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**VIA ERFS**

March 20, 2009

John M. Shenot  
Public Service Commission of Wisconsin  
610 North Whitney Way  
P.O. Box 7854  
Madison, Wisconsin 53707-7854

Re: Docket No. 05-EI-148, Investigation on the Commission's Own Motion  
Regarding Advanced Renewable Tariff Development

Dear Mr. Shenot:

This letter expands upon RENEW Wisconsin's (RENEW) and Clean Wisconsin's position in response to question 7a in their comments filed February 17, 2009 and responds to a concern raised by the Wisconsin Utilities Association (WUA) in its comments in response to the same question. RENEW and Clean Wisconsin also clarify that regardless of the Commission's determination on its authority to order utilities to provide advanced renewable tariffs (ARTs), nothing in the statutes limits the Commission's ability to model the impacts of such an undertaking on rates and technology deployment, as RENEW and Clean Wisconsin suggested on the first page of their comments as the next step for this proceeding (PSC Ref. # 108142).

RENEW's and Clean Wisconsin's response to question 7a asserted that the Commission could order utilities under its jurisdiction to offer ARTs. WUA's comments in response to the same question cited Wis. Stat. §§ 196.025(1)(c) and 196.378(4m) as limitations on the Commission's ability to "compel certain renewable energy purchases" (PSC Ref.# 108081). RENEW and Clean Wisconsin submit that their interpretation of these statutes is as a limitation on the expansion of the Renewable Portfolio Standard (RPS) requirements and not a limitation on the Commission's broad authority over the rates and tariffs of regulated public utilities.

Wis. Stat. § 196.025(1)(c) states:

In a proceeding in which an investor-owned electric public utility is a party, the commission shall not order or otherwise impose any renewable resource requirements on the investor-owned electric public utility if the commission has fulfilled all of its duties under s. 196.378 and the commission has informed the utility under s. 196.378 (2) (c) that, with respect to the most recent report submitted under s. 196.378 (2) (c), the utility is in compliance with the requirements of s. 196.378 (2) (a) 2.

Wis. Stat. § 196.378(4m) states:

ADDITIONAL RENEWABLE RESOURCES REQUIREMENTS. (a) The commission may not impose on an electric provider any requirement that increases the electric provider's renewable energy percentage beyond that required under sub. (2) (a) 2. If an electric provider is in compliance with the requirements of sub. (2) (a) 2., the commission may not require the electric provider to undertake, administer, or fund any other renewable energy program. This paragraph does not limit the authority of the commission to enforce an electric provider's obligations under s. 196.374.

Wis. Stat. § 196.025(1)(c) restricts the Commission from ordering "renewable resource requirements" on a utility that has complied with the state's RPS. The phrase "renewable resource requirements" is not defined in the statutes or the administrative code. However, Wis. Stat. § 196.378(4m) also refers to "additional renewable resources requirements" and limits the Commission from: (1) imposing a requirement that increases a utility's renewable energy percentage beyond that required in the RPS, and (2) requiring a utility that is in compliance with the RPS to "undertake, administer, or fund any other renewable energy program."

Thus the scope of the limitations in both of these statutes extends to prohibiting the Commission from imposing additional "renewable resource(s) requirements" and does not restrict any preexisting PSCW regulatory authority not involving "renewable resource requirements." This phrase "renewable resource requirements" refers to and is essentially a synonym for the RPS described elsewhere in section 196.378. Therefore, with regard to the restriction in Wis. Stat. § 196.025(1)(c) and the first sentence in s. 196.378(4m), the Commission cannot impose a direct mandate on a utility that is in compliance with the RPS to increase its "renewable energy percentage" beyond that required by the statutory RPS.

This limitation is wholly separate from the Commission's preexisting, broad ability to order a utility to offer a tariff similar to the buyback tariffs the Commission has been regulating without cause for concern for many years. *See, e.g.,* Wis. Stat. §§ 196.02(1), 196.37(1), 196.645; Docket No. 6690-UR-119, *Final Decision*, at 23 (December 30,

2008) (PSC Ref.# 106184); Docket No. 3270-UR-115, *Final Decision*, at 32 (December 14, 2007) (PSC Ref.# 87223).

With regard to the second sentence in subsection (4m), restricting the Commission from ordering a utility to undertake, administer or fund “any *other* renewable energy program” (emphasis added), the phrase “renewable energy program” is also not defined. Given the fact that the restriction is contained under the subheading “additional renewable resources requirements” and includes the words “any other” in reference to “renewable energy program,” a reasonable interpretation would be that the legislature intended to limit the Commission from requiring a utility to undertake, administer or fund any other program that imposes a requirement to increase a utility’s renewable energy percentage beyond that required under the RPS.

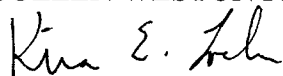
Because an order requiring utilities to offer an ART is distinct from a requirement to increase a utilities’ renewable energy percentage or to require a utility to construct renewable generation it had not intended to construct, it is not in our opinion prohibited by Wis. Stat. §§ 196.025(1)(c) or 196.378(4m).

From a factual point of view, it should also be noted that ARTs will be customer-specific regulatory measures that may involve renewable energy purchases but contain no inherent mandate because their inception is voluntary on the part of the customer. They are also much smaller-scale in their impact as compared to an RPS-type requirement that involves a percentage of total utility energy sales. Finally, ARTs do not necessarily require additional renewable-energy purchases above and beyond any applicable RPS because the utility can, with prudent advance planning, count any purchases pursuant to an ART toward its RPS requirements.

Regardless of the Commission’s determination regarding its current ability to order a regulated utility to offer an ART, RENEW and Clean Wisconsin reiterate their primary position that the Commission continue its investigation by modeling the impacts of the implementation of an ART on rates and technology deployment.

Sincerely,

CULLEN WESTON PINES & BACH LLP



Kira E. Loehr

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