

Report From Agency

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Creation of Rules Regarding Energy Efficiency and Renewable
Resource Programs

1-AC-220

Clearinghouse Rule 06-139

ORDER ADOPTING FINAL RULES

The Public Service Commission of Wisconsin proposes an order to create ch. PSC 137 related to energy efficiency and renewable resource programs.

REPORT TO THE LEGISLATURE

Set forth as Attachment A.

FISCAL ESTIMATE

This rule has no fiscal impact and no financial impact on the private sector. A completed Fiscal Estimate is included as Attachment B.

EFFECTIVE DATE

These rules shall take effect on July 1, 2007, or on the first day of the month following publication in the *Wisconsin Administrative Register*, whichever comes later.

CONTACT PERSON

Questions from the media may be directed to Linda Barth, Director of Governmental and Public Affairs at (608) 266-9600. Other questions regarding this matter should be directed to Docket Coordinator Carol Stemrich at (608) 266-8174. Hearing or speech-impaired individuals

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

Dated at Madison, Wisconsin, _____

By the Commission:

Sandra J. Paske
Secretary to the Commission

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Attachments

REPORT TO THE LEGISLATURE

A. NEED FOR THE RULE

Wis. Admin Code ch. PSC 137 was created, as required by 2005 Wis. Act 141, to establish procedures for energy utilities to contract collectively with program administrators for administration of statewide programs and to receive contributions from municipal utilities and retail electric cooperatives. These rules also establish procedures and criteria for Commission review and approval of statewide programs, procedures and criteria for utility-administered programs and large energy customer self-directed programs, and minimum requirements for energy efficiency and renewable resource programs.

B. PLAIN LANGUAGE ANALYSIS

See Attachment A1.

C. TEXT OF THE RULE

See Attachment A1.

D. PUBLIC HEARING ATTENDEES

The following persons appeared or registered at the Commission's public hearing held on January 26, 2007.

As Interest May Appear:

A-A Exteriors
David Hansen
2419 North 84th Street
Wauwatosa, WI 53226

A-A Exteriors
Jeffrey Knutson
6897 Clow Road
Winneconne, WI 54986

Alliant Energy
David Helbach
4902 North Biltmore Lane
Madison, WI 53718

Customers First! Coalition
John Sumi
14 West Mifflin Street, Suite 310
Madison, WI 53703

David J. Benforado
725 Lois Lane
Sun Prairie, WI 53590

PA Government Services
David Sumi
6410 Enterprise Lane, Suite 300
Madison, WI 53719

Wisconsin Energy Conservation Corporation
Janet Brandt
211 South Paterson
Madison, WI 53703

Written Comments

The Commission also received written comments from several persons. These comments and the Commission's responses are grouped by subject matter and described below:

1. Cost-effectiveness of energy efficiency and renewable resource programs

Wisconsin Power & Light Company (WPL); Northern States Power Company (NSP); Wisconsin Industrial Energy Group, Wisconsin Manufacturers & Commerce, and the Wisconsin Paper Council (collectively, the Industrials); and E4 recommended that the Commission either eliminate "net" cost-effectiveness from the proposed rules or modify its definition to recognize energy efficiency gains by non-participants that are influenced by the energy efficiency programs. Renew Wisconsin (RENEW), L&S Technical Associates (L&S), Citizens Utility Board (CUB), and Wisconsin Energy Conservation Corporation (WECC) commented that the definition of "net cost-effectiveness" needs to agree with how renewable resources are defined in s. 196.374 (1) (k), Stats. L&S suggested including an expanded set of tests in the definition of "net cost-effectiveness." CUB also recommended eliminating the requirement to screen renewable resource programs at the program level.

Commission response: The Commission modified the definition of "net cost-effectiveness" in s. PSC 137.01 (7). The Commission agrees that "net cost-effectiveness" should recognize the energy efficiency gains by non-participants influenced by the program. While the Commission believes this was reflected in its draft definition of "net cost-effectiveness," it has modified the definition of "net cost-effectiveness" to add clarity. The Commission also agrees that the definition of "net cost-effectiveness" needs to be consistent with how renewable resources are defined in s. 196.374 (1) (k), Stats. However, s. PSC 137.01 (intro.) already specifies that all of the definitions in s. 196.374 (1), Stats. apply to the rules, so further clarification is not necessary. The definition of "net cost-effectiveness" in the proposed draft rules did imply the use of a specific test to determine cost-effectiveness. In order to address L&S's concern regarding cost-effectiveness tests and comments in the Legislative Council Rules Clearinghouse Report, the Commission modified this definition by deleting any reference to the type of test to be used.

The Commission disagrees with CUB's recommendation to eliminate the requirement to screen renewable resource programs at the program level. It is important to screen all programs, including renewable resource programs, for cost-effectiveness. Doing so provides one piece of information needed to determine the appropriate portfolio of programs and to provide insight regarding which programs need to be modified to improve their cost-effectiveness. The rules would allow programs that do not pass the program level cost-effectiveness test to still be included in the portfolio, as long as the portfolio collectively passes the cost-effectiveness test.

2. Stakeholders' input

CUB and WECC recommended that the proposed rules include a provision for stakeholder input into the Request for Proposals (RFPs) for the administrative contractors. The Industrials and E4 advocated for even broader stakeholder input, recommending that stakeholder input be solicited on all major issues related to the development and implementation of energy efficiency and renewable resource programs. The Industrials recommended that the Commission also form a consumer advocacy group to dispute Commission decisions.

Commission response: The Commission did not modify the proposed rules based on these comments. Allowing stakeholder input into the RFPs could create conflicts of interest for several of the stakeholders, as they would likely submit proposals in response to the RFPs. It would also dilute the energy utilities' authority over their own RFPs, which would diminish the Commission's ability to hold the energy utilities accountable for successfully implementing the statewide programs.

Under s. 196.374 (3) (b) 1., Stats., the Commission will have a proceeding at least once every 4 years to evaluate the energy efficiency and renewable resource programs and to set or revise goals, priorities, and measurable targets for the programs. The Commission will solicit the input of all stakeholders as part of this proceeding. The Commission also declines to form a consumer advocacy group to dispute Commission decisions because the Commission already has a formal process for disputing decisions.

3. Length of contract

WECC, CUB, and Clean Wisconsin recommended that the rules specify a minimum contract period with the program administrators of 5 years.

Commission response: The Commission agrees that generally the contracts with program administrators should be multi-year; the Department of Administration currently uses multi-year contracts for Focus on Energy programs. However, the Commission did not add this 5-year requirement to its proposed rules in order to retain flexibility in the length of the contracts with program administrators. The Commission will solicit input from all stakeholders on this issue as part of its first quadrennial review proceeding under s. 196.374 (3) (b) 1., Stats.

4. Equivalent opportunity to participate in programs

The Industrials and NSP commented that allowing large energy customers to participate in only one program does not provide large customers an equivalent opportunity to participate in the energy efficiency and renewable resource programs as other customers. WECC praised the proposed rules because they have a clear line of eligibility between Focus on Energy, utility-administered, and self-directed programs and emphasized that this should be maintained.

Commission response: The Commission agrees with both of these comments. The Commission modified the proposed rules in ss. PSC 137.05 (12) and 137.07 (2) (c) [now numbered ss. PSC 137.05(8) and 137.07 (3) (c)] and removed s. PSC 137.08 (2) (c) 2. to allow large energy customers who choose to participate in a self-directed program also to participate in statewide programs or utility-administered programs to the extent that they contribute revenues for those programs through their electric rates. While this modification will require additional tracking of large customer energy efficiency and renewable resource dollars, it allows large energy customers to participate in any energy efficiency program while still maintaining a clear line of eligibility between the programs.

5. Utility-administered energy efficiency programs

The Industrials and E4 stated that the utility-administered energy efficiency programs are not offered a level playing field with the statewide programs. E4 suggested that the rules are too restrictive and the Industrials asserted that existing protocols are sufficient to ensure efficient utility-administered programs.

Commission response: The Commission disagrees. The requirements for utility-administered programs are needed to ensure that these programs provide energy savings on an equivalent basis as the statewide programs. This will allow the Commission to ensure that all customers in the state receive equivalent opportunities to participate in programs funded through dollars collected under s. 196.374 (3) (b) 2., Stats., and to evaluate the programs on an equal basis. The Commission did modify the draft rules to include a separate section for voluntary utility programs, which the utilities can initiate under s. 196.374 (2) (b) 2., Stats., with dollars in addition to the required funding. The proposed rules impose less stringent requirements for these voluntary programs that are similar to the informal requirements the Commission has used in the past to approve utility energy efficiency programs, such as ordered programs and WPL's Shared Savings Program.

6. Self-directed programs

The Industrials and E4 commented that the requirements for large energy customer self-directed programs are too restrictive. While E4's comment is general, the Industrials provided several specific recommended changes. The Industrials recommended less frequent reporting, a shorter lead time for submitting proposals, no requirement to coordinate with statewide and utility-administered programs, elimination of the requirement that self-directed programs be cost-effective on a "net" basis, and modifying the minimum 3-year life for self-directed programs. The Industrials also requested that the rules specify the Measurement and Verification

(M&V) protocol that would be used, provide guidelines for savings targets, and clarify the following: the definition of a large customer; what happens if a large customer “overachieves” its goals and targets; and how large customers can modify, discontinue, or re-start a self-directed program.

Commission response: The Commission agrees in part. The Commission removed s. PSC 137.08 (2) (b) 2., which required that large energy customer self-directed programs be coordinated with statewide and utility-administered programs. The Commission also reduced the minimum length of time for a self-directed program from 3 years to one year in s. PSC 137.08 (2) (c) 7. [now numbered s. PSC 137.09 (2) (d) 1.], removed the requirement in ss. PSC 137.08 (2) (b) 3. and (2) (c) 8. [now numbered s. PSC 137.09 (2) (b) 2. and (d) 2., respectively] that a large energy customer must establish annual and multi-year performance targets, and established simply a requirement that performance targets be set. This provides large energy customers more flexibility, while still allowing them to opt out of statewide and utility-administered programs and fund larger projects for multiple years. The Commission also eliminated the requirement in s. PSC 137.08 (2) (c) 4. [now numbered s. PSC 137.08 (2) (c) 3.] that self-directed programs be cost-effective on a net basis. However, the Commission did not modify the rules to require less frequent reporting. The rules specify quarterly activity reports and annual performance reports. The Commission does not intend the quarterly activity reports to be burdensome and will work with large energy customers during proposed program approval to set up a process that is easy for the large customer, such as an e-mail stating what activities occurred, if any, but that still allows the Commission to monitor progress. The Commission did not modify the required lead time for requesting approval of a self-directed program. This lead time of 6 months prior to the start of the program year is needed for the Commission to determine the dollars available for statewide and utility-administered programs and for the program administrators and the utilities to adequately plan for the upcoming program year. The Commission also did not modify the proposed rules to specify M&V protocol or to provide guidelines regarding savings targets. Doing so would diminish the flexibility the Commission needs as advancements in M&V occur. The Commission intends to work with the Industrials to provide M&V guidelines that are appropriate for self-directed programs and will work with large energy customers in establishing appropriate savings targets.

Other clarifications requested by the Industrials are not necessary. The definition of a large customer is already specified in the statutes and the Commission does not contemplate any reconciliation if a large energy customer over- or under-achieves its savings targets. Additionally, the Commission intends to work with each large customer during the self-directed program approval period to identify the process that would work best for that large customer to notify the Commission of its intent to modify or discontinue its program. The Commission also did not make any changes to the proposed rules to further address re-starting a discontinued self-directed program because the rules already allow a large energy customer to propose a self-directed program at any time. These program proposals can include new programs or programs that the large energy customer previously discontinued and wishes to re-start.

7. Environmental benefits

Clean Wisconsin recommended that where the rules describe the minimum requirements of statewide and utility-administered programs, they should specifically list environmental benefits associated with reducing specific emissions, such as sulfur dioxide, nitrogen oxides, mercury, and carbon dioxide. The Industrials, on the other hand, recommended that environmental benefits should not be included in the minimum requirements at all. The Industrials commented that if environmental benefits continue to be included in the minimum requirements of energy efficiency and renewable resource programs, then the on-site emissions requirement in s. PSC 137.08 (2) (c) 1. needs to be modified so that it is not on a “net” basis. The Industrials also advocated that the proposed rules should specify who would own the emissions credit.

Commission response: The Commission replaced the requirement in s. PSC 137.08 (2) (c) 1. [now numbered s. PSC 137.09 (2) (c) 2.] that self-directed programs result in on-site reduction in emissions with a requirement that self-directed programs include measures that are environmentally sound. The Commission declined to list specific emissions, though, because the statutory requirement specified in s. 196.374 (3) (b) 1., Stats, is broader than just air quality. Finally, specifying who owns emission credits is more appropriately addressed in the quadrennial proceeding the Commission will hold pursuant to s. 196.374 (3) (b) 1., Stats.

8. Roles of the program administrator and program implementers

CUB recommended changes to the proposed rules to ensure that program administrators and program implementers have clear, separate roles. WECC commented that pre-approved implementation contractors should not be required. WPL stated that program administrators should be allowed to conduct market research for programs they do not administer.

Commission response: The Commission agrees with CUB and WECC. The Commission created a new s. PSC 137.03 (1) to clarify that program administrators are not the same entities as those that will implement the energy efficiency and renewable resource programs. Also, the Commission modified s. PSC 137.03 (1) (a) and (b) [now numbered s. PSC 137.03 (2) (a) and (b)] to clarify that the subcontractors addressed in those paragraphs are administrative subcontractors, not subcontractors engaged in program implementation.

The Commission disagrees with WPL regarding allowing program administrators to conduct market research. Doing so, even for programs a program administrator is not administering, would give the program administrator an unfair advantage in responding to future RFPs.

9. Commission response to program proposals

WPL recommended including a requirement that the Commission respond to requests from utilities and large energy customers for utility-administered and self-directed programs within 3 months of receiving a proposal.

Commission response: The Commission agrees that it is appropriate to respond to these proposals in a timely manner. Modifications were made to the proposed rules in ss. PSC 137.07 (4) and 137.08 (3) [now numbered ss. PSC 137.07 (4) and 137.09 (3) (a), respectively] requiring the Commission to respond to these proposals within 40 working days of receipt.

10. Renewable resource programs

The Industrials commented that large energy customers should not be required to contribute to and participate in the statewide renewable resource programs. The Industrials also asked for further clarification regarding the amount set aside for renewable resource programs.

Commission response: State law does allow large energy customers to opt out of statewide energy efficiency programs, but not statewide renewable resource programs. Section 196.374 (2) (c), Stats., provides for large energy customers to administer and fund their own energy efficiency programs, but it does not provide a similar opportunity for renewable resource programs. As a result, the Commission lacks authority to exempt large energy customers from statewide renewable resource programs.

The Commission has already determined that for the first program period the percentage set-aside for renewable resource programs will be similar to the set-aside specified in 1999 Wis. Act 9. Future funding levels of renewable resource programs will be the subject of the quadrennial proceedings the Commission must hold under s. 196.374 (3) (b), Stats. Freezing set-aside levels in these rules would artificially limit the Commission's ability to respond to evolving markets and programs in its quadrennial reviews.

11. Miscellaneous

E4 requested that in s. PSC 137.03 (7) [s. PSC 137.03 (8) of the current draft] the words "may not" be changed to "shall not" to prohibit the energy utilities from signing a contracting during the Commission review and appeal period and the word "may" be changed to "shall," to require the Commission to void any contract signed during the review or appeal period. Wisconsin Electric Power Company (WEPCO) requested that the criterion proposed in s. PSC 137.07 (2) (d) [now s. PSC 137.07 (3) (e)] be modified to focus on whether or not the proposed utility-administered program will impact the statewide programs' ability to meet goals, instead of the utility-administered program's potential to disrupt statewide programs. WPL recommended modifying s. PSC 137.02 (3) to require that program administrator applications be delivered only to the energy utilities.

Commission response: The use of "may not" in s. PSC 137.03 (8) already prohibits the energy utilities from signing a contract with a program administrator during the Commission review period, so E4's request is unnecessary. Neither did the Commission change the word "may" to "shall" in reference to voiding any contract signed during this period. Giving the Commission discretionary authority ("may") can avoid situations where the energy utilities would be required to re-start their contracting process from the beginning, simply because of a harmless technical error.

The Commission agrees with WEPCO's comments in part. The Commission modified s. PSC 137.07 (3)(e) to place the emphasis on the utility-administered program's potential for disrupting the overall ability of energy efficiency efforts in the state to meet the goals, priorities, and measurable targets established by the Commission. While the Commission did not entirely eliminate the reference to the Commission in s. PSC 137.02 (3), the Commission changed this rule to list the energy utilities first in reference to the provision of program administrator applications.

E. RESPONSE TO LEGISLATIVE COUNCIL REPORT

On January 29, 2007, the Commission received the Clearinghouse Report to Agency. The report contains comments on statutory authority; form, style, and placement in administrative code; adequacy of related statutes, rules, and forms; and clarity, grammar, punctuation and use of plain language. The Commission has made all the changes suggested by the Rules Clearinghouse, except for Item 2. e. Item 2. e. states that s. PSC 137.05 (2) incorrectly treats utility-administered programs and self-directed programs as part of the statewide programs and suggests that the substance of this subsection be moved to the sections that address utility-administered and self-directed programs. However, the purpose of this subsection is to address the statutory requirement that the statewide renewable resource programs must provide services to customers eligible for utility-administered and self-directed energy efficiency programs. The Commission discussed this item with the Legislative Council's lead analyst, who agreed with the Commission that the subsection need not be changed. A copy of the Legislative Council's report is included with this report as Attachment A2.

F. FINAL REGULATORY FLEXIBILITY ANALYSIS

The rules are not expected to affect small business as defined in s. 227.114 (1), Stats.

The Public Service Commission of Wisconsin proposes an order to create ch. PSC 137, relating to energy efficiency and renewable resource programs.

I. Statute Interpreted

These rules interpret s. 196.374, Stats.

II. Statutory Authority and Explanation of Agency Authority

The commission's authority to adopt these rules is found in ss. 196.02 (1) and (3), 196.374 (3) (f), and 227.11, Stats.

III. Related Statute or Rule

Not applicable.

IV. Plain Language Analysis

2005 Wisconsin Act 141 substantially revised Wisconsin law regarding the energy efficiency programs and renewable resource programs that public utilities offer to their customers and retail electric cooperatives offer to their members. This act, whose general effective date is July 1, 2007, replaces the "Focus on Energy" programs that the Department of Administration had previously been administering. The Department contracted with third parties to implement these programs and the customers of electric and gas utilities paid for the programs either through public benefits fees or mandatory utility contributions.

Act 141 provides that the investor-owned electric and gas utilities must collectively establish and fund statewide energy efficiency and renewable resource programs. The energy utilities must contract with one or more program administrators to develop and run the programs, soliciting for program administrators on a competitive basis. The proposed rules specify the application requirements and procedures for conducting such a solicitation. The rules also describe the criteria for evaluating responses to this solicitation and explain how the energy utilities may appeal decisions of the Commission concerning their selection criteria. The energy utilities must notify the Commission of their intent to sign a collective contract for statewide programs. The proposed rules establish the minimum requirements of such a contract and provide a method by which the energy utilities can dispute Commission decisions to modify or reject a proposed contract.

The proposed rules set forth minimum requirements for the portfolio of statewide programs. These programs must: serve all customers (except those served by a utility-administered program or by a large energy customer's self-directed program); provide renewable resource programs to large customers; deliver environmental benefits; allocate at least 10 percent of the available funds for energy efficiency programs that serve local government and agricultural producers; include strategies to overcome market barriers and support the effective delivery of statewide programs; fund research and development projects; offer grant and benefit opportunities for every customer class; ensure equivalent opportunities for eligible customers to participate; establish performance goals; collect appropriate data for tracking performance; report on performance results; and deliver programs that pass a portfolio test of net cost-effectiveness.

Under Act 141, municipal electric utilities and retail electric cooperatives must charge monthly fees to continue their “Commitment to Community” programs. Act 141 permits these energy providers to contribute the fees to statewide programs and substitute the statewide programs for the Commitment to Community programs. A municipal utility or retail electric cooperative that does so makes a 3-year commitment to the statewide programs. The proposed rules explain the procedures for delivering these fees to a fiscal agent and tracking the contributions of municipal utilities and retail electric cooperatives.

Act 141 allows an energy utility, with the Commission’s approval, to administer energy efficiency programs that it provides to large commercial, industrial, institutional, or agricultural customers. Act 141 provides that the funding available for such a “utility-administered” program will come from moneys that would otherwise be available for statewide programs. The proposed rules state that funding for a utility-administered program must equal the revenues collected from the energy utility’s customers who are eligible for the program, less any funds set aside for statewide renewable resource programs. Act 141 further provides that an energy utility can voluntarily choose to administer or fund additional energy efficiency or renewable resource programs, above and beyond its legal requirements. The law requires that these programs also receive the Commission’s approval. The proposed rules set forth minimum criteria for these programs and explain how an energy utility can contest Commission decisions to modify or deny an energy utility’s request to initiate a utility-administered or voluntary utility program.

Act 141 prescribes a method by which a “large energy customer” can conduct its own self-directed energy efficiency program, which is funded out of moneys the customer would otherwise pay to finance the statewide programs. By law, a large energy customer is defined as a customer whose facility consumes at least 1,000 kilowatts of electricity per month or at least 10,000 decatherms of natural gas per month and who is billed at least \$60,000 in a month for electric and gas services. Under the proposed rules the Commission will determine the annual funding level for each large energy customer. The law requires the Commission’s prior approval of a large energy customer’s self-directed program; the proposed rules establish the minimum requirements for these self-directed programs and the method by which a large energy customer can dispute Commission decisions to modify or deny a request to implement such a program. A large energy customer that is conducting a self-directed program, but is still contributing to the statewide or utility-administered programs, may participate in these programs up to the level of revenues the customer is providing. A large energy customer with a self-directed program may also participate in voluntary utility programs.

V. Summary of and Comparison with Existing or Proposed Federal Regulations

Not applicable.

VI. Comparison with Rules in Adjacent States

Not applicable.

VII. Summary of Factual Data and Analytical Methodologies

Not applicable.

1 (3) “Division administrator” means the administrator of the division of gas and energy in
2 the public service commission, or a designee.

3 (4) “kW” means kilowatt.

4 (5) “kWH” means kilowatt-hour.

5 (6) “Municipal utility” has the meaning provided in s. 16.957 (1) (q), Stats.

6 (7) “Net cost-effectiveness” means the extent to which an energy efficiency program or a
7 renewable resource program is cost-effective, after being adjusted for attribution.

8 (8) “Program administrator” means a person who contracts with the energy utilities to
9 develop and administer the statewide programs under s. 196.374 (2) (a) 1., Stats.

10 (9) “Retail electric cooperative” has the meaning provided in s. 16.957 (1) (t), Stats.

11 (10) “Statewide programs” means the energy efficiency and renewable energy programs
12 specified in s. 196.374 (2) (a) 1., Stats.

13 (11) “Working day” has the meaning provided in s. 227.01 (14), Stats.

14 **PSC 137.02 Program administrator solicitation and public notice. (1) COMPETITIVE**
15 **SOLICITATION.** Energy utilities soliciting proposals for a program administrator under s. 196.374
16 (2) (a) 1., Stats., shall ensure that all solicitations are conducted in a manner that is fair and
17 promotes competition.

18 **(2) PUBLIC NOTICE.** (a) Energy utilities shall provide reasonable public notice of all
19 solicitations of program administrator proposals under s. 196.374 (2) (a) 1., Stats. The energy
20 utilities may provide this notice through the print, broadcast, or telecommunications media,
21 including the internet. The notice period the energy utilities select is subject to the commission’s
22 prior approval.

1 (b) The notice shall include the purpose of the solicitation, selection criteria, application
2 procedures, and all applicable solicitation deadlines that an applicant is required to meet, or shall
3 contain instructions for obtaining this information.

4 (3) APPLICATION REQUIREMENTS. Anyone applying to be a program administrator shall
5 submit the application to the energy utilities or the commission, as directed in the notice
6 provided under this section. Applications that are incomplete, filed late, or not executed by an
7 individual with the authority to act on the applicant's behalf shall be rejected.

8 **PSC 137.03 Program administrator selection. (1) ROLE OF THE PROGRAM**
9 **ADMINISTRATOR.** The program administrator shall oversee a portfolio of energy efficiency and
10 renewable resource statewide programs, in which other market providers and contractors
11 implement measures with end-use customers.

12 (2) SELECTION CRITERIA. Prior to the solicitation of a program administrator under s.
13 196.374 (2) (a) 1., Stats., the energy utilities shall submit their proposed criteria for evaluating
14 proposals and selecting a program administrator to the commission. These criteria shall evaluate
15 the following:

16 (a) The qualifications and financial soundness of a proposed program administrator and
17 any proposed administrative subcontractor.

18 (b) The previous performance of a proposed program administrator and any proposed
19 administrative subcontractor.

20 (c) The technical feasibility and quality of the proposed work plan, including the
21 feasibility of proposed goals, performance measures, and environmental and economic benefits
22 identified as objectives in the proposal.

1 (d) Compliance with each of the policies and goals the commission identifies for the
2 statewide energy efficiency program.

3 (e) Other factors the commission considers relevant.

4 **(3) APPROVED, MODIFIED, OR REJECTED SELECTION CRITERIA.** The energy utilities'
5 proposed selection criteria are subject to the commission's prior approval. The commission may
6 modify or reject the proposed selection criteria within 20 working days after it receives them. If
7 the commission does so, it shall explain its reasons in writing. The energy utilities may propose
8 a new criterion to replace any modified or rejected criterion. If the commission does not modify
9 or reject any of the proposed selection criteria within 20 working days after receiving them, they
10 are deemed approved.

11 **(4) NOTICE TO COMMISSION WHEN PROGRAM ADMINISTRATOR IS SELECTED.** The energy
12 utilities shall notify the commission in writing of their selection of a program administrator. The
13 energy utilities may negotiate a combination of proposals from various administrators, if they
14 determine that such a combination would better meet the objectives of the statewide program.

15 **(5) COMMISSION APPROVAL OF PROGRAM ADMINISTRATOR.** The commission shall, in
16 writing and within 40 working days after it receives the energy utilities' notice under sub. (4),
17 approve or reject for cause a program administrator whom the energy utilities selected.

18 **(6) RIGHT TO PROTEST.** If the energy utilities dispute the commission's rejection of a
19 selected program administrator under sub. (5), they may protest to the commission. The energy
20 utilities shall serve such a protest in writing on the division administrator within 20 working days
21 after they receive notice of the commission's rejection. The division administrator may settle
22 and resolve any protest brought under this subsection. If the protest cannot be resolved by
23 mutual agreement, the division administrator shall issue a written decision to the energy utilities.

1 (7) APPEAL. The energy utilities may, within 20 working days after the division
2 administrator issues a decision under sub. (6), appeal the decision to the commission by alleging
3 facts that show a violation of a particular statute or provision of this chapter.

4 (8) CONTRACT STATUS. The energy utilities may not sign a contract with a proposed
5 program administrator during the 40 working days when the commission can review the energy
6 utilities' proposed selection under sub. (5) or while a protest or appeal is pending under sub. (6)
7 or (7). The commission may void any contract for the selection of a program administrator that
8 is signed during these periods.

9 **PSC 137.04 Collective statewide program contracts. (1) NOTICE TO COMMISSION**
10 **AND CONTRACT REQUIREMENTS.** (a) The energy utilities shall notify the commission in writing
11 of their intent to sign a collective contract for statewide programs with a program administrator
12 and shall submit a copy of the proposed contract to the commission for its approval.

13 (b) The contract shall include the following:

14 1. A requirement that the statewide programs shall comply with the policies and goals
15 issued by the commission.

16 2. A requirement that the statewide programs shall comply with s. PSC 137.05.

17 3. Performance indicators and minimum performance standards.

18 4. Any other provision the commission may require.

19 (2) COMMISSION APPROVAL OF CONTRACT. (a) The commission shall, in writing and
20 within 40 working days after receiving the energy utilities' notice under sub. (1), approve,
21 approve with modifications, or reject a proposed contract.

22 (b) Upon receiving notice from the commission that it has approved a statewide program
23 contract, the energy utilities shall sign the contract with a program administrator.

1 (c) Upon receiving notice from the commission that it has approved with modifications a
2 statewide program contract, the energy utilities may sign a modified contract with a program
3 administrator.

4 (3) RIGHT TO PROTEST. If the energy utilities dispute the commission's modification or
5 rejection of a proposed contract under sub. (2) they may protest to the commission. The energy
6 utilities shall serve such a protest in writing on the division administrator within 10 working days
7 of the receipt of the commission's rejection or modification of a proposed contract. The division
8 administrator may settle and resolve any protest brought under this subsection. If the protest is
9 not resolved by mutual agreement, the division administrator shall issue a written decision to the
10 energy utilities.

11 (4) APPEAL. The energy utilities may, within 20 working days after the division
12 administrator issues a decision under sub. (3), appeal the decision to the commission by alleging
13 facts that show a violation of a particular statute or provision of this chapter.

14 (5) CONTRACT STATUS. The energy utilities may not sign a contract for statewide
15 programs while the commission is reviewing the energy utilities' proposed contract under sub.
16 (2) or while a protest or appeal is pending under sub. (3) or (4). The commission may void any
17 contract for statewide programs that the energy utilities sign during these periods.

18 **PSC 137.05 Minimum requirements of statewide energy efficiency and renewable**
19 **energy programs. (1) PROGRAMS FOR ALL CUSTOMERS.** The statewide programs shall address
20 the energy efficiency and renewable resource needs of all customers of participating energy
21 utilities, municipal utilities, and retail electric cooperatives, except for the energy efficiency
22 needs of those customers served by a utility-administered program under s. PSC 137.07 or a
23 large energy customer self-directed program under s. PSC 137.09.

1 **(2) RENEWABLE RESOURCE PROGRAMS FOR LARGE CUSTOMERS.** The statewide programs
2 shall use a portion of the utility revenues collected from each large energy customer, including
3 large energy customers who are participating in a self-directed energy efficiency program under
4 s. PSC 137.09 and large commercial, industrial, institutional, or agricultural customers as defined
5 in s. PSC 137.07 (1), to provide renewable resource programs to these customers.

6 **(3) ENVIRONMENTAL BENEFITS.** The statewide programs shall deliver programs that
7 result in environmental benefits, as identified by the commission, either on-site or at the
8 generation level.

9 **(4) PROGRAMS FOR LOCAL UNITS OF GOVERNMENT AND AGRICULTURAL PRODUCERS.** (a)
10 The statewide programs shall allocate at least 10 percent of the moneys collected under s.
11 196.374 (3) (b) 2., Stats., to programs to increase the energy efficiency of local units of
12 government and agricultural producers. These programs are required to pass a portfolio level
13 test of net cost-effectiveness, as determined by the commission.

14 (b) If the commission determines that the energy utilities cannot spend the full amount of
15 moneys under par. (a) on cost-effective programs to serve local units of government and
16 agricultural producers in any program year, the energy utilities shall allocate these unspent funds
17 to programs to serve commercial, institutional, and industrial customers in the following program
18 year.

19 **(5) PROMOTING MARKETS.** The statewide programs shall include initiatives and
20 strategies that address the needs of individuals or businesses facing the most significant barriers,
21 as determined by the commission, to creating or participating in markets for energy efficiency
22 and renewable resource products and services.

1 **(6) ENVIRONMENTAL AND ECONOMIC IMPACTS OF ENERGY USE.** The statewide programs
2 shall initiate and fund research and development projects, at the direction of the commission, that
3 support sound public policy and provide information to policymakers, program administrators,
4 utilities, and the public about the environmental and economic impacts of energy generation,
5 delivery, and use.

6 **(7) EFFECTIVE PROGRAM DELIVERY.** The statewide programs shall initiate and fund
7 market research projects that support and enhance the effective delivery of statewide programs.
8 These projects shall be coordinated with the commission and with the independent third-party
9 evaluator who contracts with the commission, as provided in sub. (12), to avoid any conflicts of
10 interest. A statewide program administrator may not conduct any market research related to
11 establishing quantitative baseline data or related to studying the availability of energy efficiency
12 savings if the research is used to measure program impacts.

13 **(8) GRANT AND BENEFIT OPPORTUNITIES.** The statewide programs shall provide an
14 equivalent opportunity for all eligible customers to participate. Statewide programs shall provide
15 each customer class, on an annual basis, the opportunity to receive grants and benefits in an
16 amount equal to that recovered from the customer class. If a customer is participating in a self-
17 directed program under s. PSC 137.09, that customer's participation in the statewide programs
18 shall be limited to the amount of revenues that the customer contributes to them through s.
19 196.374 (3) (b) 2., Stats. Statewide programs shall coordinate with utility-administered,
20 voluntary utility energy efficiency and renewable resource programs, ordered programs, and
21 large energy customer self-directed programs to avoid duplication of effort and of program
22 offerings in overlapping territories.

1 **(9) DATA COLLECTION.** The program administrator shall, using the commission's
2 database tracking and reporting system, collect and record for each program, by customer class:

3 (a) KW, kWh, and therm savings.

4 (b) Performance metrics.

5 (c) Non-energy benefits.

6 (d) All administrative and program delivery costs.

7 (e) Any other information the commission requests.

8 **(10) DATA TO COMMISSION AND INDEPENDENT EVALUATOR.** The program administrator
9 shall provide all information and data collected through statewide programs to the commission
10 and the independent third-party evaluator upon request.

11 **(11) PRIORITIES.** The program administrator shall assign priority status to implementing
12 programs that reduce growth in electric and natural gas demand and usage, facilitate energy
13 efficiency and renewable resource market development, help market providers achieve higher
14 levels of energy efficiency, promote energy reliability and adequacy, avoid adverse
15 environmental impacts from the use of energy, and promote rural economic development.

16 **(12) COST-EFFECTIVENESS.** The program administrator shall deliver energy efficiency
17 and renewable resource programs that pass a portfolio level test of net cost-effectiveness, as
18 determined by the commission. The program administrator shall screen each energy efficiency
19 and renewable resource program for net cost-effectiveness at least once a year. An independent
20 third party, contracted by the commission, shall conduct all market assessment and evaluation
21 activities necessary to measure the impact and cost-effectiveness of all statewide programs. The
22 commission's administration of the evaluation contract shall be paid by funds from the statewide
23 energy efficiency and renewable resource programs, at a level determined by the commission.

1 **(13) PERFORMANCE GOALS AND REPORTING.** The commission shall, in consultation with
2 the program administrator, establish annual and multi-year performance goals for the statewide
3 programs. These goals shall be consistent with commission goals, priorities, and measurable
4 targets under s. 196.374 (3) (b) 1., Stats. The program administrator shall provide monthly
5 activity reports and semiannual performance results to the commission.

6 **PSC 137.06 Procedures to receive contributions from municipal utilities and retail**
7 **electric cooperatives. (1) INVOICE FORMS.** The energy utilities shall design invoice forms for
8 municipal utilities and retail electric cooperatives that elect to contribute the fees they charge
9 under s. 196.374 (7) (a) and (b) 2., Stats., to statewide programs. The participating municipal
10 utilities and retail electric cooperatives shall use these forms to send in their collections.

11 **(2) PROCEDURES FOR FEE CONTRIBUTIONS TO STATEWIDE PROGRAMS.** (a) At the end of
12 each quarter, each participating municipal utility and retail electric cooperative shall inform the
13 energy utilities of the dollar amount of fees it has collected for energy efficiency programs in the
14 previous quarter. Participating municipal utilities and retail electric cooperatives shall deliver
15 this information to the energy utilities within 15 working days after the quarter concludes.

16 (b) The energy utilities shall verify the amount collected by each participating municipal
17 utility or retail electric cooperative.

18 (c) When the energy utilities have received the information specified in par. (a), they
19 shall produce an invoice for each participating municipal utility or retail electric cooperative and
20 deliver the invoice to the municipal utility or retail electric cooperative.

21 (d) Within 30 working days after it receives the invoice, the participating municipal
22 utility or retail electric cooperative shall send a check to the address specified by the energy
23 utilities for deposit in the fund for statewide programs.

1 (e) The energy utilities shall take reasonable steps to ensure that participating municipal
2 utilities and retail electric cooperatives remit payments completely and on a timely basis.

3 (3) REPORTS. The energy utilities shall record the payment of each municipal utility or
4 retail electric cooperative and create reports that include each municipal utility's and retail
5 electric cooperative's cumulative contributions for the fiscal year.

6 **PSC 137.07 Utility-administered programs for large commercial, industrial,**
7 **institutional, or agricultural customers. (1) DEFINITION.** In this section, "large commercial,
8 industrial, institutional, or agricultural customer" has the same meaning as "large energy
9 customer" under s. 196.374 (1) (em), Stats., unless the commission specifies a different
10 definition by order.

11 (2) FUNDING ENERGY EFFICIENCY PROGRAMS FOR LARGE COMMERCIAL, INDUSTRIAL,
12 INSTITUTIONAL, OR AGRICULTURAL CUSTOMERS. The funding available in any year for all the
13 energy efficiency programs the commission has authorized an energy utility to offer to its large
14 commercial, industrial, institutional, or agricultural customers under s. 196.374 (2) (b) 1., Stats.,
15 shall equal the revenues collected from the energy utility's customers who are eligible for the
16 utility-administered programs, less the funds set aside under s. PSC 137.05 (2) for statewide
17 renewable resource programs. The commission shall determine the annual funding level
18 available for these programs and inform energy utilities in writing at least 9 months prior to the
19 beginning of the statewide program year.

20 (3) ENERGY EFFICIENCY PROGRAMS FOR LARGE COMMERCIAL, INDUSTRIAL,
21 INSTITUTIONAL, OR AGRICULTURAL CUSTOMERS. (a) An energy utility requesting to administer
22 or fund one or more energy efficiency programs for large commercial, industrial, institutional, or
23 agricultural customers in its service territory under this section may file a request with the

1 commission at any time. The commission shall consider requests it receives at least 6 months
2 before the start of the statewide energy efficiency and renewable resource program year for
3 implementation in that program year.

4 (b) Each request to administer or fund an energy efficiency program under this section
5 shall include:

6 1. A description of the program that includes the target market, eligible measures,
7 delivery strategy, marketing and communications strategy, incentive strategy and potential
8 market effects.

9 2. A plan prepared jointly with the program administrator that describes how statewide
10 and utility-administered programs will be coordinated with large energy customer self-directed
11 programs, ordered programs, and voluntary utility programs offered during the same period.

12 3. A description of the program's consistency with the commission's most recent study
13 of available energy efficiency savings.

14 4. Annual and multi-year performance targets that are consistent with commission goals,
15 policies, and priorities.

16 5. A program time frame that is consistent with the statewide program year.

17 6. A portfolio and program level cost-effectiveness analysis that is consistent with
18 par. (c) 5.

19 7. An administrative and program delivery budget for the first year of operation.

20 8. Any other information the commission requests.

21 (c) Each utility-administered program under this section shall:

22 1. Be limited to offering energy efficiency programs to large commercial, industrial,
23 institutional, or agricultural customers in the energy utility's service territory. If a customer is

1 participating in a self-directed program under s. PSC 137.09, that customer's participation in any
2 utility-administered program under this section shall be limited to the amount of revenues that
3 the customer contributes to the utility-administered program through s. 196.374 (3) (b) 2., Stats.

4 2. Provide an equivalent opportunity for all eligible customers to participate. Utility-
5 administered programs shall coordinate with statewide programs and with large energy customer
6 self-directed programs to avoid duplication of effort and of program offerings in overlapping
7 territories.

8 3. Be evaluated by an independent third party. The commission shall contract with the
9 independent third-party evaluator, unless it determines that it is reasonable to allow the energy
10 utility to contract with the evaluator. In that case the commission shall oversee the contracting
11 process and approve the energy utility's selection of the independent third-party evaluator. The
12 energy utility shall pay for the evaluation of the program, as determined by the commission,
13 from retained utility revenues that the energy utility would otherwise have expended on
14 statewide energy efficiency programs.

15 4. Be designed in a manner that prevents the energy utility or any of its affiliates from
16 selling or installing energy efficiency processes, equipment, or appliances.

17 5. Pass a portfolio level test of net cost-effectiveness, as determined by the commission.
18 The energy utility shall screen for net cost-effectiveness at least once a year.

19 6. Result in environmental benefits, as identified by the commission, either on site or at
20 the generation level.

21 (d) The energy utility shall:

22 1. Assign priority status to implementing programs that reduce growth in electric and
23 natural gas demand and usage, facilitate energy efficiency market development, assist market

1 providers in achieving higher levels of energy efficiency, promote energy reliability and
2 adequacy, avoid adverse environmental impacts from the use of energy, and promote rural
3 economic development.

4 2. Establish annual and multi-year performance goals that are consistent with the
5 program goals, priorities, and measurable targets established under s. 196.374 (3) (b) 1., Stats.

6 At a minimum, the energy utility shall provide quarterly activity reports and semiannual
7 performance reports to the commission.

8 3. Using the commission's database tracking and reporting system, collect and record for
9 each program, by customer class:

10 a. KW, kWh, and therm savings.

11 b. Performance metrics.

12 c. Non-energy benefits.

13 d. All administrative and program delivery costs.

14 e. Any other information the commission requests.

15 4. Provide all information and data the energy utility collects for its utility-administered
16 programs to the commission and the independent third-party evaluator upon request.

17 (e) The commission shall consider all of the following when deciding whether to
18 approve a program proposed under par. (a):

19 1. Whether the program is in the public interest.

20 2. Whether the program meets the minimum requirements of par. (c).

21 3. Whether the program includes appropriate energy efficiency measures.

22 4. Whether the proposed budget is within the level of funds available.

23 5. The likelihood the program will achieve its goals.

1 6. The level of coordination with statewide programs under s. PSC 137.05, voluntary
2 utility programs under s. PSC 137.08, large energy customer self-directed programs under s. PSC
3 137.09, and ordered programs and the potential for disrupting the overall ability of energy
4 efficiency efforts in the state to meet the goals, priorities, and measurable targets established
5 under s. 196.374 (3) (b) 1., Stats.

6 **(4) APPROVAL, DENIAL OR MODIFICATION OF REQUESTS FOR UTILITY-ADMINISTERED**
7 **PROGRAMS.** An energy utility may only administer or fund a program under this section with the
8 commission’s prior approval. The commission shall issue its decision to approve, deny, or
9 modify an energy utility’s proposal to administer or fund a program under this section in writing,
10 within 40 working days after receiving the proposal. If the commission denies or modifies a
11 proposed utility-administered program it shall explain its reasons. The energy utility may revise
12 and resubmit a proposed program that the commission has denied.

13 **(5) MODIFYING OR DISCONTINUING A UTILITY-ADMINISTERED PROGRAM OR AN ORDERED**
14 **PROGRAM.** (a) An energy utility may request the commission to authorize the modification or
15 discontinuation of a program it administers or funds under this section at any time. No energy
16 utility may modify or discontinue such a program without the commission’s prior approval.

17 (b) Requests for discontinuation of an ordered program shall be made as part of a
18 proceeding the commission conducts under 196.374 (3) (b) 1., Stats.

19 **(6) RETURN OF FUNDS.** The commission may require that the energy utility deliver any
20 unspent funds of an energy efficiency program approved under this section to the energy utilities,
21 to fund the statewide programs.

22 **PSC 137.08 Voluntary utility energy efficiency or renewable resource programs. (1)**
23 **DEFINITION.** In this section, “voluntary program” means an energy efficiency or renewable

1 resource program that an energy utility voluntarily proposes for commission approval under s.
2 196.374 (2) (b) 2., Stats.

3 **(2) REQUEST TO ADMINISTER OR FUND A VOLUNTARY PROGRAM.** An energy utility may
4 file a request with the commission at any time to administer or fund one or more voluntary
5 programs in its service territory. The commission shall consider requests that it receives at least
6 6 months before the start of the statewide energy efficiency and renewable resource program
7 year for implementation in that program year.

8 **(3) REQUIRED INFORMATION.** An energy utility requesting to administer one or more
9 voluntary programs in its service territory shall provide the information specified in s. PSC
10 137.07 (3) (b) 1., 4., 6., 7., and 8., plus the following information:

11 (a) A proposed reporting schedule.

12 (b) A description of the energy utility's proposed database tracking and reporting system.

13 (c) A description of how the energy utility will coordinate its voluntary program with
14 statewide programs under s. PSC 137.05, utility-administered programs under s. PSC 137.07,
15 and ordered programs.

16 (d) An evaluation, measurement, and verification plan.

17 **(4) PRIOR APPROVAL OF VOLUNTARY PROGRAMS.** (a) An energy utility may only
18 administer or fund a voluntary program with the commission's prior approval.

19 (b) The commission shall consider each of the following factors when deciding whether
20 to approve a voluntary program:

21 1. Whether the program is in the public interest.

22 2. The likelihood the program will achieve its goals.

23 3. The inclusion of appropriate energy efficiency or renewable resource measures.

- 1 4. The adequacy of the budget.
- 2 5. The balance of services available to customer segments.
- 3 6. The cost-effectiveness of the program.
- 4 7. The adequacy of the energy utility's evaluation, measurement, and verification plan.
- 5 8. The level of coordination with statewide programs under s. PSC 137.05, utility-

6 administered programs under s. PSC 137.07, and ordered programs and the potential for

7 disrupting the overall ability of energy efficiency or renewable resource efforts in the state to

8 meet the goals, priorities, and measurable targets established under s. 196.374 (3) (b) 1., Stats.

9 (c) The commission shall issue its decision to approve, deny, or modify a proposed

10 voluntary program under this section in writing, within 40 working

11 days after receiving the proposal. If the commission denies or modifies a proposed voluntary

12 program it shall explain its reasons. The energy utility may revise and resubmit a proposed

13 voluntary program that the commission has denied.

14 **(5) MODIFYING OR DISCONTINUING A VOLUNTARY PROGRAM.** An energy utility may

15 request the commission to authorize the modification or discontinuation of a voluntary program

16 at any time. No energy utility may modify or discontinue a voluntary program without the

17 commission's prior approval.

18 **PSC 137.09 Large energy customer self-directed energy efficiency programs. (1)**

19 **FUNDING PROGRAMS FOR LARGE ENERGY CUSTOMERS.** The maximum amount of utility funding

20 available in any one year for a large energy customer self-directed program is the energy utility

21 revenues that would have been collected from the large energy customer under s. 196.374 (5) (b),

22 Stats., less the funds set aside under s. PSC 137.05 (2) for statewide renewable resource

23 programs. The commission shall determine the annual funding level for each large energy

1 customer. Upon receipt of this information, each energy utility with one or more large energy
2 customers shall notify these customers of the funds available for self-directed programs.

3 (2) PROGRAM REQUIREMENTS. (a) A large energy customer seeking approval of a self-
4 administered and self-funded energy efficiency program under 196.374 (2) (c), Stats., may file a
5 request with the commission at any time. The commission shall consider requests it receives at
6 least 6 months before the start of the statewide energy efficiency and renewable resource
7 program year for implementation in that program year.

8 (b) Each request for a large energy customer self-directed energy efficiency program
9 under this section shall include:

- 10 1. An explanation of the program, including descriptions of targeted buildings,
11 equipment and operations; of eligible energy efficiency measures; and of expected energy
12 savings, itemized by technology.
- 13 2. Performance targets that are consistent with commission goals, policies and priorities.
- 14 3. A program time frame that is consistent with the statewide program year.
- 15 4. A program level cost-effectiveness analysis, consistent with par. (c) 3.
- 16 5. An administrative and program delivery budget for each year of operation.
- 17 6. A tracking and reporting system, as specified by the commission.
- 18 7. A measurement and verification plan.
- 19 8. Any other information the commission requests.

20 (c) Large energy customer self-directed programs under this subsection shall:

- 21 1. Reduce the on-site use of electricity or natural gas. To determine whether the program
22 reduces energy or gas use, the large energy customer shall compare the facility's energy use with
23 standard replacement technology under standard operating conditions, before improvements to

1 existing facility or expansion, against the proposed facility efficiency improvements. The large
2 energy customer's measurement and verification process is subject to the commission's
3 approval.

4 2. Include measures that are environmentally sound, as determined by the commission.

5 3. Pass a program level test of cost-effectiveness, as determined by the commission.

6 4. Use retained utility revenues that would otherwise be collected for statewide energy
7 efficiency programs from the customer to pay some or all of the incremental cost difference
8 between standard efficiency replacement equipment or processes and the premium efficiency
9 replacement equipment or processes that the large energy customer proposes to install. The
10 program may also use retained utility revenues to purchase energy efficiency-related education,
11 training, and facilitation services from statewide or utility-administered programs.

12 5. Be evaluated by an independent third party. The commission shall contract with the
13 independent third party evaluator, unless it determines that it is reasonable to allow the large
14 energy customer to contract with an evaluator. In that case, the commission shall oversee the
15 contracting process and approve the large energy customer's selection of the independent third-
16 party evaluator. The large energy customer shall pay the evaluation costs out of energy utility
17 revenues that the large energy customer retains and sets aside for that purpose.

18 (d) The large energy customer with a self-directed program shall:

19 1. Retain energy utility revenues, for at least one year, to finance projects the large
20 energy customer initiates and completely installs within the period for which utility revenues are
21 retained.

22 2. Establish performance goals, as approved by the commission. At a minimum, the
23 large energy customer shall provide quarterly activity reports and annual performance results,

1 using a reporting format approved by the commission. The large energy customer shall also
2 provide all performance-related information and data to the commission that it requests.

3 **(3) PRIOR APPROVAL OF REQUESTS FOR LARGE ENERGY CUSTOMER SELF-DIRECTED**
4 **PROGRAMS.** (a) A large energy customer may only administer and fund a self-directed program
5 under this section with the commission's prior approval. The commission shall issue its decision
6 to approve, deny, or modify a large energy customer's proposal to administer and fund a self-
7 directed program under this section in writing, within 40 working days after receiving the
8 proposal.

9 (b) The commission shall consider each of the following standards when deciding
10 whether to approve a large energy customer's self-directed program:

- 11 1. The standards specified in s. PSC 137.08 (4) (b) 1. to 4., 6., and 7.
- 12 2. The minimum requirements specified in sub. (2) (c).

13 (c) If the commission denies or modifies a large energy customer's proposed self-
14 directed program it shall explain its reasons in writing. The large energy customer may revise
15 and resubmit a proposed program the commission has modified or denied.

16 **(4) MODIFYING OR DISCONTINUING A LARGE ENERGY CUSTOMER SELF-DIRECTED**
17 **PROGRAM.** A large energy customer may request the commission to authorize the modification
18 or discontinuation of an energy efficiency program implemented under this section at any time.
19 No large energy customer may modify or discontinue a self-directed program without the
20 commission's prior approval.

21 **(5) RETURN OF FUNDS.** The commission may require that the large energy customer
22 deliver any unspent funds to the energy utilities, to fund the statewide programs.

23

Wisconsin Legislative Council Rules Clearinghouse

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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 06-139

AN ORDER to create ch. PSC 137, relating to energy efficiency and renewable resource programs.

Submitted by PUBLIC SERVICE COMMISSION
12-27-2006 RECEIVED BY LEGISLATIVE COUNCIL.
01-26-2007 REPORT SENT TO AGENCY.

RS: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 ✓

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CLEARINGHOUSE RULE 06-139

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.]

1. Statutory Authority

a. Section PSC 137.05 (4) implements s. 196.374 (2) (a) 2. b., Stats., too narrowly. The statute requires that the amount set aside for local governments and agriculture programs be not less than 10% “of the amount utilities are required to spend under subd. 1. or sub. (3) (b) 2.” Section 196.374 (3) (b) 2., Stats., requires utilities to spend 1.2% of annual operating revenues to fund “the utility’s programs under sub. (2) (b) 1., the utility’s ordered programs, and the utility’s share of the statewide energy efficiency and renewable resource programs under sub. (2) (a) 1.” In other words, the set-aside is 10% of 1.2% of the total annual operating revenues of all utilities, not 10% of the moneys contracted for statewide programs. In addition, s. PSC 137.05 (4) does not require that any amount of the set-aside that cannot be used cost-effectively on those programs must be used instead for commercial, institutional, and industrial programs, as required in s. 196.374 (2) (a) 2. b.

b. Section PSC 137.07 (2) (c) 1. limits certain program participants to “large commercial, industrial, institutional, or agricultural customers, as defined by the commission” How does the commission intend to define this, if not in this rule? The rule should include any further definition of those entities that is needed. The same applies to “the statewide evaluation standards that the commission establishes,” cited in ss. PSC 137.07 (2) (c) 7. and 137.08 (2) (c) 6. and to the “commission standards” and the “statewide evaluation standards ..., as determined by the commission,” referred to in s. PSC 137.07 (3) (b) 1. and 3., respectively.

2. Form, Style and Placement in Administrative Code

a. The rule preface should follow the format found in s. 1.02 (2) (a), Manual.

b. The rule’s treatment of the fiscal agent is incomplete. Unlike its treatment of the program administrator, the rule does not indicate who designates the fiscal agent, and how. It should

specify these details and then define the term as “... the agent designated under s. PSC 137. ___.” See the definition of “program administrator” for a model. If the commission does *not* take this approach, note that the definition in the draft is incomplete; presumably, it should refer to *the utility funds expended under s. 196.374 (3) (b) 2., Stats.*, for the programs under s. 196.374 (2) (a) 1., Stats., not the programs themselves.

c. The definition of “net cost-effectiveness” is not so much a definition as a description of how to calculate it. The substance in this definition should be moved to a separate section or subsection and elaborated to give a fuller description of the calculation. Section PSC 137.05 (13) and other provisions where the term is applied, could refer to a determination of cost-effectiveness under s. _____. If a definition is needed, the term could be defined by a similar reference.

d. The structure of s. PSC 137.05 is cumbersome and confusing. It requires each of 13 subsections to follow from the introduction: “The portfolio of statewide programs shall:”. However, the subsections are more heterogeneous than this introduction would suggest, and that introduction is not appropriate for some of them. Further, shoe-horning these diverse provisions into the same format leads to some very terse and not very descriptive language. Finally, the subsections are not arranged in a logical sequence. Those provisions that establish required program elements or that specify required program outcomes should be grouped together and described sufficiently to provide useful guidance beyond repeating statutory language. Those provisions that establish obligations of the program administrator or another party should be presented either singly or in groups of related subject, and should be elaborated in greater detail. In very general terms, subs. (1) to (4) and (8), (10), (11), and (13) describe required attributes of the program, either specific elements or required outcomes, while subs. (5) to (7), (9), and (12) describe specific tasks or obligations of the program administrator (not the program, itself). The latter group, especially, require more specifically tailored treatment. It is suggested that the introduction be abandoned and that each subsection begin with a declaratory sentence in the form of “X (the program administrator, in most cases) shall do Y.” This comment applies, as well, to ss. PSC 137.07 (2) (c) and 137.08 (2) (c), in which “energy utility” and “large customer” would replace “program administrator.”

e. Section PSC 137.05 (2) incorrectly treats utility-administered programs and self-directed programs as part of the statewide programs established collectively by the utilities. The substance of that subsection should be moved to ss. PSC 137.07 and 137.08, which address those programs.

f. The second, third, and fourth sentence of s. PSC 137.05 (12) reproduces material in ss. PSC 137.07 and 137.08, and so should be omitted. If the commission wants any of these sentences included for clarity or explanatory purposes, they can be placed in a note.

g. Section PSC 137.05 (12) appears to implement s. 196.374 (5m) (b), Stats. (except that the statute requires “equivalent opportunity” and the rule requires “equal opportunity”), but not s. 196.374 (5m) (a), Stats.

h. “Achievable potential study,” used in s. PSC 137.07 (2) (b) 3., is insider jargon. The rule should either define the term or replace it with more descriptive language that makes clear what is meant. If the term is used just once or twice, the latter is the preferred option.

i. It appears that s. PSC 137.08 (2) (b) 1. should be rewritten as follows: A description of the program, including descriptions of targeted buildings, equipment and operations; eligible (or proposed?) energy efficiency measures; and expected energy savings, itemized by technology.

j. The first part of s. PSC 137.08 (2) (c) 2. is redundant with s. PSC 137.08 (1), and the second portion would more appropriately be combined with s. PSC 137.08 (2) (c) 5.

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

c. Sections PSC 137.02 (5), 137.05 (7), and 137.07 (2) (c) 4. refer to forms. The requirements of s. 227.14 (3), Stats., should be met.

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

a. The rule needs to be more clear and much more consistent in how it refers to the various programs under s. 196.374 (2), Stats. The commission should select clear, descriptive terms, such as “statewide programs,” “utility-administered programs,” “supplemental (or “additional”) utility-administered programs,” and “self-directed programs,” define the terms by cross-reference to s. 196.374 (2) (a), (b) 1. and 2., and (c), respectively, and use them exclusively throughout the rule. (We recognize that the first of these terms is so defined, and appears to be used consistently.)

b. It is not at all clear that the “proposed subcontractors” referenced in s. PSC 157.03 (1) (a) and (b) are essentially sub-administrators. As those paragraphs are written, it appears that an applicant for the program administrator contract must anticipate in advance all subcontractors who will be used in the program. These provisions need clarification.

c. The rule, in s. PSC 137.05 (7), directs the program administrator to establish annual and multi-year goals, based on statewide performance standards. How does this relate to the “goals, priorities, and measurable targets for the programs” the commission is directed to set and revise in the quadrennial review required in s. 196.374 (3) (b) 1., Stats.? Language such as that in s. PSC 137.07 (2) (b) 4. (“that are consistent with the commission’s ...”) might be helpful. Also, who establishes the performance standards, the program administrator, again?

d. To avoid confusion with the *submission* of funds under sub. (2) (d), it appears that s. PSC 137.06 (2) (a) should say “... shall *inform* the fiscal agent of the dollar amount ...”. Also, should s. PSC 137.06 (3) refer to “cumulative *contributions*”?

e. In s. PSC 137.07 (2) (c) 8., “of the energy utility” should be inserted following “affiliate.”

f. Section PSC 137.07 (2) (d) 4. should make clear that the required comparison is to the funding level for the described elements of the statewide programs.

- g. It appears that ss. PSC 137.07 (6) and 137.08 (5) should require the payment to the fiscal agent of any unspent amount of the funds available for the particular program, specified in sub. (1) of each of those sections, rather than the narrower language in the rule.
- h. Section PSC 137.08 (1) should specify that, for utility customers that are not determined to be large customers under Section 102 (8) (b) of 2005 Wisconsin Act 141 but that the commission later determines to be large customers, the funding available to that customer for a self-directed program is the amount determined under s. 196.374 (5) (b) 2., Stats. The whole thing could be stated in far fewer words, though, by referring to the amount specified (as opposed to determined) in s. 196.374 (5) (b) 1. or 2., Stats.
- i. The last clause of s. PSC 137.08 (2) (d) should be moved to follow “7.” and the words “as well as” should be replaced by “and.”

LRB or Bill No./Adm. Rule No.
Ch. PSC 137 – 1-AC-
220

Amendment No. if Applicable

ORIGINAL UPDATED

FISCAL ESTIMATE

CORRECTED SUPPLEMENTAL

DOA-2048 N(R10/96)

Subject

Create Chapter PSC 137 - Rules Related to Energy Efficiency and Renewable Resource Program

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 Permissive Mandatory
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.155 (1) (g)

Assumptions Used in Arriving at Fiscal Estimate

The proposed rules will replace the existing statewide Energy Efficiency and Renewables Program at DOA and move the monitoring of the new Program to the PSC. It is expected there will be the same number of state staff, at about the same costs, working on the programs as there are now at DOA. Therefore, the result of the creation of these rules do not increase or decrease state expenditures. WI Act 141 provides for certain expenditures by local governments, however, the rules merely implement these requirements and in and of themselves do not increase or decrease local costs.

Long-Range Fiscal Implications

Ongoing Program monitoring Costs.

Agency/Prepared by: (Name & Phone No.)
Gordon Grant 267-9086

Authorized Signature/Telephone No.
Gordon Grant

Date
12/13/2006