



March 31, 2022

5-FE-104

Public Service Commission of Wisconsin
P.O. Box 7854
Madison, WI 53707-7854

Subject: Docket 5-FE-104 – Focus on Energy Quadrennial Planning Process IV – Phase I

Dear Chairperson Valcq, Commissioner Nowak, and Commissioner Huebner:

Wisconsin Manufacturers and Commerce (WMC) appreciates the opportunity to comment on Docket 5-FE-104, related to the Focus on Energy Quadrennial Planning Process IV – Phase I. In the March 8 memo (memo), PSC staff provided a range of alternatives for consideration by the Commission. Proposed alternatives include fundamental changes to Focus on Energy, including prioritizing “decarbonization” and electrification. **If the Commission wishes to pursue these policy changes to Focus on Energy, WMC urges the Commission to first promulgate a rule. It cannot simply seek to impose such changes unilaterally without going through the lawful chapter 227 rulemaking process.**

WMC is Wisconsin’s state chamber of commerce, manufacturers’ association, and safety council. Founded in 1911, WMC has member businesses of all sizes, throughout all sectors of the economy, and in locations throughout the state. WMC is committed to supporting policies that ensure access to affordable and reliable energy for Wisconsin businesses.

WMC echoes many concerns raised by Sen. Julian Bradley and Rep. Mike Kuglitsch, the respective chairs of the Senate & Assembly utility committees, in their comment letter (PSC REF#: 434027). In particular, WMC fully agrees that “changes of this magnitude would require changes to state statute and/or administrative code; steps that have not been pursued at this time.” Specific reasons and rationale are as follows:

1. Lack of New Statutory Directive

In his biennial budget proposal (Assembly Bill 68), Governor Tony Evers proposed a series of changes to programs administered by the Public Service Commission. Such changes include, but are not limited to, the following:

- Doubling the energy tax: Increase from 1.2% to 2.4% the required contribution for the Focus on Energy Program. This was estimated to have resulted in a \$100 million annual tax increase on heating and electric bills for Wisconsin businesses and homeowners.
- Focus on Energy program changes: Require Focus on Energy to promote energy efficiency and renewable energy activities for low-income households, defined as those

households under 60% of statewide median income. This provision also required the Commission to promulgate rules to establish minimum requirements for Focus on Energy programs for such households.

- Social cost of carbon: Require the Commission to evaluate and set a “social cost of carbon” in dollars and adjust that amount every two years.

Importantly, all three of these proposals were rejected by the Legislature; none of them were included in the final biennial budget (2021 Act 58). Nor have there been any other related, recent statutory changes to Focus on Energy.

Despite the lack of any new statutory directive, in the memo PSC staff provides policy suggestions previously rejected by the Legislature. For example, this includes the following:

- Consideration of a “social cost of carbon valuing the societal impacts of carbon emissions” [Lines 12-13, page 9 of the memo]
- An alternative seeking to “explore more offerings that cross into the 60 percent of SMI currently operated by DOA.” [Lines 21-22, page 102 of the memo]

It is troubling that the Commission would consider unilaterally pursuing policy changes via the Focus on Energy program that both sidestep rulemaking and lack any new, related statutory directive from the Legislature.

2. Proposed Policy Changes are Inconsistent with Current Statutory Directive

Instead of relying on a law change, in the memo PSC staff points to its existing statutory authority as justification for pursuing substantial policy changes related to decarbonization and electrification. Specifically, it cites s. 196.374(3)(b)1, which states the following:

At least every 4 years, after notice and opportunity to be heard, the commission shall, by order, evaluate the energy efficiency and renewable resource programs under sub. (2) (a) 1., (b) 1. and 2., and (c) and ordered programs and set or revise goals, priorities, and measurable targets for the programs. The commission shall give priority to programs that moderate the growth in electric and natural gas demand and usage, facilitate markets and assist market providers to achieve higher levels of energy efficiency, promote energy reliability and adequacy, avoid adverse environmental impacts from the use of energy, and promote rural economic development.

However, this statutory directive makes no mention of “aligning Focus on Energy” with “decarbonization goals,” which is a core focus of the docket. Nor is there a mention of considering the “social cost of carbon,” as suggested by the memo.

Moreover, the memo also provides policy alternatives in relation to “electrification,” which the memo defines as “the process of replacing technologies using fossil fuels with technologies that use electricity as a source of energy to provide the same service.” The memo provides the example of “electrifying space and water heating in buildings” as an “impactful opportunity to

reduce GHG emissions.” In addition, “Alternative One” in the memo would “allow Focus to directly support beneficial electrification” in certain circumstances.

However, the statutory purpose of the Focus on Energy program is not to reduce greenhouse gas emissions or promote decarbonization. Its purpose is to promote energy efficiency and meet other purposes explicitly provided for by statute. Promoting “fuel-switching” and “electrification” does not inherently lead to energy efficiency. Indeed, it may often be less efficient than using natural gas or other traditional fossil fuels. It also appears to directly contradict the statutory requirement to “promote energy reliability and adequacy,” as found under s. 196.374(3)(b)1.

The Commission may have valid reasons to explore decarbonization and electrification within the Focus on Energy program. However, the Commission cannot unilaterally choose to pursue these policy changes without a requisite statutory directive. Instead, it could ask the Legislature for a statutory change.

3. Proposed Policy Changes, at a Minimum, Necessitate Rulemaking

Setting aside the potential statutory conflicts, at a bare minimum, the proposed changes to the Focus on Energy program included within Docket 5-FE-104 necessitate rulemaking. As implicitly acknowledged throughout the memo, PSC staff is proposing substantive changes to how the Focus on Energy program is structured. Below are a handful of examples showing how the memo clearly contemplates substantive changes to Focus on Energy:

- “This memorandum presents the Commission with various macro policy and priority alternatives.” [see lines 1-2, page 6 of the memo]
- “Historically, Focus’ Policy Manual language on fuel switching only addressed opportunities to incentivize the switch from electricity to natural gas by previously noting that it is more efficient to heat water with natural gas than electricity.” [see lines 21-23, page 32]
- “Aligning Focus with decarbonization goals...requires the Commission to consider maintaining or enhancing its past decision or establishing new program priorities to support the full stream of benefits this alignment could achieve.” [see lines 12-16, page 11]

However, under chapter 227 of the statutes, such changes in interpretations of statute necessitate rulemaking. Specifically, s. 227.10 provides that “each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute.” In other words, changing Focus on Energy to include new policy changes on decarbonization and electrification necessitates rulemaking. Moreover, the agency cannot seek to impose such requirements until the rule is fully promulgated – meaning it must go through the normal, transparent rulemaking process and provide an opportunity for legislative review.

Finally, as noted by the comment letter from Sen. Bradley and Rep. Kuglitsch, the Legislature does have remedies available to it if the Commission chooses to simply ignore the valid

concerns raised in relation to this docket. In addition to the “power of the purse” referenced in the letter, direct remedies are also available. For example, if the Joint Committee for the Review of Administrative Rules determines that an agency statement of policy or an interpretation of a statute is a rule, it can direct the agency to promulgate an emergency rule within 30 days. [see s. 227.26(2)(b)].

4. Conclusion

WMC has a number of concerns with the proposed Docket 5-FE-104, related to changes to Focus on Energy. In particular:

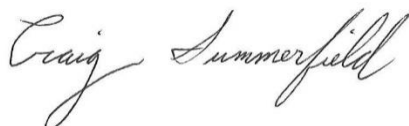
- The Commission is seeking substantial policy changes related to decarbonization and electrification in absence of any new statutory directive.
- The Commission is considering advancing policy objectives that appear inconsistent with the current statutory framework.
- If the Commission wishes to pursue these policy changes, at the very least, it must undergo the transparent rulemaking process under chapter 227.

There are some at the Commission that are no doubt disappointed that the Legislature rejected the proposed changes included in Governor Evers’ proposed budget. If lawmakers had approved doubling the energy tax, it would have raised an estimated \$100 million annually via higher heating and electric bills for Wisconsin businesses and consumers. This, coupled with other provisions, would have provided the Commission with a statutory requirement to make changes (through rulemaking) to Focus on Energy.

However, these law changes did not occur, and the Commission cannot ignore statutory obligations nor rulemaking requirements in order to pursue its own climate change goals. Contrary to the statute, the proposed changes in Docket 5-FE-104 may undermine “energy reliability” for Wisconsin businesses and consumers. Thus, WMC urges the Commission to not seek these programmatic changes via a Docket. Instead, it must seek authorization from the Legislature via a statutory change or with rulemaking.

Thank you for considering our comments.

Sincerely,



Craig Summerfield
Director of Environmental & Energy Policy
Wisconsin Manufacturers & Commerce

CC: Senator Julian Bradley, Chair, Senate Committee on Utilities, Technology and Telecommunications
Representative Mike Kuglitsch, Chair, Assembly Committee on Energy and Utilities
Senator Steve Nass, Co-Chair, Joint Committee for the Review of Administrative Rules
Representative Adam Neylon, Co-Chair, Joint Committee for the Review of Administrative Rules