



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2005 Wisconsin Act 337
[2005 Assembly Bill 615]

Mitigation Payment Agreements

2005 Wisconsin Act 337 (the Act) relates to mitigation payment agreements.

Under prior law, an electric public utility may not, in general, recover in its rates the cost of mitigation payments paid by the utility or paid by the owner or operator of an electric generating facility that the owner or operator recovers from the utility under specified circumstances. A “mitigation payment” is an unrestricted or recurring monetary payment approved by the Public Service Commission (PSC) to a local unit of government in which an electric generating facility is located to mitigate the impact of the facility on the local unit of government. These payments do not include payments made or in-kind contributions for restricted purposes to directly address health or safety impacts of the facility on the local unit of government.

Prior law includes an exception to this prohibition that specifies that the PSC shall only approve a mitigation payment agreement that it received before June 10, 2003, and, if the commission finds the agreement to be reasonable, shall not subsequently modify the agreement.

The Act modifies the exception specified above to establish that if the PSC receives a mitigation payment agreement before June 10, 2003, and does not determine that the agreement is unreasonable before November 11, 2003, mitigation payments in accordance with the terms of the agreement shall be recoverable in rates, notwithstanding any subsequent limitations imposed by the PSC on the mitigation payments.

As noted in the PSC’s fiscal estimates on Assembly Bill 615, the effect of the Act will be to continue mitigation payments of \$2,250,000 beyond 2010 for the City of Oak Creek. These continued mitigation payments from the utility to the city will be reflected in utility rates. The Act will also prohibit the PSC from repealing the \$500,000 in mitigation payments the City of Port Washington currently receives.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

Effective Date: Act 337 took effect on April 29, 2006. It applies retroactively to agreements received before June 10, 2003, and determinations made before April 29, 2006.

Prepared by: John Stolzenberg, Chief of Research Services

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JES:jal