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# Wisconsin Legislative Council

## ACT MEMO

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### 2021 Wisconsin Act 24 [2021 Assembly Bill 27]

### Requiring Energy Utilities to Fund a Consumer Advocate and Other Changes to Laws Administered by the Public Service Commission

2021 Wisconsin Act 24 makes various changes to statutes administered by the Public Service Commission (PSC). Among these changes, the act requires investor-owned energy utilities to fund a consumer advocate, defined in the act as the Citizen's Utility Board (CUB).

## REQUIREMENTS FOR UTILITIES TO FUND A CONSUMER ADVOCATE

The PSC currently administers an intervenor compensation program, through which the commission may compensate a party for expenses incurred due to its intervention in a PSC proceeding. Funding for the program consists of program revenue derived from PSC assessments on public utilities.

As a part of the intervenor compensation program, the PSC is authorized to provide grants to one or more nonstock, nonprofit corporations that have a history of advocating at the commission on behalf of Wisconsin ratepayers. Grants may be provided for the purpose of offsetting the general expenses of the corporations, including salary, benefits, rent, and utility expenses. Historically, these grants have been awarded to CUB.<sup>1</sup> [[s. 196.31, Stats.](#)]

2021 Wisconsin Act 24 eliminates the PSC's authority to award these grants for general expenses and instead requires investor-owned energy utilities to fund CUB. Additionally, the act limits the amount of intervenor compensation that CUB may otherwise receive to \$100,000 annually.

Under the act, CUB must annually file a budget with the PSC for the commission's approval. When reviewing the CUB budget, the PSC may request additional information and consider any relevant factors, including existing operating reserves and CUB's actual costs in prior years as compared to the budgets that were approved. The PSC must approve a budget if it covers the reasonable costs of CUB and is consistent with the act's legislative statement of intent and purpose.<sup>2</sup> The commission may approve the budget with conditions and modifications as it determines are necessary. If the commission fails to take final action on the budget within 60 days after it is filed, the budget is considered approved.

Annually, within 60 days after the PSC's approval of the budget, each investor-owned energy utility must pay CUB its respective share of CUB's budget. Each utility's share of the budget must be based

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<sup>1</sup> CUB was established by the Legislature in 1979. It was subsequently dissolved and reorganized as a nonstock, nonprofit corporation in 1986.

<sup>2</sup> The act's legislative statement of intent and purpose provides that: "[i]t is in the public interest that there be an independent, nonpartisan consumer advocate for residential, small commercial, and small industrial energy utility customers of this state and that the advocate be sufficiently funded by those customers to allow for the representation and protection of their interests before the commission and other venues. All actions by the advocate funded under [the act] shall be directed toward such duty."

upon the utility's proportionate share of the total number of residential, small commercial, and small industrial meters in the state. To this end, the act requires each public utility to annually report counts of the numbers of meters serving residential, small commercial, and small industrial customers. The total of all amounts required to be paid by energy utilities to CUB may not exceed \$900,000 annually.

Under the act, funds provided to CUB by energy utilities may not be used for lobbying or for defraying the cost of participating in proceedings involving the rates or practices of municipal utilities and no other public utilities. Additionally, CUB must retain all relevant records supporting its expenditure of funds provided by energy utilities for three years after receipt of the funds. CUB must also grant the PSC access to these records upon request.

The act directs the PSC to ensure in rate-making orders that energy utilities recover from their residential, small commercial, and small industrial customers, the amounts the utilities pay to CUB. The act also requires the PSC to apply escrow accounting treatment to these utility expenditures.

## **OTHER CHANGES TO STATUTES ADMINISTERED BY THE PSC**

### **Natural Gas Public Utility Projects**

Under current law, public utilities must receive a certificate or approval from the PSC before beginning certain construction projects. Projects are exempt from this requirement if they fall below a given cost threshold. Prior law provided that a project of a natural gas public utility was exempt if it cost less than \$2,500,000<sup>3</sup> or four percent of the public utility's natural gas operating revenues in the prior year, whichever was less.

The act increases the cost threshold for natural gas utility projects to \$5,000,000 while preserving the existing language allowing for a lower cost threshold if a project's cost exceeds four percent of the public utility's natural gas operating revenues in the prior year.

### **PSC Approvals for Large Generating Facilities With Associated High-Voltage Transmission Lines**

Current law generally requires a person to receive a certificate of public convenience and necessity (CPCN) from the PSC before that person may construct a large electric generating facility or high-voltage transmission line. The act provides that a person proposing to construct a large electric generating and an associated high-voltage transmission line may apply for CPCNs for these projects under a single application. The PSC is then required to conduct a single proceeding for the proposed facilities, applying the same review requirements that it would apply if separate applications were filed for each facility.

Under prior law, the PSC must consider a CPCN application complete notwithstanding the fact that it does not contain all of the information necessary to approve the construction of transmission facilities that may be associated with a proposed electric generating facility and a person other than the applicant will be responsible for the construction of the transmission facilities. Under the act, this provision does not apply when an application is a single application for CPCNs for both a large electric generating facility and an associated high-voltage transmission line.

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<sup>3</sup> [Section 196.49\(5g\)\(b\), Stats.](#), directs the PSC to adjust project cost thresholds to reflect changes to the cost of utility construction based on the applicable industry cost index numbers published in the Handy-Whitman Index of Public Utility (or an equivalent successor index).

## **Agreements to Extend Timelines for Water-Related DNR Permits**

A utility project that requires a certificate of authority (CA) or a CPCN from the PSC<sup>4</sup> may also require various water-related permits<sup>5</sup> from the Department of Natural Resources (DNR). Under current law, DNR must grant or deny applications for such permits within 30 days of the date on which the PSC issues its decision regarding a CA or CPCN for a given utility project. [[s. 30.025 \(4\) \(b\), Stats.](#)]

An applicant for a CPCN for a high-voltage transmission line may agree with DNR to modify the deadline for the department's issuance of the above permits. Under the modified deadline, DNR is required to grant or deny a permit application within 45 days after it received all of the information necessary to carry out its review of the application.

Prior law limited this deadline modification provision to projects requiring a CPCN. However, the act expands the provision to also cover projects requiring a CA.

## **Hearing Requirement for Fuel Cost Plans in Settlement Agreements**

Current law generally requires the PSC to hold a hearing before approving a public utility's fuel cost plan. [[s. 196.20 \(4\) \(c\) 3., Stats.](#)] The act provides that if a public utility's fuel cost plan is contained in a settlement agreement, the PSC may approve the plan for the first year of a two-year settlement agreement without holding a hearing.

## **Repeal of Requirement to Promulgate Telecommunications Privacy Rules**

The act repeals a requirement that the PSC promulgate rules to establish privacy guidelines applicable to telecommunications services.<sup>6</sup> The act also eliminates various cross references to rules that would be promulgated pursuant to this requirement.

## **Elimination of Environmental Assessment Requirement for Strategic Energy Assessment**

Current law requires that the PSC prepare a biennial strategic energy assessment that evaluates the adequacy and reliability of the state's current and future electrical supply. [[s. 196.491 \(2\), Stats.](#)] The act eliminates a requirement that the PSC prepare an environmental assessment for the strategic energy assessment.

## **Escrow Accounting Treatment for Pension and Other Post-Employment Benefit Costs**

Under current law, the PSC generally has discretion regarding the accounting treatment applied to certain public utility expenses. The act directs the PSC to ensure in rate-making orders that public utilities recover the reasonable amounts that the public utilities spend on pension and other post-

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<sup>4</sup> A CA is issued by the PSC under [s. 196.49, Stats.](#) Larger utility projects may require a CPCN, issued by the PSC under [s. 196.491 \(3\), Stats.](#)

<sup>5</sup> A permit may be an individual permit, general permit, approval, or contract required under [subch. I or II of ch. 30, Stats.](#), a permit or approval required under [ch. 31, Stats.](#), a storm water discharge permit required under [s. 283.33 \(1\) \(a\) or \(am\), Stats.](#), or a wetland general permit or wetland individual permit required under [s. 281.36, Stats.](#), or under rules promulgated under [subch. II of ch. 281, Stats.](#), to implement [33 U.S.C. s. 1341 \(a\)](#). [[s. 30.025 \(1b\) \(b\), Stats.](#)]

<sup>6</sup> This requirement was established under [1993 Wisconsin Act 496](#). However, the PSC has not promulgated rules pursuant to this requirement.

employment benefit costs. The act also provides that if requested by a public utility, the PSC must prescribe escrow accounting treatment for the recovery of these costs.

### **Annual Filing Deadline for Public Utilities**

Under prior law, public utilities were required to file balance sheets and other information prescribed by the PSC by April 1 annually. The act changes this annual deadline to May 1 and also applies this deadline to the act's requirement to report counts of meters serving various types of customers.

**Effective date:** April 3, 2021

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