

## Report From Agency

### PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of the Proposed Revisions to ch. 118, Renewable Resource  
Credit Tracking Program

1-AC-252

**Clearinghouse Rule No. 20-083**

### REPORT TO LEGISLATURE

#### **I. Basis and Purpose of the Proposed Rule**

On August 2, 2017, 2017 Wisconsin Act 53 was enacted and amended Wisconsin Stat. § 196.378 to add heat as a byproduct of the manufacturing process to the definitions of a renewable resource eligible for renewable resource credits. In addition, Wisconsin Stat. § 196.378 (3) (a) 1m. requires the Public Service Commission to promulgate rules that allow an electric provider or customer or member of an electric provider to create a renewable resource credit for heat that is a byproduct of a manufacturing process or heat that is a byproduct of a manufacturing process and is used to provide thermal energy for another purpose.

The Public Service Commission promulgated ch. PSC 118 to govern the creation and tracking of renewable resource credits. The rulemaking amends Wisconsin Admin. Code ch. PSC 118 to align with 2017 Wisconsin Act 53 by creating Wisconsin Admin. Code PSC § 118.02 (5g) (dm) to add the definition “heat that is a byproduct of a manufacturing process” to Wisconsin Admin Code. ch. 118.

#### **II. Summary of Public Comments**

The Commission issued a draft economic impact analysis (EIA) and received one set of joint comments. These joint comments did not include any specific concerns or issues. No changes to the draft EIA were necessary.

The Joint Committee for the Review of Administrative Rules (JCRAR) requested that the Commission hold a preliminary hearing on the statement of scope. On June 5, 2019, the Commission held the preliminary public hearing. The Commission received one written joint comment from the Wisconsin Cast Metals Association (WMCA), the Wisconsin Industrial Energy Group, Inc. (WIEG), and the Wisconsin Paper Council (WPC) (collectively, the Industrial Customer Groups (ICG)) in support of the rulemaking.

On January 28, 2021, the Commission held a virtual public hearing to solicit public input on the draft rules. The Commission received two sets of joint written comments from Heat is Power Association (HiP) and Midwest Cogeneration Association (MCA) and WMCA, WIEG, and WPC (collectively, ICG). Both joint written comments wrote in support of the rulemaking and draft rule language. Todd Stewart on behalf of WIEG made an oral statement that some surrounding states, particularly Indiana, Michigan, and Minnesota have similar language in their Renewable Portfolio Standards or Energy Efficiency Portfolio. Mr. Stewart also stated that the 2021 Consolidated Appropriations Act now recognizes this same type of technology, putting it on an even footing with combined heat and power or other renewable sources of generation.

In response to Mr. Stewart’s comments, Commission staff concluded in the bordering state analysis that none of the neighboring states (Michigan, Minnesota, Illinois, or Iowa) had Renewable Portfolio Standards (RPS) rules similar to the statutory changes allowed by 2017 Wisconsin Act 53. Michigan has a clean energy standard program which is distinct from Wisconsin’s RPS program. The program in Indiana is a voluntary RPS program not a mandatory RPS program similar to Wisconsin’s program. Additionally, there is not a federal RPS program.

### **III. Modifications Made**

No modifications were made to the rule as result of public comments. The public comments did not recommend changes. Changes were made to the final rule language and treatment of the rule section based on feedback from Legislative Council. These changes are described in Section VI.

### **IV. Appearances at the Public Hearing**

Todd Stewart, Wisconsin Industrial Energy Group, Inc. (WIEG), **(Made an oral statement)**

### **V. Changes to Rule Analysis and Fiscal Estimate**

No changes were made to the rule analysis or fiscal estimate.

### **VI. Response to Legislative Council Rules Clearinghouse Report**

The Legislative Council Rules Clearinghouse submitted comments on January 1, 2021. The comments pertained to: statutory authority; form, style, placement in administrative code; clarity, grammar, punctuation and use of plain language. Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse.

#### Comments related to Statutory Authority

***Comment 1.** - The analysis cites s. 196.49 (3), Stats., as a source of statutory authority. However, it is unclear how the authority conveyed under this section relates to the agency's administration of the renewable resource credit tracking program. Consider providing additional information in the analysis to describe the relationship between the proposed rule and s. 196.49 (3), Stats. Alternatively, are the other sources of statutory authority sufficient, such that the reference to authority under s. 196.49 (3), Stats., could be omitted in order to avoid confusion?*

**Response:** Agree. The rule analysis was revised to remove Wisconsin Stat. § 196.49 (3) as a source of statutory authority. The other statutory authority sources listed are sufficient for the Commission to promulgate this rulemaking.

#### Comments related to Form, Style and Placement in the Administrative Code

***Comment 2.** - The treatments prescribed by SECTIONS 1 and 2 of the proposed rule appear unnecessarily complex. In particular, SECTION 1 could be more accurately described as a repeal and recreation of s. PSC 118.02 (5g) (e). Repeal and recreation of a provision often creates confusion, particularly in this context where SECTION 2 subsequently reproduces the content of the existing par. (e) as par. (f). [See s. 1.04 (5), Manual.] Subject to the clarity comment, below, it appears the agency's intent could be more accurately conveyed by creating the new text in SECTION 1 as s. PSC 118.02 (5g) (dm), rather than both amending s. PSC 118.02 (5g) (e) and creating s. PSC 118.02 (5g) (f). Such treatment would preserve the existing par. (e) as the last paragraph in sub. (5g).*

**Response:** Agree. The rule language has been revised to create Wisconsin Admin. Code. § PSC 118.02 (5g) (dm) rather than amend PSC 118.02 (5g) (e) and create PSC 118.02 (5g) (f).

#### Comments related to Clarity, Grammar, Punctuation and Use of Plain Language

***Comment 5.a.** – The proposed rule adds “heat that is a byproduct of a manufacturing process” to the definition of “displacement facility” under s. PSC s. 118.02 (5g). Other items within the current definition all refer to a physical installation (e.g., “a solar water heater”, “an installation generating thermal output”, and “any other installation under s. 196.378 (3) (a) 1m., Stats., identified...”). Contrastingly, “heat that is a byproduct of a manufacturing process” is amorphous and is not a physical installation. Consider amending the proposed rule to refer to an installation that collects heat that is a byproduct of a manufacturing process.*

**Response:** Agree. The rule language has been revised to describe an installation that recovers heat that is a byproduct of a manufacturing process.

**Comment 5.b.** – *A period should be placed at the end of the text in SECTION 3 of the proposed rule.*

**Response:** Agree. A period has been added to the end of the text in SECTION 3.

**VII. Final Regulatory Flexibility Analysis**

The proposed rule changes are not expected result in significant economic impact on small businesses. The definition of “small business” in Wisconsin Stat. § 227.114 (1) states that to be considered a small business, the business must not be dominant in its field. Since electric utilities are monopolies in their service territories, they are dominant in their fields and are not small businesses. The Commission’s fiscal estimate and economic impact analysis also determined that the proposed rules will not have an economic impact on small businesses. The Commission sought input from all electric utilities, Citizens’ Utility Board, Wisconsin Industrial Energy Group, and RENEW Wisconsin.

**VIII. Response to Small Business Regulatory Review Board Report**

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.

**IX. Wisconsin Environmental Policy Act and Housing Analysis**

The Commission evaluated whether the rules would have an environmental impact and concluded that the rules do not result in any possible significant, adverse environmental or social impacts. Therefore, preparation of an environmental assessment or environmental impact statement under Wisconsin Stat. § 1.11 was not necessary. The Commission completed an evaluation of the potential impact on housing under Wisconsin Stat. § 227.115 and concluded the rules do not impact housing.