



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Senate Bill 79

**Senate
Amendment 1**

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2005 Senate Bill 79

2005 Senate Bill 79 allows a public utility that proposes to build or purchase an electric generating facility to request the Public Service Commission (PSC) to determine, by order, certain principles by which it will treat the recovery of costs related to the facility in setting rates for the utility. This is referred to as advance determination of rate-making principles, or as the fixed return on equity, or fixed ROE, method of financing. The PSC may issue such an order if it finds that the proposed principles provide a sufficient degree of certainty to the utility, investors, and ratepayers with respect to future recovery of the facility's costs and that the order is otherwise in the public interest.

The utility has the option to accept or reject the rate-making principles that the PSC specifies. If the utility accepts the principles, the principles then become binding on the PSC in all future rate-making proceedings regarding the utility. If the utility rejects the principles, the PSC will consider the costs of the facility in the manner in which it does under current law.

Senate Amendment 1

PSC Order Setting Rate-Making Principles and Utility Acceptance

Senate Amendment 1 clarifies that the costs to which the rate-making principles apply are only the capital costs of the electric generating facility to be constructed or purchased. [Items 3, 5, 7, and 9.]

The bill provides that, for rate-making principles for the purchase of a facility, the costs include any necessary modifications or improvements to the facility. The amendment specifies that the costs include only those modifications or improvements to the facility that are made at the time of purchase. [Item 4.]

The amendment adds a requirement that the PSC establish a deadline for a utility to either accept or reject rule-making principles proposed by the PSC by order. The deadline must be at least 60 days after the issuance of the order. If the utility does not either accept or reject the principles before the deadline, the utility is considered to have rejected the principles. [Items 10 and 12.]

The amendment clarifies the effect of an order establishing rate-making principles. It specifies that the principles apply to the recovery of the capital costs of the facility that is the subject of the order. By implication, the order has no effect once the capital costs of the facility have been fully recovered. The amendment also specifies that the PSC may not consider the order or its effects in its treatment of the recovery of any other costs. [Item 11.]

Application and PSC Review Process

Senate Amendment 1 requires that an application for advance determination of rate-making principles include the proposed rate of return on the facility, in addition to the proposed return on equity. [Item 6.]

The bill requires that an application include any other information required *by rule* by the PSC. The amendment removes the words “by rule.”

Rules

The bill requires the PSC to promulgate rules to administer the new procedure created by the bill. The amendment requires that the rules include information that the PSC will require be included in an application. The result of this provision and the provision described above that deletes “by rule” in the other application information required by the PSC is that the PSC rules must identify the information that must be included in an application, but that the PSC may require other information, as well, on a case-by-case basis. [Items 8 and 13.]

The amendment deletes the requirement that the PSC promulgate emergency rules for administering the advance determination or rate-making principles. [Items 1, 14, and 15.]

Relation to Other Laws

The amendment deletes the provision stating that the PSC is bound by an order establishing rate-making principles in setting rates, notwithstanding current law. Under rules of statutory construction, a statute that is specific in its application and that conflicts with a more broadly written statute is given precedence over the broader statute. Similarly, a more recent enactment of the Legislature that conflicts with an earlier enactment is given precedence over the earlier enactment. The provisions of the bill providing that the rate-making principles are binding on the PSC in all future rate-making proceedings are both more specific than the general statutory rules on rate-making and, if enacted, will be a more recent enactment. Consequently, the bill language deleted by this item appears to be unnecessary. [Item 2.]

Companion Bills and Amendments

Both Senate and Assembly versions of Senate Bill 79 are before the Legislature. 2005 Senate Bill 79 is identical to 2005 Assembly Bill 153. Senate Amendment 1 to Senate Bill 79 is identical to Assembly Amendment 1 to Assembly Bill 153.

Bill History

On March 8, 2005, the Senate Committee on Energy, Utilities and Information Technology voted to recommend adoption of Senate Amendment 1 to Senate Bill 79, and to recommend passage of the bill as amended.

On March 10, 2005, the Senate adopted Senate Amendment 1 to Senate Bill 79, and passed the bill as amended.

On March 29, 2005, the Assembly Committee on Energy and Utilities recommended concurrence in Senate Bill 79.

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