

Chapter PSC 6

ASSESSMENT OF COMMISSION'S HOLDING COMPANY REGULATION COSTS

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Note: Chapter PSC 6 was created as an emergency rule effective May 5, 1986.

PSC 6.01 Scope. The purpose of this chapter is to implement s. 196.84, Stats., authorizing the commission to assess against a holding company or a nonutility affiliate the expenses attributable to the performance of its duties under s. 196.795, Stats.

History: Cr. Register, November, 1986, No. 371, eff. 12-1-86.

PSC 6.02 Definitions. (1) "Holding company" has the meaning set forth in s. 196.795 (1) (h), Stats.

(2) "Nonutility affiliate" has the meaning set forth in s. 196.795 (1) (j), Stats.

(3) "Public utility affiliate" has the meaning set forth in s. 196.795 (1) (l), Stats.

(4) "Holding company system" has the meaning set forth in s. 196.795 (1) (i), Stats.

(5) "Cost of any increase in regulation of any public utility affiliate" means the total of commission expenditures which are in excess of the commission expenditures which are properly assessable for utility regulation under s. 196.85, Stats., and ch. PSC 5 and which expenditures are directly or indirectly attributable to the commission's implementation and enforcement of s. 196.795, Stats., as set forth in s. PSC 6.03.

(6) "Direct assessments" are charges made by the commission to holding companies or nonutility affiliates or both for the activities and expenditures set forth in s. PSC 6.05.

(7) "Remainder assessments" are charges made by the commission to holding companies or nonutility affiliates or both for the expenditures set forth in s. PSC 6.06. They are calculated by subtracting direct assessments from the commission's total holding company regulation expenditures to arrive at a remainder.

(8) "Advance payment of a remainder assessment" means payment, in advance, of remainder assessments which have been projected for the current fiscal year but have not yet been totally incurred by the commission. This payment is calculated by adding 10% to the remainder assessment for the prior fiscal year. Payment for remainder assessment expenditures incurred in the prior fiscal year by the commission, when such payment is made during the current fiscal year, is not within the definition of "advance payment of remainder assessment."

History: Cr. Register, November, 1986, No. 371, eff. 12-1-86.

PSC 6.03 Occasion for assessment of expenditures. Expenditures of the commission are assessable against a holding company, or a nonutility affiliate, or both, in a holding company system whenever commission expenditures have been incurred because of any increase in regulation of a public utility affiliate, where such expenditures have been reasonably required in order for the commission to implement and enforce s. 196.795, Stats. Such assessable expenditures include, but are not limited to, expenditures incurred by the commission in carrying out the following regulatory duties:

(1) Granting or denying a certificate of approval to form a holding company;

(2) Holding a hearing concerning an application for a certificate of approval to form a holding company;

(3) The modification or addition of any term, limitation or condition of a certificate of approval to form a holding company;

(4) Determining whether a takeover of a holding company as set forth in s. 196.795 (3), Stats., is in the best interests of utility consumers, investors and the public;

(5) Making determinations regarding capital impairment of public utility affiliates in holding company systems;

(6) Examination of books, records, documents and other information relating to a holding company system;

(7) Conducting any litigation related to the protection of a holding company system's business information from public disclosure;

(8) Monitoring and enforcing s. 196.795 (5), (c), (d), (dm), (dr), (f), (g) and (h), Stats.;

(9) Considering and determining, in a rate proceeding, attributions of tax and other benefits or liabilities pursuant to s. 196.795 (5) (i), Stats.;

(10) Regulating holding company system real estate transactions between public utility affiliates and holding companies or between public utility affiliates and nonutility affiliates in a holding company system, including leases;

(11) Approving or disapproving the termination of the interest of a holding company system in a public utility affiliate;

(12) Regulating advertising pursuant to s. 196.795 (5) (n), Stats.;

(13) Determining compliance with and enforcement of s. 196.795 (6m) (b), Stats., including the costs of determining the assets of each nonutility affiliate;

(14) Investigating and making determinations regarding the selling at retail, leasing, installing, maintaining or servicing of appliances pursuant to s. 196.795 (5) (g), Stats.;

(15) Investigating, and approving or disapproving, the use by nonutility affiliates of the services of employees of public utility affiliates pursuant to s. 196.795 (5) (r), Stats.;

(16) Regulating property contracts or arrangements between public utility affiliates and nonutility affiliates pursuant to s. 196.795 (5) (s), Stats.;

(17) Administering the reporting requirements set forth in s. 196.795 (6), Stats.;

(18) Conducting commission investigations into the impact of the operation of every holding company system on every public utility affiliate in the holding company system as set forth in s. 196.795 (7), Stats.;

(19) Conducting hearings and investigations to determine if any practice of a holding company system violates any provisions of s. 196.795 (5) (b) to (s), Stats., or any limitation, term or condition of the certificate of approval to form a holding company, all pursuant to s. 196.795 (7) (b), Stats.;

(20) Conducting all litigation arising out of any order of the commission directing a holding company system to modify or cease a practice which violates any provision of s. 196.795 (5) (b)

to (s), Stats., or any limitation, term or condition of its certificate of approval to form a holding company;

(21) Conducting any investigation and hearing regarding the necessity of ordering a holding company to terminate its interest in a public utility affiliate under s. 196.795 (7) (c), Stats., and any litigation associated therewith;

(22) Conducting any intervention by the commission in any proceeding which involves an application of or issue related to s. 196.795, Stats., pursuant to its authority to intervene under s. 196.795 (10), Stats.;

(23) Providing assistance, monitoring and advocacy in protecting small business interests under s. 196.795, Stats., in any action or proceedings before the commission, pursuant to s. 196.795 (10m), Stats.;

(24) Conducting any other litigation arising out of the performance of the commission's regulatory duties with respect to the implementation and enforcement of s. 196.795, Stats.;

(25) Ascertaining and collecting payment of the commission's holding company regulation costs under s. 196.84, Stats.;

(26) Determining future investment terms, limitations or conditions on holding companies formed prior to November 28, 1985, pursuant to s. 196.795 (11) (b), Stats.;

(27) All other costs and expenses reasonably required in order for the commission to implement and enforce s. 196.795, Stats.

History: Cr. Register, November, 1986, No. 371, eff. 12-1-86; correction in (13) made under s. 13.93 (2m) (b) 7., Stats.

PSC 6.04 Entities subject to assessment. Direct or remainder assessments for holding company regulation costs shall be made against:

(1) Holding companies;

(2) Nonutility affiliates;

(3) Public utilities prior to their becoming public utility affiliates, in circumstances where there does not exist a holding company or a nonutility affiliate against which to assess the commission's holding company regulation costs. Examples of such situations include a person who has applied for but has not yet been granted a certificate of approval to form a holding company; a person who has applied for and has been denied a certificate of approval to form a holding company; and a holding company or nonutility affiliate which has insufficient resources with which to pay the commission's holding company regulation costs. In the event a public utility pays these holding company regulation costs, said costs are not to be recouped by the utility through the rates which it charges consumers.

(4) Except as provided in sub. (3), assessments for the commission's holding company regulation costs may not be made directly or indirectly against any public utility affiliate.

History: Cr. Register, November, 1986, No. 371, eff. 12-1-86.

PSC 6.05 Direct assessments. (1) ACTIVITIES INCLUDED. All investigations, hearings, proceedings and all other activities which are reasonably attributable to a particular holding company or nonutility affiliate, whether or not a docket number is assigned, shall be included in the direct assessment of the costs of any increase in the regulation of any public utility affiliate of that holding company or nonutility affiliate.

(2) **TYPES OF EXPENSES.** The following types of expenditures attributable to the performance of the commission's holding company regulatory duties shall be included in direct assessments:

(a) Salary, including fringe benefits;

(b) Travel expenses;

(c) The costs of expert witnesses and consultants;

(d) Intervenor compensation awarded by the commission under ch. PSC 3;

(e) Any other appropriate expenditures reasonably attributable to a particular holding company or nonutility affiliate.

(3) **PERSONNEL.** The time of the following commission personnel shall be directly assessed to a holding company or nonutility affiliate:

(a) All employees engaged directly on a specific investigation, hearing, review of books and records or other activity reasonably required in order for the commission to implement and enforce s. 196.795, Stats., with regard to a specific holding company or nonutility affiliate. This time shall include, but not be limited to, travel, testimony and attendance at hearings, analysis, preparation of audits, summaries and exhibits, and writing and typing reports.

(b) Department heads, when engaged directly in the activity set forth in sub. (1), rather than in a general supervisory capacity.

(c) Consultants or experts working on a specific proceeding.

(d) Hearing examiners.

(e) Reporters, stenographers and clerks engaged in preparation of transcripts, docketing or filing.

(4) **NO LIMIT TO DIRECT CHARGES.** The limitation of s. 196.85 (1), Stats., on direct assessments does not apply to charges against holding companies or nonutility affiliates made under s. 196.84, Stats.

History: Cr. Register, November, 1986, No. 371, eff. 12-1-86.

PSC 6.06 Remainder assessments. (1) TYPES OF ACTIVITIES. The activities whose expenditures are chargeable to holding company remainder assessments are those which cannot be reasonably attributed to any specific holding company or nonutility affiliate. Examples of such activities are rulemaking regarding holding company regulation and staff attendance at special seminars directly relating to holding companies.

(2) **APPORTIONMENT.** The holding company remainder assessment shall be apportioned among all holding company systems in existence during the fiscal year in which the remainder assessment costs have been incurred. Also included in the apportionment shall be those persons who, during such fiscal year, have applied for or been granted a certificate of approval to form a holding company but who have not yet formed a holding company. The commission shall charge each such holding company system or person a remainder assessment on the following basis: The commission will compare the assets of the holding company system or, in the case of a person who has not yet formed a holding company, the assets which will be held by that person's holding company system when it is formed, to the total assets of all existing and applied for but unformed holding company systems. The resulting percentage will be the percentage which the holding company system or person will pay of the total holding company remainder assessment. The assets will be the assets declared, reported or identified, as of the date of billing, under s. 196.795 (2) (b), 196.795 (5) (o) or 196.795 (6), Stats., or through any investigation or other commission proceeding, including review of financial statements. Assets shall be determined pursuant to s. 196.795 (5) (o), Stats.

(3) **ADVANCE PAYMENT.** No advance payment of a remainder assessment under s. 196.85 (2), Stats., shall be required for the first 2 full fiscal years after November 28, 1985. Advance payments shall be required starting with the fiscal year beginning July 1, 1988.

History: Cr. Register, November, 1986, No. 371, eff. 12-1-86.

PSC 6.07 Billing and collection procedures.

(1) **DETERMINATION.** The bill mailed by the commission shall constitute the commission's determination that the charges contained therein represent increases in the cost of regulating a public utility affiliate which are reasonably required in order for the commission to implement and enforce s. 196.795, Stats.

(2) **BILLING.** (a) *Direct assessments.* 1. The commission shall determine the expenses reasonably attributable to the specific holding company docket, holding company or nonutility affiliate, or both, and mail a bill to the holding company or nonutility affiliate, or both. The bill may be mailed during the progress of the holding company regulation activity, including consideration of

an application for a certificate of approval to form a holding company, or at the conclusion of such activity. It shall constitute notice of the assessment and demand for payment.

2. The commission shall render monthly statements of said direct assessments to holding companies and nonutility affiliates, which statements itemize the names of commission employees engaged in holding company regulation work, the hours expended, the hourly rates and the total amount of charges.

(b) *Remainder assessments.* 1. The commission shall annually, within 90 days of the commencement of each fiscal year, ascertain the total of its holding company regulation expenditures during the prior fiscal year which were reasonably required in order for the commission to implement and enforce s. 196.795, Stats. The commission shall deduct from this total all amounts directly assessable pursuant to s. PSC 6.05 to arrive at a remainder assessment.

2. For fiscal years 1985–1986, 1986–1987, and 1987–88, the commission shall assess to the holding companies and their nonutility affiliates and to those persons who applied for or were granted a certificate of approval to form a holding company but have not yet formed a holding company, a sum equal to the remainder, pursuant to the apportionment set forth in s. PSC 6.06 (2).

3. Beginning with fiscal year 1988–89 and thereafter, the commission shall assess to the holding companies and their nonutility affiliates and those persons who applied for or were granted a certificate of approval to form a holding company but have not yet formed a holding company, a sum equal to the remainder plus 10% of that remainder. This shall constitute the “advance remainder assessment.”

4. If, at the time of payment of the advance remainder assessment, the commissioner’s prior fiscal year remainder expenditures exceeded the advance payments of a remainder assessment made by the holding companies, nonutility affiliates and persons for that fiscal year, the commission shall charge the difference to the holding companies, nonutility affiliates and persons in the proportion which the assets of each holding company system or person bear to the total assets which are held by all such holding company systems and persons. If, at the time of payment, it is determined that the commission’s prior fiscal year remainder expenditures related to holding company regulation were less than the advance payments of a remainder assessment made for that prior fiscal year, the commission shall credit the difference to the current year’s payment. The remainder assessment bill constitutes notice of the assessment and demand for payment.

(3) PERIOD FOR PAYMENT AND OBJECTIONS. (a) *Direct assessments.* The holding company or nonutility affiliate shall, within 30 days after the mailing of the bill for the direct assessment, pay to the commission the amount for which it is billed. Within 30 days after the date of the mailing of any direct assessment bill, the holding company or nonutility affiliate that has been billed may file with the commission objections setting out in detail the grounds upon which the objector regards the bill to be excessive, erroneous, unlawful or invalid. The procedure set forth in s. 196.85 (4), Stats., shall be followed by the objector and the commission. If the commission overrules or disallows the objections, the bill must be paid within 10 days after notice of such overruling or disallowance.

(b) *Remainder assessments.* 1. Remainder assessments resulting from the regulation of public utility affiliates of holding companies shall be paid by holding companies and nonutility affiliates within 30 days after the bill for the remainder charges has been mailed to the holding companies and nonutility affiliates. The holding companies and nonutility affiliates shall have 30 days after the mailing of the bill containing the remainder charges to file objections, and the procedures set forth in s. 196.85 (4), Stats., shall be followed.

2. Holding companies and nonutility affiliates shall not be required to pay a remainder assessment in advance until the fiscal year beginning July 1, 1988; this does not prohibit the commission from assessing holding companies, nonutility affiliates or person’s remainder assessments covering commission expenditures made during the prior fiscal year and requiring payment of those remainder assessments within 30 days.

(c) Collection of direct and remainder assessments, including collections in the event of nonpayment, shall be made pursuant to the procedures set forth in s. 196.85, Stats.

History: Cr. Register, November, 1986, No. 371, eff. 12–1–86.

PSC 6.08 Supporting records. (1) TIME RECORDS. Direct assessment charges representing time of commission staff members shall be supported by weekly time sheets which record activities performed according to docket and other code numbers.

(2) TRAVEL EXPENSE RECORDS. Travel expense charges to direct assessment shall be supported by records of the travel expense accounts of commission staff members.

(3) OTHER EXPENSES. Any other directly attributable expenses which are directly assessed shall be supported by cost records.

History: Cr. Register, November, 1986, No. 371, eff. 12–1–86.