



2001 SENATE BILL 168

April 30, 2001 – Introduced by Senator MOEN, cosponsored by Representative GARD. Referred to Committee on Health, Utilities, Veterans and Military Affairs.

1 **AN ACT** *to amend* 196.795 (5) (k) 1.; and *to create* 196.52 (9) and 196.795 (5) (k)
2 3. of the statutes; **relating to:** leased generation contracts between public
3 utilities and affiliated interests.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, a public utility may not enter into a contract with an affiliated interest without the approval of the public service commission (PSC). An “affiliated interest” is defined to include any of the following: 1) any person owning or holding 5% or more of the voting securities of a public utility; 2) any person in any chain of successive ownership of 5% or more of the voting securities of a public utility; 3) any corporation 5% or more of whose voting securities is owned by any of the foregoing persons; or 4) any person that the PSC determines actually exercises substantial influence over a public utility. The PSC must approve a contract between a public utility and an affiliated interest if the PSC finds the contract to be reasonable and consistent with the public interest. The PSC is also allowed to exclude from the accounts of a public utility any payment or compensation to or from an affiliated interest under a contract unless the public utility establishes that the payment or compensation is reasonable.

This bill imposes additional requirements on the PSC’s approval of a “leased generation contract” between a public utility and an affiliated interest. The bill defines “leased generation contract” as a contract under which a public utility transfers land, buildings, or fixtures to an affiliated interest for the affiliated interest to construct electric generating facilities on or in the land, buildings, or fixtures. In

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addition, under a leased generation contract, the affiliated interest leases the electric generating facilities that are constructed to the public utility for operation by the public utility.

Under the bill, the PSC may not approve a leased generation contract between a public utility and an affiliated interest unless four requirements are satisfied. First, the PSC may not approve a leased generation contract if the PSC has issued, before January 1, 2001, a certificate of public convenience and necessity (CPCN) for any electric generating facility that is constructed under the contract. (Under current law, with certain exceptions, a person may not construct an electric generating facility unless the PSC issues a CPCN.) Second, construction of the electric generating facilities that are subject to the contract must commence on or after January 1, 2001. Third, no existing electric generating facility that is in service on January 1, 2001, is transferred to the affiliated interest. Fourth, PSC approval of a leased generation contract depends on the length of the lease. For a gas-fired electric generating facility that is constructed, the lease must be for 20 years or more. For a coal-fired electric generating facility, the lease must be for 25 years or more.

The bill also provides that the effective date of the PSC's approval of a leased generation contract is the date on which the affiliated interest commences construction of the electric generating facilities as provided in the contract. In addition, the bill provides that the PSC maintains jurisdiction to ensure that the electric generating facilities are placed in operation as provided in the contract.

Also under the bill, if the PSC approves a leased generation contract between a public utility and an affiliated interest, the PSC may not increase or decrease the retail revenue requirements of the public utility on the basis of any dividend, distribution, or charge that is received by the public utility, or by any other company in a holding company system in which the public utility is an affiliate, and that arises from the ownership of electric generating facilities by an affiliated interest under the contract. In addition, the PSC may not increase or decrease the retail revenue requirements of the public utility on the basis of any gain, profit, or loss arising from the affiliated interest's ownership of electric generating facilities. Also, the PSC must allow the public utility to recover fully in its retail rates any payments under any lease approved by the PSC and all other costs prudently incurred in the public utility's operation and maintenance of the electric generating facilities.

In addition, the bill provides that none of the provisions described above prohibit any of the following from acquiring an interest in land, buildings, or fixtures that are subject to a leased generation contract: 1) a cooperative association; 2) a municipal utility; or 3) a municipal electric company.

Finally, under current law, certain requirements apply to the relationship between a public utility in a holding company system and any nonutility company that is in the same holding company system. Under one of these requirements, with certain exceptions, a public utility may transfer real property to such a nonutility company only by public sale or by offering the real property to the highest qualified bidder. This bill creates another exception to this requirement. Under the bill, a public utility may enter into a leased generation contract with such a nonutility

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company, but only if the leased generation contract is approved by the PSC as provided in the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 196.52 (9) of the statutes is created to read:

2 196.52 (9) (a) In this subsection, “leased generation contract” means a contract
3 or arrangement under which a public utility transfers land, buildings, or fixtures to
4 an affiliated interest for the affiliated interest to construct electric generating
5 facilities on or in the land, buildings, or fixtures, and to lease such facilities to the
6 public utility for operation by the public utility.

7 (b) Notwithstanding any other provision of this section:

8 1. The commission may approve a leased generation contract under sub. (3)
9 only if all of the following apply:

10 a. The commission has not issued a certificate of public convenience and
11 necessity under s. 196.491 (3) before January 1, 2001, for any electric generating
12 facility that is constructed under the leased generation contract.

13 b. Construction of the electric generating facilities that are subject to the leased
14 generation contract commences on or after January 1, 2001.

15 c. No existing electric generating facility that is in service on January 1, 2001,
16 is transferred to the affiliated interest.

17 d. For any gas-fired electric generating facility that is constructed under the
18 leased generation contract, the term of the lease is 20 years or more.

19 e. For any coal-fired electric generating facility that is constructed under the
20 leased generation contract, the term of the lease is 25 years or more.

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1 2. Except as provided in subd. 3., the commission may not do any of the
2 following:

3 a. Increase or decrease the retail revenue requirements of a public utility on
4 the basis of any dividend, distribution, or charge that is received by the public utility,
5 or by a company, as defined in s. 196.795 (1) (f), in a holding company system, as
6 defined in s. 196.795 (1) (i), in which the public utility is a public utility affiliate, as
7 defined in s. 196.795 (1) (L), and that arises from the ownership of electric generating
8 facilities by an affiliated interest under a leased generation contract between the
9 public utility and the affiliated interest.

10 b. Increase or decrease the retail revenue requirements of a public utility on
11 the basis of any gain, profit, or loss arising from the ownership of electric generating
12 facilities by an affiliated interest under a leased generation contract between the
13 public utility and the affiliated interest.

14 3. The commission shall allow a public utility that has entered into a leased
15 generation contract to recover fully in its retail rates any payments under any lease
16 that has been approved by the commission under sub. (3) and all other costs
17 prudently incurred in the public utility's operation and maintenance of the electric
18 generating facilities constructed under the leased generation contract.

19 (c) The effective date of an approval under par. (b) 1. shall be the date on which
20 the affiliated interest commences construction of the electric generating facilities as
21 provided in the leased generation contract. The commission shall maintain
22 jurisdiction to ensure that such electric generating facilities are placed in operation
23 as provided in the leased generation contract.

24 (d) Nothing in this subsection prohibits a cooperative association organized
25 under ch. 185, a municipal utility, as defined in s. 196.377 (2) (a) 3., or a municipal

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1 electric company, as defined in s. 66.0825 (3) (d), from acquiring an interest in land,
2 buildings, or fixtures that are subject to a leased generation contract.

3 **SECTION 2.** 196.795 (5) (k) 1. of the statutes is amended to read:

4 196.795 (5) (k) 1. Except as provided under subd. 2. or 3., no public utility
5 affiliate may transfer, sell, or lease to any nonutility affiliate with which it is in a
6 holding company system any real property which, on or after November 28, 1985, is
7 held or used for provision of utility service except by public sale or offering to the
8 highest qualified bidder.

9 **SECTION 3.** 196.795 (5) (k) 3. of the statutes is created to read:

10 196.795 (5) (k) 3. If approved by the commission under s. 196.52 (9) (b) 1., a
11 public utility affiliate may enter into a leased generation contract, as defined in s.
12 196.52 (9) (a), with a nonutility affiliate.

13 **SECTION 4. Initial applicability.**

14 (1) The treatment of sections 196.52 (9) and 196.795 (5) (k) 1. and 3. of the
15 statutes first applies to leased generation contracts that are entered into, modified,
16 renewed, or extended on the effective date of this subsection.

17 (END)