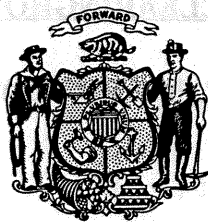


WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946



Jane R. Henkel, Acting Director
Legislative Council Staff
(608) 266-1304

Richard Sweet
Assistant Director
(608) 266-2982

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[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 99-140

AN ORDER to repeal PSC 4.80 (1) (d) and (e); to renumber and amend PSC 4.10 (5) and 4.20 (4); to amend PSC 4.05 (1), (6) and (9), 4.10 (1) to (3), 4.20 (2) (title), (intro.), (d) (intro.) and 11 and (g) and (3), 4.30 (1) (a), (2), (3) (e) and (5) (a), (b) and (d) 1., 4.50 (3), 4.60 (2) and (4) (a), 4.70 (1) (intro.) and (d) and (2) (a), (b) (intro.) and (c), 4.80 (1) (g), Table 2 items d, f, g and i, and Table 3 item a (intro.); to repeal and recreate PSC 4.20 (1), Table 1 item a, Table 2 items a and b and Table 3 items 1.2, i, and p; and to create PSC 4.10 (5) (b), 4.20 (1m) and (4) (b), 4.30 (3) (am), 4.35, Table 1 items e to g, Table 2 items bg, br and m and Table 3 items cg, cr and z, relating to implementing the Wisconsin environmental policy act.

Submitted by **PUBLIC SERVICE COMMISSION**

09-28-99 RECEIVED BY LEGISLATIVE COUNCIL.

10-26-99 REPORT SENT TO AGENCY.

RNS:DLL:jal;rv

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)]

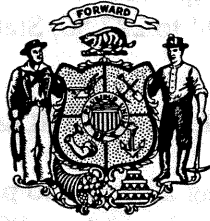
Comment Attached YES NO

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Ronald Sklansky
Director
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Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 99-140

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. A fiscal estimate was not provided with the rule. A fiscal estimate is required under s. 227.135 (4), Stats.
- b. In the treatment of s. PSC 4.05 (1), the word "generates" should be underscored.
- c. The treatment clause in SECTION 2 should read: "PSC 4.10 (2) and (3) are amended to read:", since sub. (1) is not amended. Subsection (1) should not be shown.
- d. Section PSC 4.30 (3) (e) should refer also to cost-effectiveness, since s. 1.12, Stats., calls for consideration of cost-effectiveness in addition to consideration of technical feasibility of alternatives.
- e. Should s. PSC 4.20 (3) (c) be modified in the same manner as the rule modifies s. PSC 4.30 (5) (d) 1., to ensure parallel drafting?
- f. The phrase "do all of the following" should be inserted at the end of s. PSC 4.70 (2) (b) (intro.).

4. Adequacy of References to Related Statutes, Rules and Forms

In s. PSC 4.50 (3), rather than repealing the reference to ss. PSC 2.30 to 2.66, it should be replaced with a reference to ss. 227.44 to 227.50, Stats.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Since s. PSC 4.10 (2) is being amended to parallel s. PSC 4.10 (3), to state explicitly what Type II actions are, a parallel amendment to s. PSC 4.10 (1) would seem appropriate, and would enhance the clarity of the rule.

b. With regard to s. PSC 4.20 (1m) (d), if a proposed action will affect the state as a whole, will the Public Service Commission be required to notify all 72 county clerks and chief executive officers and all state news media? This should be made clearer.

c. This rule order makes it clear that it is the commission, rather than the commission staff, that is preparing an environmental assessment. Consequently, it is the commission that is responsible for its contents. In light of this, it would seem appropriate that s. PSC 4.20 (2) (g) require that an environmental assessment include a determination as to whether the proposed action requires an environmental impact statement, as opposed to a recommendation, as the rule would modify it to require.

d. In s. PSC 4.35, new information will not affect the quality of the human environment, as the wording of these provisions suggests. What the commission means is to require supplemental documents to be prepared if new circumstances arise that could affect the quality of the human environment in a manner or to an extent not considered in the original document or if new information about the effects of the proposed action on the quality of the human environment come to light that were not considered in preparing the original document.

e. The analysis to the rule states that some of the changes to the classification of actions relating to the construction of transmission facilities are based on the recently enacted s. 196.491 (4) (c), Stats., creating an exception from the certificate of public convenience and necessity statute for new transmission lines of less than 230 kilovolts (kV) if all related construction activity takes place entirely within the area of an existing electric transmission line right-of-way. The changes in the classification system take into account the concept of construction activities taking place within existing rights-of-way but does not consider in any way the 230 kV threshold. The rule continues to use a three-tiered classification, based on voltages of more than 345 kV, 100 to 345 kV and less than 100 kV. Could this classification scheme be further modified to conform better with the legislative intent apparent from s. 196.491 (4) (c)?

f. Item z. in Table 3 addresses wholesale merchant plants with a capacity of less than 100 megawatts (MW), but no similar provision addresses wholesale merchant plants with capacities equal to or greater than 100 MW. How would this latter category of action be classified?

**PROPOSED ORDER OF THE STATE OF WISCONSIN
PUBLIC SERVICE COMMISSION ADOPTING RULES**

1 The Public Service Commission of Wisconsin proposes an order to repeal PSC 4.80 (1) (d) and
2 (e); to renumber and amend PSC 4.10 (5) and 4.20 (4); to amend PSC 4.05 (1), (6) and (9), 4.10
3 (1) to (3), 4.20 (2) (title), (intro.), (d) (intro.) and 11 and (g) and (3), 4.30 (1) (a), (2), (3) (e) and
4 (5) (a), (b) and (d) 1, 4.50 (3), 4.60 (2) and (4) (a), 4.70 (1) (intro.) and (d) and (2) (a), (b) (intro.)
5 and (c), 4.80 (1) (g), Table 2 items d, f, g and i, and Table 3 item a (intro.); to repeal and recreate
6 PSC 4.20 (1), Table 1 item a, Table 2 items a and b, and Table 3 items 1.2, i, and p; and to create
7 PSC 4.10 (5) (b), 4.20 (1m), 4.20 (4) (b), 4.30 (3) (am), 4.35, Table 1 items e to g, Table 2 items
8 bg, br, and m, and Table 3 items cg, cr, and z, relating to implementing the Wisconsin
9 Environmental Policy Act.

Analysis Prepared by the Public Service Commission of Wisconsin

Statutory authority: ss. 196.02(3) and 227.11, Stats.

Statute interpreted: s. 1.11, Stats.

fiscal est.? ✓

Section 1.11, Stats., is known as the Wisconsin Environmental Policy Act (WEPA). This statute requires each state agency to consider and make known to the public the environmental impacts of any major action the agency is proposing, if the action would significantly affect the quality of the human environment. The Public Service Commission (Commission) has adopted rules to implement WEPA.

The Commission's rules categorize various actions the Commission undertakes in three separate tables and describe when an environmental impact statement (EIS) or a preliminary document known as an environmental assessment (EA) must be prepared for these actions. Table 1 consists of "Type I" actions, which the Commission has determined are major actions significantly affecting the quality of the human environment. The rules specify that an EIS must be prepared for any Type I action. Table 2 consists of "Type II" actions, which the Commission

has determined have the potential to significantly affect the quality of the human environment. The rules require the Commission to prepare an EA for each Type II action; the function of an EA is to provide a preliminary factual investigation of the action's environmental impacts. Under current rules this preliminary investigation allows the WEPA coordinator, who is a qualified staff person designated by the Commission, to determine whether an EIS is necessary. For Type II actions, the WEPA coordinator also has the option of making a determination that an EIS is needed based on the information that is immediately available, without waiting for an EA to be completed. Table 3 consists of "Type III" actions, which the Commission has found do not normally have the potential to significantly affect the quality of the human environment. Type III actions normally require neither an EA nor an EIS, although an evaluation of a specific Type III proposal may indicate that preparation of such a document is warranted.

These proposed rules remove the WEPA coordinator's authority to determine whether an EIS or an EA is required. Instead, this authority reverts to the Commission. The proposed rules also change the Type I, II, and III lists, in order to base the level of required environmental review on the potential for significant impacts rather than the current arbitrary thresholds. In addition, they change the process of preparing an EA. The proposed rules focus the EA on determining the need for an EIS, rather than using it to provide an encyclopedic description of potential environmental impacts. Finally, the proposed rules modify the process of securing public input during the Commission's review process, so it can be received at appropriate times.

WEPA coordinator authority

Under current rules, the WEPA coordinator determines whether a proposed action of the Commission would significantly affect the quality of the human environment, for which an EIS must be prepared. If a project's environmental effect is less certain the WEPA coordinator may direct that an EA be completed, and may then decide whether the EA shows that an EIS is required. The proposed rules specify that the Commission will make these determinations.

Changes to the Type I, II, and III lists

The proposed revisions to the Type I, II, and III lists concern the proper categorization of electric generating facilities and electric transmission lines. Current rules use the size in megawatts (MW) of a proposed new generating unit as the primary indicator of whether an EA or EIS should be prepared. An application for Commission approval of any new unit whose capacity is 20 MW or more is currently considered a Type I action, for which an EIS is mandatory. If the project would have a capacity of less than 20 MW, it is currently considered a Type II action. The proposed rules categorize a new generating unit according to the type of fuel it would use and the site where it would be located. Any new unit that would be powered by nuclear energy or fueled by coal is included in the Type I list. Combustion turbine facilities, combined cycle facilities, and cogeneration facilities that use gas or some other fuel are also included in the Type I list, but only if they would be constructed at a new electric generation site. If they would be located at an existing generation site, they are Type II projects. A similar distinction is made for

hydroelectric facilities; if located at a new dam site, the project would be a Type I action, but if located at an existing dam site, the project is a Type II action.

Other Type II generating projects under these proposed rules would be new biomass or waste-to-energy units. A project to change an existing generating unit by adding another fuel type for the unit is also considered a Type II action. The proposed rules list new wind-powered electric generating facilities, less than 10 MW in size, and any new solar-powered facilities, as Type III actions. A proposal to construct any other new electric generating facility, not specifically listed elsewhere, is considered a Type II action.

Under existing rules, a proposal to construct, rebuild or upgrade a new electric transmission line at a voltage of 100 to 345 kilovolts (kV) is considered a Type II action if the new line would be more than one mile long. The proposed rules delete the criterion of length and substitute a criterion concerning where related construction activity occurs. If any construction activity takes place outside the area of an existing transmission line right-of-way, the project is classified as a Type II action. If all construction activity occurs inside existing transmission line right-of-way, the project is considered a Type III action. This criterion is modeled after a recently enacted statutory exemption that is found in s. 196.491 (4) (c), Stats., declaring that a Certificate of Public Convenience and Necessity is not necessary to build a new transmission line of less than 230 kV if "all related construction activity takes place entirely within the area of an existing electric transmission line right-of-way." (A Certificate of Authority under s. 196.49, Stats., may still be necessary for such a project, depending on its cost.)

The proposed rules add two other items to these tables. Existing rules of the Department of Natural Resources (DNR) classify as Type II actions any proposals to adopt long-range agency plans or policies that would predetermine future agency actions, if the future actions may significantly affect the human environment. The proposed rules include the same item in the Commission's list of Type II actions. In addition, the proposed rules address a new action of the Commission that was created by 1997 Wisconsin Act 204. Under s. 196.491 (3m) (a), Stats., an affiliated interest of a public utility may not own, control, or operate a wholesale merchant plant without first securing the Commission's approval. The proposed rules list this as a Type III action.

Changes to the process of preparing an EA

The purpose of an EA has been defined by federal regulations issued by the Council on Environmental Quality, and by case law interpretations. An EA is intended to be a concise document that provides sufficient evidence and analysis of potential environmental impacts to determine whether preparation of an EIS is necessary. This purpose, however, is not described in Commission rules and those prepared in recent years have begun covering all potential impacts associated with a proposed project, including minor environmental impacts. The proposed rule incorporates a declaration of the purpose of EA preparation, to provide direction to Commission staff.

Public notice

Current rules require the Commission to deliver an announcement that it is commencing the preparation of an EA to area legislators, news media, and others whom the Commission knows are interested. The announcement must establish a public comment period, lasting at least 10 days. The proposed rule provides a broader list of those receiving the announcement of an EA. It includes any person who has requested to receive this type of information, and local government representatives such as the heads of local municipalities and county clerks. The proposed rule also removes the deadline for public comment, in order to allow comments to be received at any point during the process of preparing an EA.

Current rules allow the Commission's WEPA coordinator to make a preliminary determination about the need for an EIS before the EA is completed. If such a preliminary determination is made, the Commission must notify the same group and provide at least 10 days for public comment on the determination. The proposed rule revises this process. It grants the authority to make a preliminary determination about the need for an EIS to the Commission, as described above, and specifies that this determination must occur after the EA is completed. Notice of this preliminary determination will then be issued; in addition, the proposed rule provides that the Commission will make copies of the EA available upon request. A 15-day period for public comment on the determination is specified in the proposed rules. Based on the EA and the comments received, the Commission then makes a final determination as to whether the project constitutes a major action for which an EIS is required. The proposed rule also states that a copy of the EA will be sent to municipal offices in the project area.

Other changes

The proposed rule describes a process by which a supplemental EA or supplemental EIS can be prepared. The proposed rule declares that a supplemental EA must be produced if, after an EA has been completed but before the Commission has taken action, new circumstances or information arise that the Commission decides could affect the quality of the human environment in a manner not considered in the EA. Similarly, a supplemental EIS must be produced if new circumstances or information arise that the Commission decides would affect the quality of the human environment in a manner not considered in the EIS.

Current rules require anyone who seeks Commission approval of a project to contact the Commission at least 30 days before filing their application. This advance notice allows the Commission to provide advice on the project alternatives that should be analyzed and on other agencies that must be contacted. The proposed rule limits this advance notice to Type I and Type II projects, but requires that notice of such projects must occur at least 30 days before the applicant provides an engineering plan to the DNR. This change will ensure that the environmental and engineering analysis of reasonable alternatives, which is required by s. 1.11 (2) (c) 3, Stats., is properly coordinated with the DNR.

1 SECTION 1. PSC 4.05 (1), (6), and (9) are amended to read:

2 PSC 4.05 (1) "~~Cogeneration~~" means the simultaneous generation of "Cogeneration
3 facility" means a type of electric generation facility that simultaneously generates electrical
4 power and useful heat from the same primary fuel source. (2)

5 (6) "~~Electric generation or cogeneration facility~~" means a physical plant used for
6 generating electrical power and includes multiple generating units installed over time as part of
7 an overall development project. It also includes situations, such as wind farms, where multiple
8 small generators are installed as part of a single, overall project. In the case of multiple units at a
9 single site or proximate sites, the environmental review will be predicated on the total project
10 rather than unit by unit.

11 (9) "Human environment" means ~~that~~ the natural or physical environment and the
12 relationship of people with that environment. (5)

13 SECTION 2. 4.10 ~~(1) to (3)~~ ^{(2) and} are amended to read:

14 PSC 4.10 (1) ~~TYPE I ACTIONS.~~ The commission shall prepare an EIS in connection with
15 any proposed action it determines is a major action significantly affecting the quality of the
16 human environment, within the meaning of s. 1.11 (2) (c), Stats. The commission shall also
17 prepare an EIS on any of the proposed actions involving a request for commission approval,
18 categorized as Type I actions, listed in Table I. (2)

19 (2) TYPE II ACTIONS. ~~Unless the WEPA coordinator decides to prepare an EIS instead of~~
20 ~~an EA~~ Type II actions are proposed actions involving requests for commission approval that
21 have the potential to significantly affect the quality of the human environment, within the
22 meaning of s. 1.11 (2) (c), Stats. Unless the commission decides an EIS is necessary, the

1 commission shall prepare an EA on any of the proposed actions involving a request for
2 commission approval, categorized as Type II actions, listed in Table 2.

3 (3) TYPE III ACTIONS. Type III actions are proposed actions involving requests for
4 commission approval ~~which~~ that normally do not have the potential to significantly affect the
5 quality of the human environment, within the meaning of s. 1.11 (2) (c), Stats. As such, they do
6 not normally require an EA or an EIS. An evaluation of a specific Type III proposal, however,
7 may indicate that the preparation of an EA or EIS is warranted for that proposal. Type III actions
8 are listed in Table 3.

9 SECTION 3. PSC 4.10 (5) is renumbered PSC 4.10 (5) (a) and is amended to read:

10 4.10 (5) REASONABLE ALTERNATIVE PROPOSALS. (a) If a reasonable alternative to any
11 proposed action specified in subs. (2) to (3m) exists, and the alternative would require ~~more~~
12 ~~rigorous environmental review than the proposal, environmental review under this section shall~~
13 ~~be based on the review the alternative would require~~ review under sub. (1) as a Type I action, the
14 proposed action shall be reviewed as a Type I action.

15 SECTION 4. PSC 4.10 (5) (b) is created to read:

16 4.10 (5) (b) Unless par. (a) applies, if a reasonable alternative to any proposed action
17 specified in subs. (3) to (3m) exists, and the alternative would require review under sub. (2) as a
18 Type II action, the proposed action shall be reviewed under sub. (2) as a Type II action.

19 SECTION 5. PSC 4.20 (1) is repealed and recreated to read:

20 PSC 4.20 (1) GENERAL INFORMATION. The commission shall prepare an EA as a
21 concise document that provides a preliminary factual investigation of the relevant areas of
22 environmental concern in sufficient depth to permit a reasonably informed preliminary judgment
23 of the environmental consequences of the proposed action. The EA shall include a

1 recommendation whether the proposed action is a major action significantly affecting the quality
2 of the human environment, within the meaning of s. 1.11 (2) (c), Stats., for which an EIS is
3 required.

4 **SECTION 6.** 4.20 (1m) is created to read:

5 **PSC 4.20 (1m) PUBLIC NOTICE.** When it commences the preparation of an EA, the
6 commission shall make a reasonable effort to notify the public that an EA is being prepared. The
7 announcement may be included with a notice of investigation or notice of hearing. The
8 announcement shall describe the proposed action, including a map where appropriate, list a
9 commission contact person and indicate how comments may be submitted. The commission
10 shall distribute its announcement that an EA is being prepared to:

11 (a) Any person with a demonstrated interest or who has requested to receive this type of
12 information.

13 ? (b) Area legislators.

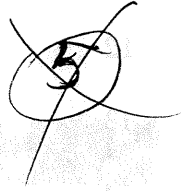
14 (c) For a proposed action affecting a local area:

- 15 1. The county clerk and the town or municipal clerk for the project area, with a request
- 16 that the clerks post the announcement publicly.
- 17 2. The county, town, village or city chief executive officer in the project area.
- 18 3. Local news media.
- 19 4. The regional planning commission.

20 (d) For a proposed action affecting a region of the state or the state as a whole:

21 1. The county clerks in the proposed project area, with a request that the clerks post the
22 announcement publicly.

7. if it applies to entire state,
notify all 72 county clerks
& chief execs, and all state
media?



- 1 2. The county chief executive officers in the proposed project area.
- 2 3. Regional news media.

3 SECTION 7. PSC 4.20 (2) (title) and (intro.), (d) (intro.) and 11, and (g) are amended to
4 read:

5 PSC 4.20 (2) (title) ENVIRONMENTAL ASSESSMENT PREPARATION. (intro.)

6 ~~Following the deadline for public comment, commission staff shall complete an EA to develop~~
7 ~~information for the commission's use and to determine whether an EIS is required. Each~~ An EA
8 shall include the following information:

9 (d) (intro.) An evaluation of significant positive and negative, short-term and long-term
10 environmental effects that would result if the commission approves the proposed action. In
11 preparing this evaluation, the commission staff shall consider:

12 11. Other environmental matters the commission staff considers significant relevant.

13 (g) A ~~determination~~ recommendation as to whether the proposed action requires an EIS.

14 SECTION 8. PSC 4.20 (3) is amended to read:

15 PSC 4.20 (3) PRELIMINARY FINDINGS. (a) ~~If the WEPA coordinator considers additional~~
16 ~~early public comment would be appropriate for a proposed action, the coordinator may~~ The
17 commission shall make a preliminary determination about the need for an EIS, based on the
18 information collected for the EA under sub. (2) ~~but before the EA is completed, and invite public~~
19 ~~comment.~~

20 (b) The commission shall notify persons who ~~received the notice of investigation~~ were
21 provided the announcement of the EA for the proposed action, and other persons the commission
22 knows to be interested in the proposed action, of the preliminary determination. The
23 ~~announcement~~ notice of preliminary determination shall include a description of the proposed

3
Since PSC not staff
responsibility is prepar
EA. shouldn't
this remain
as is?

Is the EA
final at this
point or near
final offer
comments?
be more
explicit.
5

1 action, the preliminary determination whether an EIS is needed, any significant concerns raised
2 about the proposed action, the name of a commission contact person and the period for comment.
3 The commission shall make copies of the EA available to those persons who request it.

4 (c) The commission shall authorize at least ~~10~~ 15 days for public comment on the
5 preliminary determination, commencing with the date the notice under par. (b) is mailed or
6 personally delivered. ~~When the comment period expires, the commission staff shall complete~~
7 ~~the EA.~~

8 **SECTION 9.** PSC 4.20 (4) is renumbered 4.20 (4) (a) and amended to read:

9 **PSC 4.20 (4) (a)** ~~After completion of an EA, the WEPA coordinator~~ When the comment
10 period expires, the commission shall determine whether the proposed action is a major action
11 significantly affecting the quality of the human environment within the meaning of s. 1.11 (2)
12 (c), Stats., for which an EIS is required. ~~If the coordinator decides an EIS is not required, the~~
13 ~~commission shall enter the EA as part of the case file for the proposed action.~~

14 **SECTION 10.** PSC 4.20 (4) (b) is created to read:

15 **PSC 4.20 (4) (b)** The commission shall enter the EA as part of the case file for the
16 proposed action and shall send a copy of the EA to each county clerk, city clerk, village clerk,
17 and town clerk in the area of the project.

18 **SECTION 11.** PSC 4.30 (1) (a) and (2) are amended to read:

19 **PSC 4.30 (1) (a)** ~~The commission staff shall prepare an EIS to~~ An EIS shall inform the
20 commission and the public of significant environmental impacts of a proposed action and its
21 alternatives, and reasonable methods of avoiding or minimizing adverse environmental effects.
22 The environmental analysis shall be consistent with the ~~guidelines~~ regulations issued by the U.S.

*(copy form -
scrap definition and rewrite
this paragraph* (2)

1 council on environmental quality, ss. 1500 to 1508, under the authority of the national
2 environmental policy act, 42 USC 4331 42 CFR Parts 1500 to 1508. ~~check~~

3 (2) SCOPING. Scoping shall begin early in the process of preparing an EIS. The
4 commission shall request any person it believes is interested in a proposed action to participate in
5 scoping the proposed action. Scoping is an aid to help the commission identify all of a project's
6 relevant environmental concerns and reasonable alternatives. Scoping may be achieved by
7 means of meetings, hearings, workshops, surveys, questionnaires, interagency committees,
8 requests for written comments, and other methods and combinations of methods that the
9 commission considers appropriate. The commission may also integrate scoping with other
10 public participation requirements.

11 SECTION 12. PSC 4.30 (3) (am) is created to read:

12 PSC 4.30 (3) (am) A description of the purpose of the proposed action and of the need
13 for the proposed action.

14 SECTION 13. PSC 4.30 (3) (e) is amended to read:

15 PSC 4.30 (3) (e) A proposed action's effect on energy usage, ~~as required under~~
16 including an evaluation of the *cost effectiveness and* technical feasibility of alternatives, pursuant to s. 1.12, Stats. (2)

17 SECTION 14. PSC 4.30 (5) (a), (b), and (d) 1 are amended to read:

18 PSC 4.30 (5) (a) Following the public review period on a draft EIS, the commission
19 staff shall prepare a final EIS. The final EIS may vary from the draft EIS in scope, based on
20 comments received on the draft EIS or other pertinent information ~~which~~ that becomes known to
21 the commission staff. The final EIS shall contain the information described in sub. (3).

1 (b) The commission shall distribute a copy of the final EIS to the same persons who
2 received a copy of the draft EIS under sub. (4) (c), and to any other person who requested
3 requests a copy of the draft EIS or commented comments on the draft EIS.

4 (d) 1. Except as provided in subd. 2., the commission shall distribute copies of the final
5 EIS to the public and announce its availability at least 30 days before it holds a public hearing on
6 the proposed action. The review period required under this paragraph commences with the date
7 a final EIS is mailed or personally served distributed.

*should some change
be made to PSC 4.20 (3) (e)?*

(2) ✓

8 **SECTION 15.** PSC 4.35 is created to read:

9 **PSC 4.35 Supplemental documents. (1) ENVIRONMENTAL ASSESSMENT.** The
10 commission shall prepare a supplemental EA if, after an EA has been completed but before the
11 commission takes action on a proposal, new circumstances or information arise that could affect
12 the quality of the human environment in a manner or to an extent not considered in the EA.
13 Section PSC 4.20 applies to the preparation of the supplemental EA.

(5) ✓
*new word this
new info.
will not
affect the
environment*

14 (2) **DRAFT ENVIRONMENTAL IMPACT STATEMENT.** The commission shall
15 prepare a supplemental draft EIS if, after a draft EIS has been issued but before the release of the
16 final EIS, new circumstances or information arise that would affect the quality of the human
17 environment in a significant manner or to a significant extent not considered in the draft EIS.
18 Section PSC 4.30 ^{(1) to (4)} applies to the preparation of the supplemental draft EIS. Following issuance
19 of the supplemental draft EIS, the commission shall prepare a final EIS.

ditto

20 (3) **FINAL ENVIRONMENTAL IMPACT STATEMENT.** The commission shall
21 prepare both a supplemental draft EIS and a supplemental final EIS if, after a final EIS has been
22 issued but before the commission takes action on a proposal, new circumstances or information
23 arise that would affect the quality of the human environment in a significant manner or to a

(4) ✓

ditto

1 significant extent not considered in the final EIS. Section PSC 4.30 applies to the preparation of
2 these supplemental documents.

3 **SECTION 16.** PSC 4.50 (3) is amended to read:

4 **PSC 4.50 (3) CONDUCT OF THE HEARING.** The commission shall conduct the public
5 hearing under this section as a contested case proceeding, ^{ss. 227.44 to 227.50, Stats.} ~~in accordance with ss. PSC 2.30 to~~
6 ~~2.66~~, or, if the proposed action involves rule making or a proposal for legislation, in accordance
7 with s. 227.18, Stats. At the hearing commission staff shall offer the final EIS into evidence. The
8 commission staff shall testify about the preparation of the final EIS and the issues it identifies,
9 and may provide other relevant information on the environmental aspects of the case ~~which~~ that
10 may have come to its attention. The commission shall receive the final EIS into evidence. The
11 commission may also receive testimony at the hearing regarding the environmental aspects of the
12 case and the content of the final EIS.

13 **SECTION 17.** PSC 4.60 (2) and (4) (a) are amended to read:

14 **PSC 4.60 (2) JOINT PREPARATION OF ENVIRONMENTAL ASSESSMENTS.** The
15 commission may enter into agreements with other federal, state or local agencies to develop a
16 joint environmental assessment that satisfies the requirements of the participating agencies. The
17 ~~WEPA coordinator~~ commission shall independently determine ~~the commission's~~ its need to
18 prepare an EIS.

19 (4) (a) The commission may adopt part or all of another state or federal agency's
20 environmental assessment as the commission's EA if the EA meets the requirements of this
21 chapter. The commission shall notify the public as required under s. PSC 4.20 (1) or (3). The
22 ~~WEPA coordinator~~ commission shall independently determine ~~the commission's~~ its need to
23 prepare an EIS.

1 **SECTION 18.** PSC 4.70 (1) (intro.) and (d) and (2) (a), (b) (intro.) and (c) are amended
2 to read:

3 **PSC 4.70 (1) ADVANCE NOTICE TO COMMISSION.** Any person intending to file an
4 application for commission approval of a Type I or Type II proposed action listed in s. PSC 4.10
5 (1) or (2) shall contact the commission at least 30 days before filing. The applicant shall contact
6 the commission at least 30 days before filing, and at least 30 days before providing an
7 engineering plan to the department of natural resources if required under s. 196.491 (3) (a) 3.a.,
8 Stats., to:

9 (d) For a Type I proposed action listed in s. 4.10 (1), obtain information on commission
10 methods and timing for public notice and scoping procedures.

11 (2) (a) Each application for commission approval of a Type I proposed action listed in
12 s. PSC 4.10 (1) shall describe the project in sufficient detail that the commission can prepare an
13 EIS meeting the criteria specified in s. PSC 4.30 (3). Each application for commission approval
14 of a Type II proposed action listed in s. PSC 4.10 (2) shall describe the project in sufficient detail
15 that the commission can prepare an EA meeting the criteria specified in s. PSC 4.20 (2).

16 (b) (intro.) Each application for commission approval of a Type I or Type II proposed
17 action listed in s. PSC 4.10 (1) or (2) shall: do all of the following

18 (c) No application for commission approval of a Type I or Type II proposed action listed
19 in s. PSC 4.10 (1) or (2) is complete until the information necessary for the commission to
20 complete an environmental review is provided.

21 **SECTION 19.** PSC 4.80 (1) (d) and (e) are repealed.

22 **SECTION 20.** PSC 4.80 (1) (g) is amended to read:

1 **PSC 4.80 (1) (g)** Determine the proper time periods for review of EA and EIS
2 documents under ss. PSC 4.20 ~~(4)~~ and (3) (c), 4.30 (4) (e) and (5) (d) and 4.50 (1).

3 **SECTION 21.** Item a of Table 1, following PSC 4.80, is repealed and recreated to read:

4 **Table 1. a.** Construct a hydroelectric generating facility at a new dam site.

5 **SECTION 22.** Items e to g of Table 1, following PSC 4.80, are created to read:

6 **Table 1. e.** Construct an electric generation facility powered by nuclear energy.

7 f. Construct an electric generation facility fueled by coal.

8 g. Construct, at a new electric generation site, any of the following electric generation
9 facilities: a combustion turbine facility; a combined cycle facility; or a cogeneration facility.

10 **SECTION 23.** Item a of Table 2, following PSC 4.80, is repealed and recreated to read:

11 **Table 2. a.** Construct, at the site of an existing electric generation facility, any of the
12 following electric generation facilities (if not powered by nuclear energy or fueled by coal): a
13 combustion turbine facility; a combined cycle facility; or a cogeneration facility.

14 **SECTION 24.** Item b of Table 2, following PSC 4.80, is repealed and recreated to read:

15 **Table 2. b.** Construct a hydroelectric generation facility at an existing dam site.

16 **SECTION 25.** Items bg and br of Table 2, following PSC 4.80, are created to read:

17 **Table 2. bg.** Construct a biomass or waste-to-energy electric generation facility.

18 br. Construct any electric generation facility not otherwise specified in Tables 1, 2, or 3.

19 **SECTION 26.** Items d, f, g, and i of Table 2, following PSC 4.80, are amended to read:

20 **Table 2. d.** ~~Replace, modify or add to an electric generation facility to increase the~~
21 Increase an electric generation facility's capacity significantly beyond its nominal design rating,
22 ~~to change the facility's fuel type, add an additional fuel type, or to extend the facility's life~~
23 significantly.

or knock
down up

knock this down to
230 kV to further
parallel 196.491(4)(c)?
(also Table 1.c.+d.)

(3)

or at least reflect
it here

1 f. Construct an electric transmission line designed for operation at a nominal voltage of
2 100 kV to 345 kV, if the line is more than one mile long any related construction activity takes
3 place outside the area of an existing electric transmission line right-of-way. This paragraph does
4 not apply to electric transmission lines specified in Item b, Table 1, or to distribution lines.

5 g. Rebuild or upgrade an electric transmission line to operate at a nominal voltage of
6 100 kV to 345 kV, if the line is more than one mile long any related construction activity takes
7 place outside the area of an existing electric transmission line right-of-way.

8 i. Construct or replace a water, coal slurry, oil, gas or steam pipeline or water main
9 facility, if the pipeline or main is eight inches or greater in nominal diameter and three or more
10 miles long.

11 **SECTION 27.** Item m of Table 2, following PSC 4.80, is created to read:

12 **Table 2. m.** Adopt or approve long-range commission plans or policies that would
13 predetermine future individual commission actions, if these future actions may significantly
14 affect the human environment.

15 **SECTION 28.** Item a (intro.) of Table 3, following PSC 4.80, is amended to read:

16 **Table 3. a. (intro.)** Construct, rebuild or upgrade an electric transmission line meeting
17 either of the following criteria:

18 **SECTION 29.** Item a. 2 of Table 3, following PSC 4.80, is repealed and recreated to
19 read:

20 **Table 3. a. 2.** All related construction activity takes place entirely within the area of an
21 existing electric transmission line right-of-way. This subdivision does not apply to transmission
22 lines specified in Items b, c, or d, Table 1.

23 **SECTION 30.** Items cg and cr of Table 3, following PSC 4.80, are created to read:

1 **Table 3. cg.** Construct a wind-powered electric generation facility whose nominal
2 capacity is less than 10 MW.

3 **cr.** Construct a solar-powered electric generation facility.

4 **SECTION 31.** Items i and p of Table 3, following PSC 4.80, are amended to read:

5 **Table 3. i.** Construct or replace a gas, coal slurry, ~~water~~, oil or steam pipeline or water
6 main facility, except as provided in Item i, Table 2.

7 p. Construct a utility facility, other than an electric generation facility, not otherwise
8 specified in ~~Tables~~ Table 1, 2 or 3.

9 **SECTION 32.** Item z of Table 3, following PSC 4.80, is created to read:

10 **Table 3. z.** Approval of an application under s. 196.491 (3m) (a), Stats., by an affiliated
11 interest of a public utility to own, control, or operate a wholesale merchant plant that is less than
12 100 MW.

*what about ≥ 100 MW?
Type II?*

(FV)

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

17 (End)