



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Richard Sweet
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Pam Shannon
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 10-147

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

1. Statutory Authority

a. While statutes frequently include in a definition a phrase such as “any other _____ designated by the commission by rule,” it is not appropriate for rules to include such a statement, as in the example of s. PSC 118.02 (6m) (e). The rule is the means by which the Commission must make that designation. (Cf. s. PSC 118.025.)

b. Section PSC 118.09 (2) authorizes the Division Administrator to establish displacement formulae by order. Such a formula is “a regulation...of general application which has the force of law and which is issued by an agency to implement...legislation enforced or administered by the agency...”. [s. 227.01 (13) (intro.), Stats., defining “rule”.] As such, displacement formulae are rules and so, under s. 227.10 (1), Stats., must be established by rule, not by order.

2. Form, Style and Placement in Administrative Code

a. Since the term “geothermal heating and cooling installation” is used only once in the rule (in s. PSC 118.02 (6m) (c)), and since the definition of the term (“a ground source heat pump”) is shorter than the term itself, it is suggested that the definition be omitted and the term “ground source heat pump” be used in s. PSC 118.02 (6m) (c). If the Commission finds it necessary to indicate that this provision implements the statutory language regarding geothermal energy, it can do so in a note.

b. Section PSC 118.02 (10) (a) is not so much a definition of renewable resource credit as a formula for its calculation, which does not belong in a definition. One option would be to move this material to a substantive provision of the rule and write s. PSC 118.02 (10) (a) in a form similar to par. (b), e.g., “One KWh of renewable energy, as calculated under s. PSC 118.xx”.

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

Section PSC 118.04 (1) (a) should refer to s. PSC 118.03 (1) rather than s. PSC 118.02 (10) (a). The former is only a definition of the term (though see comment 2. b.), while the latter is the closest the rule comes to stating an authority for creation of a renewable resource credit (RRC). (Note that the rule takes this approach in s. PSC 118.05 (1) (b).) Alternatively, s. PSC 118.04 (1) (a) could refer instead to “an RRC based on renewable energy,” without a cross-reference. The same comment applies to s. PSC 118.04 (1) (b).

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

a. In s. PSC 118.02 (5), “customer or member” should be used in place of “person”. (In this sentence, “person” could also refer to the electric provider.)

b. The rule defines “pyrolysis” but does not define the less commonly known term “plasma gasification”. It would appear that the rule should either define both terms or define neither.

c. Section PSC 118.02 (6m) (d) uses the term “fuel produced by pyrolysis” while s. PSC 118.03 (4) (a) uses the term “gas from pyrolysis”. If these are distinct materials, the difference should be made clear; otherwise, the same term should be used in both instances.

d. Section PSC 118.04 (1) (c) seems to confuse the concepts of *using* and *retiring* credits. A credit is used to demonstrate compliance with the requirements of the renewable portfolio standard; once used, a credit must be retired. In addition, most credits “may not be used after the fourth year after the year in which the credit is created...”. [s. 196.378 (3) (c), Stats., and s. PSC 118.04 (2) (g) 3., Wis. Adm. Code.] It appears that s. PSC 118.04 (1) (c) is intended to clarify when a credit is considered to be used relative to this four-year period, in particular, to clarify that a credit is considered to be used in the fourth year even though the actions that accomplish this (the filing of the report required under s. 196.378 (2) (c), Stats., etc.) actually take place in the following year. This might be accomplished more clearly by a provision stating something like the following:

An RRC is considered to be used in the year for which a report under s. 196.378 (2) (c) includes the RRC in the electric provider’s demonstration of compliance with the requirements of s. 196.378 (2) (a) 2., Stats., regardless of the date on which the electric provider files the report under s. 196.378 (2) (c) or the date on which the credit is retired under s. PSC 118.06 (2) (d) 3. a.

e. In s. PSC 118.09 (4), the last occurrence of the word “displaced” is incorrect; that word should either be omitted or be replaced with the word “total”.

f. For how long must a person maintain documentation under s. PSC 118.09 (5)?