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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 08-070

#### 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 January 2005.]**

#### **2. Form, Style and Placement in Administrative Code**

a. The analysis should include all of the headings in s. 1.02 (2), Manual.

b. Sections PSC 116.01 (9) and 116.02 (1) (c) both use the term “energy market sales.” Section PSC 116.02 (1) (c) contains a definition of this term that applies in that paragraph. If the commission intends “energy market sales” in s. PSC 116.01 (9) to have the same meaning as in s. PSC 116.02 (1) (c), then the definition in s. PSC 116.02 (1) (c) should be moved to the section in the rule on definitions, s. PSC 116.01. If the commission intends that these two uses convey different meanings of “energy market sales,” then the commission should clarify that difference.

c. The second par. (a) in s. PSC 116.07 (2) should be numbered as par. (b).

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

a. In the analysis accompanying the rule, the list of statutes authorizing rule-making should identify the specific provisions in the statutes that explicitly authorize rule-making, whereas the list of statutes interpreted by the rule should identify statutes interpreted. This drafting style was not followed in the analysis as, of the statutes listed under statutory authority and statutes interpreted, only ss. 196.02 (3), 196.20 (4) (d), and 227.11 (2) (a), Stats., authorize or require rule-making. In identifying statutes interpreted by the rule, the commission should not include broad references to statutes that do not apply to the subject matter of the rule. For example, s. 196.20 (2m), (2r), (3), and (5), Stats., only apply to telecommunications utilities or cooperatives and not to electric public utilities.

b. In the analysis accompanying the rule, the explanation of agency authority does not address how two sections listed in the statutory authority for the rule (and more properly placed in the statutes interpreted pursuant to the preceding comment), ss. 196.06 and 196.395, Stats., provide authority for the commission to promulgate the rule.

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

a. Section PSC 116.02 (1) (intro.) uses the undefined term “time period.” If this term is equivalent to the defined term “plan year,” then “plan year” should be used in this provision. If they are not comparable, the commission should clarify the difference.

b. The rule contains a number of undefined terms of art. See, for example, “uplift items,” “day-ahead revenue sufficiency distribution amounts,” and “real-time revenue sufficiency distribution amounts” in s. PSC 116.02 (3) (a) 3. and “allocators” in s. PSC 116.03 (2) (f). The department should review the entire rule to determine if these and other terms of art should be defined to ensure the consistent application of the rule.