BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Revisions to Renewable Resource Credits Rule 1-AC-221

Clearinghouse Rule 06-112

ORDER ADOPTING FINAL RULES

The Public Service Commission of Wisconsin proposes an order to repeal PSC 118.02 (5), (9), and (10), 118.03 (2) and (3) (a), 118.04 (1) and (2) (a) to (d), and 118.05 (4); to renumber and amend PSC 118.05 (6); to amend chapter PSC 118 (title), 118.01, 118.02 (7), 118.04 (2) (e) and (3), 118.05 (1), (2) (intro.) and (3), and 118.06 (1) and (4) (a); to repeal and recreate PSC 118.02 (13) and 118.06 (2); and to create PSC 118.04 (2) (g) and 118.07; relating to a renewable resource credit tracking program.

REPORT TO THE LEGISLATURE

Set forth as Attachment A.

FISCAL ESTIMATE

This rule change has no fiscal impact and no financial impact on the private sector. A completed Fiscal Estimate form is included as Attachment B.

EFFECTIVE DATE

These rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

CONTACT PERSON

Questions from the media may be directed to Linda Barth, Director of Governmental and Public Affairs at (608) 266-9600. Other questions regarding this matter should be directed to docket coordinator Paul Helgeson at (608) 266-3905. Hearing or speech-impaired individuals may 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 obtain this document in a different format should contact the docket coordinator listed above.

Dated at Madison, Wisconsin, February 8, 2007

By the Commission:

/s/ Sandra J. Paske

Sandra J. Paske
Secretary to the Commission

G:\ORDER\PENDING\1-AC-221 final.doc

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 megawatthour (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.

ANALYSIS AND TEXT OF PROPOSED RULES

The Public Service Commission of Wisconsin proposes an order to repeal PSC 118.02 (5), (9), and (10), 118.03 (2) and (3) (a), 118.04 (1) and (2) (a) to (d), and 118.05 (4); to renumber and amend PSC 118.05 (6); to amend chapter PSC 118 (title), 118.01, 118.02 (7), (10), and (11), 118.03 (3) (b), 118.04 (2) (e) and (3), 118.05 (1), (2) (intro.) and (3), and 118.06 (1) and (4) (a); to repeal and recreate PSC 118.02 (13) and 118.06 (2); and to create PSC 118.04 (2) (g), 118.07, and 118.08; relating to a renewable resource credit tracking program.

Analysis Prepared by the Public Service Commission of Wisconsin

Statutory authority: ss. 196.02(1) and (3), 196.378(3) and 227.11, Stats.
Statute interpreted: s. 196.378, Stats.

2005 Wis. Act 141 (Act 141) modified Wisconsin's renewable portfolio standard (RPS), which prescribes minimum levels of electric energy that public utilities and electric cooperatives must produce from renewable resources for delivery to their customers. The new law sets a specific minimum level for each electric provider, using a baseline of the provider's average renewable energy production for the years 2001, 2002, and 2003:

Years	RPS Requirement
2006 through 2009	Not less than the 2001-2003 baseline percentage
2010 through 2014	Baseline plus 2 percent
After 2014	Baseline plus 6 percent

Previously, state law had specified a gradually increasing RPS that started with 0.5 percent of retail sales in 2001 and would have risen to 2.2 percent by 2011. Act 141 also changes what is defined as a "renewable facility." Prior law excluded most of the energy from pre-1998 hydroelectric facilities in the state. Act 141 includes all existing renewable generation for the years 2001-2003 to establish the baseline renewable percentage for each electric provider.

If an electric provider delivers more renewable energy to its customers than its RPS requirement from a "new" renewable facility that is placed in service after December 31, 2003, Act 141 allows the electric provider to create renewable resource credits (RRCs) that can be sold or saved for up to four years for future use. RRCs were also created under prior law, but Act 141 specifies that these old RRCs will expire on December 31, 2011. The proposed rules incorporate these changes in state law and establish an RRC tracking program, which can be either statewide or a multi-state, regional program. The proposed rules define an RRC as a MWh produced by a certified renewable facility that is physically metered, that an electric provider delivers to a retail customer, that exceeds the electric provider's minimum RPS requirement, and that is properly

tracked and recorded. The proposed rules state that the net generation of renewable energy is measured at the renewable facility's bus bar and that any electric losses occurring between the bus bar and the retail customer's meter are ignored.

The proposed rules prevent double-counting. If an electric provider sells or conveys an RRC or MWh of renewable energy at wholesale, the proposed rules declare that the electric provider may not use that RRC or MWh to meet its RPS requirement.

The proposed rules identify the responsibilities of the program administrator, who must establish and operate a system that creates an account for each renewable generation facility, each electric provider, and any wholesale supplier that acts as an aggregator for its members or customers. In addition, the tracking system will record the amount of electricity each renewable facility in the area produces, will issue a certificate for every RRC, and will track RRCs from their creation until an electric provider uses them to meet its RPS or otherwise retires them. The proposed rules give the program administrator authority to audit the records of participating renewable generators and to perform any other function the Public Service Commission may designate.

SECTION 1. Chapter PSC 118 (title) is amended to read:

CHAPTER PSC 118
RENEWABLE RESOURCE CREDIT TRACKING PROGRAM

SECTION 2. PSC 118.01 is amended to read:

PSC 118.01 Scope. This chapter applies to each Wisconsin electric provider that creates an RRC or uses an RRC to meet the requirements of s. 196.378(2)(a), Stats.

SECTION 3. PSC 118.02 (5) is repealed.

SECTION 4. PSC 118.02 (7) is amended to read:

PSC 118.02 **(7)** "Program administrator" means the person ~~responsible for carrying~~ who carries out the administrative responsibilities related to the renewable resource credit ~~trading~~ tracking program.

SECTION 5. PSC 118.02 (9) is repealed.

SECTION 6. PSC 118.02 (10) and (11) are amended to read:

PSC 118.02 (10) "Renewable resource credit" means one MWh of renewable energy from a certified renewable facility that is physically metered with the net generation measured at the certified renewable facility's bus bar, that is delivered to a retail customer with the retail sale measured at the customer's meter, that ignores the transmission and distribution losses between the bus bar and the customer's meter, that exceeds the minimum percentage requirement specified in s. 196.378 (2) (a), Stats., and that meets the requirements of ss. PSC 118.03 and 118.04.

(11) "Retail customer" means a customer ~~of an electric provider~~ that ~~resides in Wisconsin and purchases electricity at retail~~ receives retail electricity in Wisconsin.

SECTION 7. PSC 118.02 (13) is repealed and recreated to read:

PSC 118.02 **(13)** "RRC tracking program" means a program that tracks the selling, transferring, purchasing, and retiring of RRCs.

SECTION 8. PSC 118.03 (2) and (3) (a) are repealed.

SECTION 9. PSC 118.03 (3) (b) is amended to read:

PSC 118.03 (3) (b) ~~A biomass co-fired facility~~ An electric provider may only use the renewable portion of ~~its~~ a biomass co-fired facility's energy production, based on the relative energy content of the fuels, to create RRCs in the applicable reporting period.

SECTION 10. PSC 118.04 (1) and (2) (a) to (d) are repealed.

SECTION 11. PSC 118.04 (2) (g) is created to read:

PSC 118.04 **(2)** (g) 1. An RRC created before January 1, 2004, may be sold or used to meet an electric provider's minimum percentage requirement under s. 196.378 (2) (a), Stats. The RRCs described in this subdivision may not be used after December 31, 2011, as provided in s. 196.378 (3) (c), Stats.

2. An RRC created on or after January 1, 2004, but produced by a renewable facility that was placed into service before January 1, 2004, may only be sold or used to meet an electric provider's minimum percentage requirement under s. 196.378 (2) (a), Stats., if the RRC constituted an incremental increase in output from the renewable facility due to capacity improvements that were made on or after January 1, 2004, as provided in s. 196.378 (3) (a) 2., Stats. The RRCs described in this subdivision may not be used after the fourth year after the year in which the credit is created, as provided in s. 196.378 (3) (c), Stats.

> ***EXAMPLE:*** If the renewable facility was originally constructed prior to January 1, 2004, but is entirely replaced with a new and more efficient facility, all of the output from the new facility constitutes an incremental increase and can be used to create RRCs.

3. An RRC created on or after January 1, 2004, that is produced by a renewable facility placed into service on or after January 1, 2004, may be sold or used to meet an electric provider's minimum percentage requirement under s. 196.378(2)(a), Stats. The RRCs described in this subdivision may not be used after the fourth year after the year in which the credit is created, as provided in s. 196.378 (3) (c), Stats.

SECTION 12. PSC 118.04 (3) is amended to read:

PSC 118.04 **(3)** When an RRC is credited to an electric provider's account ~~under sub. (2)~~, the account owner may sell or transfer the RRC to another electric provider. Any person selling or transferring an RRC shall report the sale or transfer to the program administrator within 10 days of the transaction. The program administrator shall then credit the RRC account of the new owner and debit the RRC account of the prior owner. An RRC may continue to be sold or traded only if each seller or transferor reports the transaction to the program administrator within 10 days of its consummation.

SECTION 13. Section PSC 118.05 (1), (2) (intro.) and (3) are amended to read:

PSC 118.05 **(1)** (a) An electric provider may only use the energy of a certified renewable facility for creation of an RRC. The commission shall certify renewable facilities or delegate this responsibility to the program administrator. Any electric provider or owner of a renewable facility that is adversely affected by the program administrator's decision to certify or not certify may protest to the commission. Such a protest shall be served in writing on the division administrator within 10 working days after the adversely affected person has received notice of the program administrator's decision. The division administrator may settle and resolve protests brought under this paragraph. If the protest cannot be resolved by mutual agreement, the division administrator shall issue a written decision. Any person adversely affected by the division administrator's written decision may, within 20 working days after its issuance, appeal the decision to the commission by alleging facts that show a violation of a particular statute or provision of this chapter.

(b) The program administrator may not ~~award~~ issue an RRC before the date that ~~the commission certifies~~ a renewable facility is certified, but the program administrator may ~~award~~ issue an RRC for energy that a certified renewable facility produced subsequent to the date ~~the commission received the~~ it delivered its request for certification.

(2) (intro.) To obtain ~~commission~~ certification, the electric provider generating or purchasing energy from a renewable facility, or a designated representative, shall provide the following ~~registration~~ information in a format approved by the commission:

(3) The commission ~~shall inform both the program administrator and~~ or the program administrator shall inform the electric provider, or its designated representative, whether it has certified a renewable facility for which it has received an application under sub. (2).

SECTION 14. Section PSC 118.05 (4) is repealed.

SECTION 15. Section PSC 118.05 (6) is renumbered PSC 118.06 (5) and is amended to read:

PSC 118.06 **(5)** The program administrator may not ~~create~~ issue RRCs for energy produced by a decertified renewable facility.

SECTION 16. Section PSC 118.06 (1) is amended to read:

PSC 118.06 **(1)** The commission shall, using a competitive process, contract with a program administrator who shall operate either a statewide or a regional RRC tracking program.

SECTION 17. Section PSC 118.06 (2) is repealed and recreated to read:

PSC 118.06 **(2)** The program administrator shall:

(a) Create an account for each electric provider.

(b) Create an account for each certified renewable facility that participates in the tracking program.

(c) Register each renewable facility the commission has certified, including the following data about the facility:

1. Its electric provider's account number.

2. Its location, owner, technology, date placed in service, and rated capacity.

3. Its expected annual energy production.

4. Information about the facility's meter that allows the program administrator to verify its accuracy.

5. Any additional data the commission deems necessary for proper operation of the tracking program.

(d) Establish and maintain a system for tracking RRCs that does all of the following:

1. Issues a unique electronic certificate for each MWh of renewable energy measured at the bus bar of a certified renewable facility that is located in the area covered by the tracking system, that is owned by a participating electric provider, or that is under contract to deliver electric energy to a participating electric provider. The certificate shall identify which certified renewable facility produced the MWh, when it was produced, and any other characteristics the commission finds necessary.

2. Records RRC ownership and each transfer between account holders.

3. Retires each RRC that meets any of the following circumstances:

a. An electric provider uses the RRC to meet all or part of its minimum percentage requirement under s. 196.378 (2) (a), Stats.

b. The RRC becomes four years old.

c. An electric provider chooses to retire the RRC for any other reason.

(e) Audit registered renewable facilities, as needed, to verify the accuracy of metered production data.

(f) Track and report each electric provider's compliance with the minimum percentage requirement under s. 196.378 (2) (a), Stats.

(g) Perform any other function the commission may designate.

SECTION 18. Section PSC 118.06 (4) (a) is amended to read:

PSC 118.06 **(4)** (a) Annually, the program administrator shall report to the commission the costs incurred in operating the RRC ~~trading~~ tracking program and recommend an assessment of these costs to electric providers and other tracking system participants that hold RRC accounts. ~~The program administrator shall base part of this proposed assessment of costs on the~~

~~number of each electric provider's RRC transactions, the size of these transactions, or both. These factors shall determine how a majority of the costs are assessed.~~

SECTION 19. Section PSC 118.07 is created to read:

PSC 118.07 Aggregation and allocation by wholesale suppliers. If a wholesale supplier aggregates and allocates RRCs among its members or customers, it shall do so in a manner approved by the affected members or customers.

SECTION 20. Section PSC 118.08 is created to read:

PSC 118.08 Double-counting prohibited. An electric provider that sells or conveys a MWh of renewable energy or an RRC at wholesale may not use that MWh or RRC to meet its minimum percentage requirement under s. 196.378 (2) (a), Stats.

EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

(End)

Attachment A2

LCRC
FORM 2

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **06-112**

AN ORDER to repeal PSC 118.02 (5), (9), and (10), 118.03 (2) and (3) (a), 118.04 (1) and (2) (a) to (d), and 118.05 (4); to renumber and amend PSC 118.05 (6); to amend chapter PSC 118 (title), 118.01, 118.02 (7), 118.04 (2) (e) and (3), 118.05 (1), (2) (intro.) and (3), and 118.06 (1) and (4) (a); to repeal and recreate PSC 118.02 (13) and 118.06 (2); and to create PSC 118.04 (2) (g) and 118.07, relating to a renewable resource credit tracking program.

Submitted by **PUBLIC SERVICE COMMISSION**

10-17-2006 RECEIVED BY LEGISLATIVE COUNCIL.

11-14-2006 REPORT SENT TO AGENCY.

RNS:SG

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701–2536
(608) 266–1304 • Fax: (608) 266–3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

   Comment Attached YES ☐ NO ☑

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

   Comment Attached YES ☑ NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

   Comment Attached YES ☐ NO ☑

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

   Comment Attached YES ☑ NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

   Comment Attached YES ☑ NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

   Comment Attached YES ☐ NO ☑

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

   Comment Attached YES ☐ NO ☑

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 06-112

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.]

2. Form, Style and Placement in Administrative Code

a. In s. PSC 118.02 (13), the use of the language "created on or after January 1, 2004" would be inaccurate if the renewable resource credit (RRC) tracking program also tracks RRCs created before that date. Section PSC 118.04 (2) (g) 1. states that RRCs created before January 1, 2004 may be sold or used to meet an electric provider's minimum percentage requirement under s. 196.378 (2) (a), Stats. The involvement in the tracking program of RRCs created prior to January 1, 2004 should be clarified.

b. In s. PSC 118.04 (2) (g) 1., the phrase "may only be used until December 31, 2011" should be changed to "may not be used after December 31, 2011" to be consistent with s. 196.378 (3) (c), Stats.

c. In s. PSC 118.04 (2) (g) 2. and 3., the phrase "may only be used through the fourth year after their creation" should be changed to "may not be used after the fourth year after the year in which the credit is created" to be consistent with s. 196.378 (3) (c), Stats.

d. In s. PSC 118.05 (1) (a), the use of both "shall" and "may" in the last sentence is confusing since "shall" denotes a mandatory duty while "may" denotes a permissive privilege. If the thought to be expressed involves a mandatory choice between one of two alternatives, the words "it may" should be deleted and the phrasing "shall certify … or delegate …" should be used.

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701–2536
(608) 266–1304 • Fax: (608) 266–3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

e. In s. PSC 118.06 (1), the word "may" should be replaced by "shall" if the thought to be expressed involves a mandatory choice between a statewide or a regional RRC tracking program.

f. In the introductory clause to the rule-making order, the abbreviation "ch." should be deleted from the phrase "to repeal ch. PSC 118.02 (5)…." The word "chapter" should be placed before PSC 118 (title) in the phrase "to amend PSC 118 (title)."

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

a. The repeal of s. PSC 118.02 (10) removes the definition of "renewable resource credit." Since s. 196.378 (1) (i), Stats., defines renewable resource credit by reference to the Public Service Commission (PSC) rules, the repeal of s. PSC 118.02 (10) renders the term undefined.

b. In s. PSC 118.04 (2) (e), the cited statute refers to the PSC definition of "renewable resource credit," now deleted. As noted in comment 4. a., the deletion of the PSC definition of renewable resource credit should be reconsidered. Additionally, if the term is defined in ch. PSC 118, then the reference should be to the rule rather than a statute that only refers to a rule.

c. Section PSC 118.07 refers to "aggregation of minimum percentage requirements." If the thought to be expressed refers to aggregation and allocation of RRCs among the members or customers of a wholesale supplier, the rule should refer to s. 196.378 (2) (b) 4., Stats., instead of s. 196.378 (2) (a), Stats. If not, what statute provides for aggregation of minimum percentage requirements? Also, the use of the phrase "aggregates the minimum percentage requirements" should be revised for consistency or clarified. Section 196.378 (2) (b) 4., Stats., refers to aggregation and allocation of RRCs.

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

a. In s. PSC 118.06 (2) (d) 1., the use of the word "certificate" should be clarified with respect to its relationship to RRCs and the RRC tracking program.

b. In s. PSC 118.04 (2) (g) 2., the second sentence seems to repeat the concept conveyed by the first sentence of s. PSC 118.04 (2) (g) 2. If so, can it be removed or be placed to follow the rule section as explanatory material, labeled "Note:" or "Example:"? [See s. 1.09 (1), Manual.]

c. In s. PSC 118.07, the use of the word "acceptable" is vague and should be clarified.

d. In ch. PSC 118, consistency in the use of words such as "issue," "award," "create," and their derivatives should be reviewed. For example, s. PSC 118.06 (5), as renumbered, changes "create" to "award" while other existing code provisions use "create" or "issue" in similar contexts.

Attachment B
2005 Session

FISCAL ESTIMATE
DOA-2048 N(R10/96)

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Ch. PSC 118 – 1-AC-221

Amendment No. if Applicable

Subject
Amend PSC Rule - Revision to Renewable Resource Tracking 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 rule changes allow for the establishment of a regional renewable credit tracking system and other Changes required by WI Act 141 laws of 2005. There are no additional costs to state or local government as a result Of these changes.

Long-Range Fiscal Implications
NONE

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Gordon Grant 267-9086	Gordon Grant	9/7/2006