

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of Proposed Revision of Chapter PSC 116
Wis. Adm. Code – Cost of Fuel

1-AC-197

Clearinghouse Rule 00-180

FINAL ORDER ADOPTING RULES

The Commission adopts an order to repeal s. PSC 116.08 (2); to renumber ss. PSC 116.03 (2), and 116.04 (1) (intro.); to renumber and amend ss. PSC 116.03 (3), 116.03 (4), 116.04 (1) (a), 116.04 (1) (b), and 116.08 (title) and (1); to amend s. PSC 116.02 (note); to repeal and recreate ss. PSC 116.03 (1), 116.05, 116.06, and 116.07; and to create ss. PSC 116.03 (2), 116.03 (3), 116.03 (4), 116.03 (5), 116.03 (6), 116.03 (8), 116.03 (10) (a) to (k), 116.03 (11), 116.03 (12), 116.03 (13), 116.08, and 116.10, relating to the cost of fuel for electric public utilities.

The Commission issued a Final Decision dated April 11, 2002, to revise its fuel rules. The rules were submitted to the legislature and the review period ended without legislative action. This Final Order Adopting Rules includes the rules, as approved on April 11, 2002, with several formatting revisions, in the form specified in Wis. Stats. § 227.14 (1), a plain language analysis of the proposed rule as required in Wis. Stats. § 227.14 (2), a statement explaining the rule as required in Wis. Stats. § 227.19 (3) (a), and the final regulatory flexibility analysis. The rule does not require any new or revised forms as discussed in Wis. Stats. § 227.14 (3).

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

Statutory authority: ss. 196.02 (1), and (3), 196.20 (4) (d), and 227.11, Stats.
Statute interpreted: ss. 196.20 (4) and 196.192 (2) (a), Stats.

Background

On August 16, 1984, the Commission issued an order establishing the electric fuel rules, ch. PSC 116, Wis. Adm. Code, pursuant to s. 196.20 (4) (d), Stats. That statute abolished the Commission's authority to use an automatic fuel adjustment clause to set rates for certain electric public utilities and authorized the Commission to approve, after hearing, a rate increase for these utilities to allow for the recovery of costs caused by an emergency or extraordinary increase in the cost of fuel.

The Commission determines the amount to be charged for Wisconsin retail electric rates in periodic rate case proceedings. The process includes a forecast of the utility's revenues and expenses for a representative test year when the rates will be in effect. The forecast is comprised of test year expenses and revenues that are monitored under the fuel rules, ch. PSC 116, Wis. Adm. Code, and other costs. For most forecasted costs and revenues, differences between the projections and the actual amounts realized for costs will usually not cause rate changes. However, for the costs and revenues monitored under the fuel rules, a variance between forecasted and actual costs can trigger a rate change. Chapter PSC 116 defines the costs and revenues included in the fuel cost monitoring system and the process to determine and implement such a rate change.

Since the fuel rules were first promulgated, electricity demand has increased to the point of causing concerns about the reliability of the state's generation and transmission systems. The increasing demand and decreasing supply options have caused fuel costs to become more volatile

over the past several years. In response to the volatility of fuel costs, and the supply and demand issues, the state's electric utilities have been pursuing new options to assure reliable electric service at the lowest possible cost. These new options were not presently included in the rule. The fuel rules, therefore, required revision to allow the costs of these new options to be considered as part of the fuel costs in setting customer rates.

Analysis

The Final Rule contains eight general classifications of changes:

- 1) Capacity and transmission costs to meet system capacity requirements.
- 2) Retail customer tariffs under s. 196.192 (2) (a), Stats., for voluntary curtailable load.
- 3) Direct load control programs.
- 4) Opportunity to defer costs caused by an emergency.
- 5) Procedures for considering rate changes caused by extraordinary fuel cost increases and decreases.
- 6) Monthly reporting.
- 7) Revisions to accurately reflect how the statute is being administered in practice.
- 8) Transition authority.

1) Capacity and transmission costs to meet system capacity requirements

Under the existing fuel rules, the cost of fuel includes all capacity and energy costs of purchased power. In the context of an extraordinary increase in the cost of fuel, the new rule would exclude the capacity and transmission costs which are incurred to meet system capacity requirements. These costs will only be considered during a full rate case as one of the costs forecasted to calculate the utility's test year revenue requirement. In the context of an emergency, a utility may request deferral accounting treatment for all applicable costs caused by

that emergency, if that emergency causes the utility, on a short-term basis, to incur either an unavoidable increase in fuel costs or expenditures that offset an otherwise necessary increase in fuel costs, at an amount at least as great as the amount of added fuel costs needed to qualify as an extraordinary increase in the average cost of fuel. This may include deferral of capacity and transmission expenditures.

2) Retail customer tariffs under s. 196.192 (2) (a), Stats., for voluntary curtailable load

Section 196.192 (2) (a), Stats., allows an electric utility to buy down firm customers' demand as a way to meet system peak demand. The firm load curtailment program provides the utility an alternative to avoid expensive fuel or purchased power costs and to make power available for other firm customers when the demand for electricity exceeds available supply.

Under the existing fuel rules, the costs of this program would be classified as non-monitored expenses or as reductions in revenue. The new rule includes this cost as a monitored fuel cost.

3) Direct load control programs

A direct load control program is a system under which a utility pays a customer to reduce its electric load. Use of this program can make power available to firm customers when the demand for energy exceeds the available supply, while at the same time avoiding expensive power purchases. The existing fuel rules do not address the issue of rate recovery for the costs of such programs. Utilities incur these costs either as a credit to the monthly fixed customer charge or as an expense per occurrence, credited to the customer's bill. The first method does not implicate the fuel rules because it is a predictable energy resource. Under the new rule, the cost of the second method would be a monitored fuel cost. The estimate of the cost included in utility

rates is based on the charge per occurrence and the number of occurrences.

4) Opportunity to defer costs caused by an emergency

The existing fuel rules and the new rule use the distinguishing terms emergency and extraordinary. In both rules, an extraordinary event is one that causes a utility's fuel costs to rise above or fall below the variance range predicted in that utility's last full rate case. Under the existing rule an "emergency increase in the cost of fuel" is an increase in the cost of fuel, which is extraordinary and which is caused suddenly by forces beyond the utility's control or reasonable foresight. Emergency and extraordinary increases in fuel costs are given the same treatment under the existing rule.

Under the new rule, an "emergency" means an event that:

- (a) Is caused suddenly by forces beyond the utility's control or reasonable foresight; and
- (b) Causes expenditures that are unusual and infrequently recurring; and
- (c) Causes the utility to incur added costs appropriate for recognition in accounts 501, 518, 547, 555, and transmission service purchased excluding charges for network transmission service in account 565 of the uniform system of accounts present under 18 CFR 101 (2002) in an amount at least as great as the amount of fuel costs necessary to show an extraordinary increase in the cost of fuel.

Accordingly, an emergency under the new rule need not be caused by an increase in fuel costs, but must be sudden, unpredictable and in an amount that, if caused by an increase in fuel costs, would be considered extraordinary. The new rule treats an emergency differently than an extraordinary event. A utility may apply for deferral accounting treatment for all costs incurred caused by an emergency. Once deferred in the utility's accounts, such costs are not automatically recoverable in rates, but the Commission may authorize recovery of all or part of these costs in a full rate case conducted at a future date.

5) Procedures for considering rate changes caused by extraordinary fuel cost increases and decreases

Under the existing fuel rules, before it can seek a rate increase, the utility must show that (1) the monthly or cumulative variance range in fuel costs has actually been exceeded, and (2) based on the forecast of the average cost of fuel for the remainder of the year, the utility will remain outside of the annual fuel cost range established by the Commission. Fuel rate decreases could similarly be implemented if actual fuel costs were sufficiently less than forecasted costs. The new rule establishes a procedure to process rate changes caused by extraordinary fuel cost increases and decreases on an expedited interim basis with rates set at a requested level. Processing a rate increase request requires that the Commission hold a hearing. Any interim increase authorized will be subject to refund plus carrying costs at the utility's most recently authorized rate of return on common stock equity pending a final full review. The new rule requires the Commission to conduct a hearing as part of both the interim and final review of the request. This procedure sets a benchmark for expedited turnaround of the request while providing a strong ratepayer protection to prevent and discourage abuses of the expedited interim process.

6) Monthly reporting

The monthly reporting requirement in s. PSC 116.05, Wis. Adm. Code, was modified to include a one month filing deadline, and a requirement that a utility that files such report under a request for confidential treatment must also concurrently file a separate version of the report that is immediately available to public inspection.

7) Revisions to accurately reflect how the statute is being administered in practice

The definition of “purchased power” specifies that it include the cost of transmitting energy to the purchaser as currently monitored. Transmission costs are limited to those costs that are not incurred to meet system capacity requirements and that are not purchased for network service.

Terminology relating to “opportunity purchases” and “opportunity sales” describes those costs and revenues from power transactions currently monitored. Opportunity sales are monitored because these transactions offset fuel costs and purchased power.

8) Transition authority

Since the new fuel rules include changes to the definition of fuel and other components of ch. PSC 116, Wis. Adm. Code, and because utilities have different schedules for their next rate case, new s. PSC 116.10 establishes this transition process.

FINAL REGULATORY FLEXIBILITY ANALYSIS

The proposed rules would apply to all electric public utilities as defined in s. 196.20 (4) (a) 2., Stats. The proposed rules do not affect small businesses as defined in s. 227.114, Stats. As a result, a regulatory flexibility analysis is not required.

TEXT OF FINAL RULE

SECTION 1. PSC 116.02 (note) is amended to read:

Note: These are ~~Lake Superior District Power Co.,~~ Madison Gas and Electric Co., Northern States Power Co., Wisconsin Electric Power Co., Wisconsin Power and Light Co., and Wisconsin Public Service Corp.

SECTION 2. PSC 116.03 (1) is repealed and recreated to read:

PSC 116.03 (1) “Average cost of fuel” means cost of fuel per kilowatt-hour.

SECTION 3. PSC 116.03 (2) is renumbered PSC 116.03 (7).

SECTION 4. PSC 116.03 (2) is created to read:

PSC 116.03 (2) “Capacity” means the continuous load-carrying ability of electric generation expressed in megawatts.

SECTION 5. PSC 116.03 (3) is renumbered PSC 116.03 (9) and amended to read:

PSC 116.03 (9) ~~An “extraordinary”~~ “Extraordinary increase in the cost of fuel” means an increase ~~which exceeds~~ in the average cost of fuel for an electric public utility that is above the range set around current tolerances established under s. PSC 116.04 (1) for either the that utility’s cumulative or monthly fuel cost estimates approved by the commission which will significantly alter the cost of fuel from the base cost authorized in the utility’s latest rate case in an amount that will cause the average cost of fuel of that utility to exceed the current tolerance for that utility’s annual fuel cost estimate established under s. PSC 116.04 (1).

SECTION 6. PSC 116.03 (3) is created to read:

PSC 116.03 (3) “Commission” has the meaning set forth in s. 196.01 (2m), Stats.

SECTION 7. PSC 116.03 (4) is renumbered PSC 116.03 (10) (intro.), and amended to read:

PSC 116.03 (10) (intro.) ~~“Fuel” means coal, gas, nuclear fuel, oil, any other type of material used to generate electricity, and electricity purchased or sold wholesale. any of the~~ following:

SECTION 8. PSC 116.03 (4) is created to read:

PSC 116.03 (4) “Direct load control” means event-based payments to retail customers under a commission approved program under which an electric public utility may pay a firm customer to reduce its demand when system constraints threaten reliable service. For purposes of this chapter, direct load control does not include equipment costs and standard monthly credits.

SECTION 9. PSC 116.03 (5) is created to read:

PSC 116.03 (5) “Emergency” means an event that:

- (a) Is caused suddenly by forces beyond the utility’s control or reasonable foresight; and
- (b) Causes expenditures that are unusual and infrequently recurring; and
- (c) Causes the utility to incur added costs appropriate for recognition in accounts 501, 518, 547, 555, and transmission service purchased excluding charges for network transmission service in account 565 of the uniform system of accounts prescribed under 18 CFR 101 (2002) in an amount at least as great as the amount of fuel costs necessary to show an extraordinary increase in the cost of fuel.

SECTION 10. PSC 116.03 (6) is created to read:

PSC 116.03 (6) “Energy” means the amount of electric generation or use of electric power over a period of time, expressed in kilowatt-hours, megawatt-hours, or gigawatt-hours.

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SECTION 11. PSC 116.03 (8) is created to read:

PSC 116.03 (8) “Extraordinary decrease in the cost of fuel” means a decrease in the average cost of fuel of an electric public utility that is below the current tolerances established for under s. PSC 116.04 (1) for either that utility’s cumulative or monthly estimates in an amount that will cause the average cost of fuel for that utility to fall below the current tolerance for that utility’s annual fuel cost estimate established under s. PSC 116.04 (1).

SECTION 12. PSC 116.03 (10) (a) to (k) are created to read:

PSC 116.03 (10) (a) Coal.

(b) Natural gas.

(c) Nuclear fuel.

(d) Oil.

(e) Any other type of material converted to electric energy.

(f) Energy and associated transmission service purchased excluding charges for network transmission service.

(g) Opportunity sales.

(h) Opportunity purchases.

(i) Retail customer tariffs under s. 196.192 (2) (a), Stats., for voluntary curtailable load.

(j) Direct load control.

(k) Fuel price risk management tools implemented under a risk management plan approved by the commission.

SECTION 13. PSC 116.03 (11), (12) and (13) are created to read:

PSC 116.03 (11) “Opportunity purchase” means a transaction of one month or less

where the total hourly cost for capacity and energy is less than the incremental cost of the next dispatchable resource available to the utility. Substantially similar transactions repeated more than three times consecutively are not opportunity purchases. Opportunity purchase does not include the cost of capacity purchased to satisfy a utility's planning reserve requirements.

(12) "Opportunity sale" means a power sale as defined in s. PSC 117.03 (14) whether it is an in-state or out-of-state sale.

(13) "Unit costs of fuel" means the price for each fuel expressed as a cost per unit of fuel purchased or sold, e.g., dollars per million British thermal units or cents per kilowatt-hour.

SECTION 14. PSC 116.04 (1) (intro.) is renumbered PSC 116.04 (intro.).

SECTION 15. PSC 116.04 (1) (a) is renumbered PSC 116.04 (1) and amended to read:

PSC 116.04 (1) In each rate proceeding ~~the commission shall consider the costs of fuel in setting base rates and~~ considering fuel costs, the commission shall set ranges establish tolerances within which ~~monthly~~ the average cost of fuel costs may vary from monthly estimates either on a monthly or a cumulative basis or both, and a tolerance within which ~~annual~~ the average cost of fuel costs may vary from an annual estimates in terms of cost per kilowatt-hour ~~without being considered an emergency or extraordinary estimate on a calendar year basis.~~

SECTION 16. PSC 116.04 (1) (b) is renumbered PSC 116.04 (2) and, as renumbered, PSC 116.04 (2) (e) is amended to read:

PSC 116.04 (2) (e) ~~The possibility of sales or purchases of excess fuel or economy energy to or from other utilities or cooperatives~~ cost effect of known or projected opportunity purchases or opportunity sales.

SECTION 17. PSC 116.05 is repealed and recreated to read:

PSC 116.05 Monthly reports. (1) An electric public utility shall file monthly reports concerning its actual monthly and cumulative average cost of fuel and fuel costs, energy consumption, and usage of fuel. The reports shall be filed no later than the last working day of the month immediately following the month for which the data is being reported, except that the commission may grant one extension per year of not more than 10 days.

(2) If an electric public utility requests confidential treatment for any portion of a report it files pursuant to sub. (1), it shall also file concurrently a report containing aggregated data and all non-confidential material. This report shall be available immediately for public inspection. The detail in the report shall be sufficient for a person to use for the purpose of making a claim under s. PSC 116.08 (1).

(3) The utility shall provide copies of non-confidential reports to any interested person requesting them at the same time it files them with the commission.

SECTION 18. PSC 116.06 is repealed and recreated to read:

PSC 116.06 Emergencies. An electric public utility experiencing an emergency may apply for deferral accounting treatment for all costs provided under s. PSC 116.03 (5) (c) caused by that emergency. A utility may not apply for both a deferral under this section and a rate increase under s. PSC 116.07 (1) to seek recovery of the same costs.

SECTION 19. PSC 116.07 is repealed and recreated to read:

PSC 116.07 Extraordinary Increases. (1) If an electric public utility experiences an extraordinary increase in the cost of fuel it may seek authority to raise rates by requesting a proceeding limited in scope to the question of the average cost of fuel.

(2) After receiving a request under sub. (1), the commission shall hold a hearing. If the commission finds that the increase in the average cost of fuel claimed by the electric public utility is an extraordinary increase in the cost of fuel it shall order, on an interim basis, a rate increase to the applicant no later than 21 days after the applicant has provided notice to all its customers of its request. Notwithstanding any other notice provision in ch. PSC 2, notice under this section may be by special mailing or by means of a display advertisement in a newspaper having general circulation in the utility's service area. The interim order will set rates at the requested level, subject to refund plus carrying costs pending a full review, hearing and final determination by the commission. Carrying costs shall be at the utility's most recently authorized rate of return on common stock equity.

(3) After a full review and hearing limited in scope in accordance with sub. (1), the commission shall determine the reasonable and just average cost of fuel for the applicant. If the commission finds that the average cost of fuel is an extraordinary increase in the cost of fuel, the commission shall determine and issue a final order authorizing a reasonable and just rate increase to the applicant. If the average cost of fuel determined by the commission is not an extraordinary increase in the cost of fuel, the commission shall deny any rate increase.

(4) The annual average cost of fuel for purposes of the orders issued under subs. (2) and (3), shall be calculated by the actual prudent fuel costs reported in the most recent monthly report filed pursuant to s. PSC 116.05 (1) and a revised forecast of the unit costs of fuel for the remainder of the year.

(5) If the commission, under sub. (3), denies the request for a rate increase or orders, for the period that the interim order was in effect, a rate increase lower than the one authorized by the interim order, the commission, in its final order, shall require the utility to refund the net

difference between the increase in rates collected by the utility under the interim order, and the amount authorized by the final order, plus carrying costs on the net difference as provided in sub. (2).

(6) If an increase in rates is based on a hearing confined solely to fuel costs, the commission shall condition the increase on a refund of any excess revenues collected by the utility.

SECTION 20. PSC 116.08 (title) and (1) are renumbered PSC 116.09 and amended to read:

PSC 116.09 Initiation of hearings. The commission may order an ~~emergency or~~ extraordinary rate increase or rate decrease proceeding on its own motion or that of ~~another~~ any other interested person ~~or may expand the scope of any rate proceeding held under this section to consider other issues in addition to fuel.~~

SECTION 21. PSC 116.08 (2) is repealed.

SECTION 22. PSC 116.08 is created to read:

PSC 116.08 Decreases. (1) If an electric public utility experiences an extraordinary decrease in the cost of fuel the utility or any interested person may seek authority to decrease rates by requesting a proceeding limited in scope to the question of the average cost of fuel.

(2) No later than 21 days after receipt of a request under sub. (1), the commission shall, on an interim basis, order the rates effective prior to this order subject to refund pending a full review and final determination by the commission, or issue an order stating the reasons for denying the request. Alternatively at the request of the applicable electric public utility, the commission may order an interim decrease pending a full review and final determination by the commission.

(3) After a full review limited in scope in accordance with sub. (1), the commission shall determine the reasonable and just average cost of fuel for the applicable electric public utility. If the commission finds that average cost of fuel is an extraordinary decrease in the cost of fuel, the commission shall determine and issue a final order authorizing a reasonable and just rate decrease.

(4) The annual average cost of fuel for purposes of the interim and final orders shall be calculated as provided in s. PSC 116.07 (4).

(5) If the commission, under sub. (3), orders, for the period that the interim order was in effect, a rate decrease lower than the one authorized by the interim order, the commission, in its final order, shall require the utility to refund the net difference between the decrease in rates collected by the utility under the interim order, and the amount authorized by the final order, plus carrying costs on the net difference as provided in sub. (2). If the commission denies a rate decrease under sub. (3), there shall be no refunds.

SECTION 23. PSC 116.10 is created to read:

PSC 116.10 Transition. The commission shall have the authority to accommodate the timing of application of this chapter to each utility to ensure that utilities and ratepayers are not harmed by the transition from the rules in effect prior to [...revisor inserts date]. This provision expires for each electric public utility when the commission completes a full rate review for that utility, or five years after the effective date of this chapter, whichever is earlier.

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SECTION 24. Effective date.

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

(end)

THE COMMISSION ORDERS:

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.

Dated at Madison, Wisconsin, _____

By the Commission:

Lynda L. Dorr
Secretary to the Commission

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