



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-4441/1
EHS&KP:amn

2023 SENATE BILL 651

November 9, 2023 - Introduced by Senators COWLES and STROEBEL, cosponsored by Representatives GUSTAFSON, NEYLON, TITTL, ANDRACA, DITTRICH, KRUG, MURPHY, O'CONNOR, RETTINGER, ROZAR and SPIROS. Referred to Committee on Utilities and Technology.

AN ACT *to repeal* 196.491 (2) (a) 3g., 196.491 (2) (a) 3r., 196.491 (2) (a) 12., 196.491 (2) (a) 13., 196.491 (2) (b) 10. and 196.491 (2) (gm); *to renumber and amend* 196.027 (1) (f); *to amend* 196.025 (1) (ar), 196.027 (3) (b), 196.378 (2) (c), 196.491 (title), 196.491 (1) (b), 196.491 (2) (a) 3., 196.491 (2) (a) 3m., 196.491 (2) (a) 4., 196.491 (2) (a) 7., 196.491 (2) (ag), 196.491 (2) (b) 7., 196.491 (2) (b) 8., 196.491 (2) (e), 196.491 (2) (f), 196.491 (2) (g), 196.491 (2r), 196.491 (3) (dm) and 196.795 (7) (a) 1. b.; *to repeal and recreate* 196.491 (2) (title), 196.491 (2) (a) (intro.) and 196.491 (2) (b) (intro.); and *to create* 196.027 (1) (d) 3., 196.027 (1) (f) 1. b., 196.491 (1) (fm), 196.491 (1) (s), 196.491 (2) (a) 1., 196.491 (2) (a) 2., 196.491 (2) (a) 5., 196.491 (2) (a) 6., 196.491 (2) (a) 8., 196.491 (2) (a) 14., 196.491 (2) (b) 11., 196.491 (2) (c), 196.491 (2) (d), 196.491 (2) (i), 196.491 (2) (j), 196.491 (2) (jm), 196.491 (2) (k), 196.491 (2) (km), 196.491 (2) (L), 196.491 (2) (m) and 196.491 (5m) of the statutes; **relating to:**

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use of environmental trust bonds to finance the costs of retiring electric generating facilities; integrated resource and reliability planning by electric utilities and cooperatives; closure of large electric generating facilities; and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill authorizes the use of environmental trust financing for the costs of retiring an electric generating facility, requires integrated resource and reliability planning by electric utilities and cooperatives, eliminates the requirement that the Public Service Commission prepare a biennial strategic energy assessment, and provides a process by which PSC determines whether a proposed closure of a large electric generating facility will affect electric reliability.

Environmental trust financing

Under current law, an energy utility is allowed to apply to PSC for an order allowing the utility to finance or recover the costs of the following activities by issuing bonds: 1) the construction, installation, or otherwise putting into place of environmental control equipment in connection with a plant that, before March 30, 2004, has been used to provide service to customers; and 2) the retiring of any existing plant, facility, or other property to reduce, control, or eliminate environmental pollution in accordance with federal or state law. Current law defines these activities as “environmental control activities.” If approved by PSC, the bonds, which are referred to as “environmental trust bonds,” are secured by revenues arising from charges paid by an energy utility’s customers for the utility to recover the cost of the activities, as well as the cost of financing the bonds.

This bill adds the retiring of any existing electric generating facility as an environmental control activity, the costs of which, including the unrecovered value, may be financed or recovered by an environmental trust bond. In addition, with respect to this new environmental control activity, the bill adds to the costs that may be financed or recovered the portion of an energy utility’s rate that is attributable to the rate of return for the facility authorized under PSC’s order in a rate-making proceeding and that is forgone as a result of the retirement. Under current law, the costs that may be financed or recovered include capital cost incurred or expected to be incurred in undertaking an environmental control activity and, with respect to retiring a plant, facility, or other property, the unrecovered value of property that is retired.

Under this bill, PSC may order an energy utility to use environmental trust bonds to finance an expenditure. Under current law, PSC may not order an energy utility to use environmental trust bonds to finance an expenditure unless the energy utility has applied to PSC to do so, and PSC may not refuse to allow an

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energy utility to recover costs for environmental control activities in an alternate manner because of the potential availability of environmental trust financing.

Integrated resource and reliability planning

This bill requires electric utilities and cooperative associations to submit biennial integrated resource and reliability plans to PSC that include certain information about their plans to construct the following: 1) large electric generating facilities with a capacity of 100 megawatts or more; 2) small electric generating facilities with a capacity of at least 12 but less than 100 megawatts; and 3) high-voltage transmission lines that are longer than one mile and operate at 100 kilovolts or more. As part of an integrated resource and reliability plan, an electric utility must identify alternatives to the proposed electric generating facilities, including alternative locations, fuel types, and methods of generation, and must explain the reasons for selecting the types of electric generating facilities proposed. An electric utility must also identify alternative routes for any high-voltage transmission lines proposed and indicate their effects on the environment and how the utility will avoid or minimize potential adverse effects. An electric utility's detailed projection for electricity demand and assessment of whether it has sufficient capacity to make electricity available to consumers at a reasonable price must also be included in the plan, as well as a description of existing and planned programs and policies for discouraging inefficient and excessive electricity use. After holding a hearing on a utility's plan, PSC may approve the plan if PSC finds that the plan will provide a reasonably adequate supply of electricity to meet the needs of the public and that the plan satisfies certain other criteria.

Strategic energy assessment

In addition, the bill eliminates the requirement that PSC prepare a biennial strategic energy assessment. Under current law, the strategic energy assessment evaluates the adequacy and reliability of the state's current and future energy supply and includes information on the following: 1) planned large electric generating facilities and high-voltage transmission lines; 2) plans for assuring an adequate ability to transfer electricity into the state; 3) the projected demand for electricity; 4) activities discouraging inefficient and excessive electricity use; 5) the extent to which effective competition contributes to a reliable, low-cost, and environmentally sound source of electricity; and 6) whether sufficient electricity is available at a reasonable price. Current law requires PSC to hold a hearing on a draft of the strategic energy assessment and prepare a final strategic energy assessment based on received comments.

Closure of large electric generating facilities

The bill requires electric utilities and cooperative associations to notify PSC at least 180 days prior to closing any large electric generating facility with a capacity of 100 megawatts or more, and requires PSC, after public comment and hearing, to issue a determination as to whether the proposed closure will have an effect on electric reliability. The bill requires PSC to make its determination by considering

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the utility or cooperative's most recent integrated resources and reliability plan and information collected from the electric utility or cooperative and from the public, as well as any other information PSC deems relevant. Under the bill, PSC must notify the electric utility or cooperative of its determination no less than 45 days prior to the planned closure.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 196.025 (1) (ar) of the statutes is amended to read:

196.025 (1) (ar) *Consideration of energy priorities.* Except as provided in pars. (b) to (d), to the extent cost-effective, technically feasible and environmentally sound, the commission shall implement the priorities under s. 1.12 (4) in making all energy-related decisions and orders, including ~~strategic energy assessment~~ approval of integrated resource and reliability plans under s. 196.491 (2), rate setting and rule-making orders.

SECTION 2. 196.027 (1) (d) 3. of the statutes is created to read:

196.027 (1) (d) 3. The retiring of any existing electric generating facility.

SECTION 3. 196.027 (1) (f) of the statutes is renumbered 196.027 (1) (f) 1. (intro.) and amended to read:

196.027 (1) (f) 1. (intro.) "Environmental control cost" means ~~capital~~ all of the following:

a. Capital cost, including the capitalized cost relating to ~~regulatory~~ assets, incurred or expected to be incurred by an energy utility in undertaking an environmental control activity and, with respect to an environmental control activity described in par. (d) 2., ~~includes or~~ 3., the unrecovered value of property

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that is retired, including any demolition or similar cost that exceeds the salvage value of the property.

2. “Environmental control cost” does not include any monetary penalty, fine, or forfeiture assessed against an energy utility by a government agency or court under a federal or state environmental statute, rule, or regulation.

SECTION 4. 196.027 (1) (f) 1. b. of the statutes is created to read:

196.027 (1) (f) 1. b. With respect to an environmental control activity described in par. (d) 3., and subject to sub. (2) (b) 2. a., the portion of an energy utility’s rate that is attributable to the rate of return for the facility authorized under the commission’s order in a rate-making proceeding and that is forgone as a result of the retirement.

SECTION 5. 196.027 (3) (b) of the statutes is amended to read:

196.027 (3) (b) The commission may ~~not~~ order or otherwise directly or indirectly require an energy utility to use environmental trust bonds to finance ~~any~~ a project, addition, plant, facility, extension, capital improvement, environmental control equipment, retirement, or any other expenditure, ~~unless, except as provided in sub. (2) (e), the energy utility has made an application under sub. (2) (a) to finance such expenditure using environmental trust bonds. The commission may not refuse to allow an energy utility to recover costs for environmental control activities in an otherwise permissible fashion solely because of the potential availability of environmental trust financing.~~

SECTION 6. 196.378 (2) (c) of the statutes is amended to read:

196.378 (2) (c) No later than April 15 annually, or another annual date

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specified by the commission by rule, an electric provider shall submit a report to the commission that identifies the electric provider's renewable energy percentage for the previous year and describes the electric provider's compliance with par. (a) 2. and the electric provider's implementation plans for future compliance. Reports under this paragraph may include certifications from renewable energy suppliers regarding the sources and amounts of renewable energy supplied to the electric provider. The commission may specify the documentation that is required to be included with reports submitted under this paragraph. The commission may require that electric providers submit the reports in a proceeding, initiated by the commission under this section relating to the implementation of s. 1.12, or in a proceeding for ~~preparing a strategic energy assessment~~ an integrated resource and reliability plan under s. 196.491 (2). No later than 90 days after the commission's receipt of an electric provider's report, the commission shall inform the electric provider whether the electric provider is in compliance with par. (a) 2.

SECTION 7. 196.491 (title) of the statutes is amended to read:

196.491 (title) ~~Strategic energy assessment~~ Integrated resource and reliability planning; electric generating facilities and transmission lines; natural gas lines.

SECTION 8. 196.491 (1) (b) of the statutes is amended to read:

196.491 (1) (b) "Commencement of construction" means site clearing, excavation, placement of facilities or installations, or any other substantial action adversely affecting the natural environment of the site, but does not mean borings

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necessary to determine foundation conditions or other preconstruction monitoring to establish background information related to site or environmental suitability.

SECTION 9. 196.491 (1) (fm) of the statutes is created to read:

196.491 (1) (fm) “Installation” means, unless the context requires otherwise, a small electric generating facility, a large electric generating facility, or a high-voltage transmission line.

SECTION 10. 196.491 (1) (s) of the statutes is created to read:

196.491 (1) (s) “Small electric generating facility” means electric generating equipment and associated facilities designed for nominal operation at a capacity of at least 12 but less than 100 megawatts.

SECTION 11. 196.491 (2) (title) of the statutes is repealed and recreated to read:

196.491 (2) (title) INTEGRATED RESOURCE AND RELIABILITY PLANNING.

SECTION 12. 196.491 (2) (a) (intro.) of the statutes is repealed and recreated to read:

196.491 (2) (a) (intro.) On or before July 1 of each even-numbered year, or such biennial period as the commission may approve, each electric utility shall file its plan with the commission and with those persons or agencies listed in par. (b). Such plans may be appropriate portions of a single regional plan or may be prepared jointly by 2 or more electric utilities, and shall do all of the following:

SECTION 13. 196.491 (2) (a) 1. of the statutes is created to read:

196.491 (2) (a) 1. Describe the general location, size, and type of installations that are expected to be owned or operated in whole or in part by the utility and the

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construction of which is expected to commence during the next 10 years, or such longer period as the commission deems necessary, and shall identify all existing installations intended to be removed from service during the period or upon completion of such construction.

SECTION 14. 196.491 (2) (a) 2. of the statutes is created to read:

196.491 (2) (a) 2. Identify practical alternatives to the general location, fuel type, and method of generation of the proposed electric generating facilities, and set forth in detail the reasons for selecting the proposed general location, fuel type, and method of generation.

SECTION 15. 196.491 (2) (a) 3. of the statutes is amended to read:

196.491 (2) (a) 3. Identify ~~and describe~~ the location of proposed and alternative sites for large electric generating facilities on which an electric utility plans to commence construction within 3 years for which neither a certificate of public convenience and necessity under sub. (3) nor a certificate under s. 196.49 has been applied for but the commencement of whose construction is planned within 5 years, or such longer period as the commission deems necessary, and indicate the impacts of the proposed and alternative generating facilities on the environment and the means by which potential adverse effects on such values will be avoided or minimized.

SECTION 16. 196.491 (2) (a) 3g. of the statutes is repealed.

SECTION 17. 196.491 (2) (a) 3m. of the statutes is amended to read:

196.491 (2) (a) 3m. Identify ~~and describe~~ the location of tentative and alternative routes for high-voltage transmission lines on which an electric utility

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~~plans to commence construction within 3 years~~ is intended to be commenced in the next 5 years and indicate the effects of the transmission lines on the environment and the means by which potential adverse effects will be avoided or minimized.

SECTION 18. 196.491 (2) (a) 3r. of the statutes is repealed.

SECTION 19. 196.491 (2) (a) 4. of the statutes is amended to read:

196.491 (2) (a) 4. ~~Identify and describe~~ Indicate in detail the projected demand for electric energy over the next 5 years and the basis for determining the projected demand, and assess whether the utility has sufficient electric capacity and energy to make electric capacity and energy available to customers at a reasonable price over that period.

SECTION 20. 196.491 (2) (a) 5. of the statutes is created to read:

196.491 (2) (a) 5. Describe the electric utility's relationship to other electric utilities and regional associations, power pools, and networks.

SECTION 21. 196.491 (2) (a) 6. of the statutes is created to read:

196.491 (2) (a) 6. Identify and describe all major research projects and programs that will continue or commence in the next 5 years and set forth the reasons for selecting specific areas for research.

SECTION 22. 196.491 (2) (a) 7. of the statutes is amended to read:

196.491 (2) (a) 7. Identify and describe ~~activities~~ existing and planned programs and policies to discourage inefficient and excessive power use.

SECTION 23. 196.491 (2) (a) 8. of the statutes is created to read:

196.491 (2) (a) 8. Identify the total number of distributed generation facilities, as defined in s. 196.496 (1), that are known to be located within the

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utility's service territory and the total generation capacity, actual or projected, of those distributed generation facilities.

SECTION 24. 196.491 (2) (a) 12. of the statutes is repealed.

SECTION 25. 196.491 (2) (a) 13. of the statutes is repealed.

SECTION 26. 196.491 (2) (a) 14. of the statutes is created to read:

196.491 (2) (a) 14. Provide any other information required by the commission.

SECTION 27. 196.491 (2) (ag) of the statutes is amended to read:

196.491 (2) (ag) The commission shall promulgate rules that establish procedures and requirements for reporting information that is necessary for ~~the commission electric utilities~~ to prepare ~~strategic energy assessments~~ integrated resource and reliability plans under par. (a) and rules that identify any additional information to be included in an integrated resource and reliability plan under par. (a) 14.

SECTION 28. 196.491 (2) (b) (intro.) of the statutes is repealed and recreated to read:

196.491 (2) (b) (intro.) A copy of each integrated resource and reliability plan shall, at the time it is filed with the commission, also be filed with each of the following:

SECTION 29. 196.491 (2) (b) 7. of the statutes is amended to read:

196.491 (2) (b) 7. The director or chairperson of each regional planning commission constituted under s. 66.0309 which has jurisdiction over any area where ~~a facility~~ an installation is proposed to be located or which requests a copy of such plan.

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SECTION 30. 196.491 (2) (b) 8. of the statutes is amended to read:

196.491 (2) (b) 8. The lower Wisconsin state riverway board if the ~~draft~~ plan includes ~~an assessment~~ of the construction, modification, or relocation of a high-voltage transmission line, as defined in s. 30.40 (3r), that is located in the lower Wisconsin riverway as defined in s. 30.40 (15).

SECTION 31. 196.491 (2) (b) 10. of the statutes is repealed.

SECTION 32. 196.491 (2) (b) 11. of the statutes is created to read:

196.491 (2) (b) 11. Standing committees of the legislature with jurisdiction over energy and utilities under s. 13.172 (3).

SECTION 33. 196.491 (2) (c) of the statutes is created to read:

196.491 (2) (c) The agencies receiving copies under par. (b) 1. to 8. shall review the plans and submit their comments to the commission within 180 days after their receipt of the plans. Comments shall include all of the following:

1. A description of any statutory permits or approvals required by the agency.
2. A description of the types and forms of information required for adequate review of an application for each permit or approval.
3. A detailed discussion as to the areas in which the plans coordinate with the agency's plans, policies, functions, and programs and the areas in which the plans conflict and the significance of such conflicts.
4. To the extent practicable and consistent with its program responsibilities, a discussion of the environmental impacts of the plan.

SECTION 34. 196.491 (2) (d) of the statutes is created to read:

196.491 (2) (d) The commission shall, within 10 days after the plan is filed,

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send a copy of such plan, or the applicable portion thereof, to the county planner or, if none exists, to the county clerk of each county affected by the plan, to the main public library of each such county, and to any other county planner, county clerk, or public library that requests copies of the plan or portions of the plan. The commission shall send a copy of the applicable portion of the plan to the clerk of each municipality and town in which a small or large electric generating facility is proposed to be located, and shall notify each public library in such municipality or town that copies of the plan are available upon request.

SECTION 35. 196.491 (2) (e) of the statutes is amended to read:

196.491 (2) (e) Any state agency, as defined in s. 16.310 (1), county, municipality, town, or person may submit written comments on any plan to the commission ~~on a strategic energy assessment~~ within ~~90~~ 180 days after ~~copies of the draft are issued under par. (b)~~ the plan is filed.

SECTION 36. 196.491 (2) (f) of the statutes is amended to read:

196.491 (2) (f) Section 1.11 (2) (c) shall not apply to ~~a strategic energy assessment~~ an integrated resource and reliability plan prepared under par. (a).

SECTION 37. 196.491 (2) (g) of the statutes is amended to read:

196.491 (2) (g) ~~No sooner than 30 and no later than 90~~ Within 180 days after ~~copies of the draft are issued~~ a plan is filed under par. (b), the commission shall hold a hearing ~~on the draft which may not be a hearing under s. 227.42 or 227.44~~ on the plan. The hearing shall be held in an administrative district, established by executive order 22, issued August 24, 1970, which the commission determines will be significantly affected by ~~facilities on which an electric utility plans to commence~~

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~~construction within~~ installations proposed in the plan to be constructed in the following 3 years. The commission may thereafter adjourn the hearing to other locations or may conduct the hearing by interactive video conference or other electronic method. Notice of such hearing shall be given by class 1 notice, under ch. 985, published in the official state newspaper and such other regional papers of general circulation as may be designated by the commission. At such hearing the commission shall briefly describe the ~~strategic energy assessment plan~~ and give all interested persons an opportunity, subject to reasonable limitations on the presentation of repetitious material, to express their views on any aspect of the strategic energy assessment plan. A record of the hearing shall be made and considered by the commission as comments on the ~~strategic energy assessment plan~~ under par. (e). The electric utility, any agency, county, municipality, or town, or any person whose substantial rights may be adversely affected by the testing for or construction of installations described in an integrated resource and reliability plan shall, upon filing written notice setting forth its interest at least 10 days in integrated resource and reliability, be afforded all the rights of a party in a contested case.

SECTION 38. 196.491 (2) (gm) of the statutes is repealed.

SECTION 39. 196.491 (2) (i) of the statutes is created to read:

196.491 (2) (i) A plan shall be approved if, based upon the record of the hearing and the written comments submitted under pars. (c) and (e), the commission determines that the plan meets all of the following conditions:

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1. Provides for a reasonably adequate supply of electrical energy to meet the needs of the public during the planning period.

2. Is in the public interest when considering engineering, economic, health, safety, reliability, efficiency, and environmental factors and alternate methods of generation or sources of supply.

3. Is reasonably coordinated with long-range plans and policies of other state agencies or that a reasonable effort has been made to coordinate with such plans and policies.

4. Provides for programs that discourage inefficient and excessive power use.

SECTION 40. 196.491 (2) (j) of the statutes is created to read:

196.491 (2) (j) If any portion of a plan does not meet the criteria under par. (i), the commission shall disapprove the plan or portion thereof, or approve them subject to such modifications as may be necessary to meet those criteria.

SECTION 41. 196.491 (2) (jm) of the statutes is created to read:

196.491 (2) (jm) The commission shall either approve or disapprove each plan within 18 months after it is filed.

SECTION 42. 196.491 (2) (k) of the statutes is created to read:

196.491 (2) (k) Any portion of a plan that is not approved may be resubmitted by the electric utility after entry of the order of disapproval and, if resubmitted, shall be reviewed under this subsection in the same manner as a new integrated resource and reliability plan, except that the commission may reduce the time for comments thereon to not less than 30 days.

SECTION 43. 196.491 (2) (km) of the statutes is created to read:

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196.491 (2) (km) An electric utility may file an amendment to a previously approved plan with the commission at any time. The commission may grant review and approval under pars. (b) to (L) and may reduce the time for comments thereon to not less than 30 days.

SECTION 44. 196.491 (2) (L) of the statutes is created to read:

196.491 (2) (L) After a plan has been approved, the commission may limit the scope of the issues upon review of a subsequent plan to those directly related to material changes.

SECTION 45. 196.491 (2) (m) of the statutes is created to read:

196.491 (2) (m) Any major contract relating to an installation for which neither a certificate of public convenience and necessity under sub. (3) nor a certificate under s. 196.49 has been applied for, other than a contract relating to acquisition of real property, shall be reported in writing to the commission, indicating the general nature and amount of that commitment, within 30 days after it has been entered into.

SECTION 46. 196.491 (2r) of the statutes is amended to read:

196.491 (2r) LOCAL ORDINANCES. No local ordinance may prohibit or restrict testing activities undertaken by an electric utility for purposes of preparing integrated resource and reliability plans or determining the suitability of a site for the placement of ~~a facility~~ an installation. Any local unit of government objecting to such testing may petition the commission to impose reasonable restrictions on such activity.

SECTION 47. 196.491 (3) (dm) of the statutes is amended to read:

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196.491 (3) (dm) In making a determination required under par. (d), the commission may not consider a factual conclusion in ~~a strategic energy assessment~~ an integrated resource and reliability plan unless the conclusion is independently corroborated in the hearing under par. (b).

SECTION 48. 196.491 (5m) of the statutes is created to read:

196.491 (5m) CLOSURE OF LARGE ELECTRIC GENERATING FACILITIES. (a) No electric utility may permanently close a large electric generating facility unless the electric utility submits notice of the closure to the commission no less than 180 days prior to the planned closure.

(b) After receiving the notice under par. (a), the commission shall allow interested parties 30 days to make comments and shall hold a hearing on the effect of the proposed closure on electric reliability.

(c) After holding the hearing and after expiration of the public comment period under par. (b), the commission shall make a determination as to whether the proposed closure under par. (a) will have an impact on reliability of electric service. In making this determination, the commission shall consider the electric utility's most recent integrated resources and reliability plan under sub. (2), any information the commission collected from the electric utility, information provided during the public hearing and public comment period, and any other information the commission deems relevant.

(d) The commission shall notify the electric utility of its determination as to whether the proposed closure under par. (a) will have an impact on reliability of electric service no less than 45 days prior to the planned closure.

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SECTION 49. 196.795 (7) (a) 1. b. of the statutes is amended to read:

196.795 (7) (a) 1. b. Any public utility or member of a cooperative association organized under ch. 185 which ~~reports or has reported information to the commission under the rules promulgated~~ files or has filed an integrated resource and reliability plan under s. 196.491 (2) ~~(a)~~.

(END)