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## WISCONSIN LEGISLATIVE COUNCIL LEGAL MEMORANDUM

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### Utility Shared Revenue Payments to Municipalities and Counties (2003 Wisconsin Act 31)

2003 Wisconsin Act 31 modifies the state's utility shared revenue payments to local governments for decommissioned, new, and repowered electric generating "production plants" (or power plants) located within the boundaries of the local government, starting with the payments in July 2005. According to Representative Mark Gottlieb, one of the authors of 2003 Assembly Bill 378, which became Act 31, the purpose of this Act is to provide incentives for local governments to host new or expanded power plants.

The Act was passed by the Legislature on June 24, 2003 and signed, with partial vetoes, by Governor Jim Doyle on July 15, 2003.

This memorandum summarizes the prior and new law and the Governor's partial vetoes.

#### **PRIOR LAW**

The state's revenue sharing with cities, towns, and villages (municipalities) and counties includes a public utility distribution. Municipalities and counties in which power plants, substations, and general structures used by electric public utilities, qualified wholesale electric companies, electric cooperatives, and municipal electric companies are located receive an annual distribution in two payments under a statutory formula. In general terms, the formula for computing the basic amount of this distribution is a specified mill rate times a portion of the value of the power plant, substation,

or general structure located within a municipality or county. Prior law set forth additional considerations used in the computation of these distributions, including a cap on the total amount of the basic public utility distribution that a municipality or county could receive.

Specific features of the prior basic public utility distribution included the following:

- If the utility property is in a city or village, the municipality's payment is calculated based upon a mill rate of six mills, and the county's payment is based on three mills. If the utility property is located in a town, the town's payment is calculated based upon a mill rate of three mills, and the county's payment is based on six mills.
- The value of the utility property at any single site used to calculate a shared revenue payment is based on the net book value of the property less the value of the land and pollution control equipment, and is limited to \$125 million. The value includes construction work in progress at the site.
- Payments to a municipality are capped at \$300 times the municipality's population per year; payments to a county are capped at \$100 times the county's population per year.
- If a power plant with a capacity of 200 megawatts or more is located within a municipality or county, the municipality and

county each receive an annual distribution of at least \$75,000, subject to the caps identified above.

If a 200 megawatt or larger power plant is decommissioned, then the \$75,000 minimum guaranteed distribution to a municipality for such a plant is continued under specified conditions. This distribution is decreased by \$7,500 annually and ceases in the year following the first year in which the property becomes subject to property tax. Also, this payment may not exceed the distribution cap applicable to the municipality.<sup>1</sup>

In addition to the above distributions, each municipality and county where spent nuclear fuel is stored receives, in general, an annual distribution of \$50,000.

### **2003 WISCONSIN ACT 31**

#### **OVERVIEW**

Beginning with public utility shared revenue distributions in 2005, the Act does the following:

- Retains most aspects of prior law with respect to existing power plants and new or existing substations and general structures.
- Revises the basic distribution for new or repowered power plants to be based on the design capacity of the plant.
- Creates additional incentive payments for a new or repowered power plant that is any of the following:
  - ◆ Sited on or adjacent to an existing or decommissioned power plant or a brownfield.
  - ◆ A baseload electric generating facility.

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<sup>1</sup> By definition, a decommissioned plant is not operating and not subject to the gross receipts tax, and is subject to local taxation. As a result, the phase-out of payments on a decommissioned property under prior law is unworkable.

- ◆ A cogeneration facility or a facility fueled by an alternative energy resource.

- Replaces the formula for computing the distributions for decommissioned power plants.
- Modifies the formula for computing the basic distribution for certain ash disposal facilities at coal-fired power plants.
- Creates a sum sufficient appropriation from the new Public Utility Account in the General Fund to make the utility shared revenue payments for new, repowered, and decommissioned power plants.

The Act does not affect the distribution to a municipality or county in which spent nuclear fuel is stored.

#### **BASIC DISTRIBUTION**

Beginning with distributions in 2005, the amount of the annual distribution for a new or repowered power plant that begins operation after December 31, 2003 by an electric public utility, qualified wholesale electric company, electric cooperative, or municipal electric utility is the design (or “name-plate”) capacity of the plant expressed in megawatts, times \$2,000. If the plant is located in a city or village, the municipality receives 2/3 of this amount and the county in which the municipality is located receives the other 1/3. If the plant is located in a town, the town receives 1/3 of this amount, and the county in which the town is located receives the other 2/3. If the plant is located in more than one municipality, the payment is divided among the municipalities in which it is located based on the net book value of the portion of the plant located in each municipality as of December 31, 2004 or the date on which the plant is in operation, whichever is later.

The Act defines “repowered” to mean any of the following:

- Replacing the boiler on the existing fossil fuel steam unit with a combustion turbine and heat

recovery steam generator and reusing the steam turbine and heat rejection system.

- Adding a heat recovery steam generator to a simple cycle combustion turbine.
- Demolishing or abandoning an existing power generation unit and replacing it with a new power generation unit at the same site.
- Replacing steam generating equipment at a combustion-based electric generating facility fueled by a renewable resource that increases the efficiency or capacity of the facility.

A “power generation unit” is a complete set of electric generating equipment, as defined in public utility law, that collectively is sufficient to generate electric power. This equipment is the core equipment, such as generators, turbines, and boilers, used to generate electricity and excludes associated facilities, such as buildings.

The Act removes from prior law aid payments for construction work in progress and otherwise continues to apply the distribution under prior law to existing power plants, substations, and general structures and to new substations and general structures.

The total amount distributed to a municipality under the prior basic distribution plus the new basic distribution, as affected by the Act, is capped at \$300 times the municipality’s population per year. A county’s similar distribution is capped at \$100 times the county’s population per year.

#### **INCENTIVE PAYMENTS**

The Act creates three incentive payments that are in addition to the basic distribution. These payments are made for power plants that are subject to the new basic distribution formula--that is, that are built or repowered after December 31, 2003 by one of the specified entities--and that meet additional requirements described below. A power plant may meet the requirements for more than one incentive payment. In that case, the municipality and county in which the power plant

is located will receive multiple incentive payments related to that power plant. Like payments under the new basic distribution formula, incentive payments begin with distributions in 2005.

#### **Brownfields and Other Specified Sites**

This incentive applies to a power plant with a design capacity of at least one megawatt, other than a nuclear-powered facility, that is built: (a) on or adjacent to the site of an existing or decommissioned power plant; (b) on a site that was purchased by a public utility before January 1, 1980, and that was identified as a proposed power plant site in an advance plan; or (c) on or adjacent to a brownfield. Both the municipality and the county in which a qualifying power plant is located will receive an annual payment equal to the plant’s design capacity, expressed in megawatts, times \$600.

#### **Baseload Electric Generating Facility**

This incentive applies to a baseload electric generating facility that has a design capacity of at least 50 megawatts. A “baseload electric generating facility” is an electric generating facility that has a capacity factor that is greater than 60%, as determined by the Public Service Commission (PSC). “Capacity factor” is the anticipated actual annual output of an electric generating facility expressed as a percentage of the facility’s potential output. The PSC may review a facility’s capacity factor at any time.

Both the municipality and county in which a qualifying power plant is located will receive a payment equal to the plant’s design capacity, expressed in megawatts, times \$600.

Since power plants’ outputs vary from year-to-year, some power plants could meet the definition of a baseload plant in some years, but not in others. It appears that baseload incentive payments could be made for such plants in years when they meet the definition and not in other years. The PSC determines whether a power plant is a baseload plant.

### Alternative Energy and Cogeneration Plants

This incentive applies to a power plant that has a design capacity of at least one megawatt and that either: (a) derives energy from an alternative energy resource; or (b) is a cogeneration production plant. Both the municipality and county in which a qualifying power plant is located will receive an annual payment equal to the design capacity of the plant, expressed in megawatts, times \$1,000.

If a plant is powered by an alternative energy resource together with a fuel that is not an alternative energy resource, the capacity used in this formula is the portion of the plant's design capacity multiplied by a fraction equal to the energy content of the alternative energy resource used at the plant in the prior year divided by the energy content of all fuels used at the plant in the prior year.

An "alternative energy resource" is a renewable energy resource, as used in the public utility law's provisions on renewable portfolio standards, garbage, or nonvegetation-based industrial, commercial, or household waste.

A "cogeneration production plant" is a power plant that produces electricity and another form of thermal energy, such as heat or steam, that is used for industrial, commercial, heating, or cooling purposes.

### DECOMMISSIONED POWER PLANTS

Beginning with distributions in 2005, for a power plant that is subject to the prior or new basic distribution and that is decommissioned, the municipality and county in which the plant is located must be paid a distribution equal to the following percentages of the utility shared revenue distribution that the municipality or county received during the last year that the plant was exempt from property tax, less the amount of property taxes paid for that property during the current year to the municipality or county:

- In the first year that the property is taxable, 100%.
- In the second year that the property is taxable, 80%.
- In the third year that the property is taxable, 60%.
- In the fourth year that the property is taxable, 40%.
- In the fifth year that the property is taxable, 20%.

### ASH DISPOSAL FACILITIES

The Act changes the formula for computing the basic utility shared revenue distribution under prior law for a municipality and county in which an ash disposal facility at a power plant that is owned and operated by an electric cooperative that was operating prior to July 30, 2003. It provides that, in this circumstance, the calculation must include twice the net book value of the ash disposal facility.

### NEW APPROPRIATION

The Act creates a new account in the General Fund, the Public Utility Account, and makes a sum-sufficient appropriation from this account for new utility shared revenue distributions created by the Act for basic and incentive payments for new or repowered power plants and for payments for decommissioned power plants. Appropriations for utility shared revenue distributions for existing, operating power plants<sup>2</sup> and for new or existing substations and general structures<sup>2</sup> continue to be made from the Shared Revenue Account in the General Fund which continues to exist.

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<sup>2</sup> "Existing" power plants, substations, and general structures begin operation on or before December 31, 2003; "new" power plants, substations, and general structures begin operation after December 31, 2003.

**PARTIAL VETOES**

In approving Enrolled 2003 Assembly Bill 378 as Act 31, Governor Doyle vetoed the following provisions in the enrolled bill:

- The prohibition on an electric public utility recovering in its rates the cost of new mitigation payments to a local unit of government hosting a power plant.
- The incentive payment to a municipality contiguous to the site of a baseload electric generating facility.
- The requirement that the incentive payment for a cogeneration production plant only applies to

plants built and completed before December 31, 2006 (thus applying this incentive to cogeneration production plants completed on or after December 31, 2006).

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This Legal Memorandum was prepared on July 18, 2003 by David Lovell, Senior Analyst, and John Stolzenberg, Chief of Research Services.

Copies of 2003 Wisconsin Act 31 may be obtained from the Legislature's website at <http://www.legis.state.wi.us/2003/data/acts/>.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

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