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Public Service Commission of Wisconsin
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BEFORE THE PUBLIC SERVICE COMMISSION OF WISCONSIN

Proposed Revisions for Wisconsin Administrative Code Chapter PSC 113, for Individual Electric Metering

Docket No. 1-AC-257

COMMENTS OF CLEAN ENERGY ADVOCATES

Introduction

The undersigned organizations (hereafter "Clean Energy Advocates") appreciate the opportunity to provide these comments to the Public Service Commission ("the Commission") on the proposed rule text (PSC REF#: 533022) to revise Wis. Admin. Code § PSC 113.0803, Rules for Individual Electric Metering. We appreciate the Commission's interest in hearing from stakeholders across the state.

Clean Energy Advocates urge the Commission to remove the individual metering requirements entirely (Section I). Individual metering requirements are not required under the Public Utility Regulatory Policies Act of 1978 (PURPA), and, while they may have furthered PURPA's goals in the past--today, they hinder the legislation's goals of energy conservation through energy efficiency and renewable energy installations. The individual metering requirement of§ 113.0803 instead has negative impacts on housing and energy affordability without providing consumer protections beyond those already addressed by other Wisconsin regulations and agencies.

In the alternative, if the Commission chooses to revise § 113.0803, Clean Energy Advocates recommend replacing the existing waiver process with streamlined categorical exemptions and a simplified confirmation process (Section II). These two general changes will meaningfully address the workload burden on the Commission from the increasing waiver and exemption requests. Finally, Section III offers specific recommendations concerning the proposed rule language should the Commission choose to retain the waiver case-by-case review process.

I. Remove the individual metering requirements altogether

Clean Energy Advocates recommend that the Commission remove the individual metering requirements from Wisconsin Administrative Code entirely. Comments provided by 350 Wisconsin[1] explain why §113.0803 is outside of the Commission's statutory authority. We will not reiterate those legal arguments here. Instead, this section will explain why policy considerations also support removal of the individual metering requirements. Namely, an

[1] *See* 350 Wisconsin Comments (PSC REF#: 53774).

individual metering requirement is not needed to meet the requirements and purposes of the Public Utility Regulatory Policies Act of 1978 (PURPA), does not reflect changes in technologies and the energy landscape, is a barrier to energy efficiency and renewable energy adoption and achieving Commission goals, and is not protective of consumers.

A. § 113.0803 is not required under PURPA and does prevents the goals of PURPA

Wis. Admin. Code § PSC 113.0803 was originally promulgated in Wisconsin in response to the Public Utility Regulatory Policies Act of 1978. PURPA was passed in the wake of the 1973 energy crisis to promote energy conservation and domestic energy supply, including renewable energy, as well as to ensure equitable rates (16 U.S. Code § 2611). State regulatory authorities were required to ***consider*** adopting master meter prohibitions, but were not required to actually adopt them: *"Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to adopt any such standard, pursuant to its authority under otherwise applicable State law."* (16 U.S. Code § 2621)

The Wisconsin Public Service Commission promulgated such a prohibition in 1980 and revised the statute in 2002, resulting in the current Wis. Admin. Code § PSC 113.0803. However, neighboring states Minnesota and Michigan, along with other Midwestern states Indiana and Ohio, do not have similar metering requirements. Iowa's metering rule allows for key categorical exemptions. Striking the individual metering requirement in Wisconsin can still achieve the goals of PURPA and, in fact, better align with the spirit of the law.

In addition to promoting energy conservation, Wis. Admin. Code § PSC 113.0803 is intended to ensure each customer is billed only for their own energy consumption, and prevent disconnections to electricity service for paying customers. The second and third goals of § 113.0803 can be accomplished without an individual metering mandate, and can be enhanced by additional consumer protection mechanisms.

In recent years, there has been a steep increase in developers submitting requests for waivers from the Rules for Individual Electric Metering. The Commission, developers, affordable housing providers, and utilities have been spending extensive amounts of time negotiating these issues and processing waivers. This cost is borne by developers and utility customers, as utilities pass the costs of challenging waivers and interconnection for master-metered properties onto ratepayers. Projects seeking to install a master meter vary in size, location, and targeted demographics of tenants. From Madison to Chippewa Falls and Green Bay, there have been proposed hotel conversions (4420-EI-108, 3270-EI-103, 3270-EI-107), projects by non-profit community action agencies (4220-EI-109, 4220-EI-113), affordable housing projects (3270-EI-105, 4220-EI-109, 4220-EI-113), owner occupied buildings (3270-EI-104, 6630-EI-119), and LEED certified market rate apartments (6630-EI-117). Wis. Admin. Code § PSC 113.0803 has created a bureaucratic and costly process, has hampered the adoption of new technologies and the energy conservation goals of the Commission, and does not achieve

the purported goals of the rule. In subsequent sections, Clean Energy Advocates will discuss why an individual metering requirement limits Commission goals of energy conservation, energy efficiency, and consumer protections as technologies and the energy landscape have evolved since PURPA was enacted in 1978 and also since the Commission last updated Wis. Admin. Code § PSC 113.0803 in 2002.

B. New technologies and changing energy landscape merit the elimination of individual metering requirements.

Technological advances

Wis. Admin. Code § PSC 113.0803 prohibits a waiver for multifamily buildings that are electrically heated or have individual unit electric water heaters (specified as "[e]xample cases" in § 113.0803(5)). However, this "example cases" language was developed in the early 2000s when electric heating meant highly inefficient electric resistance heating systems. Now, significantly more efficient electric heating appliances (i.e. air source heat pumps (ASHP)) are commercially available. In fact, heat pumps are twice as efficient as electric resistance heating.[2] The availability of such efficient electric technology eases the concerns that prompted the promulgation of this rule.

The Wis. Adim Code § PSC 113.0803 rule also predates the widespread adoption of an important technology and electricity resource in today's energy landscape – solar PV. Solar PV installations on multifamily buildings achieve both the energy conservation objective of PURPA and the domestic energy supply objective of PURPA, which explicitly includes renewable energy. A number of waiver requests in recent years have been driven by the desire to include both solar PV and efficient electric appliances (e.g. 4220-EI-109, 4220-EI-113, 3270-EI-104, 6630-EI-119, 4420-EI-110, 4220-EI-108, 6690-EI-112). One example is Energy Concepts' project that included 349 kW of solar panels and a Variable Refrigerant Flow (VRF) heat pump system (PSC REF#: 472521), an advanced electric heating system even more efficient than ASHP.[3] All components of this project meet the goals of PURPA and § 113.0803, yet Energy Concepts was denied a waiver.

Metering each individual unit complicates the billing and integration of solar PV and centralized electric HVAC systems. A building with a master meter is easily able to apply all on-site generated electricity to the building's electric load. In contrast, physically splitting the solar energy generation among units is cost-prohibitive,[4] and seeking to apply credits retroactively is

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[2] U.S. Department of Energy. *Electric Resistance Heating.* https://www.energy.gov/energysaver/electric-resistance-heating

[3] Seo, B., Yoon, Y.B., Ho Yu, B., Soolyeon, C. and Lee, K.H. 2020. "Comparative analysis of cooling energy performance between water-cooled VRF and conventional AHU systems in a commercial building." *Applied Thermal Engineering*. 170: 114992. https://doi.org/10.1016/j.applthermaleng.2020.114992

[4] In 2024, Elevate installed solar, weatherization and heat pumps on a six-unit townhouse complex in South Central Wisconsin. The solar install (including wiring for heat pumps) increased from the original quote at $395,597 to

often inefficient because electricity demand can vary significantly between units. It is simpler and more cost-effective to serve the whole building with solar electricity which allows for balancing between units over time.

Energy conservation can be better achieved by the installation of more efficient technologies than by changing consumer decisions through price responsiveness of a monthly electric bill. The Commission, in its 1979 order, noted inconclusive results in studies concerning energy conservation and individually-metered residential customers.[5] More recent research indicates that simply the presence of a meter can yield 0-2% initial energy savings, but even these meager savings will not persist over time.[6] This may be because 1) electricity meters are not granular enough to provide feedback to incentivize consumer behavior changes,[7] and 2) consumer behavior is complex and rarely follows traditional economic theories, or as one study put it - consumers are "predictably irrational".[8,9] Moreover, multifamily properties are among the most energy efficient residential buildings, but are the sole focus of § 113.0803 resulting in unintended consequences (e.g. higher rents, higher electricity bills/energy insecurity, less access to solar PV net metering, etc.). For example, buildings with 5 units or more use less energy per unit than all other home types.[10] Energy conservation goals in Wisconsin would be better achieved with more residential multifamily buildings developed to integrate highly efficient energy appliances and new efficient technologies.

As heat pumps, solar PV, and other electrical technologies are continuing to evolve, it would be best to remove the individual metering requirement altogether. Wis. Admin Code § PSC 113.0803 has already been revised once and technological advances merit revisions once

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$525,256, or an increase of more than 30%. This is emblematic of the installation cost increases required by additional inverters, meters, wiring and electrical work for individually metered multifamily residential projects. The utility bill modeling for the project showed that the individually metered system for these tenants could cost tenants approximately $749/year in lost energy bill savings. These real-world cases demonstrate the installation and ongoing energy bill costs associated with individually metered buildings.

[5] Wis. Admin. Reg. No. 292B Ch. PSC 113 (Mar 17 1980). https://docs.legis.wisconsin.gov/code/register/1980/292b/rules/psc_113.pdf

[6] *See* Table 3.2. Pacific Northwest National Laboratory. 2011. "Metering Best Practices Release 2.0." *U.S. Department of Energy.* https://betterbuildingssolutioncenter.energy.gov/sites/default/files/tools/MeteringBestPractices.pdf

[7] Fischer, C. 2008. "Feedback on household electricity consumption: a tool for saving energy?" *Energy Efficiency* 1:79-104. https://doi.org/10.1007/s12053-008-9009-7

[8] Fredericks, E.R., Stenner, K., and Hobman, E.V. 2014. "Household energy use: Applying behavioral economics to understand consumer decision-making and behavior." *Renewable and Sustainable Energy* 41:1385-1394. https://doi.org/10.1016/j.rser.2014.09.026 (internal citations omitted).

[9] Besides, if the Commission wanted to incentivize consumer behavior through price responsiveness of monthly electricity bills, then Budget Billing or Fixed Amount Bill programs should never have been authorized. (*see* e.g. Alliant Energy. "Fixed Amount Bill (Wisconsin)." https://www.alliantenergy.com/account-and-billing/payment-options/fixed-amount-bill and Madison Gas and Electric. "Budget Payment Plan." https://www.mge.com/my-account/payment-billing/budget-payment-plan-info). These programs blur the supposed price signal of electricity and are in direct conflict with the purported main purpose of § 113.0803, energy conservation.

[10] Energy Information Agency. 2013. "Apartments in buildings with 5 or more units use less energy than other home types." https://www.eia.gov/todayinenergy/detail.php?id=11731#

again. While the proposed rule language does attempt to broaden exceptions and waiver circumstances to update the rule, that is not a guarantee that it will not become outdated once again. Rather, it is time for the Commission to revisit the initial purpose of the rule and determine whether maintaining that rule continues to serve that purpose.

Changing energy landscape and policy priorities

Since the 1970s, significant changes in the energy landscape have transformed the electric industry, most recently the precipitous drop in renewable energy costs and the increasing urgency of addressing greenhouse gas emissions and climate change. Nevertheless, resource adequacy and ensuring the lights stay on remains a priority. Striking § 113.0803 will foster more innovative multifamily building developments that incorporate renewable energy systems and efficient HVAC systems and other electric appliances that help achieve reliable electricity and lower electric bills for ratepayers in Wisconsin. Streamlining the regulations will reduce red tape, while providing clarity for property owners and developers and will yield greater market predictability and stability and drive investment in energy saving technology on residential buildings.

Behind-the-meter renewable energy projects and other energy efficiency programs (e.g. weatherization, LED lighting, smart thermostats) reduce the peak load that Wisconsin utilities must be able to serve to ensure reliability. Thus, they also reduce or delay the need for the energy infrastructure buildout and subsequently lower costs to ratepayers. While beneficial electrification (like electric heating) will gradually increase electricity demand, especially in the winter, these technologies can also provide capacity and flexibility through demand response programs (run by the utility or a third-party aggregator). As MISO, the Commission, and other parties work to implement FERC Order 2222, the electric appliances and behind-the-meter generation will support a reliable and resilient electric grid. Essentially, more rooftop solar and highly efficient HVAC systems and other electric appliances help meet all three priorities the Commission must balance: affordability, sustainability, and reliability.

Furthermore, the focus on concerns about energy emissions and climate change has intensified. The Commission has indicated an interest in promoting decarbonization via beneficial electrification efforts. The Commission found it reasonable to use the Focus on Energy Quadrennial IV as a transition period to explore a larger role in promoting beneficial electrification statewide (PSC REF#: 453081). Installation of renewable energy systems, however, has been a component of Focus on Energy since its conception in 1999.[11] The Solar for All grant was awarded to the Wisconsin Economic Development Corporation ("WEDC") after submission of a competitive grant application collaborated on by state agencies and non-profits. § 113.0803 is a barrier to the implementation of the Solar for All program and its objectives –

[11] *See* 1999 Wisconsin Act 9, A.B. 133 § 16.957(2b) (1999).

deployment of solar systems for low- and moderate-income households across Wisconsin.[12] Increasing the deployment of renewable energy and highly efficient electric appliances meets reliability, resource adequacy, affordability, and decarbonization priorities. These can better be met without the barriers created by Wis. Admin. Code § PSC 113.0803, which blocks the same outcomes that Focus on Energy and Solar For All are actively pursuing.

C. The negative impacts of an individual metering requirements outweigh any purported benefit.

Housing availability, energy burden, and affordability

Wisconsin is experiencing a significant housing shortage, driven in part by the inability to build more homes and apartments. A recent analysis estimated that 200,000 more housing units need to be built by 2030 to accommodate those that want to live and work in the state.[13] The shortage has driven up rents and home prices,[14] affecting housing affordability for all residents but especially low-income Wisconsinites. Developers seeking waivers from the individual metering requirement have submitted projects that are affordable (3270-EI-105, 4220-EI-109, 4220-EI-113) and naturally occurring affordable housing (4420-EI-108, 3270-EI-103, 3270-EI-107). ("Naturally occurring affordable housing" refers to unsubsidized rentals that are affordable because of low market values.) These projects address the housing shortage by simply adding more units, but they also specifically add much needed affordable and naturally occurring affordable housing in Madison, Eau Claire, Chippewa Falls, La Crosse, and other places across the state.

An individual electric metering requirement drives up the cost of construction by mandating the installation of physical meters in each dwelling unit of a building. Multiple projects seeking a waiver are hotel to apartment conversions, which are specifically aimed at increasing affordable or naturally occurring affordable housing units. Hotel conversions are less expensive and faster than new construction, enabling lower rents. However, installing individual meters in these projects requires opening up the walls, that would likely otherwise be untouched, to run wiring and then perform drywall or sheetrock repair. One retrofit project's application, named Sandburg Studios, noted that individual meters in each of the 130 units would increase costs by more than $1.6 million, a 35% increase (PSC REF#: 486821).

Higher construction costs are passed on to tenants, and result in higher rent prices. The aforementioned Sandberg Studios disclosed that the 35% project cost increase would result in a

[12] The Solar for All program requires utility bill savings of at least 20% for each family. Wis. Admin Code § PSC 113.0803 requirements for individual metering actually would make it very hard to achieve the 20% utility bill savings. Striking the rule, or allowing for clear categorical exemptions would facilitate Wisconsin's ability to meet the contract requirements of the Solar for All award.
[13] Forward Analytics. 2023. "A Housing Hurdle: Demographics Drive Need for More Housing." https://www.forward-analytics.net/wp-content/uploads/2023/01/A-Housing-Hurdle-Report.pdf
[14] Deller, Steven. 2033. "Wisconsin's Housing Dilemma." *Community Economic Development UW Extension.* https://economicdevelopment.extension.wisc.edu/2023/06/20/wisconsins-housing-dilemma/

12% increase in monthly rent – from $1,050.00 to $1,172. As stated above, more housing, especially affordable housing and naturally occurring affordable housing, is needed in communities across Wisconsin. Any rule that holds back such housing from being built should be re-examined.

In addition to higher rents, tenants have higher energy bills with individual meters, all else being equal. Fixed fees are a component of utility rate structures, but they are regressive and especially burden low-income Wisconsin residents who have high energy burdens. The fixed fee component of an electricity bill for a tenant can be hundreds of dollars annually,[15] and can be the same for both a market rate unit and an affordable housing unit. For example, Couleecap anticipated the monthly cost of electricity service for each unit in their Haven on Main affordable housing project to be $3.58 with a master metering arrangement. In comparison, with individual meters each tenant will pay at least $15 per month in fixed fees in addition to the billed electricity consumption (PSC REF #: 523545). (To note, the utility will reap $1,125 per month and $13,500 per year in just fixed fees for this single 75 unit building under individual metering.) In buildings with a single master meter, there would be only one fixed fee charge that would be covered by the building landlord or shared across all units.

In summary, the individual metering requirements increase rents and energy bills. Indirectly, it also increases costs to ratepayers and taxpayers by costing unnecessary time for negotiation, should building developers seek waivers. While § 113.0803 is intended in part to protect consumers, it is not protecting Wisconsin residents and consumers from unaffordable housing and energy bills.

The "split incentive" for multifamily energy efficiency and renewable energy installations

These comments have already addressed the benefits of rooftop solar and energy-efficiency investments, however, multifamily buildings face particular barriers to install those technologies--namely the "split incentive:" In individually-metered buildings, building owners must pay the upfront costs of solar PV and efficient technologies, while tenants receive the benefits of reduced energy bills. This arrangement reduces the incentive for owners to install these technologies. The ambiguities in the current electric metering code and the rejection of multiple waiver requests have resulted in installations of fewer and smaller behind-the-meter solar projects and highly efficient HVAC and other electric technologies. The removal of an individual metering mandate can reduce the split incentive and facilitate further adoption of distributed renewable energy and efficient technologies on multifamily buildings.

Unnecessary complexity and cost on local governments, the Commission, developers, and ratepayers

[15] *See* Xcel Energy. 2025. "Wisconsin Residential Service Rates." https://xcelnew.my.salesforce.com/sfc/p/#1U0000011ttV/a/R3000000rjAP/M3SyvUbgL4WaMMEUsQxPtwZ9mlpWrGv.yrWkX1rcxTg

An individual metering requirement adds unnecessary complexity to housing development and workload on local governments, developers, and Commission staff. Even the process to verify that a project meets one of the § 113.0803 exceptions is time and labor intensive for multiple parties. There have been projects seeking a waiver where an exception applied (6690-EI-116, 4420-EI-112) but the utility claimed that only the Commission can make that determination. So the developer, the utility, and Commission staff spent hours on the waiver docket. With the large number of Commission cases (which is not expected to slow given load growth and clean energy goals) and other Commission staff work, an increasing number of developers seeking exemptions and waivers would be an unworkable situation for Commission staff. And, as noted by 350 Wisconsin in their comment (PSC REF#: 537774), the costs of this effort is borne by utility customers and developers. Utilities pass the costs of challenging waivers and interconnection for master-metered properties onto ratepayers. Similarly, the existing waiver process can be complicated for local governments to track, leading to confusion and delays in permitting. Simply removing an individual metering requirement removes the unnecessary burden on developers, Commission staff, and local governments.

Clean Energy Advocates want to note the financial incentives that utilities have in retaining the status quo of the individual metering requirements and waiver processes. As previously mentioned, their time and efforts are paid by ratepayers. And utilities collect thousands of dollars from the fixed fee costs for a single multifamily building. We have already noted the $13,500 per year that the utility will earn from the Haven on Main project. As another example, the Vivo hotel conversion into 153 units will reap $27,500 per year in fixed fees across the building ($2,295 per month).

D. An individual metering mandate does not protect consumers

In comments submitted in this rulemaking docket, Wisconsin utilities have raised consumer protection concerns that tenants will be taken advantage of by building owners and landlords and will therefore be susceptible to utility shutoffs and exorbitant rates without this rule (PSC REF#: 515048). It is fairly common in Wisconsin, however, for gas boilers, furnaces, and water heaters to be billed on a master meter for an apartment building and paid for by the landlord. There are also existing multifamily buildings (like those built before 1980 exempt from § 113.0803) that have a single electric meter. These existing shared meter situations minimize the utility's consumer protections concerns. In practice, property owners almost never fail to pay their utility bills, meaning there is little risk that an entire apartment building would lose access to electric or gas service. The Commission also regulates gas and water rates, yet there is no similar individual metering requirements,[16] demonstrating that the supposed risks of master electrical meters are unfounded. Furthermore, the relationship between the tenant and landlord is regulated by Wisconsin law and under the purview of the Wisconsin Department of Agriculture,

[16] For gas service regulations *See* Wis. Admin. Code § PSC 133.02 (8). For water service regulations *See* Wis. Admin. Code § PSC 185.12 (11m).

Trade and Consumer Protection (DATCP).[17] Specifically, DATCP allows for master metering and different apportionment of utility bills if made transparent to the renter: "*UTILITY CHARGES. If charges for water, heat or electricity are not included in the rent, the landlord shall disclose this fact to the tenant before entering into a rental agreement or accepting any earnest money or security deposit from the prospective tenant. If individual dwelling units and common areas are not separately metered, and if the charges are not included in the rent, the landlord shall disclose the basis on which charges for utility services will be allocated among individual dwelling units*."[18] The Commission also regulates disconnections of residential service, regardless of the type of utility service (single or individually metered).[19] These other regulations by the Commission and DATCP are foundational to protecting consumers, unlike the individual electric metering requirements which are an unequal treatment of electric metering compared to regulations of gas and water metering.

Additionally, in comments on the proposed rule changes, utilities have commented that tenants living in buildings with a shared meter will not be able to participate in state energy assistance programs such as the Wisconsin Home Energy Assistance Program (WHEAP) (e.g.), but this is not true.[20] WHEAP is a program that is partially funded by the federal Low Income Energy Assistance Program (LIHEAP), which addresses heat burden, and the state's Public Benefits program, which addresses electric burden. To make the burden determinations, WHEAP requires that applicants submit a bill showing utility or proxy costs, but does not require that they have an individual meter. In fact, the WHEAP manual indicates that tenants whose landlord pays electric or heating bills can still receive individual checks through this program stating "responsibility for energy, heat and/or electricity, in the household can be demonstrated in a number of ways including [...] Having the cost of the energy (heat and/or electricity) included in the rent."[21]

Consumer protections clauses recommended to replace an individual metering requirement

Given the reasons stated, the Commission should completely remove the Rules for Individual Electric Metering from Wisconsin code. If consumer protection concerns with shared meters remain, the Commission could instead draft rules that address consumer protections for shared meters and submetering within the bounds of their authority. For example, Clean Energy Advocates recommend the Commission review relevant sections of Minnesota and Indiana's

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[17] Wis. Admin Code § ATCP 134. Residential Rental Practices. https://docs.legis.wisconsin.gov/code/admin_code/atcp/090/134/05/4/a
[18] Wis. Admin Code § ATCP 134.04 (3). Utility Charges. https://docs.legis.wisconsin.gov/code/admin_code/atcp/090/134/04/3
[19] Wis. Admin Code § PSC 113.0301. Disconnections, residential. https://docs.legis.wisconsin.gov/code/admin_code/psc/113/iii/0301
[20] *See* PSC REF#: 515048 and PSC REF#: 515056
[21] *See page 25* Wisconsin Department of Administration and Wisconsin Division of Energy, Housing and Community Resources (DEHCR). 2023. "Wisconsin Home Energy Assistance Program (WHEAP) Manual." https://energyandhousing.wi.gov/PublishingImages/Pages/AgencyResources/energy-assistance/Program%20Year%202024%20WHEAP%20Manual.pdf

regulations. Minnesota's regulations include clauses about what submetering information should be included on tenant bills, how utility charges for tenants should be calculated, and how bill disputes should be resolved.[22] Minnesota's rules also include a clause concerning situations where a landlord defaults on utility payments.[23] In these situations, the rule allows for a tenant or group of tenants to pay to have utility service continue. Indiana's regulations allow submetering equipment to fairly allocate and charge the tenant based on their consumption.[24]

II. Replace the waiver process with categorical exemptions with a streamlined process

Should the Commission choose to revise the rule Wis. Admin. Code § PSC 113.0803 instead of striking it, Clean Energy Advocates recommend that the waiver process be replaced by an expansion of categorical exemptions with a specified and streamlined process.

A. Specify and streamline the process of acquiring an exemption from § 113.0803 through a Commission hosted form.

The waiver process, and even the exemptions process, is burdensome, time-intensive, and costly for developers, the Commission, and ratepayers. Utilities claim only the Commission can determine projects meet a stated exemption in Wis. Admin. Code § PSC 113.0803, resulting in waiver applications and docket proceeding unnecessarily.[25] Both the waiver process and exemption verification place the burden of proof on developers, and are very resource intensive for all parties. This rule should facilitate a streamlined process that reduces red tape, and provides predictable outcomes for utilities, developers, and other stakeholders.

We urge the Commission to delineate a clear and predictable process that allows a developer or property owner to quickly confirm whether their building would qualify for an exemption. This process should be simple and include expedient timelines. For example, we recommend that the exemptions included in the subsequent table be posted on a simple "exemption confirmation" page on the Commission website. Through an affidavit and uploading appropriate forms and documents, the developer can demonstrate to the Commission that they meet the exemption. Other parties should have a discreet deadline to challenge the exemption, and the exemption should be deemed affirmed unless the Commission takes other action within a specified timeframe, which we recommend 30 days. A process like this could help reduce the volume of exemptions and waivers the Commission must investigate on a case-by-case basis.

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[22] Minn. Admin Code § 504B.216 https://www.revisor.mn.gov/statutes/cite/504B.216 and Minn. Admin Code § 216B.022 - 216B.024 https://www.revisor.mn.gov/statutes/cite/216B

[23] Minn. Admin Code § 504B.216 Subsection 13 Procedure where landlord defaults on payments to the utility. https://www.revisor.mn.gov/statutes/cite/504B.216

[24] Ind. Code §8-1-2-36.5 Installation of Submetering Equipment for Individual Units; Adoptive Rules. https://law.justia.com/codes/indiana/title-8/article-1/chapter-2/section-8-1-2-36-5/

[25] *See* 4420-EI-112

B. Remove waiver examples and replace them with categorical exemptions.

Clean Energy Advocates recommend the Commission replace waiver conditions with categorical exemptions in § 113.0803 (4). We recommend some additional exemption categories and that the proposed added and amended waiver provisions in the Draft Order Adopting Proposed Rules all become categorical exclusions to the Individual Metering Requirements (PSC REF#: 533022). In addition to the existing exemptions listed in § 113.0803, Clean Energy Advocates recommend the Commission add the following exemptions to § 113.0803 (4). Proposed language and justifications will be provided in the subsequent table.

- Electric equipment under tenant control meets high efficiency standards
- Electric equipment under tenant control is minimal
- The building meets high efficiency standards
- Property has or concrete plans to install renewable energy equipment
- Property is income restricted (Tax-Credit)
- Property is naturally occurring affordable housing (below market rate)
- Property is an adaptive reuse (i.e. hotel or office building conversion)
- Transient dwelling unit exemption for existing buildings

Exemption type	**Proposed Language by Clean Energy Advocates**	**Justification**
Electric equipment under tenant control meets high efficiency standards.	"Electric equipment under tenant control meets established high efficiency standards consistent with Focus on Energy efficiency programs and federal standards."	We support the proposed separation of minimal electric usage under tenant control and energy efficient electric equipment, and consider these sufficient to be exemptions to § 113.0803. We recommend the rule references state and federal standards to give more concrete guidance to developers.
Electric equipment under tenant control is minimal.	"If the overall electric usage under tenant control is minimal, the calculation of which can account for usage offset by on-site renewables. One example of buildings that could qualify as minimal usage is multi-dwelling	The calculation of minimal electric usage should account for usage offset by on-site renewables. We support the recommended example of a unit's energy use of

	unit residential buildings where the average electric energy use per unit is projected to be less than half of average monthly residential use per customer in Wisconsin based on the previous five-year average of US Energy Information Administration or Wisconsin Energy Statistics data. Another example is if the multi-dwelling unit residential building has centralized heating, cooling, water-heating, or ventilation systems."	half of the average monthly residential use per customer in Wisconsin. We suggest the example also refer to Wisconsin Energy Statistics. We propose adding another example that references centralized heating, cooling, water-heating, or ventilation systems, which could be more straightforward for building developers to demonstrate.
The building meets high energy efficiency standards.	"New construction buildings that achieve certifications listed in the current WI Qualified Allocation Plan (QAP). Should no such appendix or standards exist in the current QAP, new construction buildings that achieve the following certifications are exempt: · Enterprise Green Communities Criteria · LEED Silver Certification · Wisconsin Green Built Communities Gold Certification · Passive House Institute US PHIUS Core Existing residential properties or adaptive reuse of nonresidential buildings that achieve the following certifications are exempt: · Enterprise Green Communities for Moderate & Substantial Rehab · Wisconsin Green Built Homes Gold Certification · Passive House Institute US – PHIUS Core Revive."	Adopting building wide energy efficiency standards would help provide additional clarity for developers. We reference certifications and standards adopted in the WI 2025-2026 Qualified Allocation Plan Appendix W: Energy Efficiency and Sustainability by the WI Housing and Economic Development Authority (WHEDA). Adoption of these standards would help harmonize treatment and rules for multifamily (low-income tax credit) properties.

Property has or has concrete plans to install renewable energy equipment. OR Property has or has concrete plans to install renewable energy equipment that reduces building energy use.	"The multi-dwelling unit residential building has renewable energy equipment or the developer has concrete plans to install renewable energy equipment." OR "Multi-dwelling unit residential buildings that meet one of these categories: 1) Geothermal HVAC System serving the entire building. 2) Solar that offsets 20% or more of the total building's annual energy load OR solar that offsets 70%-80% of the common area annual load. 3) Centralized Geothermal HVAC System with Solar that offsets at least 20% of the annual energy load."	Renewable energy installations are expensive and complicated. Building owners and landlords are unlikely to install solar PV to meet only a small amount of electricity demand. We recommend this broader language for additional flexibility to increase behind-the-meter renewable installations in Wisconsin. However, we recognize that the Commission may prefer to provide guidance on what renewable energy project installations would merit an exemption. We reference standards adopted in the WI 2025-2026 Qualified Allocation Plan Appendix W: Energy Efficiency and Sustainability by the WI Housing and Economic Development Authority (WHEDA). Adoption of these standards would help harmonize treatment and rules for multifamily (low-income tax credit) properties.
Property is income restricted (Tax-Credit).	"Properties that are Low-Income Housing Tax Credit (LIHTC) or have other regulatory agreements with state or federal agencies or authorities to provide affordable housing for qualified low-income customers."	

Property is naturally occurring affordable housing (below market rate).	"Property is located in a census property tract where 50% of the residents are 80% or below AMI."	Naturally Occurring Affordable Housing, or NOAH, refers to unsubsidized rental that is affordable because of low market values. According to Harvard's Joint Center for Housing Studies, 75% of affordable rental units across the country do not receive any government subsidy. These unassisted rental buildings generally have lower rents because they are located in lower cost markets.
Property is an adaptive reuse (i.e. hotel or office building conversion).	"Property is an adaptive reuse. Example cases are a hotel or office building conversion to a multi-dwelling unit residential building." OR Strike § 113.0803 (3)	Adaptive reuse supports increasing housing supply on a shorter timescale, including naturally occurring affordable housing, in downtowns and other prime locations. An adaptive reuse exemption may preclude the need for § 113.0803 (3), so one way to achieve that exemption could be to simply remove the individual metering requirements on existing buildings undergoing a change in occupancy or substantial remodeling.
Transient dwelling unit exemption for existing buildings	"Transient multi-dwelling buildings and mobile home parks: for example, hotels, motels, campgrounds, hospitals, community-based residential facilities, residential care apartment complexes or similar facilities, nursing homes, college	The dwelling unit exclusion of transient multi-dwelling buildings that applies to new buildings was still not extended to existing buildings. Simply removing § 113.0803 (3) would also amend this issue.

	dormitories, fraternities, and sororities." OR Strike § 113.0803 (3)	

Clean Energy Advocates are unconcerned about a developer being granted an exception and sometime later the multifamily building changes ownership, and perhaps with it the circumstances for an exception (such as a non-profit run affordable housing building being sold to a developer that rented out the units at market rate). For the reasons elaborated in Section I, we are unconvinced that this situation would increase the new tenants' risk of disconnections and landlord abuses. There are already numerous multifamily buildings in Wisconsin with a single meter (like those built before 1980). For those buildings, DATCP's regulations of the tenant/landlord relationship and the Commission's residential service rules are protective.

III. As proposed, the rule language is ambiguous and does not resolve the waiver and exemption process issues.

The following comments will focus on specific language and standards included in the proposed rules the Commission adopted (PSC REF#: 533022). The Commission has noted the increasing volume of waiver requests that have been submitted, in part prompting the rule revision. Addressing ambiguities in the proposed rule language and streamlining the exemption process will be key to reducing workload around these requests, should the Commission choose not to revoke the rule. Even if the Commission chooses to retain the waiver case-by-case review process, we urge the Commission to also delineate a clear and predictable process to confirm an exemption. Our recommendations on this system as described in the previous section still stand (expedient timelines, exemption confirmation page on the Commission website, discreet deadline to challenge the exemption, etc.). A clean and well defined process will meaningfully reduce the volume of exemptions and waivers presented to the Commission on a case-by-case basis. Today in practice, there is essentially no difference between seeking an exemption and a waiver of Wis. Admin. Code § PSC 113.0803, both of which require extensive time and resources of Commission staff.

New broad exemptions to existing buildings § 113.0803 (3)

We have concerns that there are multiple interpretations to this added exemption that will result in waiver request submissions for Commission clarity, even for projects that do clearly meet the intended exemption. Our recommendations to expand and streamline the process of categorical exemptions (Section II) address both the process issues and encapsulate multiple areas where master metering will exceed the long-term benefits of individual metering (e.g. affordable housing, renewable energy installations, adaptive reuse, etc). Specifically:

- "Long-term benefits" is ambiguous language: How will that be measured? What is included in benefits? How long is long-term? Who is the benefactor (tenant, building owner, society at large)? Given the ambiguity, developers will still need to seek Commission guidance on if their project meets the standard.
- As there is no definition of "substantial remodel" in Wisconsin code, there is still ambiguity for developers on what types of building updates this rule applies to.

We also note that the exclusion of transient multi-dwelling buildings that applies to new buildings was not extended to existing buildings. Because of this, at least one project in the past has not been exempted, despite the fact that an exception would have applied if it was new construction (6630-EI-114 for National Soldiers Home). This discrepancy remains and could be a limitation again (e.g., a hotel remodeled into a college dorm). We recommend that the transient multi-dwelling buildings and mobile home parks exemption be added for existing buildings undergoing a change in occupancy or a substantial remodel. It appears that Commission staff have been delegated authority to grant waivers for substantially remodeled buildings in which § 113.0803 would not apply if it was new construction.[26] However, this is not clear to developers, utilities, and other stakeholders and should be formalized in regulation.

Clean Energy Advocates also recommend adding an exemption for existing buildings that are undergoing adaptive reuse, or converting already existing buildings into housing. Office building and hotel conversions can support an increase in naturally occurring affordable housing in downtowns and other prime locations.

New exception for smaller buildings with installed renewable energy § 113.0803 (4) (cm)

We recommend that the exception be broadened for any residential building that installs renewable energy resources, removing the unit threshold and the 70% energy offset requirement. We propose: "The multi-dwelling unit residential building has renewable energy equipment or the developer has concrete plans to install renewable energy equipment." This simplification supports an improved exemption process - the developer would not need to go through the exemption/waiver application process to prove that the facility meets the offset requirement.

- The 10-unit threshold is a newly introduced concept that is not supported by a convincing rationale. If a smaller number of units more easily achieves a required offset amount (as argued in the Commission memo), then creating another waiver constraint is unnecessary.
- While 70% is not ambiguous (like "substantial" is), it is arbitrary. We are unconvinced that the 70% offset requirement is needed. Renewable energy installations are expensive and complicated. Building owners and landlords are unlikely to install solar PV to meet only a small amount of electricity demand. In

[26] *See* PSC REF#: 532910 at 29

Section I, we elaborate on how renewable energy installations support a reliable and resilient electric grid and help meet all three priorities the Commission must balance: affordability, sustainability, and reliability. Constraining the installations of renewable energy, particularly on larger unit buildings with a high energy offset requirement is a disservice to Commission goals.

Alternatively, if the Commission prefers to provide specific guidance on what renewable energy project installations would merit an exemption, we recommend they refer to existing Wisconsin language. We propose "Multi-dwelling unit residential buildings that meet one of these categories: 1) Geothermal HVAC System serving the entire building. 2) Solar that offsets 20% or more of the total building's annual energy load OR solar that offsets 70%-80% of the common area annual load. 3) Centralized Geothermal HVAC System with Solar that offsets at least 20% of the annual energy load." These are the standards adopted in the WI 2025-2026 Qualified Allocation Plan Appendix W: Energy Efficiency and Sustainability by the WI Housing and Economic Development Authority (WHEDA). Adoption of these standards would help harmonize treatment and rules for multifamily (low-income tax credit) properties.

Efficient electric equipment standards waiver § 113.0803 (5) (a)

Overall, Clean Energy Advocates strongly support the proposed separation of minimal electric usage under tenant control and energy efficient electric equipment. As noted in Section II, we think both of these should be part of the expanded exemptions. We also find the proposed language too vague to give sufficient guidance to developers. As written, it sounds like the code is referring to something specific.

- We recommend that the rule broadly reference state and federal standards: "meets established high efficiency standards consistent with Focus on Energy efficiency programs and federal standards."

Electric equipment under tenant control minimal § 113.0803 (5) (b)

Clean Energy Advocates recommend the Commission specify that the calculation of minimal electric usage can account for offsets by on-site renewables. Ignoring how on-site renewables reduce the amount of utility supplied electricity goes against the energy conservation stated purposes of PURPA and § 113.0803. This is particularly relevant if the Commission chooses not to adopt our suggestions regarding renewable energy as an exception or *113.0803 (4) (cm)* above edits.

- We recommend the stated example also refer to Wisconsin Energy Statistics, in addition to US EIA.
- We recommend that another example is added that references centralized heating, cooling, water-heating, or ventilation systems. This would be more straightforward

for building developers to demonstrate. We also have concerns that listing just one example could be interpreted as a requirement.

Affordable housing waiver § 113.0803 (5) (c)

Clean Energy Advocates supports the addition of an exemption (or waiver) for low-income multifamily buildings. We think this helps address our, and other's, concerns that the § 113.0803 is impeding housing affordability goals. We propose a simplification of language that will facilitate a less onerous process to verify that the "property is income restricted" with the example of the Low-Income Housing Tax Credit Program remaining listed.

- We also recommend that the Solar for All grant also be listed as an example of a state or federal agreement that would qualify a multifamily building for this waiver option. Solar for All funding is contingent on the project delivering household savings of at least 20% of past electric bills.
- We have similar concerns as above about the ambiguity of the phrase "long-term" in reference to regulatory agreements and resident cost savings. We recommend the removal of "long-term" in reference to regulatory agreements and entirely remove the standard of "long-term resident cost savings."

Prohibition on submetering § 113.0803 (6)

Clean Energy Advocates recommend the Commission remove this prohibition. An interpretation of Wis. Stat. § 196.378 (1)(d) already prohibits landlords from submetering. If so, then this prohibition is excessive and unnecessary. However, this is an active legal question. If submetering is not prevented by § 196.378 (1)(d), then Clean Energy Advocates recommend the Commission review consumer protection clauses similar to Minnesota and Indiana (elaborated on in Section I) and adopt regulations, within its authority, to address consumer protection concerns.

Conclusion

Clean Energy Advocates urge the Commission to remove the individual metering requirements entirely. We have demonstrated that this type of requirement is not required under PURPA, and in fact hinders PURPA's goals of energy conservation through energy efficiency and renewable energy deployment. Wisconsin tenants do not need individual meters for consumer protection purposes as they are adequately provided for under DATCP regulations and other Commission regulations and still have access to energy assistance programs.

If the Commission chooses to retain individual metering requirements, we urge the Commission to replace the existing waiver process with streamlined categorical exemptions and a simplified application for exemptions. The current processes to obtain a waiver, and even an exception, to Wis. Admin. Code § PSC 113.0803 is burdensome, time-intensive, and costly for

developers, the Commission, and ratepayers. Expanding categorical exemptions, removing the waiver case-by-case evaluation, and delineating a clear and predictable process to confirm if a project qualifies for an exemption will meaningfully address the workload burden on the Commission from the increasing volume of waiver and exemption requests.

Finally, should the Commission choose to retain the waiver case-by-case review process, we recommend adoption of our edits and recommendations as described above. A process change in how exemptions are verified is also needed to rectify the burden on Commission staff amid the increasing numbers of projects seeking waivers and/or exemptions from Wis. Admin. Code § PSC 113.0803.

Respectfully Submitted,

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