

## **PUBLIC SERVICE COMMISSION OF WISCONSIN**

Amend Relevant Sections of chs. PSC 112, PSC 133, and PSC 184 to Conform with 2011 Wisconsin Act 155, and Amend Relevant Sections of PSC 118 to Conform with 2014 Wisconsin Act 300

1-AC-244

Clearinghouse Rule No. 14-053

### **ORDER ADOPTING PROPOSED RULES**

The Public Service Commission of Wisconsin proposes an order to repeal 112.05 (3) (a) 1. to 3. and 118.03 (2) (b); renumber and amend 112.05 (3) (a) (intro.), 118.09 (1), 133.03 (1) (e) and 184.03 (3); amend 112.05 (3) (b), 118.02 (17), 118.03 (1) (intro.) and (2) (intro.), 118.03 (4) (b) (intro.) and (5), 118.04 (1) and 118.09 (5); and create 112.05 (3) (c) and (c) (note), 118.09 (1) and (2), 133.03 (1) (e) 2., 3., and 3. (note), and 184.03 (3) (b), (c) and (c) (note) about obtaining a certificate or approval prior to beginning a proposed utility project, and displacement facility requirements and the displacement percentage that apply in renewable energy situations.

### **REPORT TO THE LEGISLATURE**

The Report to the Legislature is included as Attachment A.

### **FISCAL ESTIMATE**

This rulemaking should have either no or minimal economic impact. The Fiscal Estimate and Economic Impact Analysis for this rulemaking are included as Attachment A1.

### **FINAL REGULATORY FLEXIBILITY ANALYSIS**

This rule will not affect small businesses. The s. 227.114 (12), Stats., definition of “small business” states that to be considered a small business, the business must not be dominant in its field. Since gas, electric and water utilities are monopolies in their service territories, they are dominant in their fields, and so, are not small businesses.

**EFFECTIVE DATE**

These rules shall take effect on the first day of the month following publication in the *Wisconsin Administrative Register* as provide in s. 227.22 (2) (intro.), Stats.

**CONTACT PEOPLE**

Questions regarding this matter should be directed to docket coordinator Andrew Kell, at (608) 266-1124 or Andrew.Kell@wisconsin.gov. Small business questions should be directed to Christine Swailes at (608) 266-8776 or Christine.Swailes@wisconsin.gov. Media questions should be directed to the Communications Director at (608) 266-9600. Hearing or speech impaired individuals may also use the commission's TTY number, if calling from Wisconsin (800) 251-8345, if calling from outside Wisconsin (608) 267-1479.

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 matter or who needs to obtain this document in a different format should contact the docket coordinator listed above.

Dated at Madison, Wisconsin, this 24<sup>th</sup> day of October, 2014.

By the Commission:

Sandra J. Paske  
Secretary to the Commission

Attachments

SJP:JMD:hms:DL: 00943879

**REPORT TO THE LEGISLATURE**

**A. TEXT OF THE RULE**

The text of the rule is included as Attachment A2.

**B. PLAIN LANGUAGE ANALYSIS**

1. Statutory Authority and Explanation of Authority

This rulemaking is authorized under ss. 196.02 (1) and (3), 196.378, 196.49 (3) and 227.11, Stats.

Section 227.11 authorizes agencies to promulgate administrative rules. Section 196.02 (1) authorizes the commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3) grants the commission specific authority to promulgate rules. Section 196.378, Stats., authorizes the commission to promulgate a variety of rules concerning renewable energy credits. Section 196.49 (3) authorizes the Commission to promulgate rules about granting certificates.

Statutes Interpreted

This rule interprets ss. 196.378 and 196.49, Stats.

Related Statutes or Rules

None.

2. Brief Summary of Proposed Rules

The purpose of this rulemaking is to amend chs. PSC 112, PSC 133, and PSC 184 of the Wisconsin Administrative Code relating to the requirement to obtain a certificate or approval

prior to beginning a proposed project, to conform with the statutory changes in s. 196.49(5g), Stats., made by 2011 Wisconsin Act 155. This will be accomplished by updating the revised cost thresholds for certification or approval in the rules.

Furthermore, this rulemaking will amend ch. PSC 118, relating to displacement facilities, to conform with the statutory changes made in s. 196.378(3)(a)1m., Stats., by 2013 Wisconsin Act 300. This will be accomplished in the following ways: (1) strike the requirement that a displacement facility be placed in service on or after June 3, 2010, to be consistent with the statute; and (2) revise the reference to “in the entire area served by the Midcontinent Independent System Operator” as a basis for the displacement percentage to streamline the process for determining the displacement percentage.

3. Comparison with Existing or Proposed Federal Regulations

The commission is not aware of any existing or proposed federal legislation concerning the matters addressed in this rulemaking.

4. Comparison with Similar Rules in Adjacent States

The commission is not aware of any surrounding states that limit what facilities may be used to create renewable energy credits by the date on which the facilities went into service. The commission is not aware of any surrounding states that determine whether certification or approval is necessary by the cost of the project.

5. Summary of Factual Data and Analytical Methodologies Used

Most of this rule merely conforms the rules to statutory changes. Changing the existing reference to the "Midcontinent Independent System Operator" so that the rule refers to the more accurate information submitted to the commission by utilities is based on experience with the program.

6. Effect on Small Business

This rule will not affect small businesses. The s. 227.114(12), Stats., definition of "small business" states that to be considered a small business, the business must not be dominant in its field. Because electric, gas, and water utilities are monopolies in their service territories, they are dominant in their fields and, so, are not small businesses.

7. Agency Contact People

Questions regarding this matter should be directed to docket coordinator Andrew Kell, at (608) 266-1124 or Andrew.Kell@wisconsin.gov. Small business questions should be directed to Christine Swailes at (608) 266-8776 or Christine.Swailes@wisconsin.gov. Media questions should be directed to the Communications Director at (608) 266-9600. Hearing or speech-impaired individuals may also use the commission's TTY number, if calling from Wisconsin (800) 251-8345, if calling from outside Wisconsin (608) 267-1479.

8. Accommodation

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 to receive this document in a different format should contact the docket coordinator, as indicated in the following paragraph, as soon as possible.

**C. FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS**

This rulemaking should have either no or minimal economic impact. The Fiscal Estimate and Economic Impact Analysis for this rulemaking is included as Attachment A1.

**D. BASIS AND PURPOSE OF RULES**

The purpose of the rulemaking is to amend chs. PSC 112, PSC 133, and PSC 184 of the Wisconsin Administrative Code relating to the requirement to obtain a certificate or approval prior to beginning a proposed project, to conform with the statutory changes in s. 196.49 (5g), Stats., made by 2011 Wisconsin Act 155. This is accomplished by referencing where the revised cost thresholds for certification or approval may be found.

Furthermore, this rulemaking amends ch. PSC 118, relating to displacement facilities, to conform with the statutory changes made in s. 196.378 (3) (a) 1m., Stats., by 2013 Wisconsin Act 300. This is accomplished in the following ways: (1) strike the requirement that a displacement facility be placed in service on or after June 3, 2010; and (2) revise the reference to “in the entire area served by the Midcontinent Independent System Operator” as a basis for the displacement percentage to streamline the process for determining the displacement percentage.

**E. SUMMARY OF PUBLIC COMMENTS AND COMMISSION RESPONSES**

A summary of public comments and commission responses are included as Attachment A3.

**F. APPEARANCES AT PUBLIC HEARING**

Mr. Todd Stuart, representing the Wisconsin Industrial Group, appeared but did not testify.

**G. ANY CHANGES TO THE FISCAL ESTIMATE OR THE ANALYSIS UNDER s. 227.14(2), STATS.**

None.

**H. RESPONSE TO LEGISLATIVE COUNCIL COMMENTS**

A copy of the Legislative Council report is included as Attachment A4. Responses to the comments are below:

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

- a. Agree. Change made.
- b. Agree. Change made.
- c. Disagree. Keeping the list of exceptions attached to the general rule is clearer.
- d. Agree. Change made.

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

Agree. Change made.

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

- a. Agree. Change made.
- b. Agree. The referenced provisions have been rewritten.

c. Agree. Change made.

**I. MISCELLANEOUS DETERMINATIONS**

The commission's Wisconsin Environmental Policy Act coordinator examined whether the rules will have an environmental impact and concluded that they will not. Commission staff also considered whether the rules will impact housing under s. 227.115, Stats., and concluded that they will not.



STATE OF WISCONSIN  
 DEPARTMENT OF ADMINISTRATION  
 DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE  
 101 EAST WILSON STREET, 10TH FLOOR  
 P.O. BOX 7864  
 MADISON, WI 53707-7864  
 FAX: (608) 267-0372

**ADMINISTRATIVE RULES  
 Fiscal Estimate & Economic Impact Analysis**

1. Type of Estimate and Analysis

Original       Updated       Corrected

2. Administrative Rule Chapter, Title and Number

Chapters PSC 112, PSC 118, PSC 133, and PSC 184

3. Subject

This rulemaking addresses two different areas: cost thresholds for needing to obtain a certificate or approval prior to beginning a proposed project, and displacement facilities. The cost thresholds will be updated, the requirement that a displacement facility be placed in service on or after June 3, 2010 will be stricken and the reference to the Midcontinent Independent System Operator as a basis for the displacement percentage will be revised to streamline the process for determining the displacement percentage

4. Fund Sources Affected

GPR     FED     PRO     PRS     SEG     SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect       Increase Existing Revenues       Increase Costs  
 Indeterminate       Decrease Existing Revenues       Could Absorb Within Agency's Budget  
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy       Specific Businesses/Sectors  
 Local Government Units       Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes     No

9. Policy Problem Addressed by the Rule

The rule making amends relevant sections of chs. PSC 112, PSC 133, and PSC 184 to conform with 2011 Wisconsin Act 155, and amends relevant sections of PSC 118 to conform with 2013 Wisconsin Act 300. Finally, getting data from the Midcontinent Independent System Operator has turned out to be time-consuming and less detailed than necessary.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

All electric, gas and water utilities, Citizens' Utility Board, League of Wisconsin Municipalities, Wisconsin Industrial Energy Group, Municipal Electric Utilities of Wisconsin, Wisconsin Towns Association, Wisconsin Counties Association, Wisconsin Utilities Association, Wisconsin Paper Council, Clean Wisconsin, RENEW Wisconsin.

11. Identify the local governmental units that participated in the development of this EIA.

League of Wisconsin Municipalities, Municipal Electric Utilities of Wisconsin, Wisconsin Towns Association, Wisconsin Counties Association.

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

None or minimal. Any economic impact occurred when the statutes were passed. This rulemaking just brings the rules into compliance.

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13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This will bring the rules into conformity with the statutes and will streamline the process for determining the percentage of electricity from conventional resources that has been displaced by renewable energy. This percentage is used to calculate the amount of renewable resource credits that may be created.

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14. Long Range Implications of Implementing the Rule

Keeps the rules in conformity with the statutes. Less confusion.

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15. Compare With Approaches Being Used by Federal Government

The federal government does not have a similar program.

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16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

The commission is not aware of any surrounding states that limit what facilities may be used to recreate renewable energy credits by the date on which the facilities went into service. The commission is not aware of any surrounding states that determine whether certification or approval is necessary by the cost of the project.

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17. Contact Name	18. Contact Phone Number
Lisa Farrell	608-267-9086

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This document can be made available in alternate formats to individuals with disabilities upon request.

**TEXT OF THE RULES**

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**SECTION 1.** PSC 112.05 (3) (a) (intro.) is renumbered 112.05 (3) (a), and amended to read:

**PSC 112.05 (3) (a)** Cost thresholds for projects requiring commission review and approval under this section are ~~as follows:~~ those specified in s. 196.49 (5g) (a), Stats., as revised under par. (b).

**SECTION 2.** PSC 112.05 (3) (a) 1. to 3. are repealed.

**SECTION 3. PSC 112.05 (3) (b) is amended to read:**

**PSC 112.05 (3) (b)** ~~Beginning in calendar year 2000, and on May 1 on May 1, 2014, and on May 1 of each successive even-numbered year thereafter, the commission shall adjust the estimated gross cost thresholds in par. (a) s. 196.49 (5g) (a), Stats., to account for inflation in reflect changes to the cost of electric utility construction. The adjustment shall be based on the cost index numbers published in the "Handy-Whitman Index of Public Utility Construction Costs, Cost Trends of Electric Utility Construction - North Central Region for Total Transmission Plant" (Handy Whitman Index). The commission shall make the adjustment calculation by multiplying each gross cost threshold in par. (a) by the ratio of the Handy Whitman Index number on January 1 of the most recent even numbered year (numerator) to the Handy Whitman Index number on January 1, 1998 (denominator). The commission shall notify all electric utilities of the resulting adjusted cost limits by May 15 of each even numbered year. If the referenced Handy Whitman Index is no longer available, an equivalent successor index may be used which is generally recognized by the electric industry and acceptable to the commission.~~

**SECTION 4.** PSC 112.05 (3) (c) and (c) (note) are created to read:

**PSC 112.05 (3) (c)** The commission shall notify all electric utilities of the resulting adjusted cost limits by May 15 of each even-numbered year and shall publicize the adjusted cost limits on the commission’s website. If the Handy-Whitman Index is no longer available, an equivalent successor index may be used which is generally recognized by the electric industry and acceptable to the commission.

**Note:** The commission maintains or has access to the Handy-Whitman Index of Public Utility Construction Costs and this reference or a copy may be reviewed by contacting the commission’s offices.

**SECTION 5.** PSC 118.02 (17) is amended to read:

1 **PSC 118.02 (17)** "Tracking system account" means the account that the program administrator  
2 maintains in order to track the creation, sale, transfer, purchase, and retirement of a renewable  
3 energy certificate or a an RRC by a renewable energy tracking system participant.  
4

5  
6 **SECTION 6.** PSC 118.03 (1) (intro.) and (2) (intro.) are amended to read:  
7

8 **PSC 118.03 (1) (intro.)** An electric provider may use the output of a renewable facility to meet a  
9 minimum percentage requirement under s. 196.378 (2) (a), Stats., or to create a an RRC for  
10 renewable energy only if the renewable facility that is the source of the electric provider's  
11 renewable energy meets all of the following requirements:  
12

13 **(2) (intro.)** An electric provider or customer or member of an electric provider may create a an  
14 RRC for conventional electricity displaced by the use of a displacement facility only if the  
15 displacement facility meets all of the following requirements:  
16  
17

18 **SECTION 7.** PSC 118.03 (2) (b) is repealed.  
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21 **SECTION 8.** PSC 118.03 (4) (b) (intro.) and 118.03 (5) are amended to read:  
22

23 **PSC 118.03 (4) (b) (intro.)** An electric provider may use the production of a facility that  
24 satisfies par. (a) to meet a minimum percentage requirement under s. 196.378 (2) (a), Stats., or to  
25 create a an RRC if the electric provider demonstrates all of the following:  
26

27 **(5)** A customer or member of an electric provider may create a an RRC in the manner described  
28 in sub. (4).  
29  
30

31 **SECTION 9.** PSC 118.04 (1) is amended to read:  
32

33 **PSC 118.04 (1)** A renewable energy certificate or a an RRC is used to meet an electric provider's  
34 minimum percentage requirement under s. 196.378 (2) (a), Stats., in the compliance period for  
35 which the electric provider retires the renewable energy certificate or RRC, regardless of the date  
36 on which the renewable energy certificate or RRC is retired in the renewable energy tracking  
37 system.  
38  
39

40 **SECTION 10.** PSC 118.09 (1) is renumbered 118.09 (1m) and amended to read:  
41

42 **PSC 118.09 (1m)** For each calendar year, the commission shall, ~~by order,~~ determine the  
43 ~~percentage of electricity from conventional resources for the entire state~~ total statewide  
44 conventional energy percentage for purposes of calculating the amount of ~~a RRC~~ RRCs per

1 MWh to be created for displaced conventional electricity. The commission shall ~~base~~ make this  
 2 ~~determination on the annual average mix of resources used to generate electricity in the entire~~  
 3 ~~area served by the Midcontinent Independent System Operator~~ the calendar year before the  
 4 calendar year in which the percentage will be used. The commission may, by order, also  
 5 establish a different percentage for a specific type of displacement facility if its seasonal or daily  
 6 operating characteristics justify a percentage that differs from the annual average percentage.

7  
 8 Note: For example, the commission will determine the 2016 total statewide renewable energy percentage in  
 9 2015 using information taken from electric provider reports, filed with the commission by April 15, 2015, that  
 10 reflect renewable energy sold to Wisconsin retail customers in the calendar year of 2014.

11  
 12  
 13 **SECTION 11.** PSC 118.09 (1) is created to read:

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 15 **PSC 118.09 Calculation of displaced conventional electricity.** (1) For purposes of this section:

16 (a) “Total statewide renewable energy percentage” means the percentage that results from the  
 17 equation of subd. 1. divided by subd. 2. as shown below:

18  
 19 1. The actual renewable energy sold to Wisconsin retail customers within a given year using  
 20 information submitted to the commission by electric providers in their most recent renewable  
 21 portfolio standard compliance reports under s. 196.378 (2) (c), Stats., including actual renewable  
 22 energy used to serve all of the following programs:

- 23 a. Wisconsin electric provider renewable portfolio standard programs.
- 24 b. Any other federal or state renewable energy programs that apply to Wisconsin electric
- 25 providers.
- 26 c. Wisconsin electric provider voluntary renewable energy programs.

27  
 28 2. The total sales of electricity to Wisconsin retail customers in that same year using information  
 29 submitted to the commission by electric providers in their most recent renewable portfolio  
 30 standard compliance reports under s. 196.378 (2) (c), Stats.

31  
 32 (b) For purposes of this section, “Total statewide conventional energy percentage” means the  
 33 percentage that results from the equation of 100% minus the total statewide renewable energy  
 34 percentage.

35  
 36  
 37 **SECTION 12.** PSC 118.09 (5) is amended to read:

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 39 **PSC 118.09 (5)** The amount of conventional electricity displaced by a displacement facility in a  
 40 calendar year is equal to the net amount of displaced electricity determined under sub. (3),  
 41 multiplied by the applicable ~~percentage of electricity in that calendar year that is from~~  
 42 ~~conventional resources~~ total statewide conventional energy percentage as determined under sub.  
 43 (4) (1m).

1 **SECTION 13.** PSC 133.03 (1) (e) is renumbered 133.03 (1) (e) 1. and 133.03 (1) (e) 1. (intro.),  
2 as renumbered, is amended to read:

3  
4 **PSC 133.03 (1) (e) 1. (intro.)** A single gas pipeline project and associated plant, or any plant or  
5 addition to plant the cost of which exceeds ~~\$1,500,000 or 4% of the utility's gross gas operating~~  
6 ~~revenue received during the previous calendar year, whichever is less~~ the cost threshold specified  
7 in s. 196.49 (5g) (a), Stats., as revised under subd. 2., except for any of the following:  
8  
9

10 **SECTION 14.** PSC 133.03 (1) (e) 2., 3. and 3. (note) are created to read:

11  
12 **PSC 133.03 (1) (e) 2.** Beginning on May 1, 2014, and on May 1 of each successive even-  
13 numbered year thereafter, the commission shall adjust the cost thresholds in s. 196.49 (5g) (a),  
14 Stats., to reflect changes to the cost of gas utility construction based on the applicable industry  
15 cost index numbers published in the "Handy-Whitman Index of Public Utility Construction  
16 Costs."  
17

18 3. The commission shall notify all gas utilities of the resulting adjusted cost limits by May 15 of  
19 each even-numbered year and shall publicize the adjusted cost limits on the commission's  
20 website. If the Handy-Whitman Index is no longer available, an equivalent successor index may  
21 be used which is generally recognized by the gas industry and acceptable to the commission.  
22

23 **Note:** The commission maintains or has access to the Handy-Whitman Index of Public Utility Construction  
24 Costs and this reference or a copy may be reviewed by contacting the commission's offices.  
25  
26

27 **SECTION 15.** PSC 184.03 (3) is renumbered 184.03 (a) and amended to read:

28  
29 **PSC 184.03 (3) CONSTRUCTION OF FACILITIES.** (a) A utility shall obtain a certificate from the  
30 commission before constructing, purchasing, installing, modifying, replacing, or placing in  
31 operation any plant not exempt under sub. (4) if the project cost exceeds ~~\$250,000 or 25 percent~~  
32 ~~of the utility's gross water or sewer operating revenue received during the previous calendar year,~~  
33 ~~whichever is less, or exceeds the cost threshold established under s. 196.49 (5g) (b), Stats. the~~  
34 cost threshold specified in s. 196.49 (5g) (a), Stats., as revised under par. (b).  
35  
36

37 **SECTION 16.** PSC 184.03 (3) (b), (c) and (c) (note) are created to read:

38  
39 **PSC 184.03 (3) (b)** Beginning on May 1, 2014, and on May 1 of each successive even-numbered  
40 year thereafter, the commission shall adjust the cost thresholds in s. 196.49 (5g) (a), Stats., to  
41 reflect changes to the cost of water utility construction based on the applicable industry cost  
42 index numbers published in the "Handy-Whitman Index of Public Utility Construction Costs."  
43

1 (c) The commission shall notify all water utilities of the resulting adjusted cost limits by May 15  
2 of each even-numbered year and shall publicize the adjusted cost limits on the commission's  
3 website. If the Handy-Whitman Index is no longer available, an equivalent successor index may  
4 be used which is generally recognized by the water industry and acceptable to the commission.  
5

6 **Note:** The commission maintains or has access to the Handy-Whitman Index of Public Utility Construction  
7 Costs and this reference or a copy may be reviewed by contacting the commission's offices.  
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10 **SECTION 17. EFFECTIVE DATE.** This rule shall take effect on the first day of the month  
11 following publication in the Wisconsin administrative register as provided in s. 227.22 (2)  
12 (intro.), Stats.  
13

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**A SUMMARY OF COMMENTS AND COMMISSION RESPONSES**

Wisconsin Public Service Corporation

Supportive of rule changes.

Wisconsin Industrial Energy Group and Wisconsin Paper Council

Supportive of or no objection to rule changes.

Xcel

118.09 (1) - Change “actual renewable generation that serves” to “actual energy sold”. **Agree.**

**Change made.**

Clarify that all energy should be included in the calculation, not just that energy generated to comply with program requirements. **Agree. Change made.**

118.09 (1m) - Add statutory reference. **Agree. Change made.**

Add clarity about timing of calculation. **Agree. Changes made.**





LCRC  
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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Scott Grosz and Jessica Karls-Ruplinger**  
*Clearinghouse Co-Directors*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### 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 **14-053**

AN ORDER to repeal PSC 112.05 (3) (a) 1. to 3. and 118.03 (2) (b); to renumber PSC 133.03 (1) (e) 1. to 3.; to renumber and amend PSC 118.09 (1), 133.03 (1) (e) and 184.03 (3); to amend PSC 112.05 (3) (a) (intro.) and (b), 118.02 (17), 118.03 (1) (intro.), (2) (intro.), (4) (b) and (5), and 118.04 (1); and to create PSC 112.05 (3) (c) and (c) (Note), 118.09 (1), 133.03 (1) (e) 2., 3., and 3. (Note), and 184.03 (3) (b), (c), and (c) (Note), relating to obtaining a certificate or approval prior to beginning a proposed utility project, and displacement facility requirements and the displacement percentage that apply in renewable energy situations.

Submitted by **PUBLIC SERVICE COMMISSION**

08-29-2014      RECEIVED BY LEGISLATIVE COUNCIL.  
09-11-2014      REPORT SENT TO AGENCY.

SG:DLL

**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

# WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz and Jessica Karls-Ruplinger  
Clearinghouse Co-Directors

Terry C. Anderson  
Legislative Council Director

Laura D. Rose  
Legislative Council Deputy Director

## CLEARINGHOUSE RULE 14-053

### 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 November 2011.]**

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

a. The treatment clause of SECTION 1 of the rule should indicate that s. PSC 112.05 (3) (a) (intro.) is renumbered s. PSC 112.05 (3) (a) and amended.

b. The treatment clause of SECTION 12 should indicate that s. PSC 133.03 (1) (e) is renumbered s. PSC 133.03 (1) (e) 1., and that s. PSC 133.03 (1) (e) 1. (intro.), as renumbered, is amended. The renumbering of s. PSC 133.03 (1) (e) 1. to 3. is not necessary, as this is accomplished by renumbering the paragraph. (They will be renumbered s. PSC 133.03 (1) (e) 1. a. to c., which presumably is what the Commission intends, not s. PSC 133.03 (1) (a) to (c), which is what the rule says.)

c. The rule’s treatment of s. PSC 133.03 (1) (e) results in the creation of subdivision paragraphs [s. PSC 133.03 (1) (e) 1. a. to c.], which the Legislative Reference Bureau Drafting Manual discourages. An alternative would be to retain the current numbering of s. PSC 133.03 (1) (e) and to create two new paragraphs, s. PSC 133.03 (1) (eg) and (er).

d. The style of the rule’s effective date SECTION should include a title, as described in s. 1.02 (4), Manual.

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

In s. PSC 118.09 (1m), since “renewable portfolio standard report” is not defined, the reference to those reports should include a reference to s. 196.378 (2) (c), Stats.

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

a. In s. PSC 112.05 (3) (a), it would appear more accurate to state that the cost limits are those specified in s. 196.49 (5g) (a), Stats., as revised under par. (b). Parallel comments apply to ss. PSC 133.03 (1) (e) and 184.03 (3).

b. Section PSC 118.09 (1) and (1m) are confusing. An alternative the Commission may want to consider is the following:

- (1) In sub. (1), define all of the terms used:
  - (a) Total statewide electricity sales.
  - (b) Total statewide renewable electricity generation (the three elements listed in s. PSC 118.09 (1) (a), based on the most recent reports under s. 196.378 (2) (c), Stats.).
  - (c) Total statewide conventional electricity generation [(a) minus (b)].
  - (d) Total statewide conventional energy percentage [(c) divided by (a)].
- (2) In sub. (1m), direct the Commission to annually calculate the total statewide conventional energy percentage (without reference to calculation of renewable resource credits – that occurs in sub. (5) and reference to it in sub. (1m) is unnecessary and confusing), and authorize the Commission to establish a different percentage for a specific type of facility.

Note that this alternative uses the term “total statewide conventional energy percentage”, which more clearly reflects the way the term is used.

c. Based on a conversation with Commission staff, it appears that s. PSC 118.09 (1) (a) 1. should refer to energy that a utility banks, in addition to energy it reports for compliance with the renewable portfolio standard.