

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

APR 14 1999

**RULES CLEARINGHOUSE**

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 99-053**

AN ORDER to amend PSC 132.02 (3), relating to the chapter PSC 132 definition of "public utility" and cable operators' access to railroad rights-of-way.

Submitted by **PUBLIC SERVICE COMMISSION**

- 03-15-99 RECEIVED BY LEGISLATIVE COUNCIL.
- 04-12-99 REPORT SENT TO AGENCY.

RS:MM:jal

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES  NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES  NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES  NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached YES  NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES  NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES  NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES  NO

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Rule Amendment to Add Cable Operators to WIS. ADMIN.  
CODE ch. PSC 132

1-AC-182

**NOTICE OF RULEMAKING**

The Public Service Commission of Wisconsin proposes an order to amend s. PSC 132.02(3), relating to the ch. PSC 132 definition of "public utility" and cable operators' access to railroad rights-of-way.

**ANALYSIS PREPARED BY THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Statutory authority: ss. 196.02(1) and (3), 196.04(4), and 227.11(2), Stats.  
Statutes interpreted: ss. 196.04(4), Stats.

Prior to the passage of 1997 Wisconsin Act 27, s. 196.04(4), Stats., permitted the Commission, under certain circumstances, to order the extension of a public utility or telecommunications provider's lines or a railroad's tracks on, over or under the right-of-way of any railroad, public utility, or telecommunications provider. The Commission was required to prescribe conditions and compensation that are equitable and reasonable under the circumstances.

Chapter PSC 132 was created to set forth the compensation to be paid and conditions to be met by a public utility for the construction or maintenance of facilities within a railroad right-of-way in cases where the utility and the railroad cannot agree. "Public utility" is defined in the rule to include telecommunications providers.

Section 3134mi of 1997 Wisconsin Act 27 amended s. 196.04(4), Stats., to include cable operators as defined in s. 66.082(2)(b), Stats., along with public utilities, telecommunications providers, and railroads. This rule change amends the current definition of "public utility" in s. PSC 132.02(3) to include cable operators, thereby conforming it to the amended statute.

A Statement of Scope on this rule was approved by the Commission on December 3, 1998, and was published in the Wisconsin administrative register on December 31, 1998.

**TEXT OF PROPOSED RULE**

SECTION 1. PSC 132.02(3) shall be amended to read:

(3) "Public utility" has the meaning given in s. 196.01 (5), Stats., and includes both a "telecommunications provider," as defined in s. 196.01 (8p), Stats., and a "cable operator," as defined in s. 66.082 (2) (b), Stats.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

**INITIAL REGULATORY FLEXIBILITY ANALYSIS**

This rule will have no effect on small telecommunications utilities, which are small businesses under s. 196.216, Stats., for the purposes of s. 227.114, Stats. It merely extends coverage of this rule to include cable operators. The only effect on cable operators that are small businesses will be to clarify and possibly speed up negotiations with railroads regarding rights-of-way. There are no reporting, bookkeeping, or other procedures required for compliance with the rule.

**FISCAL ESTIMATE**

This rule change has no fiscal impact independent of that of the legislation change that necessitates it. A completed Fiscal Estimate form is included as Attachment A.

**EFFECTIVE DATE**

These rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

**NOTICE THAT THERE WILL BE NO HEARING**

**NOTICE IS HEREBY GIVEN** that pursuant to s. 227.16(2)(b), Stats., the Commission will **not** hold a public hearing on the proposed rule change since it merely brings an existing rule into conformity with a statute that has been changed.

Docket I-AC-182

**CONTACT PERSON**

Questions regarding this matter should be directed to Joyce S. Mahan, Legal Counsel, Telecommunications Division, at (608) 267-6919, or by email at *mahanj@psc.state.wi.us*. Hearing-or speech-impaired individuals may also use the Commission's TTY number, (608) 267-1479.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs to get this document in a different format should contact Joyce S. Mahan, as indicated in the previous paragraph, as soon as possible.

Dated at Madison, Wisconsin

March 11, 1999

By the Commission.



Lynda L. Dorr  
Secretary to the Commission

JSM::reb:G:\notice\pending\1-AC-182

1999 Session

LRB or Bill No./Adm. Rule No.  
1-AC-182

Amendment No. if Applicable

**FISCAL ESTIMATE**

DOA-2048 N(R10/96)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**Subject**

Add Cable Operators to Ch. PSC 132

**Fiscal Effect**

**State:**  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

Decrease Costs

**Local:**  No local government costs

1.  Increase Costs  
      Permissive       Mandatory  
 2.  Decrease Costs  
      Permissive       Mandatory

3.  Increase Revenues  
      Permissive       Mandatory  
 4.  Decrease Revenues  
      Permissive       Mandatory

5. Types of Local Governmental Units Affected:  
 Towns       Villages       Cities  
 Counties       Others \_\_\_\_\_  
 School Districts       WTCS Districts

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Ch. 20 Appropriations**

20.155(l)(g)

**Assumptions Used in Arriving at Fiscal Estimate**

This rule would add cable operations to the definition of "public utility" to comply with Section 3134 mi of 1997 Wisconsin Act 27 which amended 196.04(4), Stats. Chapter PSC 132 sets forth the compensation to be paid and conditions to be met by a "public utility" for the construction or maintenance of facilities within a railroad right-of-way in cases where the utility and railroad cannot agree. This change is not expected to add costs to the operation of either state or local government.

**Long-Range Fiscal Implications**

Agency/Prepared by: (Name & Phone No.)

PSC/Gordon Grant      267-9086

Authorized Signature/Telephone No.

*Gordon Grant*

Date

2/19/99