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Public Utility Aid -- Production Plant Retirements
(Shared Revenue and Tax Relief -- Direct Aid Payments)

CURRENT LAW

Utility aid compensates counties and municipalities for costs they incur in providing services to public utilities. These costs cannot be directly recouped through property taxation since utilities are exempt from local taxation and, instead, are taxed by the state. Aid is limited to three types of qualifying properties owned by certain public utility companies. These companies include investor-owned and municipally-owned light, heat, and power companies, qualified wholesale electric companies, transmission companies, electric cooperatives, and municipal electric associations. Qualifying utility property includes electric substations, general structures, such as office buildings, and power production plants. Aid on substations and general structures is computed by applying a rate of nine mills to the net book value of the qualifying property. Aid on power production plants equals $2,000 multiplied by the plant's generating capacity, expressed in megawatts (MW). If the production plant derives energy from a renewable energy resource or from garbage, an additional $2,000 per megawatt is paid. If the production plant began operating after 2003, additional aid may be paid based on the plant's location or its use in cogeneration or as a baseload plant. Finally, payments are made if spent nuclear fuel from production plants is stored in the county or municipality. Aid payments are divided between the county and municipality where the qualifying property is located based on percentages specified in the statutes. In 2012 (2012-13), utility aid payments equaled $33.0 million for counties and $34.8 million for municipalities, or $67.8 million in total.

GOVERNOR

No provision.

DISCUSSION POINTS

1. Except for a limited number of production plants covered under other provisions, state aid payments are made to local governments where production plants are located that are "equal to the number of megawatts that represents the production plant's nameplate capacity, multiplied by $2,000." If the plant is located in a city or village, that city or village receives two-thirds of the payment, and the balance of the aid is paid to the county. If the plant is located in a town, the town receives one-third of the payment, and the county receives the rest of the aid.

2. The Department of Revenue (DOR) administers the utility aid program. The state aid statutes contain several references to the Public Service Commission (PSC) and the state statutes governing the regulation of utilities (chapter 196). These include references to the system of accounts established by the PSC and the certification of certain production plants that qualify for a minimum aid payment. Though not a statutory requirement, Commission staff assist DOR in identifying newly constructed production plants and determining when those plants begin operating.

3. State law requires the PSC to biennially prepare a report that "evaluates the adequacy and reliability of Wisconsin's current and future electrical capacity and supply." The report is called the Strategic Energy Assessment (SEA), and the most recent report was issued in November, 2012. The report includes information supplied by all of the state's electricity providers and transmission owners, including historic and forecasted data. The current SEA incorporates data forecasted through 2018.

4. The SEA reports retirements at two production plants. In 2012, Dairyland Power Cooperative retired three of the five generating units at its Alma plant located in the City of Alma (Buffalo County). The three units had a combined capacity of 45 MW. The two units remaining in production have a combined capacity of 136 MW, and a second plant, called "J.P. Madgett," has a capacity of 387 MW. In 2013, Madison Gas and Electric (MGE) plans to retire three units at its Blount Street facility in the City of Madison (Dane County). These units have a capacity of 78 MW. An additional 375 MW is located either at the Blount Street plant or at other production facilities in the City of Madison.

5. Based on its reading of the statutes, DOR indicates that it does not intend to reduce aid payments to these local governments based on the retirement of the indicated generating units. DOR notes that the statutes governing the payments direct it to calculate aid payments based on the capacity of production plants, and the statutes make no reference to generating units. Although not raised by DOR, another consideration in support of its position is that the statutes do not provide a definition of "retirement."

6. If the capacity associated with those units was removed from state utility aid calculations, the Alma retirements would affect aid payments in 2014 (2014-15), and the Blount Street retirements would affect aid payments in 2015 (2015-16). The aid payment to the City of Alma would not be affected because Alma's payment is "capped" under a statutory provision limiting each municipality's payment to $425 per capita. However, aid to Buffalo County would decrease by $30,000. DOR estimated Buffalo County's aid payment for 2013 at $478,245. Aid would decrease to the City of Madison by $104,000 and to Dane County by $52,000. For 2013,

DOR estimates payments of $1,375,768 for Madison and $2,163,210 for Dane County.

7. Relative to statewide utility aid payments totaling $67.8 million in 2012, the potential aid reduction associated with the two retirements is relatively small ($186,000). However, this issue is noteworthy because other retirements are scheduled in coming years. Dominion Resources, Inc. has announced that it will discontinue the generation of electricity at its Kewaunee Power Station in the Town of Carlton (Kewaunee County) in 2013. The plant's capacity is over 500 MW and the related aid payments to the Town and County are about $1 million, combined. In addition, Wisconsin Power and Light (WPL) recently announced its intent to retire capacity at its Nelson Dewey (Village of Cassville in Grant County) and Edgewater (Town of Wilson and City of Sheboygan in Sheboygan County) plants by the end of 2015. Informal conversations with staff at the PSC indicate that other utilities are likely to retire additional capacity at other facilities in coming years.

8. The retirements are explained, in part, by two factors. In response to capacity challenges and a fleet of aging plants, Wisconsin utilities constructed a number of new production plants in the period between 2002 and 2010. Major changes to the utility aid formula in 2003 and 2007 were intended to encourage counties and municipalities to allow the location of new plants within their boundaries. With this additional capacity, the current SEA reports that the state's electric utilities are forecast to have a reserve margin of nearly 22% in 2013 and the margin is "expected to remain above 11.6% through 2018." The PSC characterizes this as a "healthy planning reserve margin and adequate capacity."

9. The second factor relates to federal environmental emission requirements. To comply with these requirements, Wisconsin utilities have undertaken a number of emission control projects. The latest SEA lists 13 recent projects with costs totaling $2.7 billion. Rather than incur additional costs to bring aging production units into environmental compliance, some units are being retired. Based on recent press accounts, this was a consideration relative to the WPL retirements noted above.

10. Arguments can be made for and against continuing aid payments for retired generating units. The retired generating units are expected to continue under utility ownership, so they will continue to be exempt from local property taxes. Counties and municipalities may argue that their inability to tax the units is a reason to continue aid payments. On the other hand, the units are exempt from local taxation because the state imposes a tax on light, heat, and power companies that is in lieu of local property taxes. The state tax is based on these companies' gross revenues. Since these units are no longer generating power resulting in electric sales, the state will not receive any state tax revenue related to the retired units.

11. When the utility aid statutes were modified in 2003, the Legislature was aware that aging plants would be taken out of production, and 2003 Wisconsin Act 31 created a provision [s. 79.04(5)] to address that circumstance. That statute is modeled after a prior law provision that was created when Wisconsin Electric Power Company's plant in Saint Francis was decommissioned and sold to an investor for development. This caused the Saint Francis site to become subject to property taxes.

12. Under the provision created by Act 31, payments are extended to municipalities and counties containing production plants that were previously exempt from general property taxes and are decommissioned. Municipal and county payments equal a percentage of the aid that was paid for the plant in the last year the plant was exempt from general property taxes less the amount of property taxes paid on the plant for municipal or county purposes in the current year. The percentages decline from 100% in the first year the plant is taxable, to 80% in the second year the plant is taxable, to 60% in the third year the plant is taxable, to 40% in the fourth year the plant is taxable, and to 20% in the fifth year the plant is taxable.

13. This statute is not applicable to the capacity currently being removed from production for two reasons. First, the capacity relates to units being retired, while the statute requires the property to be decommissioned. Second, the units are not expected to become subject to local property taxes. Because the statute applies to property that was exempt, the statute implies that property must be subject to local property taxes in order to qualify for decommissioning aid.

14. Under this statute, DOR intends to make decommissioning aid payments to Kewaunee County and the Town of Carlton where the Kewaunee Power Station is located. The nuclear plant's owner has indicated that it will stop generating electricity at the plant in May, 2013, and begin the process of decommissioning, which will take a number of years. With no electricity sales, the state will not tax the utility under the state gross revenues tax, and DOR indicates that the Town of Carlton intends to assess the plant for property tax purposes next year and tax the plant for the 2014(15) property tax year. The state law authorizing decommissioning aid specifies that a plant must be decommissioned for aid to be paid. Even though the plant will be in the decommissioning process, DOR indicates that it intends to begin paying decommissioning aid to Kewaunee County and the Town of Carlton in 2014. After that payment, four additional payments will be made, with the last payment occurring in 2018.

15. The current state aid provisions related to production plant capacity that is taken out of service may not adequately reflect current utility practices. If the Committee believes that additional clarity would be beneficial, it could modify current statutory provisions regarding decommissioning aid by directing DOR to reduce the aid related to production plants where capacity is retired. The reduction could begin in the year following the capacity being retired and continue under the phase-out schedule established under current law for decommissioned plants. The PSC could be directed to notify DOR of capacity retirements reported to the PSC for purposes of its biennial SEA. The PSC and DOR could be directed to jointly propose a definition of retirement through administrative rule. Finally, the current provision governing decommissioning aid could be modified to replace the term "decommissioned" with references to "retired" and to remove the condition that property be subject to property taxation before a payment can be made. Retirement would include the decommissioning of power production plants.

ALTERNATIVES

1. Require utility aid based on a production's plant's capacity to be reduced when all or part of the plant is retired from service based on current law provisions regarding aid payments when a production plant is decommissioned. Modify the provisions regarding aid for

decommissioned plants by removing the condition that the property be previously exempt from taxation and currently subject to taxation and replace references to "decommissioned" with references to "retired." Require the PSC to notify DOR of any capacity retirements reported as part of the Commission's <u>Strategic Energy Assessment</u>. Require the PSC and DOR to create a definition for "retired" by proposing both emergency and permanent administrative rules. Specify that the proposed rules be submitted to the Legislative Council's administrative rule clearinghouse by December 31, 2013, and specify that the PSC and DOR are not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and are not required to provide a finding of emergency. Provide that the aid payment changes would first apply to payments made in the first calendar year beginning after the effective date of the emergency rule and would first apply to retirements denoted in the November, 2012, <u>Strategic Energy Assessment</u>.

2. Retain current law.

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