. The energy utilities must notify the Commission of their intent to sign a collective contract for statewide programs. The proposed rules explain the minimum requirements of such a contract and provide a method by which the energy utilities can dispute Commission decisions to modify or reject a proposed contract.

Under Act 141, municipal electric utilities and retail electric cooperatives must charge monthly fees to continue their "Commitment to Community" programs. Act 141 also permits these energy providers to contribute the fees to statewide programs and substitute the statewide programs for the Commitment to Community programs. A municipal utility or retail electric cooperative that does so makes a 3-year commitment to the statewide programs. The proposed rules explain the procedures for delivering these fees to a fiscal agent and tracking the contributions of municipal utilities and retail electric cooperatives.

Act 141 allows an energy utility, with the Commission's approval, to administer energy efficiency programs that it provides to large commercial, industrial, institution, or agricultural customers. Act 141 provides that the funding available for such a "utility-administered" program will come from moneys that would otherwise be available for statewide programs. The proposed rules state that funding for a utility-administered program must equal the revenues collected from the energy utility's customers who are eligible for the program, less any funds set aside for statewide renewable resource programs. Act 141 further provides that an energy utility can voluntarily choose to administer or fund additional energy efficiency or renewable resource programs, above and beyond its legal requirements. The law requires that these programs also

require the Commission's approval. The proposed rules set forth minimum criteria for the utility-administered programs and for voluntary utility programs, and explains how an energy utility can contest Commission decisions to modify or deny an energy utility's request to initiate either of these programs.

Act 141 prescribes a method by which a "large energy customer" can conduct its own energy efficiency program, which is funded out of moneys the customer would otherwise pay to finance the statewide programs. By law, a large energy customer is defined as a customer whose facility consumes at least 1,000 kilowatts of electricity per month or at least 10,000 decatherms of natural gas per month and who is billed at least \$60,000 in a month for electric and gas services. Under the proposed rules the Commission will determine the annual funding level for each large energy customer. The law requires the Commission's prior approval of a large energy customer program; the proposed rules establish the minimum requirements for these programs and the method by which a large energy customer can dispute Commission decisions to modify or deny a request to implement such a program.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

The rule will have no effect on small businesses.

TEXT OF PROPOSED RULE

The text of the proposed rule is set forth as Attachment A.

FISCAL ESTIMATE

A completed Fiscal Estimate form is included as Attachment B. There is also no financial impact on the private sector.

NOTICE OF HEARING

NOTICE IS GIVEN that pursuant to s. 227.16(2)(b), Stats., the Commission will hold a public hearing on these proposed rule changes on Friday, January 26, 2007, at 1:30 p.m. in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, and continuing at times to be set by the presiding Administrative Law Judge. This building is accessible to people in wheelchairs through the Whitney Way first floor (lobby) entrance. Parking for people with disabilities is available on the south side of the building. Any person with a disability who needs additional accommodations should contact the docket coordinator listed below.

WRITTEN COMMENTS

Docket 1-AC-220

Any person may submit written comments on these proposed rules. The hearing record will remain open for written comments from the public until January 26, 2007. All written comments must include a reference on the filing to docket 1-AC-220. File by one mode only.

Industry: File comments using the Electronic Regulatory Filing system. This can be accessed from the Commission's website psc.wi.gov.

Members of the Public:

If filing electronically: Use the Public Comments system or the Electronic Regulatory Filing system. Both of these can be accessed from the Commission's website psc.wi.gov.

If filing by mail, courier, or hand delivery: Address your comments as shown in the box on page 1.

If filing by fax: Send fax comments to (608) 266-3957. Fax filing cover sheet must state "Official Filing", the docket number 1-AC-220, and the number of pages (limited to 25 pages for fax comments).

CONTACT PERSON

Questions regarding this matter may be directed to docket coordinator Carol A. Stemrich at (608) 266-8174. Media questions should be directed to Linda Barth, Director of Governmental and Public Affairs at (608) 266-9600. Hearing or speech-impaired individuals may also use the Commission's TTY number, if calling from Wisconsin (800) 251-8345, if calling from outside Wisconsin (608) 267-1479.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to get this document in a different format should contact Carol Stemrich, as indicated in the previous paragraph, as soon as possible.

Dated at Madison, Wisconsin, December 22, 2006

By the Commission:

/s/ Sandra J. Paske
Sandra J. Paske
Secretary to the Commission

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TEXT OF PROPOSED RULE

1 **SECTION 1.** Chapter PSC 137 is created to read: **CHAPTER 137**

2 **ENERGY EFFICIENCY AND RENEWABLE RESOURCE PROGRAMS**

3 **PSC 137.01 Definitions.** The definitions specified in s. 196.374 (1), Stats., apply to this
4 chapter. In addition, in this chapter:

5 (1) “Commission” means the public service commission.

6 (2) “Division administrator” means the administrator of the division of gas and energy in
7 the public service commission, or a designee.

8 (3) “Fiscal agent” means the fiduciary entity that receives, distributes, and accounts for
9 statewide energy efficiency and renewable resource programs under s. 196.374 (2) (a) 1., Stats.

10 (4) “kW” means kilowatt.

11 (5) “kWH” means kilowatt-hour.

12 (6) “Municipal utility” has the meaning provided in s. 16.957 (1) (q), Stats.

13 (7) “Net cost-effectiveness” means either of the following:

14 (a) The extent to which an energy efficiency program achieves incremental savings of
15 kW, kWH, or therms that exceed what would likely occur without the program, and the program
16 costs plus the costs assigned to program participants are less than the incremental savings times
17 the avoided costs of the participants’ energy provider.

18 (b) The extent to which a customer-owned renewable resource program produces kW,
19 kWH, or therms that would otherwise be delivered to the customer by its energy provider, and
20 the program costs plus the costs assigned to the customer are less than the avoided costs of the
21 customer’s energy provider.

1 (8) “Program administrator” means a person who contracts with the energy utilities to
2 develop and administer the statewide programs under s. 196.374 (2) (a) 1., Stats.

3 (9) “Retail electric cooperative” has the meaning provided in s. 16.957 (1) (t), Stats.

4 (10) “Statewide programs” means the energy efficiency and renewable energy programs
5 specified in s. 196.374 (2) (a) 1., Stats.

6 (11) “Working day” has the meaning provided in s. 227.01 (14), Stats.

7 **PSC 137.02 Program administrator solicitation and public notice. (1) COMPETITIVE**
8 **SOLICITATION.** Energy utilities soliciting proposals for a program administrator under s. 196.374
9 (2) (a) 1., Stats., shall ensure that all solicitations are conducted in a manner that is fair and
10 promotes competition.

11 (2) **PUBLIC NOTICE.** (a) Energy utilities shall provide reasonable public notice of all
12 solicitations of program administrator proposals under s. 196.374 (2) (a) 1., Stats. The energy
13 utilities may provide this notice through the print, broadcast, or telecommunications media,
14 including the internet. The notice period the energy utilities select is subject to the commission’s
15 prior approval.

16 (b) The notice shall include the purpose of the solicitation, selection criteria, application
17 procedures, and all applicable solicitation deadlines that an applicant is required to meet, or shall
18 contain instructions for obtaining this information.

19 (3) **APPLICATION REQUIREMENTS.** Anyone applying to be a program administrator shall
20 submit the application to the commission or the energy utilities as directed in the notice provided
21 under this section, on forms prescribed by the commission. Applications that are incomplete,
22 filed late, or not executed by an individual with the authority to act on the applicant’s behalf shall
23 be rejected.

1 **PSC 137.03 Program administrator selection. (1) SELECTION CRITERIA.** Prior to the
2 solicitation of a program administrator under s. 196.374 (2) (a) 1., Stats., the energy utilities shall
3 submit their proposed criteria for evaluating proposals and selecting a program administrator for
4 the commission’s approval. These criteria shall evaluate the following:

5 (a) The qualifications and financial soundness of a proposed program administrator and
6 any proposed subcontractor.

7 (b) The previous performance of a proposed program administrator and any proposed
8 subcontractor.

9 (c) The technical feasibility and quality of the proposed work plan, including the
10 feasibility of proposed goals, performance measures, and environmental and economic benefits
11 identified as objectives in the proposal.

12 (d) Compliance with each of the policies and goals the commission identifies for the
13 statewide energy efficiency program.

14 (e) Other factors the commission considers relevant.

15 **(2) COMMISSION APPROVAL OF SELECTION CRITERIA.** If the commission modifies or
16 rejects the energy utilities’ proposed criteria it shall explain its reasons in writing. The energy
17 utilities may propose a new criterion to replace any modified or rejected criterion.

18 **(3) NOTICE TO COMMISSION OF PROPOSED SELECTION.** The energy utilities shall notify
19 the commission in writing of their selection of a program administrator. The energy utilities may
20 negotiate a combination of proposals from various administrators, if they determine that such a
21 combination would better meet the objectives of the statewide program.

1 (4) COMMISSION APPROVAL OF PROGRAM ADMINISTRATOR. The commission shall, in
2 writing, within 10 working days after it receives the energy utilities' notice under sub. (3),
3 approve or reject for cause a program administrator whom the energy utilities selected.

4 (5) RIGHT TO PROTEST. If the energy utilities dispute the commission's rejection of a
5 selected program administrator under sub. (4), they may protest to the commission. The energy
6 utilities shall serve such a protest in writing on the division administrator within ten working
7 days after they receive notice of the commission's rejection. The division administrator may
8 settle and resolve any protest brought under this subsection. If the protest cannot be resolved by
9 mutual agreement, the division administrator shall issue a written decision to the energy utilities.

10 (6) APPEAL. The energy utilities may, within 20 working days after the division
11 administrator issues a decision under sub. (5), appeal the decision to the commission by alleging
12 facts that show a violation of a particular statute or provision of this chapter.

13 (7) CONTRACT STATUS. The energy utilities may not sign a contract with a proposed
14 program administrator during the 10 working days when the commission can review the energy
15 utilities' proposed selection under sub. (4) or while a protest or appeal is pending under sub. (5)
16 or (6). The commission may void any contract for the selection of a program administrator that
17 is signed during these periods.

18 **PSC 137.04 Collective statewide program contracts. (1) NOTICE TO COMMISSION**
19 **AND CONTRACT REQUIREMENTS.** (a) The energy utilities shall notify the commission in writing
20 of their intent to sign a collective contract for statewide programs with a program administrator
21 and shall submit a copy of the proposed contract to the commission for its approval.

22 (b) The contract shall include the following:

1 1. A requirement that the statewide programs shall comply with the policies and goals
2 issued by the commission.

3 2. A requirement that the statewide programs shall meet the requirements specified in
4 s. PSC 137.05.

5 3. Performance indicators and minimum performance standards.

6 4. Any other provision the commission may require.

7 **(2) COMMISSION APPROVAL OF CONTRACT.** (a) The commission shall, within
8 15 working days after receiving the energy utilities' notice under sub. (1), approve, approve with
9 modifications, or reject in writing a proposed contract.

10 (b) Upon receiving notice from the commission that it has approved a statewide program
11 contract, the energy utilities shall sign the contract with a program administrator.

12 (c) Upon receiving notice from the commission that it has approved with modifications a
13 statewide program contract, the energy utilities may sign a modified contract with a program
14 administrator.

15 **(3) RIGHT TO PROTEST.** If the energy utilities dispute the commission's modification or
16 rejection of a proposed contract under sub. (2) they may protest to the commission. The energy
17 utilities shall serve such a protest in writing on the division administrator within ten working
18 days of the receipt of the commission's rejection or modification of a proposed contract. The
19 division administrator may settle and resolve any protest brought under this subsection. If the
20 protest is not resolved by mutual agreement, the division administrator shall issue a written
21 decision to the energy utilities.

1 (4) APPEAL. The energy utilities may, within 20 working days after the division
2 administrator issues a decision under sub. (3), appeal the decision to the commission by alleging
3 facts that show a violation of a particular statute or provision of this chapter.

4 (5) CONTRACT STATUS. The energy utilities may not sign a contract for statewide
5 programs during the 15 working days when the commission can review the energy utilities'
6 proposed contract under sub. (2) or while a protest or appeal is pending under sub. (3) or (4).
7 The commission may void any contract for statewide programs that is signed during these
8 periods.

9 **PSC 137.05 Minimum requirements of statewide energy efficiency and renewable**
10 **energy programs.** The portfolio of statewide programs shall:

11 (1) PROGRAMS FOR ALL CUSTOMERS. Address the energy efficiency and renewable
12 resource needs of all customers of participating energy utilities, municipal utilities, and retail
13 electric cooperatives, except those large customers served by a utility-administered program
14 under s. PSC 137.07 or a self-directed program under s. PSC 137.08.

15 (2) RENEWABLE RESOURCE PROGRAMS FOR LARGE ENERGY CUSTOMERS. Use large
16 energy customer utility revenues collected under s. 196.374 (3) (b) 2., Stats., to provide
17 renewable resource programs to customers eligible for utility-administered and self-directed
18 energy efficiency programs.

19 (3) ENVIRONMENTAL BENEFITS. Deliver programs that result in environmental benefits,
20 as identified by the commission, either on-site or at the generation level.

21 (4) PROGRAMS FOR LOCAL UNITS OF GOVERNMENT AND AGRICULTURAL PRODUCERS.
22 Allocate at least 10 percent of the moneys contracted for statewide programs to programs to
23 increase the energy efficiency of local units of government and agricultural producers. These

1 programs are required to pass a program level test of net cost-effectiveness, as determined by the
2 commission.

3 (5) DATA COLLECTION. Using the commission's database tracking and reporting system,
4 collect and record for each program, by customer class:

5 (a) KW, kWh, and therm savings.

6 (b) Performance metrics.

7 (c) Non-energy benefits.

8 (d) All administrative and program delivery costs.

9 (e) Any other information the commission requests.

10 (6) DATA TO COMMISSION AND INDEPENDENT EVALUATOR. Provide all information and
11 data collected through statewide programs to the commission and the independent third-party
12 evaluator upon request.

13 (7) PERFORMANCE GOALS AND REPORTING. Establish annual and multi-year
14 performance goals, based on statewide performance standards and achievable potential, as
15 approved by the commission. The program administrator shall provide quarterly activity reports
16 and semiannual performance results to the commission, using a reporting format the commission
17 approves.

18 (8) PROMOTING MARKETS. Include initiatives and strategies that address the needs of
19 individuals or businesses facing the most significant barriers, as determined by the commission,
20 to creating or participating in markets for energy efficiency and renewable resource products and
21 services.

22 (9) PRIORITIES. Assign priority status to implementing programs that reduce growth in
23 electric and natural gas demand and usage, facilitate energy efficiency and renewable resource

1 market development, help market providers achieve higher levels of energy efficiency, promote
2 energy reliability and adequacy, avoid adverse environmental impacts from the use of energy,
3 and promote rural economic development.

4 **(10) ENVIRONMENTAL AND ECONOMIC IMPACTS OF ENERGY USE.** Initiate and fund
5 research and development projects, at the direction of the commission, that support sound public
6 policy and provide information to policymakers, program administrators, utilities, and the public
7 about the environmental and economic impacts of energy generation, delivery, and use.

8 **(11) EFFECTIVE PROGRAM DELIVERY.** Initiate and fund market research projects that
9 support and enhance the effective delivery of statewide programs. These projects shall be
10 coordinated with the independent third-party evaluator and the commission to avoid any conflicts
11 of interest. A statewide program administrator may not conduct any market research related to
12 establishing quantitative baseline or achievable potential data that is used to measure program
13 impacts.

14 **(12) EQUAL OPPORTUNITIES TO PARTICIPATE IN PROGRAMS.** Provide an equal
15 opportunity for all eligible customers to participate. Large commercial, industrial, institutional,
16 or agricultural customers who are eligible for utility-administered energy efficiency programs
17 offered under s. 196.374 (2) (b) 1., Stats., are not eligible for statewide energy efficiency
18 programs. Large energy customers with self-directed programs under s. 196.374 (2) (c), Stats.,
19 are not eligible for statewide programs. Utility-administered programs and large energy
20 customer self-directed programs may purchase energy efficiency-related education, training, or
21 facilitation services from the statewide programs using retained utility revenue that would
22 otherwise be collected for statewide programs. Statewide programs shall coordinate with utility-

1 administered and large energy customer self-directed programs to avoid duplication of effort and
2 program offerings in overlapping territories.

3 **(13) COST-EFFECTIVENESS.** Deliver energy efficiency and renewable resource programs
4 that pass a portfolio level test of net cost-effectiveness, as determined by the commission. The
5 program administrator shall screen each energy efficiency and renewable resource program for
6 net cost-effectiveness at least once a year. An independent third party, contracted by the
7 commission, shall conduct all market assessment and evaluation activities necessary to measure
8 the impact and cost-effectiveness of all statewide programs. The commission's administration of
9 the evaluation contract shall be paid by funds from the statewide energy efficiency and
10 renewable resource programs, at a level determined by the commission.

11 **PSC 137.06 Procedures to receive contributions from municipal utilities and retail**
12 **electric cooperatives. (1) INVOICE FORMS.** The fiscal agent shall design invoice forms for
13 municipal utilities and retail electric cooperatives that elect to contribute the fees they charge
14 under s. 196.374 (7) (a) and (b) 2., Stats., to statewide programs. The participating municipal
15 utilities and retail electric cooperatives shall use these forms to send in their collections.

16 **(2) PROCEDURES FOR FEE CONTRIBUTIONS TO STATEWIDE PROGRAMS.** (a) At the end of
17 each quarter, each participating municipal utility and retail electric cooperative shall submit to
18 the fiscal agent the dollar amount of fees it has collected for energy efficiency programs in the
19 previous quarter. Participating municipal utilities and retail electric cooperatives shall deliver
20 this information to the fiscal agent within 30 working days after the quarter concludes.

21 (b) The fiscal agent shall verify the amount collected by each participating municipal
22 utility or retail electric cooperative.

1 (c) When the fiscal agent has received the information specified in par. (a), it shall
2 produce an invoice for each participating municipal utility or retail electric cooperative and
3 deliver the invoice to the municipal utility or retail electric cooperative.

4 (d) Within 7 working days after it receives the invoice the participating municipal utility
5 or retail electric cooperative shall send a check to the address specified by the fiscal agent for
6 deposit in the fund for statewide programs.

7 (e) The fiscal agent shall take reasonable steps to ensure that participating municipal
8 utilities and retail electric cooperatives remit payments completely and on a timely basis.

9 (3) REPORTS. The fiscal agent shall record the payment of each municipal utility or retail
10 electric cooperative and create reports that include each municipal utility's and retail electric
11 cooperative's cumulative receipts for the fiscal year.

12 **PSC 137.07 Utility-administered programs. (1) FUNDING ENERGY EFFICIENCY**
13 **PROGRAMS FOR LARGE COMMERCIAL, INDUSTRIAL, INSTITUTIONAL, AND AGRICULTURAL**
14 **CUSTOMERS.** The funding available in any year for any energy efficiency program the
15 commission has approved that an energy utility offers to its large commercial, industrial,
16 institutional, and agricultural customers under s. 196.374 (2) (b) 1., Stats., shall equal the
17 revenues collected from energy utility's customers who are eligible for the utility-retained
18 program, less the energy utility's moneys that have been set aside for statewide renewable
19 resource programs. The commission shall determine the annual funding level available for these
20 programs and inform energy utilities in writing at least 9 months prior to the beginning of the
21 statewide program year.

22 (2) ENERGY EFFICIENCY PROGRAMS FOR LARGE COMMERCIAL, INDUSTRIAL,
23 INSTITUTIONAL, OR AGRICULTURAL CUSTOMERS. (a) An energy utility requesting to administer

1 or fund one or more energy efficiency programs for large commercial, industrial, institutional, or
2 agricultural customers in its service territory under s. 196.374 (2) (b) 1., Stats., may file a request
3 with the commission at any time. The commission shall consider requests it receives at least
4 6 months before the start of the statewide energy efficiency and renewable resource program
5 year for implementation in that program year.

6 (b) Requests for utility-administered large commercial, industrial, institutional, and
7 agricultural customer energy efficiency programs under s. 196.374 (2) (b) 1., Stats., shall
8 include:

9 1. A description of the program that includes the target market, eligible measures,
10 delivery strategy, marketing and communications strategy, incentive strategy and potential
11 market effects.

12 2. A plan prepared jointly with statewide program administrator(s) that describes how
13 and when statewide and utility-administered programs will be coordinated with large energy
14 customer self-directed programs, ordered programs, and additional utility programs offered
15 during the same period.

16 3. A description of the program's alignment with the commission's most recent
17 achievable potential study.

18 4. Annual and multi-year performance targets that are consistent with commission goals,
19 policies, and priorities.

20 5. A program timeframe that is consistent with the statewide program year.

21 6. A portfolio and program level cost-effectiveness analysis that is consistent with
22 par. (c) 9.

23 7. An administrative and program delivery budget for the first year of operation.

1 8. Any other information the commission requests.

2 (c) Each utility-administered program under this subsection shall:

3 1. Be limited to offering energy efficiency programs to large commercial, industrial,
4 institutional, or agricultural customers, as defined by the commission, in the energy utility's
5 service territory. Large energy customers with self-directed programs are not eligible for the
6 utility-administered programs funded under s. 196.374 (3) (b) 2., Stats., but they may participate
7 in the utility programs funded with additional dollars not collected under s. 196.374 (3) (b) 2.,
8 Stats., and may participate in utility customer service conservation activities that the commission
9 has approved. Large energy customers with self-directed programs may also purchase energy-
10 efficiency-related education, training or facilitation services from utility-administered programs
11 or from statewide programs.

12 2. Assign priority status to implementing programs that reduce growth in electric and
13 natural gas demand and usage, facilitate energy efficiency market development, assist market
14 providers in achieving higher levels of energy efficiency, promote energy reliability and
15 adequacy, avoid adverse environmental impacts from the use of energy, and promote rural
16 economic development.

17 3. Provide an equal opportunity for all eligible customers to participate. Customers
18 eligible for the utility-administered programs funded under s. 196.374 (3) (b) 2., Stats., are not
19 eligible to participate in statewide energy efficiency programs. Energy utilities with
20 utility-administered programs may purchase energy efficiency services from the statewide
21 programs, using retained utility revenues collected under s. 196.374 (3) (b) 2., Stats. Utility-
22 administered programs shall coordinate with statewide and large energy customer self-directed
23 programs to avoid duplication of effort and of program offerings in overlapping territories.

1 4. Establish annual and multi-year performance goals, based on statewide performance
2 standards and the utility’s achievable potential, as approved by the commission. At a minimum,
3 the energy utility shall provide quarterly activity reports and semiannual performance reports to
4 the commission, using a reporting format approved by the commission.

5 5. Using the commission’s database tracking and reporting system, collect and record for
6 each program, by customer class:

- 7 a. KW, kWh, and therm savings.
- 8 b. Performance metrics.
- 9 c. Non-energy benefits.
- 10 d. All administrative and program delivery costs.
- 11 e. Any other information the commission requests.

12 6. Provide all information and data the energy utility collects for its utility-administered
13 programs to the commission and the independent third-party evaluator upon request.

14 7. Be evaluated by an independent third party. The commission shall contract with the
15 independent third party evaluator, unless it determines that it is reasonable to allow the energy
16 utility to contract with the evaluator. In that case the commission shall oversee the contracting
17 process and approve the energy utility’s selection of the independent third-party evaluator, and
18 the programs shall be subject to statewide evaluation standards that the commission establishes.
19 The energy utility shall pay for the evaluation of the program, as determined by the commission,
20 from retained utility revenues that the energy utility would otherwise have expended on
21 statewide energy efficiency programs.

22 8. Be designed in a manner that prevents the energy utility or any affiliate from selling or
23 installing of energy efficiency processes, equipment, or appliances.

1 9. Deliver energy efficiency programs that pass a portfolio level test of net
2 cost-effectiveness, as determined by the commission. The energy utility shall screen for net cost-
3 effectiveness at least once a year.

4 10. Deliver programs that result in environmental benefits, as identified by the
5 commission, either on site or at the generation level.

6 (d) The commission shall consider all of the following when deciding whether to
7 approve a program proposed under par. (a):

8 1. Whether the program meets minimum requirements of par. (c).

9 2. The likelihood the program will achieve its goals.

10 3. The inclusion of appropriate energy efficiency measures.

11 4. Whether the proposed budget is consistent with funds available for large commercial,
12 industrial, institutional, and agricultural customer energy efficiency programs.

13 5. The level of coordination with statewide programs, large energy customer self-
14 directed programs, and additional utility programs and the potential for disrupting overall energy
15 efficiency efforts in the state.

16 6. Whether the program is in the public interest.

17 **(3) ADDITIONAL UTILITY-ADMINISTERED ENERGY EFFICIENCY OR RENEWABLE**

18 **RESOURCE PROGRAMS.** (a) An energy utility requesting to administer or fund one or more
19 additional voluntary energy efficiency or renewable resource programs in its service territory

20 under s. 196.374 (2) (b) 2., Stats., may file a request with the commission at any time. The

21 commission shall consider requests it receives at least 6 months before the start of the statewide

22 energy efficiency and renewable resource program year for implementation in that program year.

1 (b) An energy utility requesting to administer one or more additional energy efficiency
2 or renewable resource programs in its service territory under s. 196.374 (2) (b) 2., Stats., shall
3 provide the information specified in sub. (2) (b) 1. to 8., plus the following information:

- 4 1. A proposed reporting schedule, consistent with commission standards.
- 5 2. A description of the energy utility's proposed database tracking and reporting system.
- 6 3. An evaluation, measurement and verification plan that is consistent with statewide
7 evaluation standards and funding levels, as determined by the commission.

8 (c) The commission shall consider all of the following when deciding whether to
9 approve a utility-administered energy efficiency or renewable resource program under s. 196.374
10 (2) (b) 2., Stats.:

- 11 1. Whether the program is in the public interest.
- 12 2. The likelihood the program will achieve its goals.
- 13 3. The inclusion of appropriate energy efficiency measures.
- 14 4. The adequacy of the budget.
- 15 5. The balance of services available to customer segments.
- 16 6. The cost-effectiveness of the programs.
- 17 7. The adequacy of the evaluation, measurement, and verification plan.
- 18 8. The level of coordination with statewide programs, utility-administered programs,
19 large energy customer self-directed programs, and ordered programs and the potential for
20 disruption of overall energy efficiency efforts in the state.

21 **(4) APPROVAL, DENIAL OR MODIFICATION OF REQUESTS FOR UTILITY-ADMINISTERED**
22 **PROGRAMS.** An energy utility may only administer or fund a program under this section with the
23 commission's prior approval. If the commission denies or modifies a proposed utility-

1 administered program it shall explain its reasons in writing. The energy utility may revise and
2 resubmit a proposed program the commission has denied.

3 **(5) MODIFYING OR DISCONTINUING A UTILITY-ADMINISTERED PROGRAM OR AN ORDERED**
4 **PROGRAM.** (a) An energy utility may request the modification or discontinuation of a utility-
5 administered energy efficiency or renewable resource program implemented under s. 196.374 (2)
6 (b) 1. or 2., Stats., at any time. No energy utility may modify or discontinue such a program
7 without the commission's prior approval.

8 (b) Requests for discontinuation of an ordered program shall be made as part of a
9 proceeding the commission conducts under 196.374 (3) (b) 1., Stats.

10 **(6) RETURN OF FUNDS.** If the commission determines that an energy utility has not fully
11 implemented an energy efficiency program approved under this section, the commission may
12 require that the energy utility deliver any unspent funds to the fiscal agent.

13 **PSC 137.08 Large energy customer self-directed energy efficiency programs. (1)**
14 **FUNDING PROGRAMS FOR LARGE ENERGY CUSTOMERS.** Except as provided under s. 196.374 (5)
15 (bm), Stats., the utility funding available in any one year for large energy customer self-directed
16 programs shall equal the energy utility revenues that would have been collected from those
17 customers in 2005 under s. 196.374 (3), 2003 Stats., as determined by the commission. The
18 commission shall determine the annual funding level for each large energy customer. Upon
19 receipt of this information, each energy utility with one or more large energy customers shall
20 notify these customers of the funds available for self-directed programs.

21 **(2) PROGRAM REQUIREMENTS.** (a) A large energy customer seeking approval of a self-
22 administered or self-funded energy efficiency program under 196.374 (2) (c), Stats., may file a
23 request with the commission at any time. The commission shall consider requests it receives at

1 least 6 months before the start of the statewide energy efficiency and renewable resource
2 program year for implementation in that program year.

3 (b) Each request for large energy customer self-directed energy efficiency programs
4 under s. 196.374 (2) (c), Stats., shall include:

5 1. A description of the program that includes targeted buildings, equipment and
6 operations, eligible energy efficiency measures, and expected energy savings by technology.

7 2. A description of how the program will be coordinated with the statewide programs,
8 utility-administered programs, ordered programs, and additional utility programs offered during
9 the same period.

10 3. Annual and multi-year performance targets that are consistent with commission goals,
11 policies and priorities.

12 4. A program timeframe that is consistent with the statewide program year.

13 5. A program level cost-effectiveness analysis, consistent with par. (c) 4.

14 6. An administrative and program delivery budget for each year of operation.

15 7. A tracking and reporting system, as specified by the commission.

16 8. A measurement and verification plan.

17 9. Any other information the commission requests.

18 (c) Large energy customer self-directed programs under this subsection shall:

19 1. Deliver energy efficiency programs that result in a net on-site reduction in the use of
20 electricity or natural gas. To determine whether the program reduces energy or gas use, the large
21 energy customer shall compare the facility's energy use with standard replacement technology
22 under standard operating conditions, before improvements to existing facility or expansion,

1 against the proposed facility efficiency improvements. The large energy customer's
2 measurement and verification process is subject to the commission's approval.

3 2. Not include participation in statewide or utility-administered energy efficiency
4 programs, except that a large energy customer may purchase energy efficiency-related education,
5 training, and facilitation services from the statewide or utility-administered programs.

6 3. Install measures that are environmentally sound, as determined by the commission.

7 4. Deliver energy efficiency programs that pass a program level test of net
8 cost-effectiveness, as determined by the commission.

9 5. Use retained utility revenues that would otherwise be collected for statewide energy
10 efficiency programs from the customer to pay some or all of the incremental cost difference
11 between standard efficiency replacement equipment or processes and the premium efficiency
12 replacement equipment or processes that the large energy customer proposes to install.

13 6. Be evaluated by an independent third party. The commission shall contract with the
14 independent third party evaluator, unless it determines that it is reasonable to allow the large
15 energy customer to contract with an evaluator. In that case, the commission shall oversee the
16 contracting process and approve the large energy customer's selection of the independent third-
17 party evaluator, and the programs shall be subject to statewide evaluation standards that the
18 commission establishes. The large energy customer shall pay the evaluation costs out of energy
19 utility revenues that the large energy customer retains and sets aside for that purpose.

20 7. Retain energy utility revenues, for at least 3 years, to finance projects the large
21 energy customer initiates and completely installs within the years for which utility revenues are
22 retained.

1 8. Establish annual and multi-year performance goals, as approved by the commission.
2 At a minimum, the large energy customer shall provide quarterly activity reports and annual
3 performance results, using a reporting format approved by the commission. The large energy
4 customer shall also provide all performance-related information and data to the commission that
5 it requests.

6 (d) The commission shall consider the standards specified in s. PSC 137.07 (3) (c) 1. to
7 4., 6., and 7. when deciding whether to approve a large energy customer self-directed program,
8 as well as whether the program meets the requirements of par. (c).

9 **(3) APPROVAL, DENIAL OR MODIFICATION OF REQUESTS FOR LARGE ENERGY CUSTOMER**
10 **SELF-DIRECTED PROGRAMS.** A large energy customer may only administer or fund a program
11 under this section with the commission’s prior approval. If the commission denies or modifies a
12 large energy customer’s proposed self-directed program it shall explain its reasons in writing.
13 The large energy customer may revise and resubmit a proposed program the commission has
14 modified or denied.

15 **(4) MODIFYING OR DISCONTINUING A LARGE ENERGY CUSTOMER SELF-DIRECTED**
16 **PROGRAM.** A large energy customer may request the modification or discontinuation of an
17 energy efficiency program implemented under s. 196.374 (2) (c), Stats., at any time. No large
18 energy customer may modify or discontinue a self-directed program without the commission’s
19 prior approval.

20 **(5) RETURN OF FUNDS.** If the Commission determines that a large energy customer has
21 not fully implemented its energy efficiency program approved under this section, the
22 commission may require that the large energy customer deliver any unspent funds to the fiscal
23 agent.

2005 Session

LRB or Bill No./Adm. Rule No.
Ch. PSC 137 – 1-AC-220

Amendment No. if Applicable

ORIGINAL UPDATED

FISCAL ESTIMATE

DOA-2048 N(R10/96)

CORRECTED SUPPLEMENTAL

Subject

Create Chapter PSC 137 - Rules Related to Energy Efficiency and Renewable Resource Program

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
- Permissive Mandatory
2. Decrease Costs
- Permissive Mandatory

3. Increase Revenues
- Permissive Mandatory
4. Decrease Revenues
- Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.155 (1) (g)

Assumptions Used in Arriving at Fiscal Estimate

The proposed rules will replace the existing statewide Energy Efficiency and Renewables Program at DOA and move the monitoring of the new Program to the PSC. It is expected there will be the same number of state staff, at about the same costs, working on the programs as there are now at DOA. Therefore, the result of the creation of these rules do not increase or decrease state expenditures. WI Act 141 provides for certain expenditures by local governments, however, the rules merely implement these requirements and in and of themselves do not increase or decrease local costs.

Long-Range Fiscal Implications

Ongoing Program monitoring Costs.

Agency/Prepared by: (Name & Phone No.)

Gordon Grant 267-9086

Authorized Signature/Telephone No.

Gordon Grant

Date

12/13/2006