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BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Relating to Rules Regarding )  
the Costs of Nuclear Safety ) 1-AC-39  
Preparedness )

ORDER OF THE  
PUBLIC SERVICE COMMISSION  
OF WISCONSIN ADOPTING RULES

Relating to rules governing the payment of state and local government radiological energy preparedness expenses by public utilities.

Analysis prepared by the Public Service Commission of Wisconsin.

ANALYSIS

On April 24, 1981, the Public Service Commission issued a notice of proposed rulemaking to adopt rules governing the payment of nuclear safety preparedness expenses of state and local governments by utilities which operate nuclear facilities. That notice stated in part:

The United States Nuclear Regulatory Commission and Federal Emergency Management Agency have published rules regarding emergency planning regulations for radiological emergencies and for review and approval of state and local emergency plans and preparedness for coping with the off-site effects of radiological emergencies. (See 10 CFR, Parts 50 and 70, and 44 CFR, Part 350.) State plans are submitted for approval by the governor or the governor's designee. If a plan is not approved, an operating nuclear plant may be shut down (10 CFR ss. 50.54(s)(2)).

The Public Service Commission believes that the cost of implementing emergency preparedness plans should be borne by those utilities which operate nuclear facilities in Wisconsin. To facilitate payment of such expenses by utilities the commission is proposing adoption of Chapter PSC 115: Non-Budgeted Radiological Protection Expenses.

Subsequent to hearing and written submissions, the commission has revised the rules slightly, but their general substance remains the same as those noticed:

Proposed sec. PSC 115.01 states the purpose of ch. PSC 115: to facilitate utility contributions to the financial support of state and local governments' offsite radiological emergency preparedness activities.

Proposed sec. PSC 115.02 specifies the five Wisconsin utilities to which the rules apply.

Proposed sec. PSC 115.03 sets forth the type of expenses to which utilities may contribute (state and local expenses to establish and maintain radiological emergency preparedness plans) and the dollar amount which may be spent: \$350,000 in the aggregate for the initial year and \$250,000 per year thereafter.

Proposed sec. PSC 115.04 sets an appeals procedure to determine what costs a utility or utilities may reasonably include for ratemaking purposes when a disagreement arises as to the reasonableness of any expense.

#### STATUTORY AUTHORITY

Pursuant to authority vested in the Public Service Commission by Chapter 196 and sec. 227.014(2)(a), and by secs. 196.02(1), and 196.37, Stats., the Public Service Commission adopts rules as follow:

Sec. PSC 115.01, 115.02, 115.03 and 115.04, Wis. Adm. Code are created to read:

PSC Chapter 115  
RADIOLOGICAL EMERGENCY PREPAREDNESS EXPENSES

115.01 PURPOSE AND AUTHORITY. The purpose of this chapter is to prescribe procedures enabling electric utilities owning, operating or dependent upon nuclear generating facilities to contribute to the financial support of offsite radiological emergency preparedness activities of state and local governments.

115.02 APPLICABILITY. (1) This chapter shall apply to the following electric utilities:

- (a) Wisconsin Electric Power Company
- (b) Wisconsin Public Service Corporation
- (c) Wisconsin Power and Light Company
- (d) Northern States Power Company of Wisconsin
- (e) Madison Gas & Electric Company

(2) These rules apply to expenses incurred by the utilities identified in sub. (1) subsequent to July 1, 1981, as a result of costs experienced by state and local governments in developing and implementing radiological emergency response plans.

115.03 GENERAL CRITERIA FOR AUTHORIZING EXPENDITURES FOR OFFSITE RADIOLOGICAL EMERGENCY PREPAREDNESS. (1) The commission shall authorize expenses incurred by the utilities identified in sec. PSC 115.02(1) for the purposes set forth in sec. PSC 115.01 to the extent that such expenses:

(a) are incurred by state agencies to establish and maintain radiological emergency preparedness plans and do not exceed \$350,000 in the aggregate for the year beginning July 1, 1981, and \$250,000 in the aggregate for subsequent years.

(b) (1) are incurred by local governmental authorities to establish and maintain radiological emergency preparedness plans and do not exceed \$350,000 in the aggregate for the year beginning July 1, 1981, and \$250,000 in the aggregate for subsequent years.

(2) Such costs shall be mutually agreed upon by the local government and the utility owning, operating or dependant upon a nuclear generating facility the Emergency Planning Zone of which is located wholly or partially within the boundaries of the local government.

(2) Authorized expenses shall be limited to incremental costs to state and local governments of radiological emergency response plan components designed to substantially comply with the minimum standards of the Nuclear Regulatory Commission required for continued nuclear power plant operation or the licensing of a new nuclear power facility.

(3) The expenses authorized by sub. (1) (a) shall be allocated among the utilities identified in sec. PSC 115.02 on a basis to be determined by the electric utilities involved. If the utilities cannot agree on allocation, they may submit the matter to the chairman of the commission for an apportionment of costs.

115.04 APPEALS. (1) If any utility identified in Section PSC 115.02 or group of such utilities participating in the state radiological preparedness program complains to the Public Service Commission that state or local government costs are unreasonable, the Commission shall investigate the complaint. If there appears to be sufficient basis for complaint, the Commission shall set the matter for public hearing upon 10 days' notice to the complainant and the appropriate governmental agencies. After the hearing, if the Commission determines that the costs complained of are unreasonable, the Commission shall by order determine costs which may reasonably be included as necessary utility expenses for ratemaking purposes.

(2) Complaints to the Commission may be based on objections to the total program budget as proposed by the Department of Administration or to specific expenses incurred as a result of program operation.

The rules contained in this order will take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in sec. 227.026, Stats.

Dated at Madison, Wisconsin, Sept 17, 1981

By the Commission.

Jacqueline K. Reynolds  
Jacqueline K. Reynolds  
Secretary to the Commission

## REPORT

### a. FINDINGS OF FACT.

The Public Service Commission on June 12, 1981, held hearing into proposed rules to allow utilities to share in the cost of local government and state agency expenses incurred in developing and implementing radiological energy preparedness plans. Under the proposed rules, those utilities operating or dependent upon nuclear generating plants would be allowed to include as a necessary cost in ratemaking, expenses charged them by local governments and state agencies.

The reason for these rules was explained in the notice of rulemaking hearing:

The United States Nuclear Regulatory Commission and Federal Emergency Management Agency have published rules regarding emergency planning regulations for radiological emergencies and for review and approval of state and local emergency plans and preparedness for coping with the offsite effects of radiological emergencies. (See 10 CFR, Parts 50 and 70, and 44 CFR, Part 350.) State plans are submitted for approval by the governor or the governor's designee. If a plan is not approved, an operating nuclear plant may be shut down (10 CFR ss. 50.54(s)(2)).

The Public Service Commission believes that the cost of implementing emergency preparedness plans should be borne by those utilities which operate nuclear facilities in Wisconsin. To facilitate payment of such expenses by utilities the commission is proposing adoption of Chapter PSC 115: Non-Budgeted Radiological Protection Expenses.

The commission finds that the proposed rules are necessary to facilitate payment of the costs of such emergency preparedness plans by utilities operating nuclear plants and that the limits included in the rules are reasonable amounts to cover these costs.

b. NEED FOR THE RULES.

Because plans for radiological emergencies are a requisite for continued operation of nuclear power plants, there must be a method of funding such plans. The rules adopted in this docket facilitate an orderly method of determining reasonable costs to be paid by utilities operating nuclear plants.

c. MODIFICATIONS AFTER HEARING.

For the most part, the rules being adopted are identical in substance to those proposed. A few changes have been made as a result of testimony at the hearing:

(1) The amounts originally contained in the rules as limits on total expenditures by utilities were \$250,000/year for state agency and \$250,000/year for local radiological protection costs. Because testimony at the hearing indicated that this amount may be insufficient, particularly for start-up costs, these amounts have been increased to \$350,000 each for the initial year.

(2) The term incremental costs has been specifically added to sec. PSC 115.03 (2) to insure that costs assessed against utilities are associated only with nuclear emergency preparedness plans.

d. RESPONSE TO LEGISLATIVE COUNCIL REPORT.

The commission has revised the proposed rules to comport with many of the suggestions and comments of the Legislative Council.

As to "Form, Style and Placement in Administrative Code" the suggestions in comments a. and b. are accepted and a more complete analysis of each proposed rule is provided, as advised in paragraph c. of the legislative council comments. The council suggests that some discussion be made of the state emergency plan regarding radiological safety. Radiological safety is the responsibility of the state division of emergency government, and the PSC is not equipped to discuss its operations in detail.

The comments in paragraphs (d) through (h) of the legislative council report have all been incorporated into the final draft. The legislative council further suggests that the fiscal impact statement should have included an analysis of fiscal impact on the utilities covered by the rule. Sec. 227.019(2), Stats., does not require an analysis of impact on private parties. In any event, the monetary limits contained in the rules themselves should provide a good idea of the fiscal impact on those utilities covered by the rule.

As to "Adequacy to Related Statutes, Rules and Forms," the legislative council suggests that Federal Register citations to federal rules be provided in addition to Code of Federal Regulation citations in the analysis. This will be done as to future rules.

The council report also suggests that the rule analysis or a note to the rule might explain the rules' relationship to other PSC rules dealing with accounting or expense reporting.



At present there are no such rules, since accounting procedures are exempted from rulemaking, and expenses are analyzed on an individual basis in rate cases.

As to "Clarity, Grammar, Punctuation and Plainness," the legislative council report notes several areas of the proposed rules which could be clearer. Point (a), (c) and (d) of the comments have led to changes in the rules, such as the use of "the active voice."

Comment b. inquires as to use of the words "enable" and "contribute" in sec. PSC 115.01 and asks whether there is any statutory obligation for utilities to pay the costs of nuclear emergency preparedness plans. The reason why these words are used in the rule is that there is no federal or state statute requiring utilities to pay these costs. Payments are considered to be contributions.

Most of the criticisms of paragraphs (e)-(h) have resulted in rewording of the rules. With regard to paragraph (i) it should be noted that under sec. PSC 115.04 a utility or group of utilities may appeal both budget and incurred expenses.

e. LIST OF PERSONS EXPRESSING OPINION ON PROPOSED RULES.

Commonwealth Edison Company  
Northern States Power Company  
Wisconsin Electric Power Company  
Wisconsin Public Service Corporation  
Wisconsin Power and Light Company  
Madison Gas and Electric Company  
by Edward J. Lipke  
Dairyland Power Cooperative  
by James W. Taylor  
State Division of Emergency Government  
by Joseph LaFleur, Administrator  
Citizens for a Better Environment  
by Richard White  
Dawn Tompkins