Wisconsin Legislative Council
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 22-077

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

a. SECTION 27 of the proposed rule text includes a requirement that "reasonable efforts are made" not to adversely impact other complete applications when an exception is made under the provision. To ensure compliance with the requirement of uniform standards under s. 196.496 (2), Stats., consider whether another standard might be more appropriate, such as a determination that there is no material adverse impact on processing of other complete applications when an exception is made under the provision. Such revision would avert the ambiguity that may arise regarding an individual utility's interpretation of "reasonableness" under the provision as currently drafted.

b. More generally, the proposed rule makes numerous references incorporating the service rules of a public utility into the application and approval process for interconnection of a distributed generation facility. While the agency explains that these service rules are subject to agency oversight pursuant to ss. 196.20 and 196.37, Stats., the extent to which such rules vary from one utility to another is unclear. As such, it may be useful for the agency to consider or more clearly explain how the incorporation of service rules comports with the requirement of uniform standards under s. 196.496 (2), Stats., as significant variation between service rules could effectively result in different standards across the state.

2. Form, Style and Placement in Administrative Code

a. In addition to the comments below, the agency should generally review s. 1.07 of the Manual, relating to the appropriate use of definitions. For example, all definitions should be reviewed to avoid incorporation of substantive provisions.

b. The agency should review the proposed rule for compliance with s. 1.04 (4) of the Manual, relating to the proper indication of amendments to existing rule provisions. For example, SECTION 32 should be revised to properly amend the word "upon" and to show stricken material prior to underscored material.

c. Throughout the proposed rule, references to tables should include "PSC" in the table name. For example, in SECTION 44, write "Table PSC 119.05-1" rather than "Table 119.05-1".

d. Throughout the proposed rule, cross-references should conform to the style described in s. 1.15 of the Manual. [See, e.g., the references in SECTION 42, which should be revised to "sub. (4) (a), (c), or (g)".]

e. SECTIONS 1 to 4 propose to amend the definitions of the various categories of DG facilities. While these categories are used to describe DG facilities, the definitions provide that the categories themselves are DG facilities (e.g., "'Category 1' means a DG ***facility***…"). [Emphasis added.] These SECTIONS of the rule could be amended to define "Category 1 facility", "Category 2 facility", "Category 3 facility", and "Category 4 facility".

f. SECTIONS 2 to 4 each refer to a non-exporting energy storage system, but in a slightly different manner than the similar reference in SECTION 1, resulting in confusion. As such, it appears the provisions would benefit from further revision. Additionally, the requirements of these provisions should be reviewed for consistency with SECTION 9, which appears to define nameplate rating as the default definition of export capacity.

g. SECTION 5 proposes to define "energy storage system" to mean "devices", rather than "a device". This definition could be modified to indicate whether an energy storage system must necessarily consist of several devices, or if a single device could constitute a system.

h. SECTIONS 6 through 8 propose definitions of "energy storage system max continuous output (kW in alternating current)", "energy storage system max usable energy (kWh in alternating current)", and "Energy storage system peak output (kW in alternating current)". However, neither these terms, nor variations on these terms, appear in the proposed rulemaking order, or ch. PSC 119, as currently promulgated. The definitions should be omitted or text should be provided within the rulemaking order to make use of these terms. The same consideration could be made with respect to SECTION 10.

i. In SECTIONS 9 and 10, what are the means by which a limit on capacity lower than nameplate rating may be approved?

j. Considering the effects of SECTIONS 11 and 12, it appears the parenthetical clauses in SECTIONS 6 to 10 and 13 should be omitted. Also, these provisions modify the definitions of "kW" and "MW" to provide that these units reference units in alternating current, unless otherwise specified. However, it appears that neither the proposed rulemaking order, nor ch. PSC 119, as currently promulgated, include an instance where "kW" or "MW" is specified to mean something other than alternating current.

k. SECTION 13 of the proposed rulemaking order uses the slashed alternative "and/or". If the thought to be expressed involves a choice between one of two alternatives, or both, the proper phrasing to be used is "_____ or _____, or both". [See s. 1.08 (1) (d), Manual.]

l. SECTION 14 proposes to amend the definition of "point of common coupling". The second sentence of the proposed definition should be modified as it is currently an incomplete sentence. Additionally, the proposed definition is ambiguous to the extent that it is unclear when the defined term is equivalent to "service point" and when it is not.

m. In SECTION 15, the order of code citations could be swapped to "chs. PSC 114 and SPS 316" in order to match the sequence of references to the national electric codes.

n. As referenced in SECTION 17, the agency should clarify the decision to require "supplements" and the relationship of those supplements to the completeness of an application.

o. In SECTION 39, s. PSC 119.04 (4) (h) (intro.) and 3. result in a confusing interaction between the 10-day deadline of the introductory material and "completion" of a waiver under subd. 3. Is the testing right waived if no action is taken by a public utility within 10 working days? [See, for comparison, the "deemed withdrawn" effect of applicant non-compliance in SECTION 31.] Additionally, in SECTIONS 39 and 40, par. (h) (intro.) and pars. (i) and (j) appear to be in conflict as to who, between an applicant and a utility, must obtain or conduct the referenced testing.

p. In SECTIONS 40 and 42, what is the relationship between an interconnection agreement and an interconnection approval memorandum in s. PSC 119.04 (4) (k) and (6), respectively?

q. The treatment clause for SECTION 55 references creation of pars. (c) and (d), but the provisions do not appear in the rule text. Also, as currently proposed, the text of SECTIONS 54 to 56 may be consolidated into a single SECTION that creates s. PSC 119.20 (15), (16), and (16) (Note).

r. In SECTION 57, the treatment may be consolidated to the amendment of s. PSC 119.25 (1) and (3) (intro.) and (b) 6.

s. SECTION 62 should be reviewed for form and clarity. For example, what is the agency's intended purpose for the phrase "in compliance with the requirements of this chapter according to the provisions of this section" in s. PSC 119.40 (1)? Additionally, the agency should review s. PSC 119.40 (7) for clarity, and s. PSC 119.40 (3) for form and style, as it appears the paragraphs that subdivide the latter subsection do not follow the typical format in relation to the introductory material. Also, it appears that s. PSC 119.40 (1) refers to the interconnection application process, but subs. (4) and (8) refer to avoidance of disconnection, suggesting a relationship to an existing, previously approved interconnection. The provision could be clarified as to whether it applies to the application and approval process, or to existing connections, or both. Are existing connections governed by the agreement or approval memorandum referenced in SECTIONS 40 and 42?

t. At the end of the proposed rule text, include the statement regarding publication in the Administrative Register, as described in s. 1.03 (4) of the Manual.

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

In SECTION 31, the reference to "s. PSC 119(6)(a)" is invalid, and should be revised.

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

a. Throughout the proposed rule and the existing ch. PSC 119, the agency should review the use of the phrases "DG facility", "DG project", and "DG system" to ensure that each phrase refers to a different concept. When referring to a single concept, the proposed rule and existing code should use the same phrase consistently throughout the rule text.

b. In SECTION 14, insert "a" before "DG facility" in the proposed rule text.

c. SECTION 18 proposes to amend s. PSC 119.02 (35) (Note). The text of this note could be amended to eliminate the use of the second-person, for formality.

d. In SECTION 21, the agency states that the defined term "may include" certain elements. In what circumstances are these elements included?

e. In SECTION 27, the proposed rule text states that exceptions may be made if an applicant exceeds any timing requirements identified in s. PSC 119.06. This provision could be further clarified. For example, is exceeding a timing requirement the same as missing a deadline, in this instance? To further clarify the intent of the provision, consider stating more specifically what "exception" would apply if the applicant exceeds a timing requirement. Presumably, this would not allow the applicant to be considered earlier. Does it mean the application may be considered later, because it may be set aside until the missed requirement has been satisfied?

f. SECTION 41 includes the date September 1, 2023. Is this date related to an anticipated effective date of the proposed rule? If so, see s. 1.08 (1) (e) of the Manual for proper drafting style. If not, does the agency intend for this date to be applied retroactively or prospectively depending on the effective date of the proposed rule? Also in this SECTION, the rule text should be revised to avoid the use of parenthetical clauses.

g. In SECTION 47, a table column is created under the heading "Commissioning Fee" and in the third cell down, for category 3, it appears to show $1,000 with a strike-through, but this should instead be underlined.

h. In SECTION 49, if retained, the imposition of a $300 fee at the discretion of an individual utility could be revised for clarity to state that a utility "may assess a fee of up to $300". However, prior to retaining that type of discretionary fee, the agency should explain how such a fee would comport with the requirement of uniform standards under s. 196.496 (2), Stats.

i. In SECTION 52, a space should be inserted after the comma and before the year "2021" in the date September 28, 2021.

j. Also in SECTION 52, after the date September 28, 2021, the word "listed" appears in the proposed rule text and it appears this should be removed. Or if the word "listed" is intentionally included, the meaning here should be clarified. See, also, SECTION 55, which uses similar phrasing.

k. In SECTION 54, could the agency directly establish "minimum standard technical and communication requirements" rather than deferring the establishment of those requirements to an applicant and a public utility?

l. In SECTION 58, what is the relationship between the two cited standards, UL 1741 and the "applicable codes and standards listed in s. PSC 119.025"? Could the required standards be consolidated directly in a single rule provision?

m. In SECTION 60, could the phrase "site conditions acceptable to both parties" be clarified or further defined?

n. In SECTION 61, how does the term "party responsible for the re-testing" differ from the previous standard of "party requesting such re-testing"? It may be useful for the agency to provide additional detail for the departure from the "requesting party" standard.