

WISCONSIN LEGISLATIVE COUNCIL STAFF

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FORM 2

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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 00-180

AN ORDER to renumber and amend PSC 116.03 (4); to amend PSC 116.02 Note, 116.03 (1) and (3), 116.04 (1) (a) and (b) 3. and 5., 116.06, 116.07 and 116.08 (1); and to create PSC 116.03 (4) (a) to (c) and (5) and 116.09, relating to fuel cost adjustments for electric public utilities.

Submitted by **PUBLIC SERVICE COMMISSION**

12-14-00 RECEIVED BY LEGISLATIVE COUNCIL.
01-16-01 REPORT SENT TO AGENCY.

RNS:JES;jal;flu

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)]

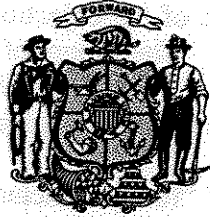
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-180

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.]

I. Statutory Authority

The commission does not appear to have the authority to modify its definition of "fuel" as proposed in s. PSC 116.03 (4). Chapter PSC 116 sets forth the conditions and procedures for the Public Service Commission (PSC) to review certain increases in electric utility fuel costs in an extraordinary or emergency hearing. Under s. 196.20 (4) (c), Stats., these hearings are limited to review of "an increase in fuel costs . . . of an extraordinary or emergency nature." Thus, under the plain reading of the statutes, the hearings can only relate to the specified costs of fuel and not to other types of costs.

Since neither s. 196.20, Stats., in particular, nor ch. 196, Stats., in general, define "fuel," for purposes of s. 196.20 (4), Stats., the PSC may use its rule-making authority to define "fuel" in ch. PSC 116. However, since s. 196.20 (4), Stats., is a successor policy to the commission's automatic fuel adjustment clause policy, case law interpreting the adjustment clause likely applies to the successor policy to the extent that the Legislature has not modified the applicable statute. In creating s. 196.20 (4), Stats., 1983 Wisconsin Act 27 did not define "fuel," and thus it is reasonable to apply court interpretations of "fuel" under the adjustment clause to the definition of "fuel" applicable to s. 196.20 (4), Stats.

In *Wisconsin's Environmental Decade, Inc. v. Public Service Commission* [81 Wis. 2d 344, 260 N.W.2d 712 (1978)], the WED IV case, the Wisconsin Supreme Court ruled that expanded adjustment clauses that included such items as "purchased power," "fuel," "labor," "supplies," "steam," "electric expenses" and "supervision" were not authorized by the

Legislature. Building on this decision, the Court of Appeals in *Wisconsin's Environmental Decade, Inc. v. Public Service Commission*, 105 Wis. 2d 457, 313 N.W.2d 863 (Ct. App. 1981), ruled that costs of nuclear fuel, though a nontraditional fuel, is "still a fuel rather than a non-fuel, which was the distinguishing characteristic of the objectionable items included in the expanded adjustment clause rejected in WED IV." The Court of Appeals also noted that "[b]ecause nuclear fuel is a fuel, it is, like other fuels, not subject to WEPCO's cost control. This provides a rational basis for treating it like other fuels by including it in an adjustment clause."

The rule expands the definition of "fuel" to include "other commission-approved plans designed for the reliable provision of electricity, including retail customer tariffs under s. 196.192 (2) (a), Stats., for voluntary curtailable load, air conditioner load control programs and short-term rental of generating facilities. See the treatment of s. PSC 116.03 (4). While it may be meritorious that the commission establish an expedited hearing procedure for increased costs born by a utility relating to the reliable provision of electricity, the plans specified in the definition of "fuel" may not result in fuel-related expenses and could include nonfuel expenses. Furthermore, the rule does not limit these plans to expenses beyond the utility's cost control, casting further doubt on the authority for their inclusion in this provision.

2. Form, Style and Placement in Administrative Code

a. The preferred drafting style in specifying a list of items is to include in the introductory material a phrase like "all of the following" or "any of the following." [See s. 1.03 (8), Manual.] This style was not followed in s. PSC 116.03 (4) (intro.).

b. In the treatment clause for SEC. 4, "are" should be substituted for "is."

c. The preferred drafting style is to present a definition in the singular form. This style was not followed in the definition of "opportunity sales" in s. PSC 116.03 (5). Also, see current s. PSC 117.03 (14).

d. The phrase "Wis. Adm. Code" should not be included in the reference to ch. PSC 117 in s. PSC 116.03 (5). [See s. 1.07 (2), Manual.]

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

The reference to the definition of "opportunity sale" in s. PSC 116.03 (5) should be to s. PSC 117.03 (14) rather than ch. PSC 117.

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

a. The rule contains a number of references to "cumulative fuel costs" or comparable terms. See, for example, ss. PSC 116.03 (3), 116.06 (1) and 116.07 (1). The rule is not clear as to the period covered by these cumulative estimates or costs. The commission should review the use of these terms and modify the rule as necessary to remove this ambiguity.

b. The punctuation between the terms in s. PSC 116.03 (4) (intro.) should be consistent. As amended, the provision has no punctuation or conjunction after "generate electricity" and includes a semicolon after "rate proceeding."

c. The commission should review the definition of "opportunity sales" in s. PSC 116.03 (5) and the use of this term in s. PSC 116.03 (4) (intro.) to ensure that the application of the term will be consistent and unambiguous. In particular, under s. PSC 116.03 (4) (intro.), "fuel" includes in-state and out-of-state opportunity sales of electricity as determined in a rate proceeding whereas s. PSC 116.03 (5) only applies the rate proceeding requirement to in-state sales. Also, s. PSC 116.03 (4) (intro.) uses the verb "determined" whereas s. PSC 116.03 (5) uses the verb "defined."

d. In s. PSC 116.03 (5), "out of state" and "in state" should be hyphenated.

e. If the purpose of the amendment to s. PSC 164.04 (1) (a) is to establish that the specified fuel costs will not be considered an emergency increase in the cost of fuel, then this paragraph is potentially ambiguous as an emergency increase in the cost of fuel is a subset of an extraordinary increase in the cost of fuel under one reading of the definitions in s. PSC 116.03 (1) and (3). If the commission intends that par. (a) be interpreted so that the specified fuel costs will not be considered an emergency or extraordinary increase in the cost of fuel, then the paragraph would be clearer if it stated that interpretation directly.

f. Since the rule does not contain any amendment to the text of s. PSC 116.04 (1) (b) 3., the commission should either delete the provision from SEC. 6 or modify the text to include an amendment to this subdivision.

g. As drafted, s. PSC 116.04 (1) (b) 5. is ambiguous, as it is not clear whether "as determined in a rate proceeding" modifies only "opportunity sales" or both "cost effect of known or projected purchases of electricity" and "opportunity sales of electricity."

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of Proposed Revision of Chapter PSC 116
Wis. Adm. Code – Cost of Fuel

1-AC-197

NOTICE OF PROPOSED RULEMAKING HEARING
AND REQUEST FOR COMMENTS

Hearing Date:	Tuesday, January 23, 2000, at 10:00 a.m.
Hearing Location:	Public Service Commission, 610 North Whitney Way, Madison, WI (Ammicon Falls Conference Room)

Comments Due: Wednesday, January 17, 2000 – Noon	Address Comments To: Lynda L. Dorr, Secretary to the Commission Public Service Commission P.O. Box 7854 Madison, WI 53707-7854 FAX (608) 266-3957
FAX Due: Tuesday, January 16, 2000 – Noon	

The Commission proposes an order to amend ch. PSC 116, Wis. Adm. Code, relating to fuel cost adjustments for electric public utilities. The Commission submitted a copy of the proposed amendment to the Joint Legislative Council Staff on the date of this notice.

ANALYSIS PREPARED BY THE COMMISSION

Statutory authority: ss. 196.02(1), and (3), 196.20(4)(d), and 227.11, Stats.
Statute interpreted: ss. 196.20(4) and 196.192(2)(a), Stats.

On August 16, 1984, the Commission issued an order establishing the electric fuel rules, ch. PSC 116, Wis. Adm. Code, pursuant to s. 196.20(4)(d), Stats., that abolished use of an automatic fuel adjustment clause in Wisconsin. The order was published in the Register in October 1984, No. 346. It became effective on November 1, 1984.

The Commission determines the amount to be charged for Wisconsin retail electric rates in periodic rate case proceedings. The process includes a forecast of the utility's revenues and

expenses for a representative test year when the rates will be in effect. The forecast is comprised of test year expenses and revenues that are monitored under the fuel rules, ch. PSC 116, Wis. Adm. Code, and other costs. For most forecast costs and revenues, differences between the projections and the actual amounts realized for costs will usually not cause rate changes. However, for the costs and revenues monitored under the fuel rules, a variance between forecast and actual costs can trigger a rate change. Chapter PSC 116, Wis. Adm. Code, defines the costs and revenues included in the fuel cost monitoring system and the process to determine and implement such a rate change.

An emergency revision to the fuel rules was published June 5, 2000. On June 20, 2000, the Commission issued a notice of rulemaking for emergency revision of ch. PSC 116, Wis. Adm. Code. A hearing was held on August 4, 2000. The definition of "fuel" in s. PSC 116.03(4) was amended and s. PSC 116.04(6), Wis. Adm. Code was created to allow investor-owned utilities the ability to incorporate the cost of voluntary curtailments of service into the cost of fuel to increase electric reliability in Wisconsin for the summer of 2000. The emergency rule changes expired on November 3, 2000.

The permanent rule amendments consider three general classifications of changes: revisions in the permanent rules to incorporate alternative sources of power, including the emergency provisions that expired November 3, 2000; a proposal for a deferral process to limit the cost risk of fuel cost volatility; and revisions to accurately reflect how the statute is being administered.

1) Retail customer tariffs under s. 196.192(2)(a), Stats., for voluntary curtailable load

Section 196.192(2)(a), Stats., allows an electric utility to buy down firm customers' demand as a way to meet system peak demand. The firm load curtailment program provides the utility an alternative to avoid expensive fuel or purchased power costs and to make power available for other firm customers when the demand for electricity exceeds available supply.

Under the existing rules the costs of this program would be classified as non-monitored expenses or as reductions in revenue. The emergency rule change included this cost in the monitored fuel costs during the summer and fall of 2000. The emergency rule expired on November 3, 2000.

2) Air conditioner load control programs

In order to avoid expensive power purchases, utilities can pay customers to reduce the air conditioning load. This program also makes power available to other firm customers when the demand for energy exceeds the available supply. Utilities incur this cost as either a credit to the monthly fixed customer charge or as an expense per occurrence, credited to the customer's bill. The first method requires no fuel rules consideration. It may be appropriate to monitor the cost of the second method in the fuel rules. The estimate of the cost included in utility rates is based on the charge per occurrence and the number of occurrences. Each actual cost occurrence replaces a cost included in the fuel rules.

3) Short-term rental of generating facilities

Utilities sometimes rent generation facilities, such as diesel generators, as an alternative source of power. The Commission classifies the rental cost as operations and maintenance expense and the related fuel cost as part of the fuel rules. This is a satisfactory approach when a utility can accurately forecast its leased obligations. The difficulty comes between rate cases when a leased obligation is less expensive than monitored fuel costs of other alternative sources of power. Monitoring this cost in the fuel rules would afford the utility the opportunity to recover part of the additional cost if its inclusion causes fuel costs to exceed the monitored range.

4) A proposal for a deferral process to limit the cost risk of fuel cost volatility

The deferral mechanism is intended to address extraordinary changes in fuel costs, consistent with the Commission's deferred accounting procedures. While the current rate credit and surcharge mechanisms under the fuel rules would remain in place, the deferral mechanism would be a further refinement to reflect the greater volatility seen in fuel costs in recent years. The ratepayer and shareholder risk would be capped, but not eliminated.

5) Revisions to accurately reflect how the statute is being administered in practice

Terminology relating to "opportunity sales" describes those revenues from power transactions currently monitored. Opportunity sales are monitored because these transactions offset fuel costs and purchased power. The addition of wording relating to "cumulative limits" is made to reflect actual administration of the rules and to make the clauses referring to monitoring consistent with each other.

An agency shall prepare in plain language an analysis of each proposed rule, which shall be printed with the proposed rule when it is published or distributed. The analysis shall include a reference to each statute that the proposed rule interprets, each statute that authorizes its promulgation, each related statute or related rule and a brief summary of the proposed rule.

TEXT OF PROPOSED RULE

1 SECTION 1. The note following PSC 116.02 is amended to read:

2 *Note:* These are ~~Lake Superior District Power Co.,~~ Madison Gas and Electric Co., Northern States Power Co.,
3 Wisconsin Electric Power Co., Wisconsin Power and Light Co., and Wisconsin Public Service Corp.

4
5 SECTION 2. PSC 116.03 (1) and (3) are amended to read:

1 PSC 116.03 (1) An "emergency" Emergency increase in the cost of fuel means an
2 increase that is extraordinary and that is caused suddenly by forces beyond the utility's control or
3 reasonable foresight.

4 (3) An "extraordinary" Extraordinary increase in the cost of fuel means an increase that
exceeds the range set around the utility's monthly or cumulative estimates approved by the
commission that will significantly alter the cost of fuel from the base cost authorized in the
utility's latest rate case.

8
9 SECTION 3. PSC 116.03(4) is renumbered PSC 116.03(4) (intro.) and amended to read:

10 (4) (intro.) "Fuel" means coal, gas, nuclear fuel, oil, and any other type of material used
11 to generate electricity, and electricity purchased or sold wholesale; opportunity sales of
12 electricity as determined in a rate proceeding; and other commission-approved plans designed for
13 the reliable provision of electricity, including: *any of the following*

14
15 SECTION 4. PSC 116.03(4) (a) to (c) *ad* is created to read:

- 16 (a) Retail customer tariffs under s. 196.192(2)(a), Stats., for voluntary curtailable load.
- 17 (b) Air conditioner load control programs.
- 18 (c) Short-term rental of generating facilities.

19 SECTION 5. PSC 116.03(5) is created to read:

20 (5) "Opportunity sales" means those sales of electricity as defined in Wis. Adm. Code
21 ch. PSC 117 for out of state sales and as defined by the commission in a rate proceeding for in-
22 state sales. *'03 (14) 1*

23
24 SECTION 6. PSC 116.04 (1)(a) and (b)3. and 5. are amended to read:

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1 **PSC 116.04 (1)(a)** In each rate proceeding the commission shall consider the costs of fuel
2 in setting base rates and shall set ranges within which monthly fuel costs may vary from monthly
3 estimates either on a monthly or a cumulative basis or both, and within which annual fuel costs
4 may vary from annual estimates in terms of cost per kilowatt hour without being considered
5 emergency or extraordinary an extraordinary increase in the cost of fuel. *want to include emergency*
(emergency - subset of extraordinary)

6 *where is part?*
(b) 3. The types, quantities, and delivered costs of fuel expected to be used by the utility.

8
9 5. The possibility of sales or purchases of excess fuel or economy energy to or from other
10 utilities or cooperatives cost effect of known or projected purchases of electricity or opportunity
11 sales of electricity (as determined in a rate proceeding). *what modify?*
- already in proceeding?

12
13 SECTION 7. PSC 116.06 is amended to read:

14 **PSC 116.06 Emergency and extraordinary increases.** (1) If a utility's monthly or cumulative
15 fuel costs exceed the ranges set in its rate proceeding, and the annual fuel costs will be affected
16 so as to exceed the annual range, the utility may seek an emergency or extraordinary a rate
17 increase in a proceeding limited in scope to the question of the emergency or extraordinary
18 increase in the cost of fuel costs.

19 (2) After a hearing confined solely to fuel costs, ~~an emergency or extraordinary~~ the
20 emergency or extraordinary increase in the cost of fuel, a rate increase based on an increase in an
21 electric utility's monthly or cumulative costs of fuel may be granted only if the commission finds
22 that the fuel cost increase will affect the utility's average yearly fuel costs so as to fall outside the
23 established annual range.

1 (3) If an increase in rates is based on a hearing confined solely to ~~fuel costs~~ an emergency
2 or extraordinary increase in the cost of fuel, the commission shall condition the increase on a
3 refund of any excess revenues collected by the utility.

4 SECTION 8. PSC 116.07 is amended to read:

5 *5 - cumulative fuel costs
6 - PSC 116.07
7 - cumulative fuel costs*
6 **PSC 116.07 Decreases.** (1) If a utility's monthly or cumulative fuel costs fall below the monthly
7 ranges set in its rate proceeding, any interested person may seek a rate decrease in a proceeding
8 limited in scope to the question of the decrease in fuel costs.

9 (2) A rate decrease based upon a decrease in an electric utility's monthly or cumulative
10 cost of fuel shall be granted only if the commission finds that the fuel cost decrease will affect
11 the utility's average yearly fuel costs so as to fall outside the established annual range.

12 SECTION 9. PSC 116.08 (1) is amended to read:

13 **PSC 116.08 Initiation of hearings.** (1) The commission may order ~~an emergency or~~
14 extraordinary a rate increase proceeding under this chapter on its own motion or that of another
15 interested person ~~or and~~ may expand the scope of any rate proceeding held under this section
16 chapter to consider other issues in addition to the cost of fuel.

17 SECTION 10. PSC 116.09 is created to read:

18 **PSC. 116.09 Deferrals.** (1) In setting base rates for the utility, the commission shall set an
19 amount above and below the annual fuel cost estimate as the utility's fuel cost deferral range.
20

21 (2) An electric public utility may apply for authority to defer recovery for its annual
22 actual fuel costs in excess of the fuel costs it recovered in rates if it can show that its additional
23

1 fuel costs exceeded its fuel cost deferral range and that, if granted, the deferral will not create
2 excess revenues.

3
4 (3) The commission, after a special surcharge hearing or as part of the utility's next rate
5 case, may grant the recovery of deferred fuel costs, if it finds that the utility's additional fuel
6 costs exceed its deferral range and that the deferral will not create excess revenues.

7
8
9 (4) The commission shall consider, on its own motion, or by application of any interested
10 person, a credit to an electric public utility's ratepayers for a reduction in annual fuel costs
11 compared with the fuel costs collected in rates that fall below its fuel cost deferral range.

12 (end)

INITIAL REGULATORY FLEXIBILITY ANALYSIS

The proposed rule would apply to electric public utilities as defined by s. 196.20(4)(a)(2), Stats. The proposed rule will not affect small businesses as defined in s. 227.114, Stats.

FISCAL ESTIMATE

This rule change has no fiscal impact. A completed Fiscal Estimate form is included as Attachment A.

NOTICE IS HEREBY GIVEN that pursuant to s. 227.16(2)(b), Stats., the Commission will hold a public hearing on these proposed rule changes in the Amnicon Falls Conference Room, at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, on Tuesday, January 23, 2000, at 10 a.m. This building is accessible to people in wheelchairs through the Whitney Way (lobby) entrance. Handicapped parking is available on the south side of the building.

The Commission requests comments on the above issues. Any party who desires to file comments should submit an original and 15 copies as indicated in the box on page 1. Members of the public need only file an original. These comments must be received by noon on

Docket 1-AC-197

Wednesday, January 17, 2000. Comments by fax are due one day earlier. Fax filing cover sheets must state "Official Filing" and include the docket number and the number of pages (limit of 20 pages). File by one mode only.

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 obtain this document in a different format should contact the case coordinator listed below.

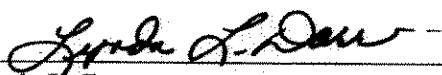
Questions from the media may be directed to Jeffrey L. Butson, Public Affairs Director at (608) 267-0912.

Questions regarding this matter may be directed to case coordinator Sharon K. Hennings at (608) 267-2160 or by email at hennis@psc.state.wi.us. Hearing or speech-impaired individuals may also use the Commission's TTY number at (608) 267-1479.

Dated at Madison, Wisconsin,

December 12, 2000

By the Commission:



Lynda L. Dorr
Secretary to the Commission

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DATE MAILED
MAY 16 2001

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of Proposed Emergency Revision of Chapter PSC 116,
Wis. Adm. Code – Cost of Fuel

1-AC-205

**ORDER OF THE PUBLIC SERVICE COMMISSION
ADOPTING EMERGENCY RULES**

The Public Service Commission of Wisconsin adopts an emergency rule to amend ss. PSC 116.03(4) and create 116.04(6) Wis. Adm. Code, relating to the definition of fuel and permissible fuel costs.

Analysis by the Public Service Commission of Wisconsin

Statutory authority: ss. 196.02(1) and (3), 227.11 and 227.24, Stats.

Statutes interpreted: ss. 196.20(4) and 196.192(2)(a), Stats.

1999 Wisconsin Act 9, s. 196.192(2)(a), Stats. required investor-owned utilities to file with the Commission rates that result in customers receiving market-based compensation for voluntary interruptions of firm load during peak periods of electric use. This creates an option that can result in a buydown of firm customers' demand as a direct alternative to purchasing power that is monitored under the fuel rules set forth at Chapter PSC 116, Wis. Adm. Code.

This buydown is a direct alternative to purchasing power on the wholesale market. This would allow a utility to avoid making a purchase of power in favor of paying firm customers to reduce their usage. Presently, the cost to buy back firm load does not meet the definition of "fuel" set forth at s. PSC 116.03(4) Wis. Adm. Code.

Fiscal Estimate

A fiscal estimate is attached to this order.

State of Emergency

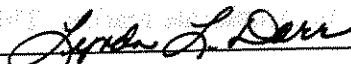
In order to preserve the health, safety, and welfare of Wisconsin residential, commercial and industrial ratepayers it is necessary to amend Chapter PSC 116 Wis. Adm. Code. Amending the definition of "fuel" in s. PSC 116.03(4) and creating s. PSC 116.04(6) would allow investor-owned utilities the ability to incorporate the cost of voluntary curtailment into the cost of fuel to increase the reliability of electric service in Wisconsin for the summer of 2001 and beyond. This change would assist in implementing the requirement of 1999 Wisconsin Act 9, s. 196.192(2)(a), Stats.

Order of Adoption

Pursuant to ss. 196.02(1) and (3), 227.11 and 227.24, Stats., the Commission amends ss. PSC 116.03(4) and creates s. 116.04(6), Wis. Adm. Code. The attached emergency rule takes effect upon publication.

Dated at Madison, Wisconsin, May 15, 2001

By the Commission:



Lynda L. Dorr
Secretary to the Commission

EMERGENCY RULES

SECTION 1. PSC 116.03(4) is amended to read:

PSC 116.03(4) "Fuel" means coal, gas, nuclear fuel, oil, any other type of material used to generate electricity, ~~and electricity purchased or sold wholesale.~~ and the voluntary curtailable load acquired under s. 196.912(2)(a), Stats.

SECTION 2. PSC 116.04(1)(b)6. is created to read:

PSC 116.04(1)(b)6 The costs incurred in acquiring voluntary curtailable load under s. 196.192(2)(a), Stats.

SECTION 3. EFFECTIVE DATE. As provided in s. 227.24(1)(c), Stats., the rules contained in this emergency order take effect upon publication in the official state newspaper.

(End)

FISCAL ESTIMATE

DOA-2048 N(R10/96)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
PSC Rule 116 (1-AC-205)

Amendment No. if Applicable

Subject

Emergency Rule Revisions for Cost of Fuel

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

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

Local: No local government costs

- 1. Increase Costs
 - Permissive Mandatory
- 2. Decrease Costs
 - Permissive Mandatory

- 3. Increase Revenues
 - Permissive Mandatory
- 4. Decrease Revenues
 - Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts WTCS Districts

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

1999 Wisconsin Act 9, s. 196.192 (2)(a), Stats., required investor-owned utilities to file with the Commission rates that result in customers receiving market based compensation for voluntary interruptions of firm load during peak periods of electric use.

This addition to Chapter PSC 116 Wis. Admin. Code would not result in increased costs to the Commission, or other units of Government.

Long-Range Fiscal Implications

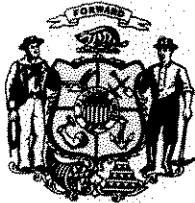
Agency/Prepared by: (Name & Phone No.)
PSC/Gordon Grant 267-9086

Authorized Signature/Telephone No.

Date

05/03/01

MAY 16 2001



Public Service Commission of Wisconsin

Ave M. Bie, Chairperson
Joseph P. Mettner, Commissioner
Robert M. Garvin, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

The Honorable Judy Robson, Co-chairman
Joint Committee for Review of Administrative Rules
15 South, State Capitol
Madison, WI 53703

The Honorable Glenn Grothman, Co-chairman
Joint Committee for Review of Administrative Rules
125 West, State Capitol
Madison, WI 53703

Re: In the Matter of Revision of Chapter PSC 116.03(4) and
116.04(1)(b)6 Wis. Admin. Code – Cost of Fuel

1-AC-205

Dear Senator Robson and Representative Grothman:

At its open meeting on May 15, 2001, the Public Service Commission adopted an emergency rule concerning the cost of fuel. Enclosed please find copies of a certificate, Commission order with attached emergency rule, and fiscal estimate regarding this emergency rule. If you have questions or concerns, please contact Mr. Leon M. Swerin, Assistant General Counsel, at (608) 267-3589 or Mr. Robert Norcross, Administrator, Electric Division, at (608) 266-0699.

Dated at Madison, Wisconsin, May 15, 2001

By the Commission:

Lynda L. Dorr
Secretary to the Commission

LLD:ccs:mem:L:\Rulemaking\1-AC-205\Notice to the Legislature

Enclosures

cc: Chief Clerks of the Senate and Assembly

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of Proposed Emergency Revision of Chapter PSC 116,
Wis. Adm. Code – Cost of Fuel

1-AC-205

**ORDER OF THE PUBLIC SERVICE COMMISSION
ADOPTING EMERGENCY RULES**

The Public Service Commission of Wisconsin adopts an emergency rule to amend ss. PSC 116.03(4) and create 116.04(6) Wis. Adm. Code, relating to the definition of fuel and permissible fuel costs.

Analysis by the Public Service Commission of Wisconsin

Statutory authority: ss. 196.02(1) and (3), 227.11 and 227.24, Stats.

Statutes interpreted: ss. 196.20(4) and 196.192(2)(a), Stats.

1999 Wisconsin Act 9, s. 196.192(2)(a), Stats. required investor-owned utilities to file with the Commission rates that result in customers receiving market-based compensation for voluntary interruptions of firm load during peak periods of electric use. This creates an option that can result in a buydown of firm customers' demand as a direct alternative to purchasing power that is monitored under the fuel rules set forth at Chapter PSC 116, Wis. Adm. Code.

This buydown is a direct alternative to purchasing power on the wholesale market. This would allow a utility to avoid making a purchase of power in favor of paying firm customers to reduce their usage. Presently, the cost to buy back firm load does not meet the definition of "fuel" set forth at s. PSC 116.03(4) Wis. Adm. Code.

Docket 1-AC-205

Fiscal Estimate

A fiscal estimate is attached to this order.

State of Emergency

In order to preserve the health, safety, and welfare of Wisconsin residential, commercial and industrial ratepayers it is necessary to amend Chapter PSC 116 Wis. Adm. Code. Amending the definition of "fuel" in s. PSC 116.03(4) and creating s. PSC 116.04(6) would allow investor-owned utilities the ability to incorporate the cost of voluntary curtailment into the cost of fuel to increase the reliability of electric service in Wisconsin for the summer of 2001 and beyond. This change would assist in implementing the requirement of 1999 Wisconsin Act 9, s. 196.192(2)(a), Stats.

Order of Adoption

Pursuant to ss. 196.02(1) and (3), 227.11 and 227.24, Stats., the Commission amends ss. PSC 116.03(4) and creates s. 116.04(6), Wis. Adm. Code. The attached emergency rule takes effect upon publication.

Dated at Madison, Wisconsin, May 15, 2001

By the Commission:



Lynda L. Dorr
Secretary to the Commission

LLD:CCS:sma:G:\Order\Pending\1-AC-205 emergency rules voluntary curtailable load.doc

EMERGENCY RULES

SECTION 1. PSC 116.03(4) is amended to read:

PSC 116.03(4) "Fuel" means coal, gas, nuclear fuel, oil, any other type of material used to generate electricity, ~~and~~ electricity purchased or sold wholesale, and the voluntary curtailable load acquired under s. 196.912(2)(a), Stats.

SECTION 2. PSC 116.04(1)(b)6. is created to read:

PSC 116.04(1)(b)6 The costs incurred in acquiring voluntary curtailable load under s. 196.192(2)(a), Stats.

SECTION 3. EFFECTIVE DATE. As provided in s. 227.24(1)(c), Stats., the rules contained in this emergency order take effect upon publication in the official state newspaper.

(End)

LRB or Bill No./Adm. Rule No.
PSC Rule 116 (1-AC-205)

Amendment No. if Applicable

- ORIGINAL
- UPDATED
- CORRECTED
- SUPPLEMENTAL

FISCAL ESTIMATE

DOA-2048 N(R10/96)

Subject

Emergency Rule Revisions for Cost of Fuel

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

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

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive
 - Mandatory
- 2. Decrease Costs
 - Permissive
 - Mandatory

- 3. Increase Revenues
 - Permissive
 - Mandatory
- 4. Decrease Revenues
 - Permissive
 - Mandatory

5. Types of Local Governmental Units Affected:

- Towns
- Villages
- Cities
- Counties
- Others _____
- School Districts
- WTCS Districts

Fund Sources Affected

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

Affected Ch. 20 Appropriations

20.155(l)(l)

Assumptions Used in Arriving at Fiscal Estimate

1999 Wisconsin Act 9, s. 196.192 (2)(a), Stats., required investor-owned utilities to file with the Commission rates that result in customers receiving market based compensation for voluntary interruptions of firm load during peak periods of electric use.

This addition to Chapter PSC 116 Wis. Admin. Code would not result in increased costs to the Commission, or other units of Government.

Long-Range Fiscal Implications

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

Authorized Signature/Telephone No.

Date
05/03/01

3. Any good faith attempt to comply with the agreement after the party receives notice of a failure to comply

4. Any other factor that the court determines is relevant.

(c) In an action to recover a forfeiture under par. (a), a finding by the commission in a proceeding under this subsection that a party to an interconnection agreement has failed to comply with the agreement shall be, subject to review under s. 227.52, conclusive proof that the party failed to comply with the agreement.

History: 1997 a 218.

196.20 Rules on service; changes in rates. (1) The rate schedules of any public utility shall include all rules applicable to the rendition or discontinuance of the service to which the rates specified in the schedules are applicable. No change may be made by any public utility in its schedules except by filing the change as proposed with the commission. Except for a telecommunications utility, no change in any public utility rule which purports to curtail the obligation or undertaking of service of the public utility shall be effective without the written approval of the commission after hearing, except that the commission, by emergency order, may make the rule, as filed, effective from the date of the order, pending final approval of the rule after hearing.

(1m) (a) A telecommunications utility may discontinue a service to an exchange if the service is optional and not essential to the provision of basic local exchange service, business access line and usage service within a local calling area or access services, or if one or more other telecommunications providers, whether or not the telecommunications providers are telecommunications utilities or otherwise subject to this chapter, are furnishing substantially the same telecommunications service to customers in the exchange, or if reasonable alternative services are available from the utility or other telecommunications providers.

(b) A telecommunications utility proposing to discontinue a service to an exchange shall file a notice of discontinuance of service with the commission, publish the notice in a newspaper of general circulation within the exchange, and provide other notice as reasonably required by the commission. Written notice of the discontinuance of a service under this subsection shall be given to affected customers.

(c) Within 30 days after the date of publication of the notice, the commission, on its own motion or on the application of a person or other telecommunications utility, may initiate an investigation to determine if the discontinuance of service is authorized under this subsection. Following an opportunity for hearing, the commission may order the continued provision of any service not authorized to be discontinued.

(d) The commission shall determine when and under what conditions a telecommunications utility may discontinue basic local exchange service, basic message telecommunications service or any element of universal service to an exchange or part of an exchange.

(2) (a) Except for a telecommunications utility, a proposed change which constitutes a decrease in rates shall be effective at the time specified in the change as filed but not earlier than 10 days after the date of filing the change with the commission, unless any of the following occurs:

1. During the 10-day period the commission, either upon complaint or upon its own motion, by order, suspends the operation of the proposed change.

2. The commission, upon application of any public utility, directs that a proposed reduction in rates be made effective less than 10 days after filing the proposed reduction.

(am) For telecommunications utilities, a proposed change which constitutes a decrease in rates shall be effective at the time specified in the tariff as filed unless the commission, either upon complaint or upon its own motion, finds after investigation and hearing that the rate reduction violates s. 196.204 or 196.219.

Upon such a finding, the commission may order changes in the rates, terms and conditions.

(b) 1. A suspension under par. (a) 1. shall be effective for a period not exceeding 4 months, during which period the commission shall investigate any matter relative to the reasonableness or lawfulness of any change in schedule as filed. After the investigation the commission, by order, shall approve or disapprove the change, except as provided under subd. 2. The commission shall give the public utility proposing the change an opportunity for hearing prior to issuing any order disapproving a change. If the commission disapproves the change, the change shall be ineffective.

2. If the commission orders a suspension under par. (a) 1., the commission, after notice to the public utility of its objections to the change and after giving the public utility an opportunity to be heard on the objections, may prescribe a schedule which, revised on the basis of the objections, the commission finds to be lawful and reasonable instead of disapproving the schedule under subd. 1.

(2m) Except as provided under sub. (5) and ss. 196.193, 196.195 (12) and 196.196, no change in schedules which constitutes an increase in rates to consumers may be made except by order of the commission, after an investigation and opportunity for hearing. The commission may waive a hearing under this subsection for a proposed change in a telecommunications utility schedule. By rule or order, the commission shall specify the notice and procedural requirements applicable to a telecommunications utility proposal for which a hearing is waived.

(2r) In setting the rates charged for basic residential local exchange telecommunications service under this section in local exchange areas served by the same telecommunications utility, the commission may investigate those areas where changes in these rates may be warranted because of the number of access lines accessible from the local exchange area.

(3) Except as provided in subs. (1m) and (5) (a), this section does not apply to telecommunications cooperatives or small telecommunications utilities unless made subject to this section under s. 196.205 or 196.215 (2).

(4) (a) In this subsection:

1. "Automatic adjustment clause" means a provision included in the rate schedule of an electric public utility after investigation, notice and hearing which permits the electric public utility to recover in rates, without prior hearing and order of the commission, an increase in costs incurred by the electric public utility.

2. "Electric public utility" means a public utility whose purpose is the generation, transmission, delivery or furnishing of electric power but does not include a public utility owned and operated wholly by a municipality or cooperative and does not include any public utility which purchases, under federal or state approved wholesale rates, more than 50% of its electric power requirements from other than an affiliated interest as defined under s. 196.52. "Electric public utility" does not include any Class A utility, as defined under s. 199.03 (4), whose electric generation equipment has a total capacity of less than 30 megawatts.

(b) An electric public utility may not recover in rates any increase in cost, including fuel, by means of the operation of an automatic adjustment clause.

(c) If an increase in fuel costs is of an extraordinary or emergency nature, the commission, after a hearing limited in scope to the question of the increase in fuel costs, may grant a rate increase to an electric public utility.

(d) The commission shall promulgate a rule.

(5) (a) This subsection applies to any of the following:

1. A small telecommunications utility subject to this section under s. 196.215 (2) that files with the commission a proposed

3. Any good faith attempt to comply with the agreement after the party receives notice of a failure to comply

4. Any other factor that the court determines is relevant.

(c) In an action to recover a forfeiture under par. (a), a finding by the commission in a proceeding under this subsection that a party to an interconnection agreement has failed to comply with the agreement shall be, subject to review under s. 227.52, conclusive proof that the party failed to comply with the agreement.

History: 1997 a. 218.

196.20 Rules on service; changes in rates. (1) The rate schedules of any public utility shall include all rules applicable to the rendition or discontinuance of the service to which the rates specified in the schedules are applicable. No change may be made by any public utility in its schedules except by filing the change as proposed with the commission. Except for a telecommunications utility, no change in any public utility rule which purports to curtail the obligation or undertaking of service of the public utility shall be effective without the written approval of the commission after hearing, except that the commission, by emergency order, may make the rule, as filed, effective from the date of the order, pending final approval of the rule after hearing.

(1m) (a) A telecommunications utility may discontinue a service to an exchange if the service is optional and not essential to the provision of basic local exchange service, business access line and usage service within a local calling area or access services, or if one or more other telecommunications providers, whether or not the telecommunications providers are telecommunications utilities or otherwise subject to this chapter, are furnishing substantially the same telecommunications service to customers in the exchange, or if reasonable alternative services are available from the utility or other telecommunications providers.

(b) A telecommunications utility proposing to discontinue a service to an exchange shall file a notice of discontinuance of service with the commission, publish the notice in a newspaper of general circulation within the exchange, and provide other notice as reasonably required by the commission. Written notice of the discontinuation of a service under this subsection shall be given to affected customers.

(c) Within 30 days after the date of publication of the notice, the commission, on its own motion or on the application of a person or other telecommunications utility, may initiate an investigation to determine if the discontinuance of service is authorized under this subsection. Following an opportunity for hearing, the commission may order the continued provision of any service not authorized to be discontinued.

(d) The commission shall determine when and under what conditions a telecommunications utility may discontinue basic local exchange service, basic message telecommunications service or any element of universal service to an exchange or part of an exchange.

(2) (a) Except for a telecommunications utility, a proposed change which constitutes a decrease in rates shall be effective at the time specified in the change as filed but not earlier than 10 days after the date of filing the change with the commission, unless any of the following occurs:

1. During the 10-day period the commission, either upon complaint or upon its own motion, by order, suspends the operation of the proposed change.

2. The commission, upon application of any public utility, directs that a proposed reduction in rates be made effective less than 10 days after filing the proposed reduction.

(am) For telecommunications utilities, a proposed change which constitutes a decrease in rates shall be effective at the time specified in the tariff as filed unless the commission, either upon complaint or upon its own motion, finds after investigation and hearing that the rate reduction violates s. 196.204 or 196.219.

Upon such a finding, the commission may order changes in the rates, terms and conditions.

(b) 1. A suspension under par. (a) 1. shall be effective for a period not exceeding 4 months, during which period the commission shall investigate any matter relative to the reasonableness or lawfulness of any change in schedule as filed. After the investigation the commission, by order, shall approve or disapprove the change, except as provided under subd. 2. The commission shall give the public utility proposing the change an opportunity for hearing prior to issuing any order disapproving a change. If the commission disapproves the change, the change shall be ineffective.

2. If the commission orders a suspension under par. (a) 1., the commission, after notice to the public utility of its objections to the change and after giving the public utility an opportunity to be heard on the objections, may prescribe a schedule which, revised on the basis of the objections, the commission finds to be lawful and reasonable instead of disapproving the schedule under subd. 1.

(2m) Except as provided under sub. (5) and ss. 196.193, 196.195 (12) and 196.196, no change in schedules which constitutes an increase in rates to consumers may be made except by order of the commission, after an investigation and opportunity for hearing. The commission may waive a hearing under this subsection for a proposed change in a telecommunications utility schedule. By rule or order, the commission shall specify the notice and procedural requirements applicable to a telecommunications utility proposal for which a hearing is waived.

(2r) In setting the rates charged for basic residential local exchange telecommunications service under this section in local exchange areas served by the same telecommunications utility, the commission may investigate those areas where changes in these rates may be warranted because of the number of access lines accessible from the local exchange area.

(3) Except as provided in subs. (1m) and (5) (a), this section does not apply to telecommunications cooperatives or small telecommunications utilities unless made subject to this section under s. 196.205 or 196.215 (2).

(4) (a) In this subsection:

1. "Automatic adjustment clause" means a provision included in the rate schedule of an electric public utility after investigation, notice and hearing which permits the electric public utility to recover in rates, without prior hearing and order of the commission, an increase in costs incurred by the electric public utility.

2. "Electric public utility" means a public utility whose purpose is the generation, transmission, delivery or furnishing of electric power but does not include a public utility owned and operated wholly by a municipality or cooperative and does not include any public utility which purchases, under federal or state approved wholesale rates, more than 50% of its electric power requirements from other than an affiliated interest as defined under s. 196.52. "Electric public utility" does not include any Class A utility, as defined under s. 199.03 (4), whose electric generation equipment has a total capacity of less than 30 megawatts.

(b) An electric public utility may not recover in rates any increase in cost, including fuel, by means of the operation of an automatic adjustment clause.

(c) If an increase in fuel costs is of an extraordinary or emergency nature, the commission, after a hearing limited in scope to the question of the increase in fuel costs, may grant a rate increase to an electric public utility.

(d) The commission shall promulgate a rule.

(5) (a) This subsection applies to any of the following:

1. A small telecommunications utility subject to this section under s. 196.215 (2) that files with the commission a proposed



Public Service Commission of Wisconsin

Ave M. Bie, Chairperson
Joseph P. Mettner, Commissioner
John H. Farrow, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

The Honorable Judith Robson, Senate Co-Chair
Joint Committee for Review of Administrative Rules
Room 15 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

The Honorable Glenn Grothman, Assembly Co-Chair
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol
P.O. Box 8952
Madison, WI 53708-8952

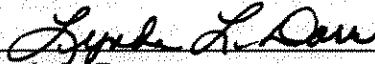
Re: In the Matter of Proposed Revision of Chapter PSC 116 Wis. 1-AC-202
Admin. Code-Cost of Fuel

Dear Senator Robson and Representative Grothman:

At its open meeting of December 21, 2000, the Commission adopted an emergency rule concerning the cost of fuel. Enclosed please find copies of a certificate, the Commission order with attached emergency rule, and the fiscal estimate regarding this emergency rule. If you have questions or concerns, please contact Assistant General Counsel Michael E. Newmark at (608) 261-8523 or Electric Division Administrator Robert D. Norcross at (608) 266-0699.

Dated at Madison, Wisconsin, December 22, 2000

By the Commission:


Lynda L. Dorr
Secretary to the Commission

LLD:MEN:O:\Rulemaking\1-AC-202\1-AC-202 Notice to the Legislature.doc

Enclosures

cc: Chief Clerks of the Senate and Assembly
Legislative Members

CERTIFICATE

STATE OF WISCONSIN

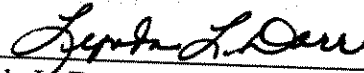
PUBLIC SERVICE COMMISSION

)
) ss.:
)

I, Lynda L. Dorr, Secretary to the Commission and custodian of the official records, certify that the annexed rules, cost of fuel for proposed actions before the Commission (docket 1-AC-202), were duly approved and adopted by this Commission on December 22, 2000.

I further certify that this copy has been compared by me with the original on file in this Commission and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Wisconsin Public Service Commission at Madison, Wisconsin, this 22nd day of December, 2000.



Lynda L. Dorr
Secretary to the Commission
Wisconsin Public Service Commission

DATE MAILED
DEC 22 2000

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of Proposed Emergency Revision of Chapter PSC 116,
Wis. Admin. Code – Cost of Fuel

1-AC-202

**ORDER OF THE PUBLIC SERVICE COMMISSION
ADOPTING EMERGENCY RULES**

The Commission adopts an emergency rule to amend Wis. Admin. Code §§ PSC 116.06(1) and 116.06(2), relating to the triggering mechanism and the period of time in which fuel costs are estimated for purposes of seeking an emergency or extraordinary rate increase under Wis. Admin. Code §§ PSC 116.06(1) and 116.06(2).

Analysis by the Public Service Commission of Wisconsin

Statutory authority: §§ 196.02(1) and (3), 227.11 and 227.24, Stat.

Statutes interpreted: §§ 196.20(4) and 196.192(2)(a), Stat.

Wis. Admin. Code ch. PSC 116, the fuel rules, was written at a time when the large investor-owned electric utilities had annual rate cases. There was no need to consider a future year's fuel costs since fuel costs would be addressed annually in the rate cases. Now, the Commission conducts general rate cases for most investor-owned electric utilities on a biennial basis. Some utilities have been authorized by the Commission to file for rate cases three or more years apart.

Natural gas prices have recently increased to unprecedented levels. This increase has had a significant impact on the fuel costs incurred by electric utilities that rely on gas-fired

Docket 1-AC-202

generation or purchased power. As a result, many Wisconsin utilities anticipate sharply higher fuel costs in 2001 than they experienced in 2000.

Under the application of the present rules, fuel cost estimates, for purposes of determining a rate change, were made for the same year as the year in which the utility exceeded its fuel cost range forecasted by the Commission. It has been unclear as to the extent to which fuel cost changes occurring in the subsequent year could be considered.

Under the proposed emergency rule, once a utility exceeded its range for fuel costs, it would be allowed to seek a rate increase based on fuel cost projections for the year in which it is reasonably anticipated that the rate increase would go into effect, provided those estimated fuel costs would exceed the utility's annual range. This would allow a better matching of rates to fuel costs and reduce the regulatory lag inherent in the current fuel rules during a time of volatile fuel costs.

Fiscal Estimate

A fiscal estimate is attached to this order.

State of Emergency

In order to preserve the health, safety, and welfare of Wisconsin residential, commercial and industrial ratepayers it is necessary to amend Wis. Admin. Code Chapter PSC 116. Amending Wis. Admin. Code §§ PSC 116.06(1) and 116.06(2), would allow the Commission to grant a rate increase to an applicable Class A electric public utility based on estimated fuel cost for the year in which it is reasonably anticipated that the rate increase would go into effect. In granting the rate change the Commission must find, after a hearing confined solely to fuel costs, that the utility is eligible to seek an emergency or extraordinary rate increase under the current

Docket 1-AC-202

rule, an emergency or extraordinary increase in the cost of fuel exists, and the fuel cost increase will affect the utility's average yearly fuel costs for the year in which it is reasonably anticipated that the rate increase would go into effect so as to fall outside the established annual range for that year. This change would assist in implementing the rule at a time of volatile fuel costs.

Order of Adoption

Pursuant to Wis. Stat. §§ 196.02(1) and (3), 227.11 and 227.24, the Commission amends Wis. Admin. Code §§ PSC 116.06(1) and 116.06(2). The attached emergency rule takes affect upon publication.

Dated at Madison, Wisconsin, December 21, 2000

By the Commission:

Lynda L. Dorr
Lynda L. Dorr
Secretary to the Commission

LLD:jkr;jlt:K:\sp\orders\1-AC-202 order

EMERGENCY RULES

SECTION 1. PSC 116.06(1) is amended to read:

If a utility's monthly fuel costs will exceed the ranges set in its rate proceeding, or and the annual fuel costs will be affected so as to exceed the annual range, the utility may seek an emergency or extraordinary rate increase in a proceeding limited in scope to the question of the increase in fuel costs.

SECTION 1. PSC 116.06(2) is amended to read:

After a hearing confined solely to fuel costs, an emergency or extraordinary rate increase based on an increase in an electric utility's monthly costs of fuel may be granted only if the commission finds that the fuel cost increase will affect the utility's average yearly fuel costs in the year it is reasonably anticipated the rate increase would go into effect so as to fall outside the established annual range.

SECTION 3. EFFECTIVE DATE. As provided in § 227.24(1)(c), Stats., the rules contained in this emergency order take effect upon publication in the official state newspaper.

(End)

LRB or Bill No./Adm. Rule No.
1-AC-202

Amendment No. if Applicable

FISCAL ESTIMATE

DOA-2048 N(R10/96)

ORIGINAL UPDATED

CORRECTED SUPPLEMENTAL

Subject

Amend rules relating to emergency or extraordinary rate increases.

Fiscal Effect

State: No State Fiscal Effect

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

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

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

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive Mandatory
- 2. Decrease Costs
 - Permissive Mandatory

- 3. Increase Revenues
 - Permissive Mandatory
- 4. Decrease Revenues
 - Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.155(l)(g)

Assumptions Used in Arriving at Fiscal Estimate

No additional staff or equipment is required. Reporting requirements would be minimal.

Long-Range Fiscal Implications

None

Agency/Prepared by: (Name & Phone No.)

PSC/ (608) -

Authorized Signature/Telephone No.

(608) -

Date

/ /2000

SENATOR JUDITH B. ROBSON
CO-CHAIR
P.O. BOX 7882
MADISON, WI 53707-7882
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR
P.O. BOX 8952
MADISON, WI 53708-8952
(608) 264-6486

**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

April 26, 2001

BY INTER-D

Ave Bie
Chair, Public Service Commission
610 North Whitney Way
Madison, WI

Re: Emergency Rule PSC 2.06 and Emergency Rule PSC 116

Dear Chairperson Bie:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on April 24, 2001. At that meeting, the JCRAR received public testimony regarding two emergency rules promulgated by the Public Service Commission. Those rules were Emergency Rule PSC 2.06, relating to procedures for the confidential treatment of documents, and Emergency Rule PSC 116, relating to the triggering mechanism and the period of time in which fuel costs are estimated for purposes of seeking an emergency or extraordinary rate increase under s. PSC 116.06.

Based on the testimony given to the committee, JCRAR adopted a motion extending the effective period of Emergency Rule PSC 2.06 for 60 days. The committee approved the motion on a 10 to 0 vote.

A motion to extend the effective period of Emergency Rule PSC 116.06 was made. However, this motion was not brought to a vote because no member of the committee would second the motion. Therefore, the effective period of Emergency Rule PSC 116.06 was not extended.

Pursuant to § 227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,


Senator Judith B. Robson
15th Senate District


Representative Glenn Grothman
59th Assembly District

SENATOR JUDITH B. ROBSON
CO-CHAIR
P.O. BOX 7882
MADISON, WI 53707-7882
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR
P.O. BOX 8952
MADISON, WI 53708-8952
(608) 264-6486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

April 26, 2001

Senator Fred Risser
Senate President
Room 220 South

Representative Scott Jensen
Speaker of the Assembly
Room 211 West

Re: Emergency Rule PSC 2.06
 Emergency Rule PSC 116.06
 Emergency Rule HFS 163

Dear Senator Risser and Representative Jensen:

We are writing pursuant to § 227.24(2)(c), *Stats.*, to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on April 24, 2001. At that meeting, the JCRAR received public testimony regarding the following emergency rules:

- Emergency Rule PSC 2.06, relating to procedures for the confidential treatment of documents;
- Emergency Rule PSC 116.06, relating to the triggering mechanism and the period of time in which fuel costs are estimated for purposes of seeking an emergency or extraordinary rate increase under s. PSC 116.06; and
- Emergency Rule HFS 163, relating to certification for the identification, removal and reduction of lead-based paint hazards.

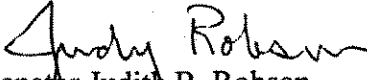
Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule PSC 2.06 for 60 days. The committee approved the motion on a 10 to 0 vote.


Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule HFS 163 for 60 days. The committee approved the motion on a 9 to 1 vote.

The committee did not extend the effective period of emergency rule PSC 116.06.

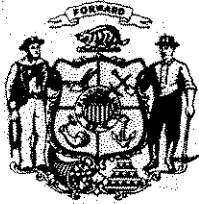
We are giving you this notice of the committee's action pursuant to § 227.24(2)(c), *Stats.*, and we ask that you notify the appropriate standing committees of each house of the legislature of the JCRAR's actions.

Sincerely,


Senator Judith B. Robson
15th Senate District


Representative Glenn Grothman
59th Assembly District

JBR:GG:da



Public Service Commission of Wisconsin

Ave M. Bie, Chairperson
Joseph P. Mettner, Commissioner
John H. Farrow, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

April 9, 2001

The Honorable Judy Robson
Joint Committee for Review of
Administrative Rules
The State Senate
State Capitol, Room 15 South
Madison, WI 53702

The Honorable Glenn Grothman
Joint Committee for Review of
Administrative Rules
The State Assembly
State Capitol, Room 15 North
Madison, WI 53702

Re: Emergency Rule ch. PSC 116

Dear Senator Robson and Representative Grothman:

Pursuant to s. 227.24(2), Stats., the Commission requests a 60-day extension of its emergency rules regarding procedures related to cost of fuel rate increase proceedings. These rules were promulgated as emergency rules in response to the unprecedented rise in natural gas prices. Prices for natural gas continue to be highly volatile. Natural gas is used more heavily to generate electricity during warmer months when demand for electricity is at its peak. For this reason the necessity for the emergency rule is greater now than when the rule first took effect. The rule took effect on December 28, 2000, and will expire on May 27, 2001, if an extension is not granted.

The Commission is promulgating the emergency rule into a permanent rule in conjunction with a general revision of ch. PSC 116, Wis. Adm. Code. The Commission has solicited and received written comments and has held separate hearings on both the emergency and proposed permanent rules. The proposed permanent rule has also received the Clearinghouse Report as Clearinghouse Rule 00-180. However, the Commission has not yet adopted a final version of the proposed permanent rule and the rule has not been forwarded to the legislature for standing committee review. Consequently, the permanent rule cannot be in effect before the date the emergency rules expire.

If you have any questions regarding this request, please contact Attorney Michael Newmark at (608) 261-8523, or by e-mail at newmam@psc.state.wi.us.

Thank you for consideration of this request.

Sincerely,

Ave M. Bie
Chairperson

AMB:pmn:sp:L:letters\JCRAR 3-28-01

Enclosures

cc: The Honorable Fred Risser
The Honorable Scott Jensen
Ron Sklansky

Date Mailed
December 22, 2000

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of Proposed Emergency Revision of Chapter PSC 116,
Wis. Admin. Code – Cost of Fuel **1-AC-202**

**ORDER OF THE PUBLIC SERVICE COMMISSION
ADOPTING EMERGENCY RULES**

The Commission adopts an emergency rule to amend Wis. Admin. Code §§ PSC 116.06(1) and 116.06(2), relating to the triggering mechanism and the period of time in which fuel costs are estimated for purposes of seeking an emergency or extraordinary rate increase under Wis. Admin. Code §§ PSC 116.06(1) and 116.06(2).

Analysis by the Public Service Commission of Wisconsin

Statutory authority: §§ 196.02(1) and (3), 227.11 and 227.24, Stat.

Statutes interpreted: §§ 196.20(4) and 196.192(2)(a), Stat.

Wis. Admin. Code ch. PSC 116, the fuel rules, was written at a time when the large investor-owned electric utilities had annual rate cases. There was no need to consider a future year's fuel costs since fuel costs would be addressed annually in the rate cases. Now, the Commission conducts general rate cases for most investor-owned electric utilities on a biennial basis. Some utilities have been authorized by the Commission to file for rate cases three or more years apart.

Natural gas prices have recently increased to unprecedented levels. This increase has had a significant impact on the fuel costs incurred by electric utilities that rely on gas-fired

generation or purchased power. As a result, many Wisconsin utilities anticipate sharply higher fuel costs in 2001 than they experienced in 2000.

Under the application of the present rules, fuel cost estimates, for purposes of determining a rate change, were made for the same year as the year in which the utility exceeded its fuel cost range forecasted by the Commission. It has been unclear as to the extent to which fuel cost changes occurring in the subsequent year could be considered.

Under the proposed emergency rule, once a utility exceeded its range for fuel costs, it would be allowed to seek a rate increase based on fuel cost projections for the year in which it is reasonably anticipated that the rate increase would go into effect, provided those estimated fuel costs would exceed the utility's annual range. This would allow a better matching of rates to fuel costs and reduce the regulatory lag inherent in the current fuel rules during a time of volatile fuel costs.

Fiscal Estimate

A fiscal estimate is attached to this order.

State of Emergency

In order to preserve the health, safety, and welfare of Wisconsin residential, commercial and industrial ratepayers it is necessary to amend Wis. Admin. Code Chapter PSC 116. Amending Wis. Admin. Code §§ PSC 116.06(1) and 116.06(2), would allow the Commission to grant a rate increase to an applicable Class A electric public utility based on estimated fuel cost for the year in which it is reasonably anticipated that the rate increase would go into effect. In granting the rate change the Commission must find, after a hearing confined solely to fuel costs, that the utility is eligible to seek an emergency or extraordinary rate increase under the current

rule, an emergency or extraordinary increase in the cost of fuel exists, and the fuel cost increase will affect the utility's average yearly fuel costs for the year in which it is reasonably anticipated that the rate increase would go into effect so as to fall outside the established annual range for that year. This change would assist in implementing the rule at a time of volatile fuel costs.

Order of Adoption

Pursuant to Wis. Stat. §§ 196.02(1) and (3), 227.11 and 227.24, the Commission amends Wis. Admin. Code §§ PSC 116.06(1) and 116.06(2). The attached emergency rule takes effect upon publication.

Dated at Madison, Wisconsin, _____

By the Commission:

Lynda L. Dorr
Secretary to the Commission

LLD:jkr:jlt:G:\orders\pending\1-AC-202 order

EMERGENCY RULES

SECTION 1. PSC 116.06(1) is amended to read:

If a utility's monthly fuel costs will exceed the ranges set in its rate proceeding, or and the annual fuel costs will be affected so as to exceed the annual range, the utility may seek an emergency or extraordinary rate increase in a proceeding limited in scope to the question of the increase in fuel costs.

SECTION 1. PSC 116.06(2) is amended to read:

After a hearing confined solely to fuel costs, an emergency or extraordinary rate increase based on an increase in an electric utility's monthly costs of fuel may be granted only if the commission finds that the fuel cost increase will affect the utility's average yearly fuel costs in the year it is reasonably anticipated the rate increase would go into effect so as to fall outside the established annual range.

SECTION 3. EFFECTIVE DATE. As provided in § 227.24(1)(c), Stats., the rules contained in this emergency order take effect upon publication in the official state newspaper.

(End)

FISCAL ESTIMATE

DOA-2048 N(R10/96)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

Amend rules relating to emergency or extraordinary rate increases.

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

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

Local: No local government costs

- | | | |
|--|---|--|
| 1. <input type="checkbox"/> Increase Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 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 |
| 2. <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | |

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.155(l)(g)

Assumptions Used in Arriving at Fiscal Estimate

No additional staff or equipment is required. Reporting requirements would be minimal.

Long-Range Fiscal Implications

None

Agency/Prepared by: (Name & Phone No.)

PSC/ (608) -

Authorized Signature/Telephone No.

(608) -

Date

/ /2000