

CR 10-147

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Rule Modifications to Wis. Admin. Code ch. PSC 118
Regarding Renewable Resource Credits

1-AC-234

Clearinghouse Rule 10-147

ORDER ADOPTING FINAL RULES

The Public Service Commission of Wisconsin proposes an order to repeal PSC 118.02 (13) and 118.06 (2) (d) 3. c.; renumber and amend PSC 118.01, 118.02 (1), (10) and (12), 118.03 (3) (b), 118.06 (1) and 118.08; consolidate, renumber and amend PSC 118.03 (1) (c) 1. and 2.; amend PSC 118.02 (2), (4), (6) and (7), 118.03 (title), (1) (intro.) and (a), 118.04 (title), (2) (e), (f), and (g) 2. and 3., 118.04 (3), (4) and (5), PSC 118.05 (1), PSC 118.06 (title), (2) (b), (c) (intro.), (c) 5., (d) (intro.), 2., 3. and 3. a., (3), (4) (a), and (5), 118.07; repeal and recreate PSC 118.06 (2) (d) 3. b.; create PSC 118.01 (2), 118.02 (1e), (1m), (3m), (5), (5m), (6g), (6r), (7g), (7r), (9), (10) (a) and (b), (14), (15) and (16), 118.025, 118.03 (2) and (4), 118.04 (1), (1m), (2) (g) 4. and 5., 118.05 (1) (c) and (d), 118.055, 118.06 (1) (a) and (b), (2) (cm), (d) 1m., and (em), 118.08 (2) and 118.09, relating to renewable resource credits.

REPORT TO THE LEGISLATURE

Set forth as Attachment A.

FISCAL ESTIMATE

There are no additional costs to state or local government as a result of these changes. A completed Fiscal Estimate form is included as Attachment B. There is also no quantitative

financial impact on the private sector. The proposed changes implement legislative changes that expand the types of renewable resources that may be used to create renewable resource credits, thus giving an electric provider more choices to meet the Renewable Portfolio Standard.

EFFECTIVE DATE

These rule amendments 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 Kristin Ruesch, Communications Director, at (608) 266-9600. Other questions regarding this matter should be directed to docket coordinator Preston Schutt, at (608) 266-1462, or preston.schutt@wisconsin.gov. Hearing- or speech-impaired individuals may use the commission's TTY number. If calling from within Wisconsin, use (800) 251-8345; if from outside Wisconsin, use (608) 267-1479.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Anyone who needs to obtain this document in a different format should contact the docket coordinator listed above.

Dated at Madison, Wisconsin, October 6, 2011

By the Commission:

/s/ Sandra J. Paske

Sandra J. Paske
Secretary to the Commission

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Attachments

REPORT TO THE LEGISLATURE

A. NEED FOR THE RULE

The proposed rule will update ch. PSC 118 to create renewable resource credits by electric providers and include as eligible for the renewable portfolio standard those resources described in 2009 Wisconsin Act 406.

B. PLAIN LANGUAGE ANALYSIS

The analysis is set forth as Attachment A1.

C. TEXT OF THE RULE

The text of the Final Rule is set forth as Attachment A2.

D. PUBLIC HEARING ATTENDEES AND COMMENTS

A public hearing was held on February 15, 2011, at the Public Service Commission building, 610 North Whitney Way, Madison, Wisconsin. Those who provided input, and details about and responses to specific comments, are listed below.

Testimony at the Public Hearing and Public Service Commission Responses

Michael Potts

Mr. Potts, President and Chief Operating Officer of Orion Energy Systems (Orion), testified at the public hearing. Mr. Potts described Orion's business and one of its products, the Apollo solar light pipe. Mr. Potts also indicated that Orion worked with the Legislature to develop the legislation leading to the rulemaking. Mr. Potts indicated general support for the proposed rule, and expressed interest in a process whereby a formulaic approach is used to determine the number of renewable resource credits (RRCs) that non-electric resources would be entitled to create. Mr. Potts expressed interest in eliminating provisions allowing the commission to establish additional criteria in the future on which to base RRC calculations and advocated for using the same criteria from utility to utility.

The commission intends to establish formulas, through an investigation with an opportunity for public comment, that could be used to determine how to award RRCs for each type of non-electric facility. Since not all of the details about these calculations are known at this time, and since new technologies or changes to existing technologies may occur in the future, the commission will retain the ability to establish additional criteria.

Ted Zigmunt

Mr. Zigmunt, a former state legislator, stated that he authored the legislation that led to the rulemaking. Mr. Zigmunt stated that his intent in authoring this legislation was to ensure “direct use renewables” would be treated and valued the same as renewable resources generating electricity. Mr. Zigmunt also stated that his legislative intent was for direct use renewables to receive the same treatment from Focus on Energy with regard to incentives.

The rules do treat the output from non-electric renewable resources that displace electricity from a conventional resource the same as electric generation from renewable resources. The legislation did not make any reference or changes to the Focus on Energy program, and the rules do not apply to Focus on Energy incentives.

Michael Keleman

Mr. Keleman, an environmental engineer at InSinkErator and member of the Food Waste Committee for WasteCap Resource Solutions, testified to support inclusion of food waste as a feed stock for renewable energy under s. PSC 118.02. This provision remains in the rule. Mr. Keleman also indicated support for allowing “energy derived on site and used there” to be eligible for the Renewable Portfolio Standard (RPS) or to create RRCs.

Under s. 196.378, Stats., electricity derived from a renewable resource that is used onsite and not sold to the electric provider is already eligible for utility buy-back rates, and already reduces the electric provider’s need for RRCs by reducing load. The statute clearly provides that a non-electric facility that displaces use by the electric provider, or a customer or member of the electric provider of electricity from conventional resources, is eligible to create RRCs. To the extent that Mr. Keleman advocated for RPS eligibility for electric generation from renewable resources occurring “behind the meter” where the electricity is not sold to the electric provider, the statute does not specify that this type of electric generation can create RRCs. Because the law does not appear to allow “behind the meter” electric generation of this type to produce RRCs, the commission has not incorporated this part of Mr. Keleman’s suggestions in the rule.

Written Comments*Rolando Sanz-Guerrero*
Greenwood Fuels (Greenwood)

Greenwood requested changes to the rules to allow customers that generate electricity from renewable resources to be eligible to create RRCs. No changes are needed to accomplish this goal; customer-generated electricity from renewable resources is already eligible to create RRCs, as long as the electricity and RRCs are sold to the electric provider. Behind the meter customer-generated electricity from renewable resources is not eligible to create RRCs and cannot be used to comply with the RPS, per s. 196.378, Stats. This cannot be modified through rulemaking.

Greenwood recommended that the rules apply to renewable energy generated by the new fuel types added under 2010 Wisconsin Act 406 as of the Act's effective date. Changes have been made to accomplish this. See s. PSC 118.05 (1) (d).

Greenwood also requested changes to the rules to allow customers using non-electric facilities to create RRCs, rather than only having the electric provider eligible to create RRCs from non-electric facilities. Greenwood suggested requiring electric providers to create RRCs on behalf of their customers and to facilitate the transfer of the customer-owned RRCs to third parties. Greenwood suggested that the legislature intended to allow retail customers to be able to create and sell RRCs from non-electric facilities. However, state law conflicts with the concept of allowing customers to create and sell RRCs from non-electric facilities. Section 196.378 (3) (a) 1m. provides, "The commission shall promulgate rules that allow an electric provider to create a renewable resource credit based on use in a year by the electric provider, or a customer or member of the electric provider, of [list of qualifying resources]; but only if the use displaces the electric provider's, customer's, or member's use of electricity . . ." (Emphasis added.) The legislature could have easily said "the commission shall allow an electric provider or customer or member of an electric provider to create a renewable resource credit," but it did not do so. Therefore, the commission has no choice but to limit the creation of RRCs to electric providers. Additionally, the legislature recently enacted new provisions relating to agency rulemaking authority. One of these new provisions, Wis. Stat. § 227.11 (2) (a) 1., states:

A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

While Wis. Stat. § 227.11 (2) (a) 1. does not apply to this rulemaking, it is worth noting in the context of Greenwood's argument regarding legislative intent. The commission is concerned that requiring an electric provider to create RRCs on behalf of its customers would impose an administrative burden on the electric provider, the cost of which would be borne by all ratepayers, for the benefit of only a limited number of retail customers. If RRCs are to be created by retail customers, the commission believes a change to the statute is needed.

Greenwood requested that the commission certify customer-owned, non-electric facilities. No changes are needed to accomplish this goal. The rules do permit the commission to certify customer-owned, non-electric facilities; there is no specific ownership requirement in order to obtain certification for a non-electric facility.

Kevin L. Shafer, P.E.

Executive Director, Milwaukee Metropolitan Sewerage District (MMSD)

MMSD filed comments indicating it intends to seek certification of two of its projects to create RRCs under these rules. MMSD described the two projects and requested confirmation from the commission that the projects would qualify for RRCs. MMSD also requested changes to the rules in order to ensure that the projects would qualify for RRCs.

The first MMSD project, the South Shore Digester Gas Project, is described as an electric generating facility that can run on either natural gas or methane gas from decomposition of wastewater solids. MMSD indicated it believes the methane gas from decomposition of wastewater solids qualifies as a renewable resource under the rules. The commission agrees that the methane gas from decomposition of biological waste as described by MMSD would qualify as a renewable resource under the rules, therefore no changes were made.

The second MMSD project, the landfill gas utilization project at Jones Island, is described as allowing MMSD to use landfill gas in place of natural gas for electricity generation. MMSD believes there is ambiguity as to whether landfill gas would qualify for RRCs, due to the statutory definition of biomass, which expressly includes “landfill gases” and expressly excludes “garbage, as defined in s. 289.01 (9).” MMSD requests that the rules be modified to include landfill gas in the definition of biogas. Biogas is currently defined as “a gas created by the anaerobic digestion or fermentation of biomass, food processing waste or discarded food.”

The commission believes that electricity from landfill gas qualifies as a renewable resource under the statutory definition of biomass; therefore, no changes have been made. The change requested by MMSD would be redundant, as electricity from landfill gas already qualifies as a renewable resource.

*Peter L. Gardon and Bryan K. Nowicki
Attorneys for Orion Energy Systems (Orion), Reinhart Boerner Van Deuren S.C.*

Orion requested a change to s. PSC 118.02 (4) to allow a provider of the technology installed to displace electricity to act as a “designated representative.” The change has not been made. Under the existing rules, a designated representative may register a facility, request certification from the commission, or purchase or sell RRCs from a facility. Under the existing definition, only a person authorized by the electric provider may be a designated representative. Considering the fact that only an electric provider can create an RRC, it is not appropriate to authorize others by rule to conduct RRC activities.

Orion requested a change to s. PSC 118.03 (2) (b) to allow creation of an RRC from a non-electric facility placed in service prior to enactment of 2009 Wisconsin Act 406. Orion states that there “would seem to be no reason” to exclude non-electric facilities that existed prior to enactment of the legislation. However, the change requested would discourage the future adoption and installation of new non-electric facilities. For every RRC given to an existing non-electric facility, there is less incentive for a new non-electric facility to be installed. Therefore, no change has been made.

Orion requested a change to s. PSC 118.03 (2) (d) to ensure that conditions imposed by the commission would be consistent with a referenced statutory provision. This change is not necessary, as the rules of statutory construction would already require the conditions to be consistent with the referenced statutory provision. However, making this change may aid someone reading the rules in understanding what types of conditions could be imposed. Therefore, the change has been made.

Orion mentioned but did not request a specific change to s. PSC 118.04 (2) (e) regarding fractional RRCs for a non-electric facility being limited to 0.01 megawatt-hour. Orion asked whether this provision is consistent with allowing credit based on 100 percent of the displacement. This provision regarding fractional RRCs does not limit the amount of displacement that can be used for RPS compliance purposes; it only establishes reasonable rules under which an electric provider would account for such displacement. Anything less than 0.01 megawatt-hour indicated could be combined with future displacement activity to build up enough credit to make up a fractional RRC under the rules. This type of accounting provision is not inconsistent with the provision regarding allowing credit for 100 percent of the displacement; therefore, no change has been made.

Orion requested a change to s. PSC 118.05 (1) (a) to reduce confusion. The rule has not been changed because it more clearly limits the creation of an RRC than the language suggested by Orion. Orion's suggested language would introduce additional ambiguity. Orion requested a change to s. PSC 118.055 to allow a provider of a technology used to displace conventional electricity to protest an adverse commission decision regarding certification of a non-electric facility. This change has not been made, because the entity providing the non-electric facility would not have an interest directly affected by the decision. The certification decision would affect the electric provider and/or the owner of the facility; the entity that manufactured the facility or arranged for its installation is not entitled to RRCs from the facility.

Orion requested a change to s. PSC 118.09 (2) to include certain displacement formulas it proposed in the rules. The commission does not have sufficient information at this time on which to base specific displacement formulas, and therefore, formulas cannot be included in the rules. The commission will conduct an investigation with an opportunity for public comment to establish any formulas that will be used for calculating the amount of an RRC to be granted for a certified non-electric facility. The change requested has not been made; however, the rules have been changed to refer to a commission process through which displacement formulas may be established in the future.

Orion also included sample documents with its comments to illustrate ways the commission could acquire some of the detailed information set forth in the rules. The commission intends to take these sample documents into consideration in future activities to implement these rules.

Bill McClenahan

Government Affairs Director, Wisconsin Solar Energy Industries Association (WiSEIA)

WiSEIA indicated its support for the proposed rule and for the statutory changes that prompted the current rulemaking. WiSEIA also indicated support for additional changes to the RPS statute to "allow RRCs to be created for new solar hot water heaters that displace the local use of fossil fuels for heating." This change cannot be accomplished through administrative rules, so no changes were made in response.

WiSEIA also indicated support for allowing RRCs to be created on behalf of the customers of electric providers and indicated support for comments filed by Greenwood Fuels on this topic. See discussion under Greenwood Fuels.

Valy Goepfrich

Assistant Vice President-Operations & Analytics, WPPI Energy (WPPI)

WPPI suggested modifying ch. PSC 118 to better reflect how RRCs under Wisconsin law fit into the regional renewable energy tracking system scheme. Specifically, WPPI suggested describing both renewable energy certificates and RRCs in ch. PSC 118. A renewable energy certificate is an electronic representation of one megawatt-hour of renewable energy; it is the term for how the regional renewable energy tracking system used by Wisconsin electric providers tracks renewable energy. Not all of these renewable energy certificates meet the requirements under Wisconsin law of an RRC. However, a Wisconsin electric provider can use both RRCs and “renewable energy” to comply with the RPS. In practical terms, the “renewable energy” that a Wisconsin electric provider can use to comply with the RPS that does not qualify to create RRCs is tracked in the regional renewable energy tracking system as a renewable energy certificate. These nuances were not captured in ch. PSC 118 as drafted. Changes have been made throughout the rule to acknowledge the existence of renewable energy certificates that are not RRCs but which represent renewable energy that a Wisconsin electric provider may use for RPS compliance.

WPPI suggested language to clarify s. PSC 118.03 (2) (c). The specific language suggestion was not adopted; however, a different modification was made to this provision to offer clarification.

WPPI suggested adding an “example” to illustrate the rule language in s. PSC 118.04 (1) (a). An example similar to the language suggested by WPPI has been added.

WPPI suggested modifying several cross references in ss. PSC 118.055 (2) (b) and 118.06 (2) (d). The cross references have not been modified because they refer to the intended provisions.

E. RESPONSE TO THE LEGISLATIVE COUNCIL REPORT

A copy of the Legislative Council’s report, and responses to it, are included with the Report as Attachment A3.

F. FINAL REGULATORY FLEXIBILITY ANALYSIS

The final rule will have no negative impact on small businesses, as defined in s. 227.11 (1), Stats. The final rule may have a beneficial impact for small businesses in either of two ways:

- 1) The final rule establishes new ways for Wisconsin electric providers to create renewable resource credits (RRCs), in addition to all of the existing ways in the current rule. RRCs can be used to comply with Wisconsin’s Renewable Portfolio Standard (RPS) mandate. By giving electric providers new options for creating RRCs, but not requiring the use of those options, the costs of complying with the RPS mandate may

decrease. Electric providers are authorized to recover their RPS compliance costs in the rates they charge customers and members. Thus, if an electric provider's RPS compliance costs are reduced, their customers or members (including small businesses) may indirectly benefit through reduced electric rates.

2) The final rule also makes it possible for a small business (or any other customer or member of an electric provider) to benefit more directly, if the business is using a qualifying technology or resource to produce non-electric energy. In such circumstances, the final rule allows the electric provider to create RRCs based on energy produced by the small business, but only with the permission of the small business. A small business could request compensation from the electric provider in exchange for granting permission to create those RRCs.

This rulemaking will affect electric generating utilities (EGUs). Because of Wisconsin's RPS mandate, renewable resources must account for a certain percentage of an EGU's electricity generation. This final rule expands the types of renewable resources that may be used to create RRCs, thus giving an EGU more options to meet the RPS requirements.

PLAIN LANGUAGE ANALYSIS

A. Statutory Authority and Explanation of Authority

This rule is authorized under ss. 196.02 (1) and (3), 196.378 (3) (a) 1., and 196.378 (3) (a) 1m., and 227.11, Stats.

Section 227.11, Stats., authorizes agencies to promulgate administrative rules. Section 196.02 (1), Stats., authorizes the commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3), Stats., grants the commission specific authority to promulgate rules. Section 196.378 (3) (a) 1., Stats., grants the commission specific authority to promulgate rules that establish requirements for the creation and use of a renewable resource credit (RRC) on or after January 1, 2004. Section 196.378 (3) (a) 1m., Stats., grants the commission specific authority to promulgate rules that allow an electric provider to create a RRC based on the use of specified resources by the electric provider, or a customer or member of the electric provider.

B. Statutes Interpreted

This rule interprets ss. 196.378 (1) (h) 1. h. to j. and (i) and (3) (a) 1. and 1m. and (c), Stats. These statutes deal with the creation, sale, calculation and tracking of RRCs, and specify the manner for aggregating or allocating RRCs.

C. Related Statutes or Rules

Section 196.374, Stats., also defines the term “renewable resource,” and deals with energy efficiency and renewable resource programs. Section 196.377, Stats., deals with the promotion of renewable energy sources. Section 196.378, Stats., provides definitions for certain renewable resources that are included in this rule.

D. Summary and Analysis of the Rule Amendments

2009 Wisconsin Act 406 establishes statewide criteria for the creation of RRCs by electric providers, and the inclusion of certain resources that generate electric power from certain fuel, synthetic gas, or densified fuel pellets in the renewable portfolio standard. 2009 Wisconsin Act 406 also establishes the ability to create RRCs from renewable resources that do not generate electric power but which displace the use of electricity from conventional resources.

This rule creates definitions for biogas, displaced conventional electricity, non-electric facility, pyrolysis, solar light pipe, solar water heater and synthetic gas, and refines existing definitions to prevent ambiguity. This rule also describes when certain RRCs are considered created and used, and which facilities are eligible for creating RRCs, even in instances where the RRC is created from a renewable resource not produced on site.

Under this rule, an RRC may be created by the displacement of conventional electricity caused by the use of a non-electric facility under certain circumstances. For example, if a building with solar light pipes, i.e., a non-electric facility as defined by this rule, displaces conventional electricity used by the electric provider or by a customer or member of the electric provider, the electric provider can create an RRC from the displacement. This rule provides greater detail describing when and how this can be done.

Displaced conventional electricity is calculated by taking the annual average mix of resources used to generate electricity in the entire area served by the Midwest Independent Transmission System Operator, Inc. Alternatively, displaced conventional electricity may be calculated by establishing a different percentage for a specific type of non-electric facility if its seasonal or daily operating characteristics justify a percentage that differs from the annual average percentage. Electric providers or users of a non-electric facility must determine the net amount of electricity displaced by using methodologies outlined under s. PSC 118.09 (3).

Lastly, this rule provides a procedure for the certification and registration of renewable and non-electric facilities that can create an RRC, and a means of tracking RRCs that have been created, retired or expired.

E. Comparison with Existing or Proposed Federal Regulations

No federal renewable portfolio standard (RPS) exists at this time. Several legislative proposals to establish a federal “renewable electricity standard” have been submitted within the last year. Two have been referred to the U.S. Senate Committee on Energy and Natural Resources and the third has been placed on the U.S. Senate Legislative Calendar under General Orders (Calendar No. 576).

Two of the three federal legislative proposals establish a minimum annual percentage of the base quantity of electricity that an electric utility sells to electric consumers; one proposal calls for a minimum of 15 percent by 2021 and the other calls for a minimum of 25 percent by 2025. The third proposal does not specify a minimum annual percentage to be achieved. The proposed federal legislation includes many of the same kinds of renewable resources as does this rule, e.g., biogas, biomass, solar, and wind.

Two of the federal proposals address the issuance of renewable energy credits (RECs), direct the U.S. Secretary of Energy (Secretary) to establish a means to administer RECs and promulgate regulations regarding the measurement and verification of electricity savings. Under these proposals, the Secretary may delegate REC-tracking to a national, state or local entity. One REC is worth one kilowatt-hour under the proposed regulations.

F. Comparison with Similar Rules in Adjacent States

Like Wisconsin, Illinois, Michigan and Minnesota have adopted RPS mandates. Iowa, however, has not adopted an RPS mandate.

ILLINOIS

Illinois has promulgated rules addressing compliance with and reporting requirements for its RPS. In Illinois, investor-owned utilities (IOUs) that sell outside their service territories to comply with the RPS¹ and alternative retail electric suppliers (ARES) are required to comply with the RPS. Municipal and cooperative utilities are exempt from the RPS. The Illinois RPS requires that renewable resources provide 25 percent of the overall standard retail electric sales by 2024-2025.

For IOUs, wind power must provide a minimum of 75 percent of the renewable energy and the remaining 25 percent may come from other eligible renewable resources. ARES must obtain a minimum of 60 percent of their renewable energy from wind power; the remaining 40 percent may come from other eligible renewable resources. IOUs and ARES may procure their renewable energy either through energy bundled with renewable energy credits or through the purchase of tradable renewable energy credits on their own. Utilities must retire credits that they use for compliance.

Through 2011, utilities must procure the renewable resources in Illinois. If it is not cost-effective to procure in-state eligible resources, utilities may procure these resources from adjoining states. Utilities may, as a last resort, procure resources from other regions of the country if resources from adjoining states are not cost-effective. After 2011, equal preference is given to in-state resources and adjoining states. IOUs and ARES must submit an annual compliance report by September 1 of each year.

IOWA

Iowa adopted its alternate energy production (AEP) requirements prior to widespread use of energy-based RPSs in other states. Iowa's AEP differs from an RPS in that the AEP is capacity-based and relates to specific AEP facilities, either owned or contracted by utilities, rather than being an energy-based portfolio requirement. Only two Iowa utilities—Interstate Power and Light Company (IPL) and MidAmerican Energy Company (MidAmerican)—are currently required by the AEP statutes to own or purchase their share of alternate energy from AEP production facilities or small hydro facilities for a combined total of 105 megawatts. IPL currently fulfills its entire obligation with wind, while MidAmerican fulfills its obligation with wind and a small amount of biogas capacity.

MICHIGAN

Michigan has an RPS, and while it has not promulgated any rules or issued any technical guidance document outlining the implementation of its mandates, it has begun the process of developing a system to address compliance and REC tracking. The state's renewable energy certification system, MIRECS,² was developed by APX, Inc., which also developed the Midwest Renewable Energy Tracking System (M-RETS) used by Wisconsin. MIRECS will track all relevant information about renewable energy produced and delivered in Michigan. APX, Inc.,

¹ Also referred to as ARES in these situations.

² MIRECS stands for "Michigan Renewable Energy Certification System."

designed MIRECS so that it would integrate with M-RETS and the North American Renewables Registry to provide for import and export of certificates across renewable energy markets. Additionally, the Michigan Public Service Commission (MPSC) has hired an auditor who will be responsible for performing inspections of renewable energy facilities to ensure compliance.

Under Michigan's RPS, IOUs, rural electric cooperatives, municipal utilities and retail suppliers must have 10 percent of their electricity come from eligible renewable resources by 2015. As the state's two largest IOUs, Detroit Edison Company (DTC) and Consumers Energy (Consumers) have additional obligations beyond those of other utilities. DTC must procure 300 megawatts of new renewable resources by 2013 and 600 megawatts of new renewable resources by 2015. Consumers must procure 200 megawatts of new renewable resources by 2013 and 500 megawatts of new renewable resources by 2015.

Michigan utilities may achieve compliance with the RPS by purchasing RECs. Up to 50 percent of the RPS may be met with RECs produced by utility-owned facilities. A REC has a three-year lifetime from the end of the month it was generated. The MPSC requires utilities to submit affidavits and a renewable energy plan to verify compliance on a biennial basis.

MINNESOTA

Minnesota has not promulgated any rules or issued any technical guidance document outlining the implementation of its RPS mandates; however, the Minnesota Public Utilities Commission (PUC) has an open docket to address implementation issues that have not been fully addressed in previous dockets or that are due to changes in national, state or M-RETS policies and protocols. Only RECs recorded and tracked by M-RETS may be used for compliance with the RPS. Xcel Energy, public utilities providing electric service, generation and transmission cooperative electric associations, municipal power agencies and power districts operating in the state are subject to the RPS mandates.

Under Minnesota's RPS, the standard for Xcel Energy requires that eligible renewable electricity account for 30 percent of total retail electricity sales, including sales to retail customers of a distribution utility to which Xcel Energy provides wholesale service, in Minnesota by 2020. Xcel must procure a minimum of 24 percent of its eligible renewable electricity from wind, solar may contribute up to 1 percent, and the remaining 5 percent may be generated from other eligible technologies to meet the 2020 standard. Other utilities must obtain 25 percent of their electricity from eligible renewable electricity by 2020 to meet the RPS, and are not subject to requirements that specify percentages for particular types of renewable resources.

Presently, Minnesota places the burden on its utilities to carry out the RPS mandates. Utilities must report when they retire their RECs and submit a biennial report to the PUC that provides information on retail sales, REC retirements and REC trading activities.

G. Data, Methodology, and Effect on Small Business

No specific factual or analytical studies were conducted because these rule changes are specifically required to implement state statute enacted under 2009 Wisconsin Act 406.

Because the rule does not add program requirements above those established under 2009 Wisconsin Act 406, there is no estimated state, local, or electric provider fiscal effect.

This rulemaking may benefit small businesses that own or sell the technologies that this rulemaking makes eligible for renewable resource credits. It may also allow small businesses who use non-electric renewable resources to obtain compensation from an electric provider for the RRCs that the electric provider can create from the small businesses' use of non-electric facilities. There is no way to quantify whether or how much small businesses may benefit because there is no existing market for the RRCs from non-electric facilities.

H. Accommodation

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 receive this document in a different format, should contact the Docket Coordinator, as indicated in the following paragraph, as soon as possible.

I. Agency Contacts

Questions regarding this matter, including small business questions, should be directed to Docket Coordinator Preston Schutt at (608) 266-1462, or preston.schutt@wisconsin.gov. Media questions should be directed to Kristin Ruesch, Communications Director, at (608) 266-9600. Hearing- or speech-impaired individuals may also use the commission's TTY number: If calling from Wisconsin, use (800) 251-8345; if calling from outside Wisconsin, use (608) 267-1479.

TEXT OF THE RULES

SECTION 1. PSC 118.01 is renumbered PSC 118.01 (1) and amended to read:

PSC 118.01 Scope. (1) This chapter applies to each Wisconsin electric provider that ~~creates an RRC or uses an RRC~~ is subject to meet the requirements of s. 196.378 (2) (a), Stats.

SECTION 2. PSC 118.01 (2) is created to read:

PSC 118.01 (2) The commission may consider exceptional or unusual situations and may, by order, apply different requirements to an individual facility than those provided in this chapter.

SECTION 3. PSC 118.02 (1) is renumbered 118.02 (1s) and amended to read:

PSC 118.02 (1s) “Certified renewable facility” means an electric generating facility that the commission certifies ~~has met the definition of a renewable facility~~ under s. PSC 118.05.

SECTION 4. PSC 118.02 (1e) and (1m) are created to read:

PSC 118.02 (1e) “Biogas” means a gas created by the anaerobic digestion or fermentation of biomass, food processing waste or discarded food.

(1m) “Certified non-electric facility” means a non-electric facility that the commission certifies under s. PSC 118.055.

SECTION 5. PSC 118.02 (2) is amended to read:

PSC 118.02 (2) “Compliance period” means a calendar year, beginning January 1, during which an electric provider is required to ~~deliver~~ achieve a renewable energy percentage under

s. 196.378 (2) (a), Stats.

SECTION 6. PSC 118.02 (3m) is created to read:

PSC 118.02 (3m) “Densified fuel pellets” means pellets made from waste material that does not include garbage, as defined in s. 289.01 (9), Stats., and that contains no more than 30 percent fixed carbon.

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

PSC 118.02 (4) “Designated representative” means the person authorized by the electric provider to register a renewable facility or non-electric facility with the program administrator, or to purchase or sell renewable energy certificates or RRCs.

SECTION 8. PSC 118.02 (5) and (5m) are created to read:

PSC 118.02 (5) “Displaced conventional electricity” means electricity derived from conventional resources that an electric provider, or a customer or member of the electric provider, would have used except that the person used instead a certified non-electric facility.

(5m) “Division administrator” means the administrator of the commission’s division responsible for energy regulation.

SECTION 9. PSC 118.02 (6) is amended to read:

PSC 118.02 (6) “MWh” means megawatt-hour of electricity.

SECTION 10. PSC 118.02 (6g) and (6r) are created to read:

PSC 118.02 (6g) “Non-electric facility” means any of the following when used by an electric provider, or by a customer or member of the electric provider:

- (a) A solar water heater.
- (b) A solar light pipe.
- (c) A ground source heat pump.
- (d) An installation generating thermal output from biomass, biogas, synthetic gas, densified fuel pellets, or fuel produced by pyrolysis.
- (e) Any other installation under s. 196.378 (3) (a) 1m., Stats., identified by the commission that meets the criteria specified in this chapter.

(6r) “Plasma gasification” means the process of using an electric arc gasifier at a high temperature to break down waste material into gases and solids.

SECTION 11. PSC 118.02 (7) is amended to read:

PSC 118.02 (7) “Program administrator” means the person who carries out the administrative responsibilities related to the renewable ~~resource credit~~ energy tracking program system.

SECTION 12. PSC 118.02 (7g) and (7r) are created to read:

PSC 118.02 (7g) “Pyrolysis” means an industrial process that heats organic or waste material under pressure in an oxygen-starved environment to break the material down into gases, liquid and solid residues.

(7r) “Renewable energy certificate” means an electronic certificate representing one MWh of total renewable energy from a certified renewable facility that meets all of the following requirements:

- (a) The MWh is physically metered with the net generation measured at the certified renewable facility's bus bar.
- (b) The MWh represents renewable energy that is delivered to a retail customer with the retail sale measured at the customer's meter, ignoring the transmission and distribution losses between the bus bar and the customer's meter.
- (c) The MWh is tracked in the renewable energy tracking system.
- (d) The facility meets the applicable requirements of ss. PSC 118.03 and 118.04.

SECTION 13. PSC 118.02 (9) is created to read:

PSC 118.02 (9) “Renewable energy tracking system” means a program that tracks the selling, transferring, purchasing, and retiring of renewable energy certificates and RRCs under s. 196.378. (3) (a), Stats., and meets the criteria in s. PSC 118.06.

SECTION 14. PSC 118.02 (10) is renumbered 118.02 (10) (intro.) and amended to read:

PSC 118.02 (10) (intro.) “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. either of the following:~~

SECTION 15. PSC 118.02 (10) (a) and (b) are created to read:

PSC 118.02 (10) (a) One renewable energy certificate that exceeds an electric provider's minimum percentage requirement specified in s. 196.378 (2) (a), Stats., and meets the applicable requirements of ss. PSC 118.03 and 118.04.

(b) An electronic certificate representing one MWh of displaced conventional electricity, as calculated under s. PSC 118.09.

SECTION 16. PSC 118.02 (12) is renumbered PSC 118.02 (17) and amended to read:

PSC 118.02 (17) “~~RRC~~ Tracking system account” means the account that the program administrator maintains in order to track the creation, sale, transfer, purchase, and retirement of a renewable energy certificate or an RRC by a program renewable energy tracking system participant.

SECTION 17. PSC 118.02 (13) is repealed.

SECTION 18. PSC 118.02 (14), (15) and (16) are created to read:

PSC 118.02 (14) “Solar light pipe” means a device that concentrates and transmits sunlight through a roof to an interior space, employing highly-reflective material inside the device to focus and direct the maximum available sunlight to the interior space.

(15) “Solar water heater” means a device that concentrates and collects solar radiation to heat water for domestic use, pool heating, space heating, or ventilation air heating.

(16) “Synthetic gas” means gas created by plasma gasification or pyrolysis.

SECTION 19. PSC 118.025 is created to read:

PSC 118.025 Renewable resource designation. Biogas is a renewable resource under s. 196.378 (1) (h) 2., Stats.

SECTION 20. PSC 118.03 (title), (1) (intro.) and (a) are amended to read:

PSC 118.03 (title) Facilities eligible for the minimum percentage requirement and for creating renewable resource credits. (1) (intro.) An electric provider may use the output of a renewable facility to meet a minimum percentage requirement under s. 196.378 (2) (a), Stats., or to create an RRC for renewable energy only if the renewable facility that is the source of the electric provider’s renewable energy meets all of the following requirements:

(a) The energy output of the renewable facility is physically metered and the accuracy of the metering is subject to verification by the program administrator or the commission.

SECTION 21. PSC 118.03 (1) (c) 1. and 2. are consolidated, renumbered 118.03 (1) (c) and amended to read:

PSC 118.03 (1) (c) The renewable facility is owned or operated by the electric provider, which sells the renewable energy to its retail customers or members; ~~or 2. The~~ or the renewable facility supplies or allocates its energy under an executed wholesale purchase contract to the electric provider, which sells the renewable energy to its retail customers or members.

SECTION 22. PSC 118.03 (2) is created to read:

PSC 118.03 (2) An electric provider may create an RRC for conventional electricity displaced by the use of a non-electric facility only if the non-electric facility meets all of the following requirements:

- (a) Is registered with, and is certified by, the commission under s. PSC 118.055.
- (b) Was placed in service on or after June 3, 2010.
- (c) Will replace or reduce the use of an electric device used for the same purpose at the same location as the non-electric facility.
- (d) Satisfies any other condition established by the commission consistent with s. 196.378 (3) (a) 1m., Stats.

SECTION 23. PSC 118.03 (3) (b) is renumbered PSC 118.03 (3) and amended to read:

PSC 118.03 (3) An electric provider may only use the renewable portion of ~~a biomass co-fired facility's energy production~~ the production from a facility using both a renewable and conventional fuel, based on the relative energy content of the fuels, to meet a minimum percentage requirement under s. 196.378 (2) (a), Stats., or to create RRCs in the applicable reporting period.

SECTION 24. PSC 118.03 (4) is created to read:

PSC 118.03 (4) (a) An electric provider may under par. (b) use the production of a facility that has contracted with a producer of biogas or synthetic gas for ownership of the gas and that has

sufficient contracts to deliver the gas to the facility, according to the resulting number of MWh that the facility generates or the amount of conventional electricity that the facility displaces.

(b) An electric provider may use the production of a facility that satisfies par. (a) to meet a minimum percentage requirement under s. 196.378 (2) (a), Stats., or to create an RRC if the electric provider demonstrates all of the following:

1. The gas producer meters the amount of gas delivered, using metering devices that comply with ss. PSC 134.27 and 134.28.
2. The gas producer measures the heat content of the gas at least monthly.
3. The facility complies with sub. (1) or (2).

SECTION 25. PSC 118.04 (title) is amended to read:

PSC 118.04 (title) Creation and transfer of renewable energy certificates and renewable resource credits.

SECTION 26. PSC 118.04 (1) and (1m) are created to read:

PSC 118.04 (1) A renewable energy certificate or an RRC is used to meet an electric provider's minimum percentage requirement under s. 196.378 (2) (a), Stats., in the compliance period for which the electric provider retires the renewable energy certificate or RRC, regardless of the date on which the renewable energy certificate or RRC is retired in the renewable energy tracking system.

EXAMPLE: An RRC created for renewable energy generated in 2011 may be used to satisfy an electric provider's minimum percentage requirement under s. 196.378 (2) (a), Stats., in compliance years 2011 through 2015. An RRC created in 2011 may be used for compliance year 2015 even if the RRC is not retired until 2016.

(1m) For purposes of determining how long a renewable energy certificate or an RRC is eligible to be used to meet an electric provider's minimum percentage requirement under s. 196.378 (2)

(a), Stats.:

(a) A renewable energy certificate is created when the renewable facility generates the renewable energy.

(b) An RRC for renewable energy is created when the renewable facility generates the renewable energy.

(c) An RRC for displaced conventional electricity is created in the year in which the use of the certified non-electric facility displaces conventional electricity.

SECTION 27. PSC 118.04 (2) (e), (f) and (g) 2. and 3. are amended to read:

PSC 118.04 (2) (e) Renewable energy or displaced conventional electricity that would meet the definition of an RRC under s. PSC 118.02 (10), except that it consists of less than one MWh, shall constitute a fraction of an RRC. A fractional RRC may not be smaller than 0.01 MWh.

(f) Two or more electric providers may jointly purchase or sell a renewable energy certificate or an RRC.

(g) 2. ~~An RRC created~~ Renewable energy generated on or after January 1, 2004, but produced by a renewable facility that was placed into service before January 1, 2004, may only be ~~used to meet an electric provider's minimum percentage requirement under s. 196.378 (2) (a),~~ Stats., if the RRC used to create an RRC if the renewable energy 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 to meet a minimum percentage requirement under s. 196.378 (2)

(a), Stats., after the fourth year after the year in which the credit is created, as provided in s. 196.378 (3) (c), Stats. If the renewable facility was originally placed in service before 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 may be used to create RRCs.

~~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 to meet a minimum percentage requirement under s. 196.378 (2) (a), Stats., after the fourth year after the year in which the credit is created, as provided in s. 196.378 (3) (c), Stats.

SECTION 28. PSC 118.04 (2) (g) 4. and 5. are created to read:

PSC 118.04 (2) (g) 4. An RRC created for displaced conventional electricity 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 to meet a minimum percentage requirement under s. 196.378 (2) (a), Stats., after the fourth year after the year in which the credit is created, as provided in s. 196.378 (3) (c), Stats.

5. A renewable energy certificate that is not an RRC may not be used to meet an electric provider's minimum percentage requirement under s. 196.378 (2) (a), Stats., for a compliance period after the year in which the renewable energy certificate was created.

SECTION 29. PSC 118.04 (3), (4) and (5) are amended to read:

PSC 118.04 (3) When a renewable energy certificate or an RRC is credited to an electric provider's account, the account owner may sell or transfer the renewable energy certificate or RRC to another electric provider. Any person selling or transferring a renewable energy certificate or 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~~ renewable energy tracking system account of the new owner and debit the ~~RRC~~ renewable energy tracking system account of the prior owner. ~~An~~ A renewable energy certificate or 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.

(4) An electric provider shall annually retire renewable energy certificates and RRCs to demonstrate compliance with its minimum percentage requirement under s. 196.378 (2) (a), Stats. When an electric provider uses an RRC to comply with the minimum percentage requirements of s. 196.378 (2) (a), Stats., the electric provider shall retire the RRC. When an electric provider uses a MWh of total renewable energy to comply with the minimum percentage requirements of s. 196.378 (2) (a), Stats., the program administrator shall retire the ~~RRC.~~ renewable energy certificate representing the MWh of total renewable energy.

(5) Subject to commission approval, the program administrator may establish any procedure necessary to ~~ensure that~~ accurately record the creation, sale, transfer, purchase and retirement of ~~RRCs are accurately recorded~~ renewable energy certificates and RRCs.

SECTION 30. PSC 118.05 (1) is amended to read:

PSC 118.05 (1) (a) ~~An~~ Except as provided in s. PSC 118.055, an electric provider may only use the energy of a certified renewable facility to meet a minimum percentage requirement under s. 196.378 (2) (a), Stats., or 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~~ file a complaint with the commission. ~~Such a protest~~ The complaint shall be served in writing ~~on the division administrator~~ and filed with the commission within 10 working days after ~~the adversely affected person has received notice of the program administrator's~~ service of the decision. The division administrator may settle and resolve ~~protests~~ a complaint brought under this paragraph. If the ~~protest~~ complaint 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 issue a renewable energy certificate or an RRC under s. PSC 118.03 (1) for generation occurring before the date that a renewable facility is certified, ~~but the program administrator may issue an RRC for energy that a certified renewable facility produced subsequent to the date it delivered its request for certification~~ except as specified under pars. (c) or (d).

SECTION 31. PSC 118.05 (1) (c) and (d) are created to read:

PSC 118.05 (1) (c) For a renewable facility that receives certification from the commission, an electric provider may meet a minimum percentage requirement under s. 196.378 (2) (a), Stats., or

create an RRC with energy from the renewable facility that was generated up to 60 days before the date the electric provider delivered its request for certification of the renewable facility, except as otherwise provided under par. (d).

(d) For energy generated by a renewable resource specified in ss. 196.378 (1) (h) 1. h. to j., Stats., the commission may permit an electric provider to meet a minimum percentage requirement under s. 196.378 (2) (a), Stats., or create an RRC with energy that was generated from a certified renewable facility on or after June 3, 2010 but before the date the electric provider delivered its request for certification. The commission may not permit creation of an RRC for energy that was generated by a renewable resource specified in ss. 196.378 (1) (h) 1. h. to j., Stats., before June 3, 2010.

SECTION 32. PSC 118.055 is created to read:

PSC 118.055 Certification of non-electric facilities. (1) (a) An electric provider may create an RRC under s. PSC 118.03 (2) based on the use of a certified non-electric facility by the electric provider, or by a customer or member of the electric provider, to the extent that the use displaces conventional electricity. The commission shall certify non-electric facilities or delegate this responsibility to the program administrator. Any electric provider or owner of a non-electric facility adversely affected by the decision to certify or not certify may file a complaint with the commission. The complaint shall be in writing and filed with the commission within 10 working days after service of the decision. The division administrator may settle and resolve a complaint brought under this paragraph. If the complaint 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 commission may permit an electric provider to create an RRC for conventional electricity displaced by use of a non-electric facility before the date the facility is certified, except that the commission may not permit creation of an RRC for displacement that occurred before June 3, 2010.

(2) To obtain certification of a non-electric facility, the electric provider, or a designated representative, shall provide the following information to the commission in a format approved by the commission:

- (a) The non-electric facility's location, owner, technology, and date placed in service.
- (b) Information that demonstrates the non-electric facility meets the eligibility criteria under s. PSC 118.03.
- (c) The estimated annual amount of displaced conventional electricity and information supporting this estimate using methods approved by the commission.
- (d) Any other information the commission determines to be necessary.
- (e) The electric provider's affirmation that it has verified all of the information in pars. (a) to (d).
- (f) If the electric provider does not own the non-electric facility, a statement signed by the facility owner that affirms the information in pars. (a) to (d) and permits the electric provider to create RRCs from the facility.

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

(4) The commission may make on-site visits to any certified unit of a non-electric facility to determine its compliance with this chapter and with s. 196.378, Stats., may request copies of all supporting documentation used to comply with this section, and may decertify any unit that it finds not to be in compliance.

(5) Nothing in this chapter obligates the owner of a non-electric facility to permit the electric provider to create RRCs from the facility.

SECTION 33. PSC 118.06 (title) is amended to read:

PSC 118.06 (title) Renewable resource credit energy tracking system program administrator.

SECTION 34. PSC 118.06 (1) is renumbered PSC 118.06 (1) (intro.) and amended to read:

PSC 118.06 (1) (intro.) The commission shall, ~~using a competitive process, contract with a program administrator who shall operate either a statewide or a regional RRC tracking program.~~ do any of the following:

SECTION 35. PSC 118.06 (1) (a) and (b) are created to read:

PSC 118.06 (1) (a) Using a competitive process, contract with a program administrator who shall operate either a statewide or a regional renewable energy tracking system.

(b) Participate in a regional organization that contracts with a program administrator who shall operate a statewide or regional renewable energy tracking system.

SECTION 36. PSC 118.06 (2) (b), (c) (intro.) and (c) 5. are amended to read:

PSC 118.06 (2) (b) Create an account for each certified renewable facility or certified non-electric facility that participates in the tracking system and requests a separate account.

(c) (intro.) ~~Register~~ Upon request, register each renewable facility the commission has certified, including the following data about the facility:

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

SECTION 37. PSC 118.06 (2) (cm) is created to read:

PSC 118.06 (2) (cm) Upon request by the commission, register each non-electric facility the commission has certified, including the following data about the facility:

1. Its electric provider's account number.
2. Its location, owner, technology, and date placed in service.
3. Its estimated annual amount of displaced conventional electricity.
4. Any additional data the commission considers necessary for proper operation of the tracking system.

SECTION 38. PSC 118.06 (2) (d) (intro.) is amended to read:

PSC 118.06 (2) (d) (intro.) Establish and maintain a system for tracking renewable energy certificates and RRCs that does all of the following:

SECTION 39. PSC 118.06 (2) (d) 1m. is created to read:

PSC 118.06 (2) (d) 1m. Issues a unique electronic certificate for each MWh of conventional electricity displaced by a certified non-electric facility that complies with ss. PSC 118.03 and 118.04, as calculated under s. PSC 118.09. The certificate shall identify which non-electric facility displaced the MWh, when the facility operated, and any other characteristics the commission finds necessary.

SECTION 40. PSC 118.06 (2) (d) 2., 3. and 3. a. are amended to read:

PSC 118.06 (2) (d) 2. Records renewable energy certificate and RRC ownership and each transfer between account holders.

3. Retires each renewable energy certificate and RRC that meets any of the following circumstances:

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

SECTION 41. PSC 118.06 (2) (d) 3. b. is repealed and recreated to read:

PSC 118.06 (2) (d) 3. b. An electric provider chooses to retire the renewable energy certificate or RRC for any other reason.

SECTION 42. PSC 118.06 (2) (d) 3. c. is repealed.

SECTION 43. PSC 118.06 (2) (em) is created to read:

PSC 118.06 (2) (em) Audit registered non-electric facilities, as needed, to verify the amount of displaced conventional electricity.

SECTION 44. PSC 118.06 (3), (4) (a), and (5) are amended to read:

PSC 118.06 (3) The program administrator may create an exchange procedure for purchasing and selling renewable energy certificates and RRCs.

(4) (a) Annually, the program administrator shall report to the commission the costs incurred in operating the ~~RRC~~ renewable energy tracking program system and recommend an assessment of these costs to electric providers and other tracking system participants that hold ~~RRC~~ tracking system accounts.

(5) An electric provider may not use renewable energy from a decertified renewable facility to meet the electric provider's minimum percentage requirement under s. 196.378 (2) (a), Stats., that was produced after the facility is decertified. The program administrator may not issue RRCs for energy ~~produced by~~ from a decertified renewable facility that was produced after the facility is decertified. The program administrator may not issue RRCs for conventional electricity displaced by the operation of a decertified non-electric facility which displacement occurred after the facility is decertified.

SECTION 45. PSC 118.07 is amended to read:

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

SECTION 46. PSC 118.08 is renumbered PSC 118.08 (1) and amended to read:

PSC 118.08 (1) An electric provider that sells or conveys a MWh of renewable energy, a renewable energy certificate or an RRC at wholesale may not use that MWh, renewable energy certificate or RRC to meet its minimum percentage requirement under s. 196.378 (2) (a), Stats.

SECTION 47. PSC 118.08 (2) is created to read:

PSC 118.08 (2) If an electric provider sells or conveys a MWh of renewable energy, a renewable energy certificate or an RRC at retail to a customer or member that retains independent control over the disposition or retirement of the renewable energy certificate, RRC or other renewable attributes representing that MWh of renewable energy, the electric provider may not use that MWh, renewable energy certificate or RRC to meet its minimum percentage requirements under s. 196.378 (2) (a), Stats.

SECTION 48. PSC 118.09 is created to read:

PSC 118.09 Calculation of displaced conventional electricity. (1) For each calendar year, the commission shall, by order, determine the percentage of electricity from conventional resources for the entire state for purposes of calculating the amount of an RRC to be created for displaced conventional electricity. The commission shall base this determination on the annual average mix of resources used to generate electricity in the entire area served by the Midwest Independent Transmission System Operator. The commission may, by order, also establish a different percentage for a specific type of non-electric facility if its seasonal or daily operating characteristics justify a percentage that differs from the annual average percentage.

(2) The commission may, by order, establish a displacement formula for any type of non-electric facility. The commission shall base any such formula on a calculation of the minimum amount

of displaced electricity that would be expected in a typical calendar year under realistic operating conditions. The commission shall provide an opportunity for public comment on any such formula before the formula is established.

(3) For each calendar year, the electric provider or the user of a non-electric facility shall determine the net amount of electricity displaced by the non-electric facility, using site-specific information and either the applicable formula established under sub. (2) or by subtracting the amount of electricity used by the non-electric facility from the amount of electricity that would have been used for the same purposes by the electric device that was replaced by the non-electric facility or that was used less due to the use of the non-electric facility.

(4) If the value under sub. (3) is less than zero, the electric provider may not create any RRCs for the non-electric facility for that calendar year.

(5) The amount of conventional electricity displaced by a non-electric facility in a calendar year is equal to the net amount of displaced electricity determined under sub. (3), multiplied by the applicable percentage of electricity in that calendar year that is from conventional resources as determined under sub. (1).

(6) The electric provider or the user of a non-electric facility shall maintain at least three years of historical documentation of all information used in the determination made under sub. (3).

(7) For each non-electric facility for which an electric provider is creating RRCs, the electric provider shall submit information to the commission to support its determination under sub. (3) at least annually. The commission may specify the timing and method for submitting information under this subsection. Determinations under sub. (3) are subject to the commission's review and verification.

SECTION 49. 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), Stats.

(End)

LCRC
FORM 2

WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Richard Sweet
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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 **10-147**

AN ORDER to repeal PSC 118.06 (2) (d) 3. c.; renumber and amend PSC 118.02 (1), (10) and (12), 118.03 (3) (b), and 118.08 (intro.); amend PSC 118.01, 118.02 (2), (4), (6) and (7), 118.03 (title), (1) (intro.) and (a), 118.04 (title), (2) (e), (f), and (g) 2. and 3., 118.04 (3), (4) and (5), PSC 118.05 (1), PSC 118.06 (title), (1) (intro.), (2) (b), (c) (intro.), (c) 5., (d) (intro.), 2., 3. and 3. a., (3), (4) (a), and (5), 118.07; repeal and recreate PSC 118.06 (2) (d) 3. b.; create PSC 118.02 (1), (1g), (3m), (5), (5m), (6g), (6r), (7g), (7r), (9), (10) (a), (10) (b), (14), (15), and (16), 118.025, 118.03 (2) and (4), 118.04 (1), (1m), (2) (g) 4. and 5., 118.05 (1) (c) and (d), 118.055, 118.06 (1) (a) and (b), (2) (cm), (d) 1m., and (em), 118.08 (1) (b), 118.09, and 118.10, relating to renewable resource credits.

Submitted by **PUBLIC SERVICE COMMISSION**

12-20-2010 RECEIVED BY LEGISLATIVE COUNCIL.

01-11-2011 REPORT SENT TO AGENCY.

PS:DLL

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

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CLEARINGHOUSE RULE 10-147 Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

1. Statutory Authority

a. While statutes frequently include in a definition a phrase such as “any other _____ designated by the commission by rule,” it is not appropriate for rules to include such a statement, as in the example of s. PSC 118.02 (6m) (e). The rule is the means by which the Commission must make that designation. (Cf. s. PSC 118.025.)

b. Section PSC 118.09 (2) authorizes the Division Administrator to establish displacement formulae by order. Such a formula is “a regulation...of general application which has the force of law and which is issued by an agency to implement...legislation enforced or administered by the agency...”. [s. 227.01 (13) (intro.), Stats., defining “rule”.] As such, displacement formulae are rules and so, under s. 227.10 (1), Stats., must be established by rule, not by order.

2. Form, Style and Placement in Administrative Code

a. Since the term “geothermal heating and cooling installation” is used only once in the rule (in s. PSC 118.02 (6m) (c)), and since the definition of the term (“a ground source heat pump”) is shorter than the term itself, it is suggested that the definition be omitted and the term “ground source heat pump” be used in s. PSC 118.02 (6m) (c). If the Commission finds it necessary to indicate that this provision implements the statutory language regarding geothermal energy, it can do so in a note.

b. Section PSC 118.02 (10) (a) is not so much a definition of renewable resource credit as a formula for its calculation, which does not belong in a definition. One option would be to move this material to a substantive provision of the rule and write s. PSC 118.02 (10) (a) in a form similar to par. (b), e.g., “One KWh of renewable energy, as calculated under s. PSC 118.xx”.

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

Section PSC 118.04 (1) (a) should refer to s. PSC 118.03 (1) rather than s. PSC 118.02 (10) (a). The former is only a definition of the term (though see comment 2. b.), while the latter is the closest the rule comes to stating an authority for creation of a renewable resource credit (RRC). (Note that the rule takes this approach in s. PSC 118.05 (1) (b).) Alternatively, s. PSC 118.04 (1) (a) could refer instead to “an RRC based on renewable energy,” without a cross-reference. The same comment applies to s. PSC 118.04 (1) (b).

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

a. In s. PSC 118.02 (5), “customer or member” should be used in place of “person”. (In this sentence, “person” could also refer to the electric provider.)

b. The rule defines “pyrolysis” but does not define the less commonly known term “plasma gasification”. It would appear that the rule should either define both terms or define neither.

c. Section PSC 118.02 (6m) (d) uses the term “fuel produced by pyrolysis” while s. PSC 118.03 (4) (a) uses the term “gas from pyrolysis”. If these are distinct materials, the difference should be made clear; otherwise, the same term should be used in both instances.

d. Section PSC 118.04 (1) (c) seems to confuse the concepts of *using* and *retiring* credits. A credit is used to demonstrate compliance with the requirements of the renewable portfolio standard; once used, a credit must be retired. In addition, most credits “may not be used after the fourth year after the year in which the credit is created...”. [s. 196.378 (3) (c), Stats., and s. PSC 118.04 (2) (g) 3., Wis. Adm. Code.] It appears that s. PSC 118.04 (1) (c) is intended to clarify when a credit is considered to be used relative to this four-year period, in particular, to clarify that a credit is considered to be used in the fourth year even though the actions that accomplish this (the filing of the report required under s. 196.378 (2) (c), Stats., etc.) actually take place in the following year. This might be accomplished more clearly by a provision stating something like the following:

An RRC is considered to be used in the year for which a report under s. 196.378 (2) (c) includes the RRC in the electric provider’s demonstration of compliance with the requirements of s. 196.378 (2) (a) 2., Stats., regardless of the date on which the electric provider files the report under s. 196.378 (2) (c) or the date on which the credit is retired under s. PSC 118.06 (2) (d) 3. a.

e. In s. PSC 118.09 (4), the last occurrence of the word “displaced” is incorrect; that word should either be omitted or be replaced with the word “total”.

f. For how long must a person maintain documentation under s. PSC 118.09 (5)?

RESPONSES TO LEGISLATIVE COUNCIL REPORT

1. Statutory Authority

a. Legislative Council requested that the commission remove provisions including phrases such as “any other ____ designated by the commission,” for example, in s. PSC 118.02 (6m) (e), and indicated that the commission must establish all relevant details by rule, not commission order. This change has not been made; however, references have been added to indicate that certain determinations made by the commission will be made consistent with the relevant statutory provisions where such references were appropriate.

It is appropriate for the commission to retain the ability to specify additional types of non-electric facilities as eligible under the statutory criteria. It is not possible for the commission to know at this time all of the technologies that exist or may exist in the future that may use renewable resources to displace the use of electricity from conventional resources. The commission needs to be able to respond to requests to qualify such technologies in a timely manner. Conducting a rulemaking every time a new technology requests certification is not practical and would require dedication of an unreasonable amount of staff resources to a relatively straightforward task.

Several provisions under which the commission may request additional information it deems necessary were not modified. It is not possible to determine the entire realm of documentation that may be needed to identify, measure and verify the characteristics of a facility requesting to be certified as eligible for compliance with the RPS. As new types of facilities or new configurations come into use, the commission must quickly adapt and be able to require different or additional information and documentation on an as-needed basis. Several of these provisions allowing the commission to request additional information were already in the rule prior to this rulemaking; the new provisions mirror those pre-existing ones.

b. Legislative Council requested that the commission specify displacement formulas by rule rather than authorize the Division Administrator to establish formulas by order. This change has not been made; however, the authorization has been modified so that the commission, not the Division Administrator, will establish formulas by order. There is not sufficient information in the record to establish displacement formulas by rule at this time, and it is likely that changes in technologies will come along that would require new displacement formulas not yet contemplated. The commission believes conducting an investigation with an opportunity for public comment will be the best way to determine displacement formulas for various technologies. Other administrative code rules allow state agencies to make quantitative determinations based on rules that permit consideration of additional information not specified in the rule. See for example s. NR 438.03 (5).

2. Form, Style and Placement in Administrative Code

a. Legislative Council requested modification of the terms referring to geothermal resources. The suggested change has been made.

b. Legislative Council indicates it believes s. PSC 118.02 (10) (a) does not belong in a definition. Most of the language Legislative Council requests modifying was in the provision prior to this rulemaking. Making the requested change does not appear to enhance clarity and increases the number of cross references in the rule; therefore, the change was not made.

3. Conflict with or Duplication of Existing Rules

No comments were received under this heading.

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

Legislative Council states that s. PSC 118.04 (1) (a) should refer to s. PSC 118.03 (1) or refer to the RRC being “based on renewable energy.” This change has been made. Legislative Council makes a similar comment with regard to s. PSC 118.04 (1) (b). This change has been made.

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

a. Legislative Council requested that the phrase “customer or member” be used in place of person. The change was not made, because the meaning that Legislative Council was trying to avoid with its suggestion was the intended meaning.

b. Legislative Council requested that the rule either define plasma gasification or not define pyrolysis. A definition of plasma gasification has been added.

c. Legislative Council requested clarification regarding distinctions between the terms “fuel produced by pyrolysis” and “gas from pyrolysis.” The definition of pyrolysis indicates that it can produce gases, liquid and solids. The term synthetic gas has been modified to include both gas from pyrolysis and plasma gasification, and the phrase “gas from pyrolysis” has been removed from the rule.

d. Legislative Council suggests modifications to the use of the terms “using” and “retiring” RRCs. The specific suggested language was not adopted; however, changes have been made to clarify s. PSC 118.04.

e. Legislative Council requested changing the last occurrence of the word “displaced” to the word “total.” The requested change was not made; however, the last occurrence of the word “displaced” has been deleted.

f. Legislative Council asked how long documentation under s. PSC 118.09 (5) must be maintained. New language has been added to indicate a time period.

STATE OF WISCONSIN
 DEPARTMENT OF ADMINISTRATION
 DOA-2049 (R05/2011)

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ADMINISTRATIVE RULES – FISCAL ESTIMATE

1. Fiscal Estimate Version

Original Updated Corrected

2. Administrative Rule Chapter Title and Number

3. Subject

4. State Fiscal Effect:

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No May be possible to absorb within agency's budget.
		<input type="checkbox"/> Decrease Costs

5. Fund Sources Affected:

GPR FED PRO PRS SEG SEG-S

6. Affected Ch. 20, Stats. Appropriations:

20.155 (1) (g)

7. Local Government Fiscal Effect:

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Decrease Costs

8. Local Government Units Affected:

Towns Villages Cities Counties School Districts WTCS Districts Others:

9. Private Sector Fiscal Effect (small businesses only):

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No May have significant economic impact on a substantial number of small businesses
	<input type="checkbox"/> Yes <input type="checkbox"/> No May have significant economic impact on a substantial number of small businesses	<input type="checkbox"/> Decrease Costs

10. Types of Small Businesses Affected:

Electric Providers and Businesses that sell renewable resource credits to utilities

11. Fiscal Analysis Summary

State Fiscal Effects:

There are no estimated state fiscal effects from the proposed changes to the Renewable Resource Credit Trading Program rule (PSC 118).

The proposed changes to PSC 118 mainly implement changes to state statute enacted under 2009 Wisconsin Act 406. The proposed rule revises the definition of a renewable resource credit to allow electric providers to use additional credits to meet minimum renewable percentage requirements under 196.378 (2) (a). The proposed rule allows electric providers to create renewable resource credits from the electric providers' use and/or their customers' or members' use of solar energy, geothermal energy, biomass, biogas, synthetic gas created by the plasma gasification of waste, densified fuel pellets, and fuel produced by pyrolysis of organic or waste material, if these sources displace electricity from conventional energy sources, as per Act 406. The revised rule specifies how these new sources will be certified by the Commission, how credits from these sources will be calculated, and that displacement of conventional energy by these sources could be verified through an audit. Verification of

displacement through a potential audit is consistent with the verification processes in existing rule for existing renewable sources.

In addition to revisions relating to Act 406, revisions to PSC 118 allow the Commission to collaborate with other states to purchase, as a group, program administrator services for tracking renewable resource credits. The proposed rule provides the Commission the option to either contract for a program administrator through a standard competitive procurement, or to access program administration services through participation in a regional renewable energy tracking system group, such as Midwest Renewable Energy Tracking System, Inc. Additional revisions to PSC 118 clarify existing code language where ambiguity or unintended consequences in the original language have been identified.

The revised rule is not anticipated to have a state fiscal effect because revisions to PSC 118 are not anticipated to change state staff workload or program administrator costs. State staff workload does not change due to the revised rule because the rule does not add program requirements above those established under Act 406. Program administrator costs are not anticipated to change because the new option of accessing program administration services through participation in a regional group is not anticipated to decrease program costs. The complexity needed in a contract to administer either a statewide renewable resource credit trading program or a regional program is unlikely to reduce any one state’s share of administration costs under a group. The rule also allows the Commission to procure for administrative services through a competitive procurement; so, if costs for administrative services under the group are more costly than those anticipated through a standard procurement, the Commission has the option to use the standard procurement and avoid additional costs. Therefore, the revised rule is not anticipated to have a state fiscal effect.

Local Fiscal Effects:

There are no estimated local fiscal effects from the proposed changes to PSC 118. Local governments can be electric providers and are subject to the rule, but the rule does not establish new requirements; it only provides direction to operators on how to comply with current state statutes. Therefore, the revised rule is not estimated to have a local fiscal effect.

Fiscal Effect for Electric Providers and Small Businesses:

There is no estimated fiscal effect for electric providers. Electric providers are already subject to the state statutes the proposed rule implements. The rule does not add requirements; it only provides direction to operators on how to comply with current state statutes. Small Businesses are also unlikely to experience a fiscal effect under this rule as it is consistent with state statutes. The rule does not change the opportunities provided under Act 406 for small businesses to sell renewable resource credits to utilities. Therefore, the revised rule is not estimated to have a fiscal effect to electric providers or small businesses.

12. Long-Range Fiscal Implications

Costs to administer a renewable resource credit trading program could be reduced in the long term, under this rule, because it includes an option allowing the Commission to contract for administrative services through a regional renewable resource credit trading program group. If the regional group can implement a regional renewable resource credit trading program that is more streamlined than the current Wisconsin system, and if the Commission can pool its contracting resources with other states in the group, then it is possible that, by contracting through the group for a more streamlined program, administrative service costs will decrease.

13. Name - Prepared by Anne Olson	Telephone Number 267-9086	Date 6/28/2011
14. Name – Analyst Reviewer	Telephone Number	Date
Signature –Secretary or Designee	Telephone Number	Date

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