PUBLIC SERVICE COMMISSION OF WISCONSIN

Quadrennial Planning Process 5-GF-191

ORDER

Introduction

On April 26, 2012, the Commission issued an Order in docket 5-GF-191 that required that the annual renewable energy incentive level for 2012, 2013, and 2014 not exceed $10 million in a given year. In addition, for program years 2013 and 2014, the Order required 75 percent of total incentives be allocated to Group 1 technologies (biomass, biogas, and geothermal) and 25 percent be allocated to the less cost-effective Group 2 technologies (solar photovoltaic, solar thermal, and wind). This was due in large part to Wisconsin's agriculture, food processing, and paper production enterprises and the vast amount of waste they produce that can be used to create cost-effective renewable energy. The Order also stipulated that renewable energy incentive funding is contingent upon Focus on Energy's (Focus) overall benefit-to-cost ratio being at least 2.3 (inclusive of renewables) and requires that the inclusion of renewable energy technology incentives cannot reduce energy savings by more than 7.5 percent in comparison to an efficiency-only program. The Commission's original decision emphasized that in order to best enhance the renewable industry in Wisconsin, priority in Focus spending must be given to the state's strengths in the most cost-efficient manner. This meant focusing on Group 1 rather than Group 2 technologies that complement the state's existing industries, while still providing funding for other projects. Per the decision, dollars that are not spent on renewables under the $10 million cap are allocated to the significantly more cost effective energy Focus programs. The original decision upheld the idiom that the Focus program's intent is to create awareness, not only for renewable programs, but to help individuals and businesses realize and take advantage of energy efficiency as a cost saving measure.

On June 20, 2013, Chicago Bridge and Iron (CB&I), the Focus Program Administrator, provided the Commission a memorandum that discussed the potential impacts these constraints would have on renewable energy funding for the remainder of the quadrennial period, which ends December 31, 2014. As a result of this memorandum and discussion with Commission staff, CB&I requested clarification of the following issues:

1. **Does the $10 million renewable energy spending cap include administration and implementation costs or incentives only?**

2. **Does CB&I have discretion to spend less than the $10 million on renewable energy projects, or can the amount only be reduced if one of the constraints in the Commission Order is triggered?**

3. **Must the 75/25 percent split for Group 1 and Group 2 technologies be applied annually, or can it be applied on a cumulative basis for the remainder of the quadrennial period?**

4. **In determining the spending split between Group 1 and Group 2 technologies, should the spending be based on the amount of renewable energy incentives paid out or obligated in a year?**

5. **Which budget amount should be used for the energy efficiency-only comparison when determining whether spending on renewable energy projects will reduce the total energy savings of the Focus portfolio of programs by 7.5 percent or more?**

Discussion

1. Does the $10 million renewable energy spending cap include administration and implementation costs or incentives only?

The Order in this docket, dated April 26, 2012, states that "the annual renewable energy incentive level for 2012, 2013, and 2014 cannot exceed $10 million in a given year." The

Commission determined that on this point the Order of April 26, 2012, is clear. The $10 million cap on renewable energy spending is for incentives only and does not include administration and implementation costs.

2. Does CB&I have discretion to spend less than the $10 million on renewable energy projects, or can the amount only be reduced if one of the constraints in the Commission Order is triggered?

The Commission determined that the Order of April 26, 2012, is clear that the $10 million annual renewable energy incentive expenditure is a ceiling and that the Program Administrator may spend less than this amount. However, the Commission also finds that some clarification is needed. The Commission finds that the Program Administrator should attempt to spend $10 million on renewable energy incentives as long as the overall benefit/cost ratio of 2.3 based on the Total Resource Cost test is maintained; spending on renewable energy incentives does not reduce energy savings by more than 7.5 percent when compared to an efficiency-only program; and the 75/25 percent funding for Group 1 and Group 2 technologies is maintained. Should the Program Administrator wish to reduce the level of funding for renewable energy incentives below the $10 million for any reason other than one of these three constraints being triggered, it should request and receive Commission authority to do so.

3. Must the 75/25 percent split for Group 1 and Group 2 technologies be applied annually, or can it be applied on a cumulative basis for the remainder of the quadrennial period?

The longer lead times of Group 1 technologies compared to Group 2 technologies would result in Group 2 accounting for over 50 percent of the renewable energy incentives being paid out in 2013. If 2013 and 2014 are combined, Group 2 spending in 2013 alone would account for about 35 percent of renewable energy incentives paid out through the end of 2014. Based on

2013 renewable energy incentive obligations, and assuming all of the obligations came to fruition, Focus would achieve a 72/28 percent Group 1 and Group 2 split.

The Commission affirmed that the 75/25 percent split for Group 1 and Group 2 technologies shall be applied on an annual basis as required in the Order of April 26, 2012. In order to provide the Program Administrator some flexibility in meeting the annual 75/25 percent split, the Commission finds it reasonable to provide a range for this split. The Commission finds it appropriate to retain the 75/25 percent split between Group 1 and Group 2 technologies, with a range of plus or minus 5 percent of both Group 1 and Group 2 technologies. This provides a range of 70 to 80 percent for Group 1 technologies and 20 to 30 percent for Group 2 technologies on an annual basis.

Commissioner Callisto dissents.

4. In determining the split between Group 1 and Group 2 technologies, should the spending be based on the amount of renewable incentives paid out or obligated in a year?

Because incentives paid out for Group 1 are used to determine the funding available for Group 2 technologies, based on maintaining the 75/25 percent split, the longer lead times for Group 1 projects can result in a limitation in the funding available for Group 2 technologies until the implementation of the Group 1 technologies reaches its full level. Basing the spending available for Group 2 technologies on the incentives obligated addresses this lag in Group 1 implementation. However, basing the Group 2 funding level on obligated incentive levels does not assure that the 75/25 percent split between Group 1 and Group 2 will be met because not all obligated Group 1 projects will ultimately be implemented. Using incentives paid out to determine the Group 2 funding level provides more certainty that the 75/25 percent split will be reached. Use of incentives paid out in a year is also consistent with maintaining the requirement that the 75/25 percent split, as well as the other two constraints, be met on an annual basis. The Commission finds that it is appropriate to base the split between Group 1 and Group 2 technologies on the incentives paid out.

Commissioner Callisto dissents.

5. Which budget amount should be used for the energy efficiency-only comparison when determining whether spending on renewable energy projects will reduce the energy savings of the Focus portfolio of programs by more than 7.5 percent?

The Commission finds it reasonable to use the base budgets for 2013 and 2014 to determine if the 7.5 percent energy savings reduction has been achieved due to the inclusion of renewable energy incentives. This is consistent with the use of the base budget to establish the 7.5 percent reduction constraint.

Commissioner Callisto dissents.

Conclusions of Law

The Commission as authority to issue this Order pursuant to Wis. Stat. §§ 196.374 and 196.40.

Order

1. There is a $10 million Focus cap for renewable energy incentive spending. This cap does not include administrative or program implementation and delivery costs.

2. The Program Administrator shall attempt to allocate $10 million to renewable energy incentives as long as the overall benefit/cost ratio of 2.3 based on the Total Resource Cost

test is maintained; spending on renewable energy incentives does not reduce energy savings by more than 7.5 percent when compared to an efficiency-only-program; and the 75/25 percent funding for Group 1 and Group 2 technologies is maintained.

3. Should the Program Administrator wish to allocate an amount different than the $10 million to renewable energy incentives for any reason other those described in Discussion Point 2, it shall request permission from the Commission to do so.

4. The 75/25 percent split between Group 1 and Group 2 renewable energy technologies shall be maintained on an annual basis.

5. The 75/25 percent split between Group 1 and Group 2 technologies shall be maintained within a range of plus or minus 5 percent.

6. Renewable energy incentives paid out shall be used to determine whether the spending split between Group 1 and Group 2 technologies is being achieved.

7. The base 2013 and 2014 Focus budgets shall be used to determine if inclusion of renewable energy projects has resulted in an energy savings reduction of 7.5 percent or more.

8. The Program Administrator shall not make additional commitments to Group 2 technologies in 2013 unless sufficient Group 1 projects are paid out to allow the 75/25 split to be met consistent with the Commission’s decisions in this Order. The Program Administrator may honor existing Group 2 renewable energy incentive commitments.

9. The Program Administrator shall take steps necessary to ensure that the Commission’s Order of April 26, 2012, as clarified and modified by this Order, is met.

10. Jurisdiction is retained.

Dissent

Commissioner Callisto dissents and writes separately (attached).

Dated at Madison, Wisconsin, this 26th day of September, 2013.

For the Commission:

Sandra J. Paske

Sandra J. Paske
Secretary to the Commission

SJP:JS:jlt:DL:00796409

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN
610 North Whitney Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.[1] The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013

[1] *See State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

PUBLIC SERVICE COMMISSION OF WISCONSIN

Quadrennial Planning Process 5-GF-191

Avoided Energy Cost Forecast Method

DISSENT OF COMMISSIONER ERIC CALLISTO

I dissent from those portions of the Commission's *Order* that necessitate the unplanned stoppage of Focus funding for solar and wind energy technologies. This is the second time in just more than two years that Focus funding for renewable energy projects has been suspended. The last time we stopped funding – a suspension that lasted nearly a year – we had a good reason: there was substantial program overspending that potentially threatened the overall cost-effectiveness of the full Focus portfolio. No similar situation exists today. The Commission's decision creates uncertainty in the renewables marketplace and penalizes entire classes of technologies without any compelling justification.

I specifically take issue with the Commission's decision to require that the 75/25 percent split between Group 1 (biomass, biogas, and geothermal) and Group 2 (solar and wind) incentives be applied annually and based on actual incentive dollars paid out rather than incentive commitments made in a given year.[1] The effect of that decision is that Focus funding for solar and wind will be stopped, no new 2013 solar or wind commitments will be allowed, and 2014 funding for those technologies likely will be curtailed. As of now, the program has awarded just $800,000 in Group 2 incentives for 2013, substantially less than Focus

[1] These are discussion items #3 and #4 on pages 3 and 4 of the *Order*.

contributions to the solar and wind markets in previous years.[2] The Commission's decision also has no upward effect on Group 1 projects, even though that was the Commission's originally stated purpose of the 75/25 split – to weight the program toward Wisconsin's supposed strengths in native energy resources.[3] The fact is, Group 1 Focus funding for 2013 is just $384,448 paid as of this month, a marked decrease from previous years, and by far the lowest Group 1 spend since 2008.[4] If the Commission's 75/25 split was meant to emphasize Wisconsin's biomass and biogas resources, it isn't working, and today's decision won't help.

The Commission's decision to cut off Group 2 funding also has nothing to do with program cost-effectiveness. Compare, for example, today's renewables funding stoppage with when it was last suspended in 2011. Here's what happened then: in the first six months of 2011, the renewables program had spent more than $10 million in incentives, more than 22 percent of the Focus program's overall incentive spending for that year, an amount that surpassed any previous year's 12-month spending total, all the while producing just 3 percent of the program's overall energy savings. The situation led at least one commissioner to conclude that the renewable over-commitments from 2011 "jeopardized the cost-effectiveness of the entire Focus program," which ultimately justified a "temporary suspension" of programs.[5]

Today, we have a very different situation. The program administrator just recently projected an overall benefit-cost ratio of 2.98 for the full Focus portfolio, assuming 2013

[2] Focus funding for Group 2 projects was $8,590,736 in 2010, $9,120,742 in 2011, and $5,442,832 in 2012, according to the latest figures from the program administrator.
[3] *See* Commission Press Release, *PSC Approves Responsible Renewables Plan – Emphasis on Biomass and Biogas a Smart Investment for Wisconsin*, dated April 13, 2012, http://psc.wi.gov/pdffiles/News%20Releases/2012/04%20April/04132012RenewablesPlan.pdf; *see also Order* in this docket, dated April 26, 2012 (PSC REF#: 163778).
[4] Focus funding for Group 1 projects was $236,975 in 2008, $2,453,523 in 2009, $1,020,525 in 2010, $1,577,282 in 2011, and $1,839,947 in 2012, according to the latest figures from the program administrator.
[5] *See* Letter from Division Administrator Robert Norcross, sent on behalf of Commissioner Nowak, dated February 1, 2012 (PSC REF#: 158942).

renewables funding continues as planned.[6] And the Commission's *Order* of April 26, 2012, only required that Focus not dip below a benefit-cost of 2.3 program-wide. So even without halting Group 2 renewables funding in 2013, the program is on track to best the Commission's ordered cost-effectiveness benchmark by nearly 30 percent. Moreover, the renewables share of total Focus incentives in 2013 will likely be about 3 percent, a fraction of any previous year's share since the program began and nowhere near the 22 percent figure that was reached halfway through 2011.[7]

I joined my colleagues in the initial decision over a year ago to modify and place tighter controls on the funding of renewable projects through Focus on Energy. Our goal then was to create market certainty, foster fiscal sustainability and program cost-effectiveness, and ultimately allow the funding of more biogas and biomass projects. The Commission's decision today helps to advance none of those goals, but rather reintroduces substantial uncertainty into the renewables marketplace.

I respectfully dissent.

DL: 00858666

[6] *See* Memorandum from William S. Hass, Program Director, to Carol Stemrich and Jolene Sheil, Commission staff, dated June 20, 2013 (PSC REF#: 189953). Note too that in this memorandum, the program administrator proposed a solution for applying the 75/25 funding split in a way that would have allowed Group 2 funding commitments to continue as planned in 2013 and 2014.

[7] The 3 percent figure is derived from an assumption of a total incentive budget of $70 million and total renewables spend of $2.2 million for 2013.