

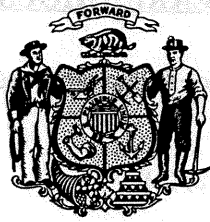
WISCONSIN LEGISLATIVE COUNCIL STAFF

MAY 08 2000
LCRC
FORM 2

RULES CLEARINGHOUSE

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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 00-065

AN ORDER to create chapter PSC 117, relating to the use of renewable resource credits.

Submitted by **PUBLIC SERVICE COMMISSION**

03-31-00 RECEIVED BY LEGISLATIVE COUNCIL.

04-28-00 REPORT SENT TO AGENCY.

RS:JES;jal;rv

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)]

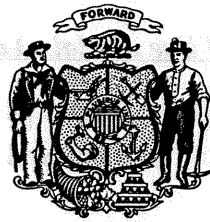
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-065

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. Under s. PSC 117.07 (3), the commission must determine the annual fee, if any, that it assesses electric providers for the purpose of funding the commission's renewable resource credit (RRC) program administrator. No statute expressly confers the power to the commission to establish this fee. The implied authority for the commission to establish and assess electric providers for the fee is not apparent.

In addition, if the commission concludes after review that it does have the authority to assess this fee, on what basis does the commission apply the fee to a nonexempt electric provider, as determined under s. PSC 117.01 (4), that chooses to comply with s. 196.378 (2) (a), Stats., directly without the use of any renewable resource credits from another electric provider and, thus, without receiving any services from the administrator?

b. The rule appears to allow electricity to be used in a renewable resource credit that is not authorized under s. 196.378, Stats. To be eligible for this use, the electricity must be supplied by a renewable facility owned, operated or under a wholesale purchase contract with an electric utility or retail electric cooperative in Wisconsin and sold by the utility or cooperative to its retail customers or members. See s. 196.378 (1) (g), (n) and (o), (2) (a) (intro.) and (3), Stats. The definition of "renewable resource credit" in s. PSC 117.02 (9) refers to the requirements set forth in ch. PSC 117 but not s. 196.378, Stats. Neither s. PSC 117.04 (1) nor 117.06 (2) explicitly refers to these requirements. If the commission intends to include these requirements

under s. PSC 117.06 (2) (c), the preferred rule drafting style is to include the requirements in the text of the rule.

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

a. In s. PSC 117.01, the word “a” should be replaced by the word “an” before the acronym “RRC.” (The entire rule should be reviewed for the use of the correct article before this acronym.)

b. Section PSC 117.02 (10) refers to the creation, sale, transfer, purchase and retirement of a renewable resource credit. Subsection (11) refers to creating, trading, tracking and submitting RRCs. Section PSC 117.05 (5) refers to the award, transfer and retirement of credits. The terminology used in connection with the RRC trading program should be made consistent.

c. Section PSC 117.02 (3) defines “designated representative” to be “the person authorized by the owner or operator of a renewable resource to register that resource with the program administrator” Given the use of the term “designated representative” in s. PSC 117.06 (2) (intro.) and (3), “renewable facility” and “facility” should be substituted for “renewable resource” and “resource,” respectively, in the definition of “designated representative.”

d. The phrase “meets the requirements set forth in this chapter” in the definition of “renewable resource credit” in s. PSC 117.02 (9) is vague. Can the commission specify which requirements must be met for a megawatt-hour of renewable energy to become a renewable resource credit? Also, the use of “otherwise” in this definition is at best unnecessary and at worst confusing to a reader.

e. Section PSC 117.04 describes how a “facility” may create RRCs for use in the RRC trading program. First, neither the statutes nor the rule define the term “facility.” It appears that when the commission intends to refer to a facility, it should make use of the defined statutory terms “renewable facility” throughout the rule. Next, in sub. (2), it is not clear why a renewable facility that is used to qualify for an electric provider exemption under s. 196.378 (2) (e), Stats., may not provide excess RRCs for use in the RRC trading program. The commission should provide an explanation for this provision in its analysis.

f. Under s. PSC 117.05 (2) (b) 2., the owner of a participating renewable facility must identify all electric providers to which energy was sold and the amount sold to each electric provider. Does the commission want the owner to not only identify this information but also to provide it to either the commission or its program administrator?

g. Section PSC 117.05 (2) (c) provides that the program administrator must credit a renewable facility’s RRC account with the number of RRCs created. This leads the reader to the conclusion that a renewable facility, on its own, may participate in the RRC trading program. However, s. 196.378 (3) (a) describes the RRC trading program in terms of transfers of RRCs between electric providers. The rule provision should be clarified.

h. The commission should review the procedures for the mandatory retirement of renewable resource credits after five years under s. PSC 117.05 (4) to ensure that the procedures work under all circumstances. For example, as drafted, a renewable resource credit created in January of a year could be used in the month of March five years later even though it is more than five years old because it will not be retired in the annual retirement process until after April 1 under s. PSC 117.06 (4) (b).

i. Under s. PSC 117.07 (1) (a), the program administrator must identify the number of renewable resource credits necessary for each participating electric provider to comply with the minimum percentage requirements of s. 196.378 (2) (a), Stats. Should the program administrator identify these numbers on an annual or biennial basis, given that the requirements in s. 196.378 (2) (a), Stats., change every two years and that the total retail electric sales are calculated on the basis of an average amount of a provider's sales in this state during the prior three years under s. 196.378 (2) (b) 1., Stats.? Also, will the program administrator be responsible for applying s. 196.378 (2) (b) 2. to 4., Stats., to participating electric providers?

j. In the third sentence in s. PSC 117.07 (3), "non-electric" should be "non-exempt electric."

k. The fiscal estimate notes that the commission has not yet decided who will fulfill the role of program administrator. This of course should be determined prior to the promulgation of the rule.

**PROPOSED ORDER OF THE STATE OF WISCONSIN
PUBLIC SERVICE COMMISSION ADOPTING RULES**

The Public Service Commission of Wisconsin proposes an order to create ch. PSC 117, relating
to the use of renewable resource credits.

Analysis Prepared by the Public Service Commission of Wisconsin

OK OK Statutory authority: ss. 196.02(1) and (3), 196.378^(b)(3) and 227.11, Stats.
Statute interpreted: s. 196.378, Stats.

1999 Wis. Act 9 created a renewable portfolio standard, requiring electric providers to meet certain minimum percentages of their retail sales with renewable resources. The minimum percentage gradually increases, as follows:

Year 2001:	0.5 percent of total retail electric sales.
Year 2003:	0.85 percent of total retail electric sales.
Year 2005:	1.2 percent of total retail electric sales.
Year 2007:	1.55 percent of total retail electric sales.
Year 2009:	1.9 percent of total retail electric sales.
Year 2011:	2.2 percent of total retail electric sales.

In lieu of providing renewable energy to its customers, an electric provider can purchase a renewable resource credit. Under the newly created statutes, the Commission must “promulgate rules that establish requirements for the use of a renewable resource credit, including the amount of a renewable resource credit.” The proposed rules address the requirements and procedures for the use of renewable resource credits.

The proposed rules establish a renewable resource credits trading program and describe the minimum criteria for renewable energy facilities to be eligible for production of credits in the trading program. The proposed rules also describe the duties of a program administrator, who supervises and implements the trading program. The program administrator is required to create

a trading account for program participants and to award renewable resource credits to the account of a certified renewable facility according to the amount of renewable energy produced at the facility. The program administrator must retire renewable resource credits upon their use to satisfy an electric provider's minimum renewable energy requirement. If a credit is not used within five years after its creation, it expires.

1 **SECTION 1. PSC 117 is created to read:**

2 **CHAPTER PSC 117**
3 **RENEWABLE RESOURCE CREDIT TRADING PROGRAM**
4

5 **PSC 117.01 Scope.** This chapter applies to each renewable facility that creates RRCs and
6 each electric provider that uses ^{an} RRC to meet the requirements of s. 196.378 (2) (a), Stats.

Can renewable facility be out of state?

ck 8 **PSC 117.02 Definitions.** The definitions specified in s. 196.378, Stats., also apply to this
9 chapter. In this chapter:

10 (1) "Compliance period" means a calendar year, beginning January 1, during which an
11 electric provider is required to deliver renewable energy under s. 196.378 (2) (a), Stats.

12 (2) "Commission" means the public service commission

13 (3) "Designated representative" means the person authorized by the owner or operator of a
14 renewable resource to register that resource with the program administrator or to take title to the
15 RRCs created by a facility. *Property right?*

16 (4) "Exempt electric provider" means an electric provider that has met the exemption
17 requirements of 196.378(2)(e), Stats.

ck 18 (5) "MWh" means megawatt-hour.

19 (6) "Program administrator" means the entity responsible for carrying out the administrative
20 responsibilities related to the renewable resource credit trading program.

21 (7) "RRC" means a renewable resource credit.

22 (8) "Renewable energy" means energy that is supplied by a renewable facility.

23 (9) "Renewable resource credit" means one MWh of renewable energy that is physically
24 metered and otherwise meets the requirements set forth in this chapter. *Reminder* *usage - which reqts. -> go to satisfy an electric provider's reqts.*

25 (10) "RRC account" means the account that the program administrator maintains in order to
26 track the creation, sale, transfer, purchase, and retirement of ^{an} RRC by a program participant. *notional*

1 (11) "RRC trading program" means the process of creating, trading, tracking, and submitting
2 RRCs.

3
4 **PSC 117.03 Use of renewable resource credits.** An electric provider may use a RRC in its
5 RRC account to comply with s. 196.378 (2) (a), Stats., only if, during that compliance period, the
6 electric provider meets its entire minimum percentage requirement under s. 196.378 (2) (a),
7 Stats., by using RRCs in its RRC account.

says all
in one
out.

8
9 **PSC 117.04 Facilities eligible for creating renewable resource credits.** (1) A facility
10 may create RRCs for use in the RRC trading program only if it is a renewable facility and meets
11 all of the following requirements:

12 (a) The energy output of the facility is physically metered and the accuracy of the metering
13 is verified by the program administrator.

14 (b) The facility registers with, and is certified by, the commission under s. PSC 117.06.

CK 15 (2) A renewable facility that is used to qualify for an exemption under s. 196.378 (2) (e),
16 Stats., in any compliance period, is not eligible to create RRCs for use in the RRC trading
17 program during that compliance period.

} auth.

18 (3) A biomass cofired facility may use only the renewable portion of its energy production,
19 based on the relative energy content of the fuels, to create RRCs in the applicable reporting
20 period.

21
22 **PSC 117.05 Creation and transfer of renewable resource credits.** (1) The program
23 administrator shall administer a trading program for RRCs.

24 (2) (a) Beginning on January 1, 2001, an owner of a certified renewable facility creates a
25 RRC when it meters one MWh of renewable energy at the facility. The energy metered for this
26 purpose may not be used to meet any electric provider's minimum percentage requirement under
27 s. 196.378 (2) (a), Stats., other than through the use of its associated RRC.

↪ stats refer to electric provider

} this means?

28 (b) Within 15 days of the end of each calendar quarter, the owner of each participating
29 renewable facility shall:

elec. provd.?

30 1. Report the amount of renewable energy generated during that quarter to the program
31 administrator.

ck of electric providers to install & provide to?

1 2. Identify all electric providers to which the energy was sold and the amount sold to each
2 electric provider.

3 3. Provide, to each electric provider that purchased renewable energy from the facility
4 during that quarter, an accounting of the renewable energy sold to the electric provider that
5 qualifies for participation in the RRC trading program.

what if sold to a trader? per

6 (c) On a quarterly basis, the program administrator shall record the amount of metered MWh
7 reported for each certified renewable facility. The program administrator shall credit the
8 renewable facility's RRC account, or the account of the facility's designated representative, with
9 the number of RRCs created.

10 (3) When an RRC is credited to an account under sub. (2), the account owner may sell or
11 transfer the RRC to any person. Any person buying or receiving a RRC shall report the sale or
12 transfer to the program administrator within 10 days of the transaction. The program
13 administrator shall then credit the RRC account of the new owner and debit the RRC account of
14 the prior owner. A RRC may continue to be sold or traded to meet the minimum percentage
15 requirements of s. 196.378 (2) (a), Stats., only if each buyer or transferee reports the transaction
16 to the program administrator within 10 days of its consummation.

17 (4) (a) When an electric provider uses a RRC to comply with the minimum percentage
18 requirements of s. 196.378 (2) (a), Stats., the program administrator shall retire the RRC.

19 (b) A RRC has a maximum life of five years. Annually, on or after April 1, the program
20 administrator shall retire each RRC that has reached the end of its five-year life and has not
21 otherwise been retired under par. (a).

what do you credit create in 1st qtr?

22 (5) Subject to commission approval, the program administrator may establish any procedure
23 necessary to ensure that the award, transfer, and retirement of credits are accurately recorded.

see p. 2, 6, 26 p. 3, 11

25 **PSC 117.06 Certification of renewable facilities.** (1) No renewable facility may
26 participate in the RRC trading program until it is certified by the commission. The program
27 administrator may not award RRCs for any energy produced by a renewable facility before the
28 date that the commission certifies the facility.

29 (2) To obtain commission certification, the owner of a renewable facility, or a designated
30 representative, shall provide the following registration information in a format approved by the
31 commission:

elec. provider

form?

1 (a) The renewable facility's location, owner, technology, date placed in service, and rated
2 capacity.

3 (b) Information that demonstrates the renewable facility meets the resource eligibility
4 criteria under s. PSC 117.04.

5 (c) Any other information the commission determines to be necessary.

6 (3) The commission shall inform both the program administrator and the facility owner, or
7 its designated representative, whether it has certified a renewable facility for which it has
8 received an application under sub. (2).

9 (4) The program administrator shall create ^{an} RRC account for each renewable facility that
10 the commission certifies.

11 (5) The commission may make on-site visits to any certified unit of a renewable facility to
12 determine its compliance with this chapter and with s. 196.378, Stats., and may decertify any unit
13 that it finds not to be in compliance.

14 (6) The program administrator may not create RRCs for a decertified renewable facility.

PSC 117.07 Renewable resource credit program administrator.

17 program administrator shall: (1) The commission's ^{shall} duty is to ^{assess} ^{early in} ^{the} ^{process} ^{of} ^{issuing} ^{the} ^{RRC} ^{accounts} ^{to} ^{the} ^{participating} ^{electric} ^{providers} ^{to} ^{comply} ^{with} ^{the} ^{minimum} ^{percentage} ^{requirements} ^{of} ^{s.} ^{196.378} ⁽²⁾ ^(a), Stats.

18 (a) Identify the number of RRCs necessary for each participating electric provider to comply
19 with the minimum percentage requirements of s. 196.378 (2) (a), Stats.

20 (b) Create an RRC account to track RRCs for each program participant. ^{include traders?}

21 (c) Credit RRCs to RRC accounts under s. PSC 117.05 (2).

22 (d) Retire RRCs under s. PSC 117.05 (4)

23 (e) Maintain program information on an internet website for traders and the public in
24 general.

25 (f) Audit renewable facilities that participate in the trading program to verify the accuracy of
26 metered production data.

27 (g) Perform any other function designated by the commission.

28 (2) The program administrator may create an exchange procedure for purchasing and selling
29 RRCs.

30 (3) Annually, in consultation with the program administrator, the commission shall
31 determine the annual fee, if any, it assesses electric providers for the purpose of funding the

1-Authority for 516
18 How do elect. providers get to participate in the program?
21 How do providers get to participate in the program?
22 How do providers get to participate in the program?
23 How do providers get to participate in the program?

Any duty to assess elect. pr. in report
include traders?
will administer itself to buyer that trader has RRC to sell

Fee Authority
- only 1/2 state providers
- business pay fee?
or register

Nexus for change

*what if not using
↑ RRC, doing completion
directly*

*5-7
Clarity*

1 program administrator. The commission shall allocate this fee among non-exempt electric
 2 providers, based on the renewable resource requirement of each non-exempt electric provider.
 3 The commission shall calculate each non-electric provider's renewable resource requirement as a
 4 percentage of the total renewable resource requirement of all non-exempt electric providers
 5 under s. 196.378 (2) (a), Stats. The fee allocation of each non-exempt electric provider shall be
 6 the product of the total annual fee and the non-exempt electric provider's percentage of the total
 7 renewable resource requirement.

8 (4) The commission shall invoice each non-exempt electric provider for its portion of the
 9 renewable trading credits fee annually.

10 (5) Each non-exempt electric provider shall pay to the commission the invoiced amount
 11 within 30 days after the commission delivers its invoice under sub. (4).

12
 13 **EFFECTIVE DATE:** This rule shall take effect on the first day of the month following
 14 publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

15 (End)

1997 Session

LRB or Bill No./Adm. Rule No.
PSC Rule 117 (1-AC-192)
Amendment No. if Applicable

FISCAL ESTIMATE

DA-2048 N(R10/96)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject
Rules for Sales of Renewable Resource Credits

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

Local: No local government costs

- | | | |
|---|---|--|
| <p>1. <input type="checkbox"/> Increase Costs
 <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>2. <input type="checkbox"/> Decrease Costs
 <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> | <p>3. <input type="checkbox"/> Increase Revenues
 <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>4. <input type="checkbox"/> Decrease Revenues
 <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> | <p>5. Types of Local Governmental Units Affected:
<input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities
<input type="checkbox"/> Counties <input type="checkbox"/> Others _____
<input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts</p> |
|---|---|--|

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.155(l)(i)

Assumptions Used in Arriving at Fiscal Estimate

These rules propose a process for sale of renewable energy credits to implement § 196.378 (3)(b), Stats. The rules create a program administrator to be responsible for carrying out the administrative responsibilities related to the trading program. It has not been determined how the administrator will be created. The Commission has several options including using existing staff, assigning a new staff person, or requesting expenditure authority to hire an outside contractor to manage the program. A collaborative report to the Commission is currently planned as a part of the rule making process. The report will address this issue, among others, and make a recommendation for action to the Commission. Until the report is received and action taken by the Commission it would be only speculation to provide cost data at this time. A new fiscal note for this rulemaking will be developed after the Commission has acted on the collaborative report.

what?

Wide-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
PSC/Gordon Grant 267-9086

Authorized Signature/Telephone No.

Gordon Grant

Date
03/21/00