

MEMORANDUM

TO: Senator Jeff Plale, Senator Mark Miller
Representative Jim Soletski, Representative Spencer Black

CC: Former Task Force Group

FROM: Roy Thilly and Tia Nelson

DATE: January 26, 2010

SUBJECT: **Proposed Modifications to the Clean Renewable Jobs Act**

Former members of the Governor's Task Force on Global Warming, as well as alternates and work group chairs, have met informally on January 8 and January 22 to discuss the proposed Clean Renewable Jobs Act (the Act) and provide comments on consistency with the Task Force's recommendations and related issues. The meetings were attended by certain members of your staff and by Legislative Council staff at your request. These meetings have been productive and had broad participation. The focus of discussion was on the enhanced energy conservation and efficiency and enhanced renewable portfolio standard provisions of the Act. We also touched on the advanced renewable tariffs (ARTS), the new nuclear power plants provisions and certain other issues that remain under discussion. Additional comments were provided on transportation, agriculture and forestry provisions, but we have not yet had time to discuss those matters.

This memo is written to inform the authors of the Act of a number of proposed modifications to the Act agreed upon by the group. These modifications would better conform the Act to the Task Force's intent in making its recommendations and we believe will strengthen the Act. They are:

Enhanced Energy Conservation and Efficiency

1. Provide for a 1.2% funding floor for conservation and efficiency programs funded by investor-owned utilities, as well as an \$8.00 per meter floor for municipal utilities and cooperatives, consistent with Act 141. Section 106; §196.374 (3)(br).
2. Restore the requirement of Joint Finance review of PSC four-year budget determinations above the floor specified above. Section 106; §196.374(3)(br). See existing §196.374(3)(b)3.
3. Provide that budgets must be set in a contested case proceeding by requiring a hearing. Section 106; §196.374(3)(br).
4. Delete Section 67/§196.025(1)(e) which imposes a general duty on the PSC to maximize conservation and efficiency in exercising the PSC's regulatory authorities and substitute language that provides that the Commission shall set the quadrennial energy conservation and efficiency savings targets and budgets to reflect all achievable, cost effective energy savings and enable the state to meet or exceed the goals set forth in Section 1.12(4) and Section 299.03(2) and (3m)(a)-(b).

5. Restore the criteria currently in Section §196.374(3)(b) as applicable to programs and funding.
6. In order to provide funding equity with respect to large customers, include in the Act the recommendation made by the PSC to the legislature on funding equity dated December 30, 2008.
7. Clarify Section 148/§196.374(9) to provide that an investor-owned utility can earn a return only on capital invested by it and leave it to the Commission to establish by rule the criteria that apply to requests for returns on conservation and efficiency investments, rather than specify the criteria in subsections (b) 1 and 2. Also, the provision should be reviewed to be sure there is no implication that the PSC cannot provide incentives for conservation and efficiency as it does today in other ways, such as approval of a shared savings program.
8. With respect to utility administrated programs for which utilities may apply to use dollars in the PSC's approved conservation and efficiency budgets, restore the provision in Act 141 that utility administered programs shall not include residential and smaller business customers. Section 100/§196.374(b)1.
9. Eliminate the requirement of non-duplication with respect to utility programs in Section 110/§196.374(3)(c) 2 am, but retain the other criteria.
10. Clarify provisions related to non-regulated fuels to provide that the funding for those programs must go back to non-regulated fuel users, and similarly, funds from regulated fuel users must be used for regulated fuel programs. See Section 126/§196.374(5m)(a).
11. Provide that the PSC is obligated in its administration and oversight of conservation and efficiency programs to minimize administrative and reporting burdens through coordination with any federal conservation and efficiency legal requirements that are adopted, without weakening the Wisconsin requirements. In addition, if federal requirements are imposed, the PSC should be required to make a report to the legislature recommending any changes that it believes should be made to the law to avoid duplication and resolve inconsistencies between the federal and state programs, consistent with the state's goals.

Enhanced Renewable Portfolio Standard

1. Review and, if appropriate, clarify the definition of biomass in Section 154/§196.378(1r) so there is no implication that any change from existing law is intended with respect to woody biomass and to include biogas.
2. Provide that not only new biomass facilities are covered by the RPS, but also conversions of existing facilities to biomass or biogas, as well as fuel switching.
3. Similar to the provision with respect to conservation and efficiency, require the PSC to take steps to minimize administrative and reporting burdens through consistency if a federal RPS is adopted, without weakening the Wisconsin RPS, and to recommend any changes it deems appropriate to the state RPS in such event.

4. Clarify that only the thermal output of cogeneration projects produced by biomass or biogas fuel qualify for the RPS. See Section 172/§196.378(1r)(dm)(1).
5. Provide with respect to geothermal systems that in determining the renewable energy equivalent for a certificate, the PSC should take into account the estimated net greenhouse gas emission benefits. It is possible that this may most easily be done by subtracting any increase in electric use required by such a system. See Section 172/§196.378(1r)(dm)(3) ?
6. Add comparable stringency and verification requirements if the PSC approves use of a tracking system other than MRETS. Section 201/§196.378(3).
7. We would like to work further with the authors to refine the findings in Section 170/§196.378(1g) to support the provision while avoiding an implication that bringing in power from outside the state raises significant reliability issues. We believe this can be done by focusing on congestion cost risks, concerns related to long term transmission adequacy and the need for, and benefits of, a geographically diverse portfolio of renewable resources.
8. All but one member of the group agreed that the requirement that certificates for non-electric energy such as light tube and geothermal systems are good only for the year in which the energy is produced should be eliminated. Related to this issue, a sub-group will be discussing the certificate provisions further in order to propose changes to facilitate the use of such certificates and to recognize that it would desirable for the technologies covered eventually to be included in the MRETS system. See Section 202/§196.378(3m).

Other Matters

1. The group also discussed ARTS provision. It was evident from our discussion that there is not a meeting of the minds of the members of Task Force on the intent of that template recommendation. Some believe any such tariff was intended to be voluntary, while others believe it was intended to be mandatory. There did appear to be agreement that any mandatory requirement should not force a utility to go beyond the RPS. While the ARTS provision is quite controversial, we hope the groups concerned about the provision will continue informal discussions.
2. We also discussed the new nuclear plant provision. Further thought should be given to issues that have been raised with respect to constitutionality and the non-severability clause, so these concerns can be resolved, while staying true to the Task Force's intent.
3. Finally, the group agreed certain provisions that relate to the grants for governmental entities should be reviewed for inclusion of tribes.