



October 2007

State Legislation and Regulations Supporting Nuclear Plant Construction

FLORIDA

*Legislation: SB 888
Enacted June 2006*

This legislation includes several provisions to support construction of new nuclear plants in Florida.

Key Elements:

- ▶ The legislation directs the Public Service Commission (PSC) to consider fuel diversity and reliability in determining the need for a proposed electric power plant.
- ▶ A provision exempts new nuclear power plant projects from the mandatory competitive bidding process.
- ▶ The PSC is instructed to establish alternative cost recovery mechanisms that allow recovery of preconstruction costs and the carrying costs on the projected construction cost through the capacity cost recovery clause.
- ▶ Pre-construction costs may accrue a carrying charge equal to the utility's allowance for funds used during construction (AFUDC) rate until those costs are recovered in rates.
- ▶ Once the PSC grants a determination of need, challenges to cost recovery are prohibited except if costs were imprudent. Proceeding with construction and incurring cost increases beyond a utility's control are not evidence of imprudence.
- ▶ Once a nuclear plant is in service, ongoing costs are recovered through base rate increases.
- ▶ If construction is not completed, the utility is allowed to recover all prudent pre-construction and construction costs incurred following determination for need.

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This rule implements the alternate cost recovery mechanisms for construction of nuclear power plants authorized in legislation SB 888 and is now section 366.93 of Florida Statutes. Site selection costs, pre-construction costs and the carrying cost of construction may be recovered in rates after the Public Service Commission (PSC) issues a determination of need order and before the plant enters service.

Key elements:

- ▶ Site selection costs, pre-construction costs, and the carrying charge for the balance of these costs spent in years prior to the year costs are recovered may be recovered through the Capacity Cost Recovery Clause after a determination of need is granted.
- ▶ Once construction begins, the carrying cost on construction costs may also be recovered through the Capacity Cost Recovery Clause. The carrying cost is calculated using the allowance for funds used during construction (AFUDC) rate, which will incorporate the interest payments on debt and the return on equity.
- ▶ Annual reviews of site selection costs, pre-construction costs and construction costs will be held, with annual hearings, to determine prudence. Once costs are found prudent during this annual review process, they will not be subject to disallowance or further prudence review.
- ▶ When the new plant is placed into service, the utility will file a petition for a base rate increase to begin to recover construction costs. The increase will be based on annual revenue requirements for the plant's first 12 months of operation.
- ▶ If a utility elects not to complete or is precluded from completing the construction of the plant, all prudent site selection costs, pre-construction costs and construction costs shall be recovered in rates over a period equal to the time over which costs were incurred or 5 years, whichever is longer.

GEORGIA

Georgia's Integrated Resource Planning Act, which was passed in 1991 and is now Georgia Code § 46-3A, requires that any proposed new electric plant receive certification by the Georgia Public Service Commission (PSC) before construction begins. A utility is entitled to recover pre-approved costs after a plant is built or canceled.

*Legislation: Integrated Resource Planning Act
Enacted 1991*

To receive certification, a utility must demonstrate to the PSC that the proposed project will "assure an economical and reliable supply of electric power and energy for the Georgia retail customers" by using cost-benefit analysis and a current integrated resource plan, which includes demand and supply forecasts. Once a project has been certificated, a utility is entitled to recover all costs that do not exceed those approved by the PSC in the certification docket, so long as those costs are not the product of "fraud, concealment, failure to disclose a material fact, imprudence, or criminal misconduct." Conversely, if the costs are in excess of the amount approved in the certification docket, then the utility must show that the costs were reasonable and prudent. Certification implies pre-approval of costs specified in the application. Granting of a certificate is not dependent solely on the project being least cost.

Key elements:

- ▶ If an application for a certificate of public convenience and necessity is not acted upon by the PSC within the prescribed review period (300 days after original filing, 180 days after subsequent filings), the certificate shall be deemed granted by law. Modification or revocation of the certificate can be requested by either the PSC or the utility if demand forecasts change, costs change, etc. If the PSC revokes the certificate, the utility can recover through rates what it has already spent, plus the carrying cost of the unamortized portion of the investment, over a reasonable period of time.
- ▶ During construction, the utility will file a progress report every one to three years with proposed revisions to cost estimates and construction schedule. If the PSC does not approve or disapprove those revisions within 180 days, the revisions are deemed approved by law. If disapproval by the PSC of all or part of the requested revisions leads to cancellation of the project, the utility may recover its actual investment in the partially completed project and collect the carrying cost of the unamortized balance of the project.
- ▶ When the project is completed, the utility may add to its rate base the construction costs that do not exceed costs approved by the PSC (either in the original certificate or through approved revisions). Inclusion of excess costs will be permitted if shown to have been reasonable and prudent.
- ▶ "Compliance with the provisions of the certificate as approved or modified by the commission shall result in a presumption of prudence."

*Regulation: Docket No. 24505-U
of the Georgia Public Service
Commission (PSC)
Adopted July 2007*

This order adopts the most recent Integrated Resource Plans (IRP) of Georgia Power Company with some modifications. With respect to nuclear energy, the order finds it reasonable for Georgia Power Company to investigate the opportunity to build nuclear resources with the added modification that the Company shall develop by January 1, 2008 a back-up plan. The back-up plan will lay out how the Company will acquire alternative baseload generation if the nuclear units do not meet expectations.

*Regulation: Docket No. 22449-U
of the Georgia Public Service
Commission (PSC)
Adopted June 2006*

This order allows the Georgia Power Company to record, in a FERC Account 183, development and licensing costs incurred in development of a new regulated nuclear generation plant at Vogtle.

Key elements:

- ▶ Amounts recorded in Account 183 cannot exceed \$51 million.
- ▶ Costs recorded in Account 183 may be recovered in rates in the future, if deemed prudent, whether or not the nuclear plant is eventually constructed. If the plant is built, Account 183 will be folded into a construction work in progress account. If a plant is not built, costs in Account 183 will be considered in the next rate case.

IOWA

Iowa passed legislation aimed at attracting the development of sufficient in-state generation and transmission. It allows the Iowa Utilities Board (IUB) to specify the rate-making principles that will apply when a new baseload generating facility (built or leased) begins service before construction commences or a lease is signed. Rate-making principles typically include elements like the return on equity for that project (can be different from the utility's general ROE), the depreciable life of the project and any recovery of stranded costs if the project is prudently canceled.

*Legislation: HF 577
Enacted 2001*

Key elements:

- ▶ The baseload facility must have a nameplate capacity of 300 MW or greater.
- ▶ To receive advanced rate determination on a project, the regulated utility must demonstrate 1) that it has in place an IUB-approved energy efficiency plan, and 2) that the proposed facility or lease is reasonable when compared to other feasible alternative sources of supply. The IUB has discretion on what is deemed reasonable. In cases that have appeared since HF 577 was enacted, least cost is not the sole standard. Environmental considerations have also been considered.
- ▶ In determining the future rate, the IUB "shall not be limited to traditional rate-making principles or traditional cost recovery mechanisms."
- ▶ The rate-making principles established for a project are binding and cannot be changed in subsequent rate proceedings.

KANSAS

This proposed legislation would exempt from state property taxes any property purchased, constructed or installed to expand capacity at an existing nuclear plant or to build a new nuclear plant.

*Legislation: HB 2038
Enacted April 2007*

Key elements:

- ▶ A qualifying new nuclear plant must be within three miles of an existing reactor.
- ▶ Expanded capacity must increase an existing facility's capacity by at least 10 percent.
- ▶ Eligible projects that add nuclear capacity must be started after December 31, 2006.
- ▶ Property tax exemption begins at the start of construction or installation of the property and continues for 10 years after the construction or installation is complete. If new nuclear capacity that is already expanded or operating is purchased, the exemption is for 10 years after purchase.
- ▶ In lieu of property taxes, a fee must be paid to the state equal to the tax on the real property (land) on which the expanded nuclear capacity is being constructed or exists.
- ▶ The provision reduces the siting requirements for a qualifying nuclear project.

- ▶ Construction of a new nuclear plant requires a permit from the Kansas Corporation Commission (KCC). In considering the application for such a permit, the KCC will make a decision based on whether the proposed nuclear plant will help meet the state's electricity demand and whether the existing generating capacity is "capable of being distributed economically, reliably, technically and environmentally." The decision is not purely based on economics.
- ▶ Once the KCC issues a permit to build a nuclear plant, no local ordinance, resolution or regulation can prohibit its construction.

*Legislation: Substitute for SB 104
Enacted April 2003*

This legislation permits the Kansas Corporation Commission (KCC) to determine rate-making principles that will apply to the cost of a utility's investment in generation or transmission before constructing a facility or entering into a contract for purchasing power. It is similar to Iowa's HF 577, but less restrictive.

Key elements:

- ▶ There is no restriction on the type or the size of electric generating unit for which rate-making principles can be set in advance.
- ▶ A petition for predetermining rate-making principles will include a description of the following: the utility's conservation measures, demand-side management efforts, ten-year generation and load forecast, and all power supply alternatives considered.
- ▶ The KCC may review, but need not require, a competitive request for proposal process used by the utility.
- ▶ If the KCC fails to issue a determination within 180 days of the petition filing, the rate-making principles the utility proposed will be deemed to have been approved by the commission and shall be binding.
- ▶ If the project is built, once it is placed in service the rate-making principles apply to that generating facility in all subsequent rate cases.

*Legislation: Substitute for HB
2516
Enacted April 2004*

This bill expanded upon the 2003 legislation. One clause of particular interest allows the KCC to make adjustments to a utility's revenue requirements allowing the utility to retain benefits equivalent to 10 percent of the net revenue from electricity sold to out-of-state customers generated from a new or expanded generator in a county with 5 percent or less population growth.

LOUISIANA

*Regulation: Docket No. R-29712
Adopted May 1, 2007*

The Incentive Cost Recovery Rule for Nuclear Power Generation requires three phases of certification covering 1) siting and licensing, 2) design and development, and 3) construction to commercial operation. Once a phase is certified, costs will be reviewed and approved on an annual basis for future recovery in rates when the plant is either canceled or begins commercial operation. Cash earnings on construction work in

progress will be recovered in rates during the certified phase of nuclear plant development.

Key elements:

- ▶ A utility must apply for certification for nuclear power plant siting and licensing activities. To allow a project to progress, the utility is allowed to recover costs prudently incurred before and during review of the application, regardless of the outcome of the certification proceeding. These are called transition costs. The utility must file its request for recovery of transition costs along with its application for siting and licensing certification. The Louisiana Public Service Commission (LPSC) has 120 days to make a preliminary determination on whether the utility's application is in the public interest and to rule on the reasonableness of the transition costs. The commission has 18 months to approve the certification.
- ▶ A utility must similarly apply for certification for design and development activities and certification for activities to construct a plant and bring it into commercial operation. The commission has 18 months to approve each certification. Transition costs for each of these phases may also be recovered, provided requests for transition cost recovery accompany certification applications. The commission has 120 days to approve the application preliminarily and find transition costs reasonable.
- ▶ Once certification is granted for any phase, an annual prudence review hearing will review and approve costs incurred. The legal presumption of prudence shall apply to all costs incurred for the certified phase of the project. These reviews will only consider costs that have not yet been reviewed and found prudent. The commission has 12 months to issue an order allowing recovery of these costs in future rates when the plant is canceled or begins commercial operation.
- ▶ The utility will also provide the LPSC with written quarterly progress reports during each phase that compare previous estimates of costs and schedule to actual costs and schedule.
- ▶ The utility is required to hold annual stakeholder briefings and provide ongoing information on its website to keep the public apprised of the project's progress.
- ▶ One year prior to expected commencement of commercial operation, the utility will file a rate case to move incurred siting, licensing, design, development and construction costs into rate base. The rate case will only examine costs that have not been previously certified as prudent during the annual review process.

This bill repeals the ban on issuing a certificate of need for the construction of a new nuclear power plant, specifically section 216B.243, subdivision 3b of Minnesota Statutes 2006.

No further action is expected until the legislature reconvenes in February 2008.

MINNESOTA

Legislation: S.F. No. 1491, identical companion bill H.F. 1740 Introduced March 5 and 7, respectively, 2007

NORTH CAROLINA

*Legislation: Senate Bill 3
Enacted August 2007*

This energy legislation implements several initiatives, including a renewable energy and energy efficiency standard, adjustments to the fuel rider and the review of generating facility construction costs.

This legislation supports the construction of nuclear plants by establishing a utility's ability to have incurred costs reviewed by the North Carolina Utilities Commission (NCUC) periodically and added to the rate base in a general rate case even if that facility is not yet complete. Additionally, the NCUC is given the ability to review and find prudent the activities associated with developing a nuclear plant, but not any specific costs of development.

Key elements:

- ▶ A certificate for construction of a coal or nuclear plant may not be issued unless the NCUC determines that energy efficiency, demand-side management, renewable energy, combined heat and power or any combination of these resources would not establish or maintain a more cost-effective and reliable generation system.
- ▶ Once a certificate is granted, the project cannot be canceled without approval of the NCUC.
- ▶ The utility must submit annual reports during construction. Upon the request of the utility or the commission's own motion, the NCUC may conduct a review of the construction and approve or deny incurred costs and revised cost estimates.
- ▶ Expenditures that have been reviewed and approved by the NCUC during construction can be recovered through rates in a general rate case without further review by the commission. Construction does not have to be complete for approved, incurred costs to be added to the rate base during a general rate case.
- ▶ The costs of a completed facility that has not undergone annual NCUC reviews may be included in rates if the NCUC finds the costs reasonable and prudent.
- ▶ The NCUC can pre-approve costs of constructing a facility located out-of-state that will serve North Carolina customers after an application for a construction certificate has been filed, but not necessarily approved, in the host state. The NCUC has 180 days to issue an order on this type of petition.
- ▶ Like an in state facility, annual, ongoing reviews of costs and construction of an out-of-state facility by NCUC allows the addition of approved, incurred costs to the rate base during a rate case even if the plant is not complete.
- ▶ If a project is cancelled, a utility has the ability to recover all costs incurred before the cancellation, provided those costs are reviewed and approved by the NCUC either during construction or after the cancellation. This applies to generating projects both in- and out-of-state.
- ▶ The NCUC now has the authority to rule on the prudence of a utility incurring project development costs for a potential new nuclear plant in- or out-of-state without actually ruling on the prudence of specific actions or costs.

The North Carolina Utilities Commission (NCUC) has issued a declaratory ruling finding it appropriate that Duke Energy pursue development work (preliminary siting, design and licensing) on the proposed Lee Nuclear Station through December 31, 2007. If, in a future rate case, the NCUC finds the costs incurred developing the Lee Nuclear Station prudent, whether or not it is constructed, Duke may recover these costs in rates. Duke must file update reports semi-annually on costs incurred through December 31, 2007.

*Regulation: Docket No. E-7 Sub 819
Adopted March 20, 2007*

Though the declaratory ruling is not the specific language Duke requested, the NCUC feels it does assuage Duke's concern that inclusion of development costs in future rate cases might be rejected because the development work on a nuclear plant itself was not deemed prudent.

SOUTH CAROLINA

This legislation, called the Base Load Review Act, allows the South Carolina Public Service Commission (PSC) to grant a project development order for nuclear projects and a base load review order for any base load facility, including nuclear projects. The base load review application may be combined with an application for certificate of necessity if the proposed plant is located within the state. The base load review application may be for a proposed plant located outside of the state.

*Legislation: H 3499 and S 431
Enacted May 3, 2007*

Key elements:

- ▶ The term "base load" applies to coal or nuclear generation or any facility 350 MW or larger designed to run with a capacity factor greater than 70 percent.
- ▶ A project development order, applicable only to nuclear plants, allows pre-construction and development costs and an allowance for funds used during construction (AFUDC) associated with those costs to be included in the rate increase when the plant goes into service. If the project is abandoned prudently, these costs will be included in rates during the next rate review.
- ▶ A base load review order constitutes a final and binding determination that a plant is used and useful, and that its capital costs are prudent utility costs that will be properly included in rates so long as the plant is constructed or is being constructed within parameters defined in the order.
- ▶ A utility proposing to build a nuclear plant (no other baseload technology is eligible) may submit a revised rate request with the base load review order or one year after an order is granted, and every year thereafter. A revised rate request would allow the utility building a nuclear plant to collect the carrying cost of construction work in progress (CWIP), which includes both the interest on debt and the return on equity. When the plant goes into service, the final revised rate request will incorporate into rates the ongoing "in-service expenses," which include operating costs and the revenue requirements related to the utility's cost of capital applied to the investment.
- ▶ Once a base load review order is granted, the utility must file quarterly reports of progress with the Office of Regulatory Staff until the project commences commercial operation.

- ▶ If the PSC fails to rule on a project development application, a base load review application or the subsequent requests for revised rates within the prescribed review times and process set forth in this legislation, approval is considered granted.

TEXAS

*Legislation: HB 1386
Enacted May 28, 2007*

This bill gives the Public Utility Commission of Texas (PUCT) the authority to regulate decommissioning trust funds for up to six new nuclear power plants under construction before 2015. Nuclear plant owners will pay annually into the decommissioning trust fund. If the owner defaults on payments or if the fund is not large enough to cover decommissioning, the commission may authorize collection of decommissioning funds from retail customers.

Key elements:

- ▶ PUCT sets the amount annually remitted to the decommissioning trust fund by the plant owner.
- ▶ Plant owners must provide financial assurances on funds equal to 16 years of annual payments. PUCT will establish acceptable forms of assurance that will include parent guarantees and support agreements, letters of credit, and surety or insurance.
- ▶ The decommissioning trust fund is administered by the owner of the nuclear power plant according to rules issued by PUCT.
- ▶ PUCT will review the adequacy of the decommissioning trust fund at least once every three years and make adjustments to annual payments.
- ▶ If the owner defaults on trust fund payments and trust funds have been collected directly from retail customers, the defaulting owner or a new owner of the operating plant must repay those funds to retail customers over a period of time determined by PUCT.

*Legislation: HB 2994
Enacted May 28, 2007*

This legislation expands existing legislation that enables local taxing authorities to grant property tax abatements adding new nuclear plants and IGCC facilities as eligible projects.

Key elements:

- ▶ The negotiated tax abatement period can be for up to 10 years.
- ▶ Local taxing authorities may opt to postpone commencement of the tax abatement period on nuclear plants for up to 7 years.

VIRGINIA

Legislation: HB 3068/SB 1416

Enacted April 2007

Under this legislation, the State Corporation Commission (SCC) in Virginia will once again regulate retail electric sales and the construction of generation. Capped rates, which have been in place since the state was deregulated, will end December 31, 2008, and regulated rates will return to the state, except for large or aggregated customers (5 MW or greater) that can continue to choose competitive supply. The SCC can include performance incentives in general rates and must apply enhanced rates of return to construction of new baseload facilities, specifically nuclear, coal and combined cycle combustion turbines. There is a voluntary renewable portfolio standard that rewards participants for attaining certain percentages of renewable energy, which is calculated excluding nuclear generation.

Key provisions pertinent to future construction of generation:

- ▶ The determined rate of return on common equity shall not be lower than the average rate of return of other investor-owned electric utilities in the southeastern United States and shall not be higher than 300 basis points above such average.
- ▶ The SCC can increase or decrease the determined rate of return by 100 basis points to reward or penalize utility performance.
- ▶ The SCC will conduct biennial reviews of rates.
- ▶ If the SCC finds that a utility's actual return for the previous period was more than 50 basis points above the determined rate of return, the SCC may either direct the excess earnings be returned to customers or 60 percent to customers and 40 percent to the utility as an incentive for continued good performance. If the actual rate of return was more than 50 basis points below the determined rate of return, future rates will be set in such a way to reimburse the utility for lost return. Two consecutive biennial periods exceeding 50 basis points above the determined rate of return can result in a rate reduction.
- ▶ Utilities may apply for recovery of the cost of building new generation before beginning construction. Costs that may be recovered when the facility begins commercial operation include costs associated with planning, development, life-cycle, associated infrastructure, construction and, as an incentive to undertake such projects, an enhanced rate of return for nuclear, coal and combined cycle generation. During construction, a utility may collect an allowance for funds used during construction and a rate of return, including the enhanced rate of return, on construction work in progress. The enhanced rate of return will be applied to project costs during construction and for an initial portion of the service life of the project. The enhanced return (a supplement to the determined general rate of return) and duration of initial portion of service life shall vary by type of facility accordingly: nuclear, 200 basis points for between 12 and 25 years; coal that is carbon capture compatible, 200 basis points for between 10 and 20 years; conventional coal, 100 basis points for between 10 and 20 years; combined-cycle combustion turbine, 100 basis points for between 10 and 20 years; and renewable facilities, 200 basis points for between 5 and 15 years.
- ▶ The SCC can opt to apply reduced enhanced rates on new generation projects that are not making reasonable progress after 2018 or are initially applied for after 2018.
- ▶ A voluntary renewable portfolio standard would reward participating electric companies that achieve prescribed renewable energy goals with an additional 50

basis points of return on top of the determined rate of return. The goals are 1) 4 percent of electric sales in 2010, 2) an average of 4 percent for 2011-2015 and 7 percent in 2016, and 3) an average of 7 percent in 2017-2021 and 12 percent in 2022. The prescribed percentages of renewable energy are calculated against all 2007 electric energy sales minus that generated by nuclear energy. In other words:

$$\frac{\text{Renewable energy sold}}{(\text{All energy sold in 2007} - \text{Avg. annual energy from nuclear in 2004-2006})}$$

WISCONSIN

*Legislation: AB 346
Introduced May 21, 2007*

This bill repeals the nuclear moratorium in Wisconsin that currently restricts the Public Service Commission (PSC) from issuing a certificate of public convenience for construction of a nuclear plant unless a facility is available for disposal of the waste. Specifically, Wisconsin statute 196.493 is repealed.

Two other nuclear energy bills were also introduced at the same time that would require the PSC to consider electric supplies in Wisconsin after operating licenses for existing reactors expire (AB 347) and to advocate for centralized interim used fuel storage (AB 348). All these bills were prepared by the Joint Legislative Council's Special Committee on Nuclear Power.

Discussion of all three bills will likely occur in late 2007 or early 2008 in the Committee on Energy and Utilities.

*Legislation: Act 7
Enacted May 2005*

Wisconsin passed legislation similar to Kansas' SB 104 in May 2005. It allows the Wisconsin Public Service Commission (PSC) to issue an order specifying in advance the rate-making principles that will apply to a new electric generating facility (built or purchased) before construction commences or the purchase contract is closed.

Key elements:

- ▶ There is no restriction on the type or the size of electric generating unit for which rate-making principles can be set in advance.
- ▶ The PSC must decide on an application within 180 days or when the commission takes final action on the application for a certificate for construction, if one has been submitted. (There is no consequence if the PSC does not act in 180 days, however.)
- ▶ The PSC cannot reopen, change, amend or rescind an order specifying in advance ratemaking principles for a specific facility.
- ▶ The PSC may not consider this type of order or the effects of the order in its treatment of the recovery of any other cost of the public utility.

State Legislation and Regulations Supporting Capital-Intensive Projects

Legislation and regulations in this section are included as examples of innovative cost recovery approaches that could be used to support construction of nuclear plants.

This legislation allows the West Virginia Public Service Commission (PSC) to issue a financing order that allows a utility to issue environmental control bonds and collect environmental control charges from electric customers. Utilities serving the state have the option of using this securitization to:

- ▶ help finance environmental controls of fossil-fired plants, or
- ▶ collect unrecovered value of a plant that is retired for emission control purposes.

Key elements:

- ▶ Environmental control bonds can be issued by a utility after the PSC issues a financing order. Application for a financing order is filed as part of the application for a certificate of public convenience and necessity to engage in environmental control activities. The financing order is issued as part of that certificate.
- ▶ Environmental control bonds can be used to cover the capital cost of environmental controls, design and engineering work, preliminary expenses and investments incurred prior to issuance of a financing order and the financing charges associated with the bond.
- ▶ Environmental control bonds are secured by the environmental control property. This property is created by the financing order as the right to collect environmental control charges from customers. The financing order is not revocable.
- ▶ Environmental control property can be sold and assigned with retention of all rights by new owner or assignee.
- ▶ Only utilities that have, or have had at any time since April, 2004, unsecured debt with a rating below investment grade can qualify for environmental control bonds.
- ▶ The PSC cannot consider an environmental control bond to be debt of the utility, nor can it consider environmental control charges collected in rates to be revenue of the utility.
- ▶ An environmental control bond is not considered public debt.

To encourage the construction of new electric generating facilities in the state, Wisconsin Energy Corporation (WEC) proposed an innovative ownership and financing structure which allows a WEC non-utility affiliate to construct an electric generating facility as a stand-alone non-regulated project. That project benefits from a long-term contract to lease the electric generating facility to the utility, which will operate it. The utility benefits from upfront set payments under the lease, which are recovered in

WEST VIRGINIA

*Legislation: SB 455 added §24-2-4e to the Code of West Virginia
Enacted April 2005*

WISCONSIN

*Legislation: Act 16
Enacted 2001*

rates. All operating expenses are borne by the utility and recovered in rates. This innovative structure required legislation.

This legislation has three major components:

1. It allows the PSC to approve a lease generation contract between a public utility and an affiliated interest of the public utility establishing standards and requirements the PSC must consider when approving such a contract.
2. It allows a public utility to sell, at book value, real property to a non-utility affiliate for the purpose of building a new generating facility or making capital improvements to an existing facility (like a new turbine or emission control system).
3. It requires the PSC to allow the utility to recover fully in rates payments it makes under a leased generation contract and expenses incurred operating the facility.

Key elements:

- ▶ No asset of the public utility that is currently used may be transferred.
- ▶ Definition of the electric generating facility is very specific to include only the equipment that converts fuel into electricity.
- ▶ A leased generation contract cannot be applied to the construction or improvement of a nuclear power plant.
- ▶ The legislation does not prohibit electric cooperatives or municipals from owning part of the electric generation facility or the land involved in a leased generation contract.
- ▶ A facility subject to a leased generation contract is not a wholesale merchant plant.
- ▶ The PSC cannot consider any income, expenses, gains or losses received or incurred by the affiliate (builder and owner of the facility) when setting rates for the public utility.

*Legislation: Act 152
Enacted 2003*

This legislation creates environmental trust financing by allowing the PSC to authorize the issuance of bonds that would be repaid by fees collected from utility customers. It appears the West Virginia legislation was based on this Wisconsin legislation. See the West Virginia summary above for details.