

CR 13-040

PUBLIC SERVICE COMMISSION OF WISCONSIN

Changes to Wis. Admin. Code ch. PSC 118 as a
Result of 2011 Wisconsin Act 155

1-AC-240

Clearinghouse Rule 13-040

ORDER ADOPTING FINAL RULES

The Public Service Commission of Wisconsin proposes an order to renumber PSC 118.02 (6g) (a) to (e), to renumber and amend PSC 118.01 (1), 118.02 (6g) (intro.) and 118.03 (3); to amend PSC 118.02 (1m) and (5), 118.03 (2) (intro.) and (c), 118.04 (1m) (c), (4) and (5), 118.055 (title), (1), (2) (intro.) to (b), (e) and (f), (3) to (5), 118.06 (2) (b), (c) 1., (cm) (intro.) and 1., (d) 1m., (em), and (5), 118.09 (1) to (7); and to create PSC 118.01 (3), 118.03 (3) (b) and (5), 118.04 (2) (fm), and 118.08 (3) and (4) relating to renewable resource credits.

REPORT TO THE LEGISLATURE

The Report to the Legislature is set forth as Attachment A.

FISCAL ESTIMATE

The Economic Impact Analysis for this rulemaking is included as Attachment A2.

FINAL REGULATORY FLEXIBILITY ANALYSIS

This rule will not affect small businesses. The s. 227.114(12), Stats., definition of “small business” 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, so, are not small businesses.

EFFECTIVE DATE

These rules shall take effect on the first day of the month following publication in the *Wisconsin Administrative Register* as provided in s. 227.22 (2) (intro.), Stats.

CONTACT PERSON

Questions regarding this matter should be directed to docket coordinator Preston Schutt at (608) 266-1462 or preston.schutt@wisconsin.gov. Small business questions may be directed to Anne Vandervort at (608) 266-5814 or anne.vandervort@wisconsin.gov. Media questions should be directed to Nathan Conrad, Communications Director, at (608) 267-9600. Hearing- or speech-impaired individuals may also use the commission's TTY number. If calling from Wisconsin, use (800) 251-8345; if calling from outside Wisconsin, use (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, this 5th day of March, 2014.

By the Commission:



Sandra J. Paske
Secretary to the Commission

Attachments

DL: 00909885

REPORT TO THE LEGISLATURE

A. TEXT OF THE RULE

The text of the proposed rules is set forth in Attachment A1.

B. PLAIN LANGUAGE ANALYSIS

1. Statutory Authority and Explanation of Authority

This rule is authorized under ss. 196.02 (1) and (3), Stats., 196.378 Stats. and 227.11, Stats.

Section 227.11, Stats., authorizes agencies to promulgate administrative rules. Section 196.02 (1), Stats., authorizes the commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3), Stats., grants the commission specific authority to promulgate rules. Section 196.378, Stats., authorizes the commission to promulgate a variety of rules concerning renewable energy credits.

Statutes Interpreted

This rule interprets s. 196.378, Stats.

Related Statutes or Rules

None.

2. Brief Summary of Proposed Rules

The purpose of the rulemaking is to amend relevant sections of ch. PSC 118 relating to renewable resource credits (RRCs) to conform to the statutory changes made by 2011 Wisconsin Act 155, effective April 10, 2012. This will be accomplished in the following ways: (1) revise the definition of a renewable resource credit to be consistent with the statute, (2) allow a

“customer or member of an electric provider” to create a renewable resource credit under s. 196.378 (3) (a) 1m, Stats., (3) include wind energy and hydroelectric energy as additional types of energy from which a renewable resource credit may be created under s. 196.378(3)(a)1m., Stats., and (4) revise ch. PSC 118 to reflect the statutory provisions regarding banking of credits. The degree of impact is expected to be wholly positive, offering greater opportunities to create renewable resource credits consistent with the legislature’s changes to s. 196.378, Stats., under 2011 Wisconsin Act 155.

3. Comparison with Existing or Proposed Federal Regulations

No comparison with federal regulations can be made because there is no federal renewable portfolio standard. Two bills proposing a national renewable portfolio standard were introduced in the 112th Congress, but neither has been enacted:

1. Senate Bill 741, a bill to amend the Public Utility Regulatory Policies Act of 1978 to establish a renewable electricity standard, and for other purposes. Senator Tom Udall (NM) introduced the bill on April 6, 2011. The bill was then referred to Senate committee where it was read twice and referred to the Committee on Energy and Natural Resources.
2. Senate Bill 559, Securing America’s Future with Energy and Sustainable Technologies Act. Senator Amy Klobuchar (MN) introduced this bill on March 10, 2011. The bill was then referred to Senate committee where it was read twice and referred to the Committee on Finance.

There are no known federal regulations governing the creation of renewable resource credits or their equivalent.

4. Comparison with Similar Rules in Adjacent States

Illinois

Under Ill. Stat. ch. 220 § 5/16-107.5 (net metering), a retail customer that owns or operates a solar, wind, or other eligible renewable electrical generating facility with a rated

capacity of not more than 2,000 kilowatts that is located on the customer's premises and is intended primarily to offset the customer's own electrical requirements is treated as owning and having title to the renewable energy attributes, renewable energy credits, and greenhouse gas emission credits related to any electricity produced by the qualified generating unit.

Iowa

Iowa state law does not address ownership of RECs for net-metering customers.

Michigan

A customer or member of an electric provider may generate or own a REC, providing that the facility is certified through the Michigan Renewable Energy Certification System (MIRECS). MIRECS is a tracking system similar to Midwest Renewable Energy Tracking System, more commonly known as M-RETS. The Michigan Public Service Commission has also identified a REC aggregator who will aggregate like renewable energy that may then be purchased from retail customers or members.

Minnesota

Ownership of RECs where ownership is not addressed in power purchase agreements is not established under Minnesota Public Utility Commission rules or order; instead utilities must pursue negotiations and settlements with the owners of generation units.

5. Summary of Factual Data and Analytical Methodologies Used

Because the purpose of this rulemaking is to conform to the statutory changes made by 2011 Wisconsin Act 155, effective April 10, 2012, there is no summary of factual data and analytical methodologies used to report.

6. Effect on Small Business

This rulemaking is expected to have no or minimal financial impact. All electric providers, customers or members of an electric provider, and renewable energy developers seeking to create renewable resource credits will be favorably impacted by this change, offering greater opportunities to create renewable resource credits. There is no anticipated impact on utility ratepayers.

7. Agency Contacts

Questions regarding this matter should be directed to docket coordinator Preston Schutt at (608) 266-1462 or preston.schutt@wisconsin.gov. Small business questions may be directed to Anne Vandervort at (608) 266-5814 or anne.vandervort@wisconsin.gov. Media questions should be directed to Nathan Conrad, Communications Director, at (608) 267-9600. Hearing- or speech-impaired individuals may also use the commission's TTY number. If calling from Wisconsin, use (800) 251-8345; if calling from outside Wisconsin, use (608) 267-1479.

8. Accommodation

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 to receive this document in a different format should contact the docket coordinator, as indicated in the following paragraph, as soon as possible.

C. FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

The Economic Impact Analysis for this rulemaking is included in Attachment A2.

D. BASIS AND PURPOSE OF RULES

The purpose of the rulemaking is to amend relevant sections of ch. PSC 118 relating to renewable resource credits to conform to the statutory changes made by 2011 Wisconsin Act 155, effective April 10, 2012. This will be accomplished in the following ways: (1) revise the definition of a renewable resource credit to be consistent with the statute, (2) allow a “customer or member of an electric provider” to create a renewable resource credit under s. 196.378 (3) (a) 1m., Stats., (3) include wind energy and hydroelectric energy as additional types of energy from which a renewable resource credit may be created under s. 196.378 (3) (a) 1m., Stats., and (4) revise ch. PSC 118 to reflect the statutory provisions regarding banking of credits. The degree of impact is expected to be wholly positive, offering greater opportunities to create renewable resource credits consistent with the legislature’s changes to s. 196.378, Stats., under 2011 Wisconsin Act 155.

E. SUMMARY OF PUBLIC COMMENTS AND COMMISSION RESPONSES

Seven entities submitted public comments on the draft rules.

General Comments in Support

RENEW Wisconsin, Greenwood Fuels, and Green Bay Packaging all submitted short statements in support of the commission’s proposed rules and expressing support for the increased opportunity the rule changes will provide for the creation of RRCs.

Wisconsin Public Service Corporation

Wisconsin Public Service Corporation (WPSC) submitted a comment identifying a potential ambiguity due to how two provisions in the proposed rules were drafted. The intent expressed by WPSC in its comments is consistent with the commission’s intent for the proposed

rule. The commission does not believe that the proposed rules as drafted create any problematic ambiguity. However, the commission does not oppose using WPSC's suggested modification. WPSC's suggested changes have been incorporated.

Wisconsin Paper Council and Wisconsin Industrial Energy Group

Wisconsin Paper Council (WPC) and Wisconsin Industrial Energy Group (WIEG) submitted joint comments. WPC and WIEG expressed general support for the proposed rule, however, they submitted a number of suggested modifications. First, WPC and WIEG requested clarification of what the commission will consider to make up a displacement facility and how the current rule language regarding calculating displacement would be interpreted. These comments address how the rule would be applied in practice, and no modifications to the rule are necessary. WPC and WIEG did not indicate that any facilities looking to create RRCs for displacement would be unable to do so under the current rule language. Rather, WPC and WIEG posed several hypotheticals and requested that the rules specifically address the types of hypotheticals presented in detail. Changes to the rule are not necessary. There are an infinite number of hypotheticals that could be presented for creating RRCs from displacement, and the rule language is sufficiently and purposefully broad so that the particulars of a given situation can be accommodated in practice. The commission appreciates the additional perspectives provided by WPC and WIEG, however the commission intends to address the types of questions posed by WPC and WIEG on a case-by-case basis, to avoid any unintended consequences of narrowing the current rule language.

WPC and WIEG requested that the commission delete the rule language in s. PSC 118.03 (2) (b) regarding the in service date of a displacement facility. This request is outside the scope of this rulemaking, therefore, no change was made.

WPC and WIEG asked whether a non-electric provider could create a fractional RRC. No change was suggested. The commission believes that the rule provisions referenced are not in conflict with the statutory language referenced. The rule provisions do not prohibit the commission from accommodating the creation, transfer, or use of fractional RRCs. Therefore, no change was made.

WPC and WIEG discussed the commission's process for establishing the percentage of electricity attributable to conventional resources for purposes of calculating displacement RRCs. No change was suggested. The commission will take WPC and WIEG's suggestion under consideration in implementation.

WPC and WIEG made comments regarding possible interpretations of the use of the term "displacement facility." These comments address how the rule will be interpreted and applied, and no changes were suggested. The commission believes that any ambiguity that exists in the rule will allow the commission to accommodate creation of RRCs in a variety of circumstances. To avoid any unintended consequences of adding more specificity to the rule when the full range of possible displacement scenarios is not known, no changes have been made.

WPC and WIEG proposed a change to s. PSC 118.02 (5m) (d) to avoid a possible interpretation of "installation" that would limit it to a "single, discrete piece of equipment." The commission believes the proposed change is not necessary due to the existence of s. PSC 118.02 (5m) (e), which can accommodate any other installation the commission identifies as meeting the statutory and administrative code criteria. To avoid duplication, the change has not been made.

WPC and WIEG requested clarification of s. PSC 118.03 (4) regarding the creation of RRCs where biogas is being used to generate or displace electricity by the party creating the

biogas. The commission agrees that clarification is needed to ensure the ability to use self-generated biogas for displacement. Changes have been made to address this comment.

WPC and WIEG suggested a possible change to the definition of “designated representative.” This request is outside the scope of this rulemaking, therefore no change was made.

WPC and WIEG made a suggestion regarding renumbering. The change has been incorporated.

WPC and WIEG suggested clarification of the rule provision regarding sale or transfer of RRCs. Changes have been made to provide clarification.

WPC and WIEG suggested striking the word “non-electric” from the title of s. PSC 118.055 and replacing it with “displacement.” This change has been made.

WPC and WIEG asked whether s. PSC 118.055 (5) should be changed. The commission is not aware of any benefit that would result from the change proposed. The original rule language is intended to protect the customer or member of an electric provider from the electric provider claiming the RRCs for a project in the electric provider’s service territory (as displacement of the electric provider’s use of conventional electricity) without adequately compensating the customer or member where the customer or member has made an investment to cause the displacement. The commission does not believe any change is needed, therefore no change was made.

Murray Sim

Murray Sim, Executive Vice President, on behalf of New Chester Clean Energy, LLC (NCCE), testified at the public hearing and submitted a written comment. Mr. Sim expressed

general support for the proposed rules, and expressed interest in ensuring that NCCE's biogas combined heat and power project would be eligible to create RRCs for displacement of the use of electricity from conventional resources. Mr. Sim made four specific comments on the rule content.

First, Mr. Sim indicated it is not clear in the rules whether transfer of RRCs between non-electric providers is contemplated. This concern was also expressed by WPC and WIEG. A change has been made to clarify that transfers by any party are allowed.

Second, Mr. Sim suggested striking the word "non-electric" from the title of s. PSC 118.055 and replacing it with "displacement." This suggestion was also made by WPC and WIEG. The change has been made.

Third, Mr. Sim requested clarification that displacement RRCs can be banked for sale in future years. No clarification is needed. Section PSC 118.04 (2) (g) 4. indicates the period of time that an RRC created for displacement is eligible to be used; this provision clearly contemplates the ability to create a credit in one year and carry it forward for use in a later year.

Finally, Mr. Sim requested that the commission change the portion of ch. PSC 118 that describes how the proportion of electricity that is attributable to conventional resources is calculated. This is outside the scope of the current rulemaking, therefore no change was made.

F. APPEARANCES AT PUBLIC HEARING

A public hearing was held on June 28, 2013, at the Public Service Commission building, 610 North Whitney Way, Madison, Wisconsin. One individual testified in support for the proposed rule. Details about and responses to specific comments, are listed below.

Testimony at the Public Hearing and Public Service Commission Responses

Murray Sim

Murray Sim, Executive Vice President, on behalf of New Chester Clean Energy, LLC (NCCE), testified at the public hearing and submitted a written comment. Mr. Sim expressed general support for the proposed rules, and expressed interest in ensuring that NCCE's biogas combined heat and power project would be eligible to create RRCs for displacement of the use of electricity from conventional resources. Details concerning his suggestions may be found in Section E.

G. ANY CHANGES TO THE FISCAL ESTIMATE OR THE ANALYSIS UNDER s. 227.14 (2), STATS.

None.

H. RESPONSE TO LEGISLATIVE COUNCIL COMMENTS

1. Statutory Authority

No comments were received under this heading.

2. Form, Style and Placement in Administrative Code

- a. Legislative Council indicated that s. PSC 118.01 (1) should be inserted before PSC 118.02 (1m) to reflect the treatment in SECTION 1. This change has been made.
- b. Legislative Council suggested that the commission should include a summary of factual data and analytical methodologies in the current summary. Because the purpose of this rulemaking is to conform to the statutory changes made by 2011

Wisconsin Act 155, effective April 10, 2012, there is no summary of factual data and analytical methodologies used to report.

- c. Legislative Council suggested that s. PSC 118.02 (6g) (intro.) should be renumbered to s. PSC 188.02 (5g) (intro.), and additionally, pars. (a) to (e) in s. PSC 118.02 (6g) should be renumbered to s. PSC 188.02 (5g) (a) to (e). These changes have been made.
- d. Legislative Council suggested, that in s. PSC 118.03 (2) (intro.), “~~an~~ a RRC” should be replaced with “~~an~~ a RRC”. This change has been made.
- e. Legislative Council suggested that, in s. PSC 118.055 (title), “non-electric” should be removed. This change has been made.

3. Conflict with or Duplication of Existing Rules

No comments were received under this heading.

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

No comments were received under this heading.

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

Legislative Council suggested that, in s. PSC 118.055 (1) (a), the comma following “customer” in the first sentence should be removed to accurately reflect the current text of the rule. This change has been made.

I. MISCELLANEOUS DETERMINATIONS

The commission’s WEPA Coordinator examined whether the rules have an environmental impact and concluded that they do not. Commission staff also considered whether the rule will impact housing, s. 227.115, Stats., and concluded that they will not.

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TEXT OF RULES

SECTION 1. PSC 118.01 (1) is amended to read:

PSC 118.01 (1) This chapter applies to each Wisconsin electric provider that is subject to s. 196.378 (2) (a), Stats., and to any member or customer of an electric provider.

SECTION 2. PSC 118.01 (3) is created to read:

PSC 118.01 (3) This chapter should be construed liberally in favor of the creation of RRCs.

SECTION 3. PSC 118.02 (1m) is amended to read:

PSC 118.02 (1m) “Certified ~~non-electric~~ displacement facility” means a ~~non-electric~~ displacement facility that the commission certifies under s. PSC 118.055.

SECTION 4. PSC 118.02 (5) is amended to read:

PSC 118.02 (5) “Displaced conventional electricity” means electricity derived from conventional resources that an electric provider, or a customer or member of the electric provider, would have used except that the person used instead a certified ~~non-electric~~ displacement facility.

SECTION 5. PSC 118.02 (6g) (intro.) is renumbered 118.02 (5g) (intro.) and amended to read:

1 PSC 118.02 (5m) (intro.) “~~Non-electric~~ Displacement facility” means any of the
2 following when used by an electric provider, or by a customer or member of the electric
3 provider:

4
5 **SECTION 6.** PSC 118.02 (6g) (a) to (e) are renumbered to 118.02 (5g) (a) to (e).

6
7 **SECTION 7.** PSC 118.03 (2) (intro.) is amended to read:

8 PSC 118.03 (2) (intro.) An electric provider or customer or member of an electric
9 provider may create ~~an~~ a RRC for conventional electricity displaced by the use of a ~~non-~~
10 ~~electric-displacement~~ facility only if the ~~non-electric-displacement~~ facility meets all of the
11 following requirements:

12
13 **SECTION 8.** PSC 118.03 (2) (c) is amended to read:

14 PSC 118.03 (2) (c) Will replace or reduce the use of an electric device or electric service
15 used for the same purpose at the same location as the ~~non-electric-displacement~~ facility.

16
17 **SECTION 9.** PSC 118.03 (3) is renumbered 118.03 (3) (a) and amended to read:

18 PSC 118.03(3) (a) An electric provider may only use the renewable portion of the
19 production from a facility using both a renewable and conventional fuel, based on the
20 relative energy content of the fuels, to meet a minimum percentage requirement under s.
21 196.378 (2) (a), Stats., ~~or to create RRCs.~~

22
23 **SECTION 10.** PSC 118.03 (3) (b) is created to read:

1 PSC 118.03 (3) (b) An electric provider or customer or member of an electric provider
2 may only use the renewable portion of the production from a facility using both a
3 renewable and conventional fuel, based on the relative energy content of the fuels, to
4 create RRCs.

5

6 **SECTION 11.** PSC 118.03 (3m) is created to read:

7 PSC 118.03 (3m) An electric provider or customer or member of an electric provider may
8 use biogas or synthetic gas it creates under sub. (1) or (2), or may use biogas or synthetic
9 gas provided by another entity under sub. (4).

10

11 **SECTION 12.** PSC 118.03 (4) (a) is amended to read:

12 PSC 118.03 (4) (a) An electric provider may under par. (b) or a customer or member of
13 an electric provider may under par. (c) use the production of a facility that has contracted
14 with a producer of biogas or synthetic gas for ownership of the gas and that has sufficient
15 contracts to deliver the gas to the facility, according to the resulting number of MWh that
16 the facility generates or the amount of conventional electricity that the facility displaces.

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18 **SECTION 13.** PSC 118.03 (4) (c) is created to read:

19 (c) A customer or member of an electric provider may use the production of a facility that
20 satisfies par. (a) to create a RRC if the electric provider demonstrates all of the following:

21 1. The gas producer meters the amount of gas delivered, using metering devices that
22 comply with ss. PSC 134.27 and 134.28.

23 2. The gas producer measures the heat content of the gas at least monthly.

1 3. The facility complies with sub. (1) or (2).

2

3 **SECTION 14.** PSC 118.03 (5) is created to read:

4 PSC 118.03 (5) A customer or member of an electric provider may create a RRC in the
5 manner described in sub. (4).

6

7 **SECTION 15.** PSC 118.04 (1m) (c) is amended to read:

8 PSC 118.04 (1m) (c) ~~An~~ A RRC for displaced conventional electricity is created in the
9 year in which the use of the certified ~~non-electric-displacement~~ facility displaces
10 conventional electricity.

11

12 **SECTION 16.** PSC 118.04 (2) (fm) is created to read:

13 PSC 118.04 (2) (fm) Two or more customers or members of an electric provider may
14 jointly purchase or sell a RRC.

15

16 **SECTION 17.** PSC 118.04 (3), (4) and (5) are amended to read:

17 PSC 118.04 (3) When a renewable energy certificate or an RRC is credited to an electric
18 provider's account or the account of a customer or member of an electric provider, the
19 account owner may sell or transfer the renewable energy certificate or RRC to another
20 electric provider or customer or member of an electric provider. Any person selling or
21 transferring a renewable energy certificate or a RRC shall report the sale or transfer to the
22 program administrator within 10 days of the transaction. The program administrator shall
23 then credit the renewable energy tracking system account of the new owner and debit the

1 renewable energy tracking system account of the prior owner. A renewable energy
2 certificate or a RRC may continue to be sold or traded only if each seller or transferor
3 reports the transaction to the program administrator within 10 days of its consummation.
4 (4) An electric provider shall annually retire renewable energy certificates and RRCs in
5 the renewable energy tracking system to demonstrate compliance with its minimum
6 percentage requirement under s. 196.378 (2) (a), Stats. When an electric provider uses ~~an~~
7 a RRC to comply with the minimum percentage requirements of s. 196.378 (2) (a), Stats.,
8 the electric provider shall retire the RRC. When an electric provider uses a MWh of total
9 renewable energy to comply with the minimum percentage requirements of s. 196.378 (2)
10 (a), Stats., the ~~program administrator~~ electric provider shall retire the renewable energy
11 certificate representing the MWh of total renewable energy.

12 (5) Subject to commission approval, if applicable, the program administrator may
13 establish any procedure necessary to accurately record the creation, sale, transfer,
14 purchase and retirement of renewable energy certificates and RRCs.

15

16 **SECTION 18.** PSC 118.055 (title) is amended to read:

17 PSC 118.055 (title) **Certification of ~~non-electric~~ displacement facilities.**

18

19 **SECTION 19.** PSC 118.055 (1) and (2) (intro.) to (b) are amended to read:

20 PSC 118.055 (1) (a) An electric provider or customer or member of an electric provider
21 may create ~~an~~ a RRC under s. PSC 118.03 (2) based on the use of a certified ~~non-electric~~
22 displacement facility by the electric provider, or by a customer, or member of the electric
23 provider, to the extent that the use displaces conventional electricity. The commission

1 shall certify ~~non-electric facilities~~ displacement facilities or delegate this responsibility to
2 the program administrator. Any electric provider, customer or member of an electric
3 provider, or owner of a ~~non-electric displacement~~ facility adversely affected by the
4 decision to certify or not certify may file a complaint with the commission. The
5 complaint shall be in writing and filed with the commission within 10 working days after
6 service of the decision. The division administrator may settle and resolve a complaint
7 brought under this paragraph. If the complaint cannot be resolved by mutual agreement,
8 the division administrator shall issue a written decision. Any person adversely affected by
9 the division administrator's written decision may, within 20 working days after its
10 issuance, appeal the decision to the commission by alleging facts that show a violation of
11 a particular statute or provision of this chapter.

12 (b) The commission may permit an electric provider or customer or member of an electric
13 provider to create ~~an~~ a RRC for conventional electricity displaced by use of a ~~non-electric~~
14 displacement facility before the date the facility is certified, except that the commission
15 may not permit creation of ~~an~~ a RRC for displacement that occurred before June 3, 2010.

16 (2) (intro.) To obtain certification of a ~~non-electric displacement~~ facility, the electric
17 provider, customer or member of an electric provider, or a designated representative,
18 shall provide the following information to the commission in a format approved by the
19 commission:

20 (a) The ~~non-electric displacement~~ facility's location, owner, technology, and date placed
21 in service.

22 (b) Information that demonstrates the ~~non-electric displacement~~ facility meets the
23 eligibility criteria under s. PSC 118.03.

1

2 **SECTION 20.** PSC 118.055 (2) (e) and (f), and (3) to (5) are amended to read:

3 PSC 118.055 (2) (e) The electric provider's, customer's or member's affirmation that it
4 has verified all of the information in pars. (a) to (d).

5 (f) If the ~~electric provider~~ applicant does not own the ~~non-electric displacement~~ facility, a
6 statement signed by the facility owner that affirms the information in pars. (a) to (d) and
7 permits the electric provider, customer or member to create RRCs from the facility.

8 (3) The commission or the program administrator shall inform the electric provider,
9 customer or member, or its designated representative, whether it has certified a ~~non-~~
10 electric displacement facility for which it has received an application under sub. (2).

11 (4) The commission may make on-site visits to any certified unit of a ~~non-electric~~
12 displacement facility to determine its compliance with this chapter and with s. 196.378,
13 Stats., may request copies of all supporting documentation used to comply with this
14 section, and may decertify any unit that it finds not to be in compliance.

15 (5) Nothing in this chapter obligates the owner of a ~~non-electric displacement~~ facility to
16 permit the electric provider to create RRCs from the facility.

17

18 **SECTION 21.** PSC 118.06 (2) (b) is amended to read:

19 PSC 118.06 (2) (b) Create an account for each certified renewable facility or certified
20 ~~non-electric displacement~~ facility that participates in the tracking system and requests a
21 separate account.

22

23 **SECTION 22.** PSC 118.06 (2) (c) 1. is amended to read:

1 PSC 118.06 (2) (c) 1. Its ~~electric provider's~~ tracking system account number.

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3 **SECTION 23.** PSC 118.06 (2) (cm) (intro.) and 1. are amended to read:

4 PSC 118.06 (2) (cm) (intro.) Upon request by the commission, register each ~~non-electric~~
5 displacement facility the commission has certified, including the following data about the
6 facility:

7 1. Its ~~electric provider's~~ tracking system account number.

8

9 **SECTION 24.** PSC 118.06 (2) (d) 1m. is amended to read:

10 PSC 118.06 (2) (d) 1m. Issues a unique electronic certificate for each MWh of
11 conventional electricity displaced by a certified ~~non-electric-displacement~~ facility that
12 complies with ss. PSC 118.03 and 118.04, as calculated under s. PSC 118.09. The
13 certificate shall identify which ~~non-electric-displacement~~ facility displaced the MWh,
14 when the facility operated, and any other characteristics the commission finds necessary.

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16 **SECTION 25.** PSC 118.06 (2) (em) is amended to read:

17 PSC 118.06 (2) (em) Audit registered ~~non-electric facilities~~ displacement facilities, as
18 needed, to verify the amount of displaced conventional electricity.

19

20 **SECTION 26.** PSC 118.06 (5) is amended to read:

21 PSC 118.06 (5) An electric provider may not use renewable energy from a decertified
22 renewable facility to meet the electric provider's minimum percentage requirement under
23 s. 196.378 (2) (a), Stats., that was produced after the facility is decertified. The program

1 administrator may not issue RRCs for energy from a decertified renewable facility that
2 was produced after the facility is decertified. The program administrator may not issue
3 RRCs for conventional electricity displaced by the operation of a decertified ~~non-electric~~
4 displacement facility which displacement occurred after the facility is decertified.

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6 **SECTION 27.** PSC 118.08 (3) and (4) are created to read:

7 PSC 118.08 (3) An electric provider or customer or member of an electric provider may
8 not create RRCs for displaced conventional electricity based on the use of a facility for
9 which RRCs are created under s. 196.378 (3) (a) 1., Stats.

10 (4) An electric provider or customer or member of an electric provider may not create
11 RRCs for displaced conventional electricity based on hydroelectric energy for which an
12 electric provider is permitted to use the average amount of hydroelectric power generated
13 by the facility under s. 196.378 (2) (b) 1m. a., Stats.

14

15 **SECTION 28.** PSC 118.09 (1) to (7) are amended to read:

16 PSC 118.09 (1) For each calendar year, the commission shall, by order, determine the
17 percentage of electricity from conventional resources for the entire state for purposes of
18 calculating the amount of ~~an~~ a RRC to be created for displaced conventional electricity.

19 The commission shall base this determination on the annual average mix of resources
20 used to generate electricity in the entire area served by the ~~Midwest~~ Midcontinent

21 Independent ~~Transmission~~-System Operator. The commission may, by order, also

22 establish a different percentage for a specific type of ~~non-electric-displacement~~ displacement facility if

1 its seasonal or daily operating characteristics justify a percentage that differs from the
2 annual average percentage.

3 (2) The commission may, by order, establish a displacement formula for any type of ~~non-~~
4 ~~electric-displacement~~ facility. The commission shall base any such formula on a
5 calculation of the minimum amount of displaced electricity that would be expected in a
6 typical calendar year under realistic operating conditions. The commission shall provide
7 an opportunity for public comment on any such formula before the formula is established.

8 (3) For each calendar year, the electric provider ~~or the user of,~~ customer or member
9 seeking to create RRCs from a non-electric-certified displacement facility shall determine
10 the net amount of electricity displaced by the ~~non-electric-displacement~~ facility, using
11 site-specific information and either the applicable formula established under sub. (2) or
12 by subtracting the amount of electricity used by the ~~non-electric-displacement~~ facility
13 from the amount of electricity that would have been used for the same purposes by the
14 electric device or electric service that was replaced by the ~~non-electric-displacement~~
15 facility or that was used less due to the use of the ~~non-electric-displacement~~ facility.

16 (4) If the value under sub. (3) is less than zero, the electric provider, customer or member
17 may not create any RRCs for the ~~non-electric-displacement~~ facility for that calendar year.

18 (5) The amount of conventional electricity displaced by a ~~non-electric-displacement~~
19 facility in a calendar year is equal to the net amount of displaced electricity determined
20 under sub. (3), multiplied by the applicable percentage of electricity in that calendar year
21 that is from conventional resources as determined under sub. (1).

1 (6) The electric provider ~~or the user of~~ customer or member creating RRCs from a ~~non-~~
2 ~~electric-displacement~~ facility shall maintain at least three years of historical
3 documentation of all information used in the determination made under sub. (3).

4 (7) For each ~~non-electric-displacement~~ facility for which an electric provider, customer or
5 member is creating RRCs, the electric provider, customer or member shall submit
6 information to the commission to support its determination under sub. (3) at least
7 annually. The commission may specify the timing and method for submitting information
8 under this subsection. Determinations under sub. (3) are subject to the commission's
9 review and verification.

10

11 **SECTION 29. EFFECTIVE DATE.** This rule shall take effect on the first day of the
12 month following publication in the Wisconsin Administrative Register as provided in s.
13 227.22 (2) (intro.), Stats.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Chapter PSC 118 Renewable resource credit tracking program		
Subject		
Result of Statutory Changes Adopted in 2011 Wisconsin Act 155 Pertaining to Renewable Resource Credits		
Fund Sources Affected	Chapter 20 , Stats. Appropriations Affected	
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG SEG-S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State's Economy <input type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
The objective of the rulemaking is to amend relevant sections of ch. PSC 118 relating to renewable resource credits (RRCs) as a result of statutory changes adopted in 2011 Wisconsin Act 155, effective April 10, 2012.		
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)		
This rulemaking is expected to have no or minimal financial impact. All electric providers, customers or members of an electric provider, and renewable energy developers seeking to create renewable resource credits will be favorably impacted by this change, offering greater opportunities to create renewable resource credits. There is no anticipated impact on utility ratepayers.		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
Under this rulemaking, a customer or member of an electric provider may create a RRC for conventional electricity displaced by the use of a displacement facility. Previously, only the electric provider could create a RRC. There is no alternative to implementing this rulemaking because the changes reflect the statutory changes adopted in 2011 Wisconsin Act 155, effective April 10, 2012.		
Long Range Implications of Implementing the Rule		
More RRCs will be available in the market, and can be used to meet Wisconsin's renewable portfolio standard.		

Compare With Approaches Being Used by Federal Government	
There is no federal renewable portfolio standard, so no comparison can be made.	
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)	
<p><u>Illinois</u> Under Ill. Stat. ch. 220 § 5/16-107.5 (net metering), a retail customer that owns or operates a solar, wind, or other eligible renewable electrical generating facility with a rated capacity of not more than 2,000 kilowatts that is located on the customer's premises and is intended primarily to offset the customer's own electrical requirements is treated as owning and having title to the renewable energy attributes, renewable energy credits (RECs), and greenhouse gas emission credits related to any electricity produced by the qualified generating unit.</p> <p><u>Iowa</u> Iowa state law does not address ownership of RECs for net-metering customers.</p> <p><u>Michigan</u> A customer or member of an electric provider may generate or own a REC, providing that the facility is certified through the Michigan Renewable Energy Certification System (MIRECS). MIRECS is a tracking system similar to M-RETS. The Michigan Public Service Commission has also identified a REC aggregator who will aggregate like renewable energy that may then be purchased from retail customers or members.</p> <p><u>Minnesota</u> Ownership of RECs where ownership is not addressed in power purchase agreements is not established under Minnesota Public Utility Commission rules or order; instead utilities must pursue negotiations and settlements with the owners of generation units.</p>	
Name and Phone Number of Contact Person	
Lisa Farrell	608-267-9086