

Kite, Robin

From: Pulda, Matt
Sent: Tuesday, September 24, 2013 4:20 PM
To: Kite, Robin
Subject: RE: Transmission siting bill

That's a good idea. I hadn't sent them to him, but I should have.

Thanks!

From: Kite, Robin
Sent: Tuesday, September 24, 2013 4:16 PM
To: Pulda, Matt
Subject: RE: Transmission siting bill

Matt:

I have been working with David Lovell who drafted the original proposal and on which LRB-1884 is based. David has had many discussions with the interested parties that I have not been involved in. Has David received these proposed revisions? Do you have any objection to my consulting with David as I work through these proposed revisions?

Thanks.
Robin

From: Pulda, Matt
Sent: Tuesday, September 24, 2013 3:41 PM
To: Kite, Robin
Cc: fassbender@hamilton-consulting.com; vmele@wheelerlaw.com
Subject: Transmission siting bill

Hi, Robin,

I shared 1884/P1 and your drafter's note with Bob Fassbender, and he passed them along to Xcel and Dairyland for their review. They have prepared the attached documents, a redlined version of 1884/P1 with additional changes they would like (in blue) and an explanation for some of the changes. I have shared them with Representative Larson, and he asked me to give them to you for inclusion in the draft.

Vince Mele from Wheeler, Van Sickle & Anderson, who worked on the revisions, said he would be willing to meet in the next few days if you think that would be helpful. Otherwise, feel free to contact him or Bob if you have any questions.

Thanks!

Matt Pulda
Research Assistant/Committee Clerk
Office of State Rep. Tom Larson
Assembly Committee on Family Law
(608) 266-1194

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30.025 PERMIT PROCEDURE FOR UTILITY FACILITIES.

(1b) DEFINITIONS. In this section:

(a) (ar) "Commission" means the public service commission.

(ag) "Applicant" means a person proposing to undertake a utility project for which a permit is required and who is any of the following:

1. A person required to obtain a certificate from the public service commission under s. 196.49 or 196.491 (3) in order to undertake the utility project.

2. An electric cooperative, as defined in s. 196.025 (5) (ag).

(b) "Permit" means an individual permit, a general permit, an approval, or a contract required under this subchapter or subch. II, a permit or an approval required under ch. 31, an incidental taking permit required under s. 29.604 (6m) a storm water discharge permit required under s. 283.33 (1) (a), authority to proceed under a general storm water discharge permit under s. 283.35 or a wetland general permit or wetland individual permit required under s. 281.36 or under rules promulgated under subch. II of ch. 281 to implement 33 USC 1341 (a).

(c) "Utility facility" means a facility, as defined in s. 196.491(1), or a project, as defined in s. 196.49 (3) (a), plant, equipment, property, or a facility, as defined in s. 196.491 (1) (e) for the generation, transmission, or distribution of electric power.

(d) "Utility project" mean a project, as defined in s. 196.49 (3) (a), or a project to construct, extend, improve, maintain, or add to a utility facility.

(1c) APPLICABILITY.

(a) Except as provided in pars. (b) and (c), this section applies to a proposal to construct a utility facility if the utility facility is required to obtain, or give notification of the wish to proceed under, one or more permits.

(b) This section does not apply to a proposal to construct a utility facility if the only permit that the utility facility is required to obtain from the department is a storm water discharge permit under s. 283.33 (1) (a) or (am).

[Note: Above provision amended and renumbered 30.025(5)(b)]

(c) This section does not apply to a proposal to construct a utility facility for ferrous mineral mining and processing activities governed by subch. III of ch. 295, unless the person proposing to construct the utility facility elects to proceed in the manner provided under this section.

[Note: Above provision renumbered 30.025(5)(c)]

(1m) PREAPPLICATION PROCESS. Before filing an application under this section, a person proposing to construct a utility facility applicant files an application for a permit under this section, the applicant shall notify the department of the intention to file an application. After receiving such notice, the department shall confer with the person applicant, in cooperation with the commission if the proposed utility facility is subject to s. 196.49 or s. 196.491 (3), to make a preliminary assessment of the project's scope, to make an analysis of alternatives, and to identify potential interested persons, and to ensure that the person making the proposal is aware. At the time the department confers with the applicant, the department shall provide the applicant written notice of all of the following:

this is a defined term

(a) The permits that the person applicant may be required to obtain and the permits under which the person applicant must give notification of the wish intention to proceed.

(b) The information that the person applicant will be required to provide.

(c) The timing of information submissions that the person applicant will be required to provide in order to enable the department to participate in commission review procedures, if the applicant intends to submit the application under

not see def. of applicant in draft

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sub (1s) (a) 2., and to process the application in a timely manner.

(1s) APPLICATION FOR PERMITS.

(am) (a) Submission of application. (intro.) An applicant shall submit to the department applications for permits, together with the information, in detail, that the department requires to determine whether an application is complete and to carry out its obligations under sub. (4). The applicant shall submit an application in one of the following ways:

1. An applicant may submit a separate application for each permit.

2. Any person proposing to construct a utility facility to which this section applies shall, in lieu of separate application for permits, submit By submitting one application for all permits together with any additional information required by the department. The If the proposed utility project is subject to s. 196.49 or 196.491 (3), an application under this subdivision shall be filed with the department at the same time that an application for a certificate is filed with the commission under s. 196.49 or in a manner consistent with s. 196.491 (3) and shall include the detailed information that the department requires to determine whether an application is complete and to carry out its obligations under sub. (4). The department may require supplemental information to be furnished thereafter.

(b) A person who applies to the commission for a certificate under s. 196.49 or 196.491 (3) is eligible to apply under par. (a) for any permit that the utility facility may require and to receive such permit.

(c) Review; no additional information required. In issuing permits or entering contracts under this section, the department shall review an application, and within 30 days after the application is submitted, the department shall determine that either the application is complete or that additional information is needed. If the department determines that the application is complete, the department shall notify the applicant in writing of that fact within the 30-day period, and the date on which the notice

under this paragraph is sent shall be considered the date of closure.

(d) Additional information requested. If the department determines that the application is incomplete, the department shall notify the applicant in writing and may make only one request for additional information during the 30-day period specified in par. (c). Within 10 days after receiving all of the requested information from the applicant, the department shall notify the applicant in writing as to whether the application is complete. The date on which the 2nd notice under this paragraph is sent shall be set as the date of closure. The department may request additional information from the applicant to supplement the application, but the department may not request items of information that are outside the scope of the original request unless the applicant and the department both agree. A request for any such additional information may not affect the date of closure.

(e) Specificity of notice; limits on information. Any notice stating that an application has been determined to be incomplete or any other request for information that is sent under par. (d) shall state the reason for the determination or request and the specific items of information that are still needed and the statutory authority explicitly requiring the information.

(f) Failure to meet time limits. If the department fails to meet the 30-day time limit under par. (c) or 10-day time limit under par. (d), the application shall be considered to have a date of closure that is the last day of that 30-day or 10-day time period.

(2) HEARING. Once the applicant meets the requirements of sub. (1s) (a), the department may schedule the matter for a public hearing. Notice of the hearing shall be given to the applicant and shall be published as a class 1 notice under ch. 985 and as a notice on the department's Internet Web site. The department may give such further notice as it deems proper, and shall give notice to interested persons requesting same. The department's notice to interested persons may be given through an electronic notification system established by the

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sub (1s) (a) 2., and to process the application in a timely manner.

(1s) APPLICATION FOR PERMITS.

(am) (a) Submission of application. (intro.) An applicant shall submit to the department applications for permits, together with the information, in detail, that the department requires to determine whether an application is complete and to carry out its obligations under sub. (4). The applicant shall submit an application in one of the following ways:

1. An applicant may submit a separate application for each permit.

~~2 Any person proposing to construct a utility facility to which this section applies shall, in lieu of separate application for permits, submit By submitting one application for all permits together with any additional information required by the department. The [if the proposed utility project is subject to s. 196.49 or 196.491~~
(3), an application under this subdivision shall be filed with the department at the same time that an application for a certificate is filed with the commission under s. 196.49 or in a manner consistent with s. 196.491 (3) and shall include the detailed information that the department requires to determine whether an application is complete and to carry out its obligations under sub. (4). The department may require supplemental information to be furnished thereafter.

~~(b) A person who applies to the commission for a certificate under s. 196.49 or 196.491 (3) is eligible to apply under par. (a) for any permit that the utility facility may require and to receive such permit.~~

(c) Review; no additional information required. In issuing permits or entering contracts under this section, the department shall review an application, and within 30 days after the application is submitted, the department shall determine that either the application is complete or that additional information is needed. If the department determines that the application is complete, the department shall notify the applicant in writing of that fact within the 30-day period, and the date on which the notice

under this paragraph is sent shall be considered the date of closure.

(d) Additional information requested. If the department determines that the application is incomplete, the department shall notify the applicant in writing and may make only one request for additional information during the 30-day period specified in par. (c). Within 10 days after receiving all of the requested information from the applicant, the department shall notify the applicant in writing as to whether the application is complete. The date on which the 2nd notice under this paragraph is sent shall be set as the date of closure. The department may request additional information from the applicant to supplement the application, but the department may not request items of information that are outside the scope of the original request unless the applicant and the department both agree. A request for any such additional information may not affect the date of closure.

(e) Specificity of notice; limits on information. Any notice stating that an application has been determined to be incomplete or any other request for information that is sent under par. (d) shall state the reason for the determination or request and the specific items of information that are still needed and the statutory authority explicitly requiring the information.

(f) Failure to meet time limits. If the department fails to meet the 30-day time limit under par. (c) or 10-day time limit under par. (d), the application shall be considered to have a date of closure that is the last day of that 30-day or 10-day time period.

(2) HEARING. Once the applicant meets the requirements of sub. (1s) (a), the department may schedule the matter for a public hearing. Notice of the hearing shall be given to the applicant and shall be published as a class 1 notice under ch. 985 and as a notice on the department's Internet Web site. The department may give such further notice as it deems proper, and shall give notice to interested persons requesting same. The department's notice to interested persons may be given through an electronic notification system established by the

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department. Notice of a hearing under this subsection published as a class 1 notice, as a notice on the department's Internet Web site, and through the electronic notification system established by the department shall include the time, date, and location of the hearing, the name and address of the applicant, a summary of the subject matter of the application, and information indicating where a copy of the application may be viewed on the department's Internet Web site. The summary shall contain a brief, precise, easily understandable, plain language description of the subject matter of the application. ~~One~~ The department shall make one copy of the application shall be available for public inspection at the office of the department, and at least one copy in the regional office of the department, and at least one copy at of the area affected. The department shall send an electronic copy of the application to the main public library, of the area affected. At the library's request, the department shall also send a paper copy of the application. Notwithstanding s. 227.42, the hearing shall be an informational hearing and may not be treated as a contested case hearing nor converted to a contested case hearing.

(2g) PARTICIPATION IN COMMISSION PROCEEDINGS:

(a) The department shall review every proposed utility facility subject to this section, including each location, site, or route proposed for the utility facility, to assess whether each proposed location, site, or route can meet the criteria for proceeding under the authority of or obtaining the required permits, and shall provide that information to the commission.

(b) The department shall participate in commission investigations or proceedings under s. 196.49 or 196.491 (3) with regard to any proposed utility facility that is subject to this section. In order to ensure that the commission's decision is consistent with the department's responsibilities, the department shall provide the commission with information that is relevant to only the following:

1. Environmental issues that concern the proposed utility facility.

2. Public rights in navigable waters that may be affected by the proposed utility facility.

3. Location, site, or route issues concerning the proposed utility facility, including alternative locations, sites, or routes.

(2m) SUBMISSION OF INFORMATION TO COMMISSION.

(a) The department shall review every proposed utility project that is subject to s. 196.49 or 196.491 (3), including each location, site, or route proposed for each utility facility, to assess whether each proposed location, site, or route can meet the criteria for obtaining the individual permits or proceeding under the authority of general permits identified by the department under sub. (1m) (a).

(b) The department shall identify and communicate to the commission all of the following with regard to each proposed location, site, or route of a proposed utility project that is subject to s. 196.49 or 196.491 (3):

1. Factors that would require the department to deny one or more permit required for the proposed utility facility to be constructed at the location or site or on the route.

2. Factors that would require the department to impose conditions on one or more permits required for the proposed utility facility to be constructed at the location or site or on the route. The department shall identify the nature of the conditions that would be required and the purposes for imposing the conditions.

(c) The department shall provide the commission with information under par. (b) that is relevant to only the statutes administered by the department and rules promulgated under those statutes that the department has explicit authority to enforce.

(d) If the application was submitted under subs. (1s) (a) 1 or (1s) (a) 2., the department shall participate in commission investigations or proceedings under s. 196.49 or 196.491 (3) with regard to the proposed utility facility.

(2s) CONSIDERATION OF ALTERNATIVES.

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(a) The department shall treat the commission's decision under s. 196.49 or 196.491 (3) as concluding a conclusive finding that there is no practicable alternative for the utility facility if all of the following apply:

1. The department has participated in the commission's investigations or proceedings under sub. (2g).
2. The commission's decision under s. 196.49 or 196.491 (3) is consistent with the department's assessment and information under sub. (2g) considering those factors required to be considered by the commission under s. 196.49 or 196.491 (3).

(b) If par. (a) applies, the The department may not require the applicant for the proposed utility facility to undertake further analysis of any utility facility alternatives, including an analysis of alternative methods of meeting the need for the utility project or alternative locations, sites, or routes in order to satisfy the criteria criterion under sub. (3). If the proposed utility project is subject to s. 196.49 or 196.491 (3). The department may identify adjustments that may be required to address permitting issues within the location, site, or route approved by the commission under s. 196.49 or 196.491 (3) within the location, site, or route approved by the commission that may be required to address permitting issues. If the proposed utility project affects an existing utility facility and is not subject to s. 196.49 or 196.491 (3) [Narrower alternative: If the proposed utility project is excepted from a certificate by s. 196.491 (4)(c)(1s)], the department may identify adjustments within the utility facility's existing location, site, or route that may be required to address permitting issues, and shall treat the utility facility's existing location, site, or route as a conclusive finding that there is no practicable alternative for the utility project.

(3) **PERMIT ISSUANCE.** (a) The department shall issue any individual permit or authorize proceeding the applicant to proceed under, the necessary permits any general permit required for the project if it finds that the applicant has shown that the proposal: (a) ~~Complies~~ complies with environmental statutes administered by the

department and rules promulgated thereunder, and federal environmental standards which that the department has explicit authority to enforce.

(b) Does not unduly affect:

1. Public rights and interests in navigable waterways;
2. The effective flood flow capacity of a stream;
3. The rights of other riparian owners; or
4. Water quality.

(c) The department may not do any of the following:

1. Deny a permit for a proposed utility facility at a location or site or on a route if the department did not identify under sub. (2m) (b) 1. factors that would require it to deny the permit.
2. Impose conditions on a permit that the department did not identify as necessary under sub. (2m) (b) 2. or that are different in nature than the conditions the department identified as necessary under sub. (2g) (c) 2.

(d) 1. If the application was submitted under sub. (1s) (a) 1., the department shall grant or deny the application within 120 days of the date of closure, or the time specified in [the individual permit sections if the applicant had opted not to use s. 30.025], whichever is sooner.

2. If the application was submitted under sub. (1s) (am) 2., the department shall grant or deny the application within 30 days of the date on which the commission issues its decision under s. 196.49 or 196.491 (3) or within 120 days of the date of closure, whichever is sooner.

(e) If the department fails to comply with the pertinent time limit under par. (d), a decision issuing the permit or authorizing the applicant to proceed shall be considered to be rendered. The permit or authorization to proceed that is rendered shall authorize the activity as proposed by the applicant, but within 90 days of authorization, the department may impose prospective terms and conditions consistent with s. 30.025(4) on the permit or authorization that

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are consistent with the applicant's basic proposal.

(3m) ENVIRONMENTAL ASSESSMENTS FOR CERTAIN PROJECTS. The department is not required to prepare an environmental impact statement under s. 1.11 (2) (c) for the construction of a project that is specified in s. 196.491 (4) (c) 1m. or 1s. and for which one or more permits are required, but shall prepare an environmental assessment regarding the construction if the department's rules require an environmental assessment.

(4) PERMIT CONDITIONS. ~~The permit may be issued, or the authority to proceed under a permit may be granted, Except as provided in sub. (3) (c) 2., the department may issue any individual permit or authorize the applicant to proceed under any general permit required for the utility project upon stated conditions deemed determined to be necessary to assure ensure compliance with the criteria criterion designated under sub. (3).~~ The department shall grant or deny the application for a permit for the utility facility within 30 days of the date on which the commission issues its decision under s. 196.49 or 196.491 (3).

(4m) BASIS OF DEPARTMENT DETERMINATIONS. When providing information to the commission under sub. (2m) or making a finding or determination under sub. (2m), (3) (a), or (4), the department shall provide to the applicant and, if the proposed utility facility is subject to s. 196.49 or s. 106.491 (3), to the commission a written statement that demonstrates all of the following:

(a) The information, finding, or determination is consistent with the department's explicit authority under the statutes it administers and with rules promulgated by the department and federal standards that the department has explicit authority to enforce.

(b) The information, finding, or determination is based on sufficient facts or data and is the product of reliable principles and methods, and the department has reliably applied the principles and methods to the facts of the case.

(5) EXEMPTIONS FROM CERTAIN PROCEDURES.

(a) Sections 30.208 and 30.209 do not apply to an application for any permit under this section.

(b) This section does not apply to a proposal to construct a utility facility if the only permit that the utility facility is required to obtain from the department is a storm water discharge permit under s. 283.33 (1) (a) or (am) or authority to proceed under a storm water discharge general permit under s. 283.35.

(c) This section does not apply to a proposal to construct a utility facility for ferrous mineral mining and processing activities governed by subch. III of ch. 295, unless the person proposing to construct the utility facility elects to proceed in the manner provided under this section.

(d) This section does not apply to a proposed utility project that does not require a certificate under s. 196.49 or 196.491 (3), unless the applicant proposing the utility project elects to proceed in the manner provided under this section.

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Exemption in LRB 1884/P1

SECTION 28. 30.12 (1mn) of the statutes is created to read:

30.12 (1mn) UTILITY FACILITIES. (a) In this subsection:

1. "Construction" means installation, repair, replacement, removal, or maintenance.
2. "Facility" means a facility used to transmit or distribute electricity, gas, water, or telephone service or to collect sewerage.
3. "Structure" includes a pole, support anchor, culvert, clear-span bridge, or construction mat used to protect a wetland or land below the ordinary high-water mark.

(b) An electric public utility or a wholesale electric cooperative, as defined in ~~s. 16.957 (1)~~ ~~(v)~~ s. 196.025 (5) (ag), is exempt from the permit requirements under this section for any of the following:

1. The temporary use or placement within an existing utility corridor of equipment or a structure for a purpose associated with the construction of a facility.
2. The temporary use or placement within an existing utility corridor of a vehicle on the bed of a navigable water for a purpose associated with the construction of a facility.
3. The deposit of material that is associated with the response to or cleanup of a release of drilling fluid associated with directional boring, if the deposit does not affect more than one-tenth of one acre.

SECTION 29. 30.20 (1g) (d) of the statutes is created to read:

30.20 (1g) (d) The removal of material that is associated with the response to or cleanup of a release of drilling fluid associated with directional boring is exempt from the permit and contracts requirements under this section, if the removal does not affect more than one-tenth of one acre.

SECTION 30. 59.692 (1n) of the statutes is created to read:

59.692 (1n) (a) In this subsection, "electric cooperative" means a cooperative association that is organized under ch. 185 for the purpose of providing electricity at wholesale or retail to its members only.

(b) This section and ordinances enacted under this section do not apply to a project for the construction and maintenance of electric, gas, telephone, water, or sewerage collection, transmission, or distribution facilities conducted by a public utility or an electric cooperative in a shoreland if one of the following applies:

1. The department has issued all permits required for the project.
2. No permits are required for the project and the person conducting the project employs best management practices related to storm water management.

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Changes to Chapter 196 in LRB 1884/P1

SECTION 31. 196.491 (3) (a) 3. a. of the statutes is amended to read:

196.491 (3) (a) 3. a. At least 60 days before a person files an application under subd. 1., the person shall provide the department with an engineering plan if the facility is a large electric generating facility. The engineering plan shall show the location of the facility, a description of the facility, including the major components of the facility that have a significant air, water or solid waste pollution potential, and a brief description of the anticipated effects of the facility on air quality, water quality, wetlands, solid waste disposal capacity, and other natural resources. Within 30 days after a person provides an engineering plan, the department shall provide the person with a listing of each department permit or approval, other than a permit as defined in s. 30.025 (1b) (b), which, on the basis of the information contained in the engineering plan, appears to be required for the construction or operation of the facility.

SECTION 32. 196.491 (3) (a) 3. b. of the statutes is amended to read:

196.491 (3) (a) 3. b. Except as provided under subd. 3. c., within 20 days after the department provides a listing specified in subd. 3. a. to a person, the person shall apply for the permits and approvals identified in the listing. The department shall determine whether an application under this subd. 3. b. is complete and, no later than 30 days after the application is filed, notify the applicant about the determination. If the department determines that the application is incomplete, the notice shall state the reason for the determination. An applicant may supplement and refile an application that the department has determined to be incomplete. There is no limit on the number of times that an applicant may refile an application under this subd. 3. b. If the department fails to determine whether an application is complete within 30 days after the application is filed, the application shall be considered to be complete. ~~Except as provided in s. 30.025 (4), the~~ The department shall complete action on an application under this subd. 3. b. for any permit or approval that is

required prior to construction of a facility within 120 days after the date on which the application is determined or considered to be complete.

SECTION 33. 196.492 of the statutes is created to read:

196.492 Siting of electric facilities. (1) In this section, "utility facility" has the meaning given in s. 30.025 (1b) (c).

(2) Subject to sub. (3), the commission shall have exclusive jurisdiction over the approval of locations, sites, or routes for utility facilities that are subject to s. 196.49 or 196.491 (3).

(3) In an investigation or proceeding under s. 196.49 or 196.491 (3), the commission shall consider the information provided by the department of natural resources under s. 30.025 (2m) when determining the location, site, or route of a utility facility that is subject to s. 30.025.

Clarifications/Changes to LRB 1884/P1

Generally, we need to clarify the proposed language regarding the situation where an applicant needs to file for DNR permits but does not need a CA or CPCN. This is the bulk of DPC and the distribution cooperative's projects. Of concern is that the proposed s. 30.025 would apply to these projects and mandate a preapplication process for minor projects that have not historically required such action. Our suggestions would clarify that certain applicants may opt-in to bundle DNR permits together pursuant to s. 30.025.

The decision tree for an electric cooperative or other electric utility that does not require a CA/CPCN for such a project would be:

1. Initially, do you want to process the DNR permit(s) under s. 30.025? (Parallel to the ferrous mining opt-in in existing s. 30.025 (1e)(c))
 - a. If no, then the DNR permit(s) will be filed individually pursuant to the respective statutes (e.g., s. 281.36 for wetland permits) and s. 30.025 is not applicable.
 - b. If yes, then under s. 30.025, do you want to file the DNR permits individually or bundled?
 - i. If individually, then follow process of proposed s. 30.025 (1s)(am)1.
 - ii. If bundled, then follow process of proposed s. 30.025 (1s)(am)2.

this may ultimately be deleted

Specific Changes

Section 4

We have discussed this before, but we are significantly cutting out non-electric utilities that currently receive permits under s. 30.025 by restricting it to only electric "utility facilities." We do not want to see other (non-electric) utilities or entities that must receive PSC certificates to see their exclusion as an opportunity to kill the bill. The suggested language below will maintain the status quo for applicability of s. 30.025, and is broader than what we have suggested in the past due to the prior expectation that those potentially adverse parties would have already raised this as an issue.

Suggested language for s. 30.025 (1b)(c):

"Utility facility" means a facility, as defined in s. 196.491 (1) (e), or a plant, equipment, property, or facility for the generation, transmission, or distribution of electric power.

Suggested language for s. 30.025 (1b)(d):

"Utility project" means a project, as defined in s. 196.49 (3)(a), or a project to construct, extend, improve, maintain, or add to a utility facility.

Section 10

The modified language creates a new requirement for a preapplication process for any DNR permit for a utility project. This is a substantial departure from the current law where s. 30.025 is arguably optional for DNR permits for non-CA, non-CPCN projects. The ability in existing s.

30.025 (1e)(c) for mining operations to opt-out of s. 30.025 bolsters the argument that s. 30.025 would be mandatory for all DNR permits for utility facilities. We suggest parallel language to existing s. 30.025 (1e)(c) in the applicability section of the statute. Additionally, a qualifier for s. 30.025 (1m) is needed to denote the applicant's ability to opt-out of s. 30.025 by not submitting a DNR permit under the statute.

Suggested language for new s. 30.025 (5)(d):

This section does not apply to a proposed utility project that does not require a certificate under s. 196.49 or 196.491 (3), unless the applicant proposing the utility project elects to proceed in the manner provided under this section.

[For reference, existing s. 30.025(1e)(c): "This section does not apply to a proposal to construct a utility facility for ferrous mineral mining and processing activities governed by subch. III of ch. 295, unless the person proposing to construct the utility facility elects to proceed in the manner provided under this section."]

Proposed s. 30.025 (5)(a) will need to be changed to refer to this exception.

Suggested language for s. 30.025 (1m):

Before an applicant files an application for a permit under this section, the applicant shall notify the department of the intention to file an application.

Section 11

As it is currently drafted, the second sentence of proposed s. 30.025 (1s)(am)2. indicates that the subdivision only applies to activities requiring PSC involvement (requiring DNR permit(s) and a PSC certificate). We would like it clarified that it also applies in circumstances where only DNR permits are bundled and applied for as a single application under s. 30.025 (1s)(am)2.

Suggested language for s. 30.025 (1s)(am)2. :

By submitting one application for all permits. If the proposed utility project is subject to s. 196.49 or 196.491 (3), an application under this subdivision shall be filed with the department at the same time that an application for a certificate is filed with the commission under s. 196.49 or in a manner consistent with s. 196.491 (3).

Section 20

The last sentence (page 8:21-23) should be reordered to place the limitation on adjustments to "within the commission approved location, site, or route." The department may not force the utility outside of the location, site, or route approved by the commission. As it is currently drafted, the "permitting issues" are "within the location, site, or route," but the "adjustments," could be anywhere. DPC would also like to ensure that DNR cannot move any project off of existing right-of-way. A narrower alternative would apply only when the project is not subject to a CPCN due to an electric cooperative rebuilding entirely within its own right-of-way.

Suggested language for the last sentence of s. 30.025 (2s) (b):

The department may not require the applicant to undertake further analysis of any utility facility alternatives, including an analysis of alternative methods of meeting the need for the utility project or alternative locations, sites, or routes in order to satisfy the criterion under sub. (3). If the proposed utility project is subject to s. 196.49 or 196.491 (3), the department may identify adjustments within the location, site, or route approved by the commission that may be required to address permitting issues. If the proposed utility project affects an existing utility facility and is not subject to s. 196.49 or 196.491 (3) [Narrower alternative. If the proposed utility project is excepted from a certificate by s. 196.491 (4)(c)(1)], the department may identify adjustments within the utility facility's existing location, site, or route that may be required to address permitting issues, and shall treat the utility facility's existing location, site, or route as a conclusive finding that there is no practicable alternative for the utility project.

existing

Section 23

If a utility does not need a PSC certificate (DPC, or Xcel after a PSC certificate is attained), and proceeded with a combined application for DNR permits or submitted individual permits, the department shall grant or deny the application within 120 days of the date of closure. This differs from the timeline of filing for individual permits outside of this proposed s. 30.025 process.

hold off

Suggested language for s. 30.025 (3)(d)1.:

If an application is submitted under sub. (1s)(am)1., the department shall grant or deny the application within 120 days of the date of closure, or the time specified in [the individual permit sections if the applicant had opted not to use s. 30.025], whichever is sooner.

DNR should not be able to impose "terms and conditions", page 10:1-2, that exceed the terms and conditions that it would have been able to impose if it had issued a permit within the timeframe listed in par. (d). The limitation as drafted states that the terms and conditions must be "consistent with the applicant's basic proposal." There is also no timeline by which DNR must impose these terms and conditions.

Suggested language for s. 30.025 (3) (e):

If the department fails to comply with the relevant time limit under par. (d), a decision issuing the permit or authorizing the applicant to proceed shall be considered to be rendered. The permit or authorization to proceed shall authorize the activity as proposed by the applicant, but within 90 days of authorization, the department may impose prospective terms and conditions consistent with s. 30.025 (4) and the applicant's basic proposal.

Section 28

Distribution cooperatives should receive the same treatment as DPC.

Suggested language for 30.12 (1mn)(b):

An electric public utility, or an ~~wholesale~~ electric cooperative as defined in ~~s. 16.957 (1)(v)~~ s. 196.025 (5) (ag), is exempt from the permit requirements under this section for any of the following: [...]

10/14/13

Meeting with Bob Fassbender (represents Xcel), Vince Mele (represents Dairyland Cooperative), and David Lovell to discuss latest revisions. I raised the issue that I did not want to proceed with another version of the draft if there was a likelihood that ATC would want changes and that those changes could be significant. Bob said that he would get back to me in a few days with a final decision on all changes. In meantime we discussed the latest requested changes.

The overall issue according to Vince is that a cooperative may not have PSC review because it is not required to get a certificate but the intent is to allow the cooperative to still use the procedure in s. 30.025 (to combine permits). The current version of the draft does not contemplate this option.

Kite, Robin

From: Mele, Vincent <vmele@wheelerlaw.com>
Sent: Monday, October 14, 2013 4:57 PM
To: Kite, Robin
Cc: Lovell, David; Robert Fassbender (fassbender@hamilton-consulting.com); Landsman, Jeffrey; Nathan S Franklin (nsf@dairynet.com)
Subject: Transmission Siting Reform Bill

Robin,

Thank you for your time and patience today while I tried to unpack some of the concepts of the bill. As a follow up to our discussion, please find our suggested revisions to Section 20 of the LRB-1884/P1 draft. Conceptually, we would like DNR bound by the PSC's decision if a certificate is required. Additionally, we would like DNR bound by the existing location, site, route, or right-of-way if: [1] a utility facility already exists, and [2] a certificate is not required for the construction, expansion, improvement, or maintenance of that existing utility facility. I added the phrase "right-of-way" to this latter circumstance because "right-of-way" only applies to an existing utility facility. Regarding the conclusive finding that there is no practicable alternative, I attempted to parallel the language used in Section 18 of your draft.

Suggested Section 20

The department may not require the applicant to undertake further analysis of any utility facility alternatives, including an analysis of alternative methods of meeting the need for the utility project or alternate locations, sites, or routes in order to satisfy the criterion under sub. (3). If the proposed utility project is subject to s. 196.49 or 196.491 (3), the department may identify adjustments within the location, site, or route approved by the commission that may be required to address permitting issues. If the proposed utility project affects an existing utility facility and is not subject to s. 196.49 or 196.491 (3), the department may identify adjustments within the utility facility's existing location, site, route or right-of-way, and shall treat the utility facility's existing location, site, route or right-of-way as a conclusive finding that there is no practicable alternative for the utility facility.

Please let me know if I can be of any further assistance deciphering these or any other technical concepts of the bill.

Vince Mele
Wheeler, Van Sickle & Anderson, S.C.
25 West Main Street, Suite 801
Madison, WI 53703

Telephone (608) 255-7277
Direct line (608) 441-3831
Fax (608) 255-6006

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11/4 - called Vince Mele, left message
1

Kite, Robin

From: Robert Fassbender <fassbender@hamilton-consulting.com>
Sent: Thursday, October 17, 2013 9:14 AM
To: Pulda, Matt
Cc: Kite, Robin; Lovell, David
Subject: RE: Transmission Siting Reforms

Yes Matt,

Dairyland Power and Xcel Energy have no intention to request any additional changes.

Bob

Robert Fassbender
fassbender@hamilton-consulting.com
Hamilton Consulting Group
Office: 608-258-9506

From: Pulda, Matt [<mailto:Matt.Pulda@legis.wisconsin.gov>]
Sent: Thursday, October 17, 2013 9:02 AM
To: Robert Fassbender
Cc: Kite, Robin; Lovell, David
Subject: FW: Transmission Siting Reforms

Hi, Bob,

I believe you said yesterday that these are your final instructions, but would you please confirm that? Thanks!

Matt

From: Kite, Robin
Sent: Thursday, October 17, 2013 9:00 AM
To: Pulda, Matt
Cc: Lovell, David
Subject: RE: Transmission Siting Reforms

Matt:

Do you know if these are final instructions? When David and I met with Bob Fassbender and Vince Mele earlier this week, I understood that they intended to have more discussions with ATC and that after the conclusion of those discussions they would have final instructions for me. This is an extremely complicated draft and I want to try and avoid working on it in a piecemeal fashion. This tends to slow down the drafting process. Do you know if these instructions are the result of those discussions? If, in fact, these are the final instructions, I will be happy to proceed with the redraft.

Thanks.
Robin

From: Pulda, Matt
Sent: Thursday, October 17, 2013 8:54 AM
To: Lovell, David; Kite, Robin
Subject: FW: Transmission Siting Reforms

Hi, David and Robin,

Bob sent the attached changes to me yesterday, and I have shared them with the Representative. Would you please incorporate these into the new draft? Thanks! (As always, if you have questions, you can ask me or contact Bob directly.)

Matt

From: Robert Fassbender [<mailto:fassbender@hamilton-consulting.com>]
Sent: Wednesday, October 16, 2013 3:28 PM
To: Pulda, Matt
Cc: Matt Pagel (Matthew.E.Pagel@xcelenergy.com)
Subject: Transmission Siting Reforms

Matt,

Attached and below are those changes supported by Xcel Energy and Dairyland Power that would address the primary concerns raised by ATC. If Rep. Larson agrees, we would appreciate you providing these changes to both Robin Kite and David Lovell.

Thanks for your consideration.

Bob

Robert Fassbender
fassbender@hamilton-consulting.com
Hamilton Consulting Group
Office: 608-258-9506

Drafting Instructions – 1884-P1 (Transmission Permits)

In addition to those changes previously requested, please modify LRB-1884/P1 as follows:

1. Revert to existing law that requires a single DNR permit application filed at the time of the PSC application. (Section 11 modifying §30.025(1s)(a)) Other sections in LRB-1884/P1 would be modified to reconcile this change.

2. Modify language parroting the *Daubert* expert testimony standard in Section 25, creating §30.025(4m)(b), as follows:

(b) The information, finding, or determination is based on sufficient facts or data and is the product of reliable principles and methods, and the department has reliably applied the principles and methods to the facts of the case.

3. Clarify that while Section 16 repeals §30.025(2g), entitled Participation in Commission Proceedings, Section 17, creating §30.025(2m), still requires DNR to participate in PSC proceedings. See new §30.025(2g)(d) that provides:

[T]he department shall participate in commission investigations or proceedings under s. 196.49 or 196.491 (3) with regard to the proposed utility facility.

It does not appear to us any change is required to LRB-1884/P1, but some have interpreted, at least of prior versions of the draft bill, that DNR would no longer be required to participate in PSC proceedings.

Maybe retaining the existing title (Participation in Commission Proceedings), in part or whole, would help.

11/5/13 - Telephone call with Vince Mele.

Vince clarified that the redraft should not include the option to use the s. 30.025 if the utility decides to file for each permits separately. That part of the draft should be removed.

Vince said that one of the main objectives of the redraft is to let utility facilities that do not need a certificate from PSC "bundle" their permits under s. 30.025. So for these utilities, the s. 30.025 procedure is optional. For those facilities that need a PSC certificate, the s. 30.025 procedure is not optional (as under current law).

11/7/13 - Telephone call to Vince Mele
I called Vince to tell him that I thought the draft was confusing on the question of how DNR makes a decision on a "combined permit". On the one hand, the draft implies that DNR approves or denies the entire application. On the other hand, the draft says that ~~DNR~~ DNR may approve or deny ~~the~~ each permit separately. This issue needs to be resolved. Vince will give this more thought + call me tomorrow.



State of Wisconsin
2013 - 2014 LEGISLATURE

soon



RM
run

P2

LRB-1884/P2
RNK/wlj:lm

Stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

JR
10/14

Wed. 1
11/20

D-Note

PWF
11/20

Regen

1 **AN ACT to repeal** 30.025 (1e) (title), 30.025 (1e) (a), 30.025 (1s) (b), 30.025 (2g),
2 30.025 (2s) (a) 1. and 2. and 30.025 (3) (b); **to renumber** 30.025 (1b) (a), 30.025
3 (1e) (c) and 30.025 (5); **to renumber and amend** 30.025 (1e) (b), 30.025 (1s) (a)
4 and 30.025 (2s) (a) (intro.); **to consolidate, renumber and amend** 30.025 (3)
5 (intro.) and (a); **to amend** 30.025 (1b) (b), 30.025 (1b) (c), 30.025 (1m), 30.025
6 (2), 30.025 (2s) (b), 30.025 (4), 196.491 (3) (a) 3. a. and 196.491 (3) (a) 3. b.; **to**
7 **repeal and recreate** 30.025 (5) (title); and **to create** 30.025 (1b) (ag), 30.025
8 (1b) (d), 30.025 (1s) (am) (intro.) and 1., 30.025 (1s) (c) to (f), 30.025 (2m), 30.025
9 (3) (c) to (e), 30.025 (4m), 30.12 (1mn), 30.20 (1g) (d), 59.692 (1n) and 196.492

1 of the statutes; relating to: ^{review of proposed} utility ^{facilities} ^{by the}
 2 that require a permit from the Department of Natural Resources ~~and the Public Service Commission.~~ ^{procedures for the projects}

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 30.025 (1b) (a) of the statutes is renumbered 30.025 (1b) (ar).

4 SECTION 2. 30.025 (1b) (ag) of the statutes is created to read:

5 30.025 (1b) (ag) "Applicant" means a person proposing to undertake a utility
6 project for which a permit is required and who is any of the following:

7 1. A person required to obtain a certificate from the public service commission
8 under s. 196.49 or 196.491 (3) in order to undertake the utility project.

9 2. An electric cooperative, as defined in s. 196.025 (5) (ag).

10 SECTION 3. 30.025 (1b) (b) of the statutes, as affected by 2013 Wisconsin Act 20,
11 is amended to read:

12 30.025 (1b) (b) "Permit" means an individual permit, a general permit, an
13 approval, or a contract required under this subchapter or subch. II, a permit or an
14 approval required under ch. 31, an incidental taking permit required under s. 29.604
15 (6m), a storm water discharge permit required under s. 283.33 (1) (a) or (am),
16 authority to proceed under a general storm water discharge permit required under
17 s. 283.35, or a wetland general permit or wetland individual permit required under
18 s. 281.36 or under rules promulgated under subch. II of ch. 281 to implement 33 USC
19 1341 (a).

20 SECTION 4. 30.025 (1b) (c) of the statutes is amended to read:

INS
2-9

1 30.025 (1b) (c) "Utility facility" means a project, as defined in s. 196.49 (3) (a),
 2 plant, equipment, property, or a facility, as defined in s. 196.491 (1) (e) ^{operated} for the
 3 generation, transmission, or distribution of electric power.

4 SECTION 5. 30.025 (1b) (d) of the statutes is created to read:

5 30.025 (1b) (d) "Utility project" means a project to construct, extend, improve,
 6 ^{maintain} or add to a utility facility.

7 ~~SECTION 6. 30.025 (1e) (title) of the statutes is repealed.~~

8 SECTION 7. 30.025 (1e) (a) of the statutes, as affected by 2013 Wisconsin Act 1,
 9 is repealed.

INS.
3-9

10 SECTION 8. 30.025 (1e) (b) of the statutes, as affected by 2013 Wisconsin Act 20,
 11 is renumbered 30.025 (5) (b) and amended to read:

12 30.025 (5) (b) This section does not apply to a proposal to ~~construct~~ ^{undertake} a utility
 13 ~~facility~~ ^{project} if the only permit that the ~~utility facility~~ ^{applicant} is required to obtain from the
 14 department is a storm water discharge permit under s. 283.33 (1) (a) or (am) or
 15 authority to proceed under a storm water discharge general permit issued by the
 16 department under s. 283.35.

17 SECTION 9. 30.025 (1e) (c) of the statutes, as created by 2013 Wisconsin Act 1,
 18 is renumbered 30.025 (5) (c).

19 SECTION 10. 30.025 (1m) of the statutes is amended to read:

20 30.025 (1m) PREAPPLICATION PROCESS. Before filing an application under this
 21 section, a person proposing to construct a utility facility ^{applicant} ^{submits} an application
 22 ~~for a permit~~ ^{under this section} the applicant shall notify the department of the intention to ^{submit} file an
 23 application. After receiving such notice, the department shall confer with the person
 24 applicant, in cooperation with the commission if the ~~utility project is subject to s.~~ ^{utility}
 25 ~~196.49 or 196.491 (3)~~, to make a preliminary assessment of the project's scope, to

applicant is required to obtain a certificate

1 make an analysis of alternatives, and to identify potential interested persons, and
2 to ensure that the person making the proposal is aware. At the time the department
3 confers with the applicant, the department shall provide the applicant written notice
4 of all of the following:

5 (a) The permits that the person applicant may be required to obtain and the
6 permits under which the person applicant must give notification of the wish
7 intention to proceed.

8 (b) The information that the person applicant will be required to provide.

9 (c) The timing of information submissions that the person applicant will be
10 required to provide in order to enable the department to participate in commission
11 review procedures if the applicant intends to submit the application under sub. (1s)

12 (am) 2. and to process the application in a timely manner.

13 **SECTION 11.** 30.025 (1s) (a) of the statutes is renumbered 30.025 (1s) (am) 2.
14 and amended to read:

15 30.025 (1s) (am) 2. ~~Any person proposing to construct a utility facility to which~~
16 ~~this section applies shall, in lieu of separate application for permits, submit By~~
17 ~~submitting one application for all permits together with any additional information~~
18 ~~required by the department. The An application under this subdivision shall be filed~~
19 ~~with the department at the same time that an application for a certificate is filed with~~
20 ~~the commission under s. 196.49 or in a manner consistent with s. 196.491 (3) and~~
21 ~~shall include the detailed information that the department requires to determine~~
22 ~~whether an application is complete and to carry out its obligations under sub. (4).~~
23 ~~The department may require supplemental information to be furnished thereafter.~~

24 **SECTION 12.** 30.025 (1s) (am) (intro.) and 1. of the statutes are created to read:

INS.
4-9

INS.
4-12

INS.
4-12

INS.
5-6

1 ~~30.025 (1s) (am) *Submission of application.* (intro.) An applicant shall submit~~
2 ~~to the department applications for permits, together with information, in detail, that~~
3 ~~the department requires to determine whether an application is complete and to~~
4 ~~carry out its obligations under sub. (4). The applicant shall submit an application~~
5 ~~in one of the following ways:~~

6 1. By submitting a separate application for each permit.

7 SECTION 13. 30.025 (1s) (b) of the statutes is repealed.

8 SECTION 14. 30.025 (1s) (c) to (f) of the statutes are created to read:

9 30.025 (1s) (c) *Review* ~~no additional information required. In issuing permits~~
10 ~~or entering contracts under this section,~~ the department shall review an application,

submitte
under
par. (a)

11 and within 30 days after the application is submitted, the department shall
12 determine that either the application is complete or that additional information is
13 needed.) If the department determines that the application is complete, the
14 department shall notify the applicant in writing of that fact within the 30-day
15 period, and the date on which the notice under this paragraph is sent shall be
16 considered the date of closure.

INS.
5-13

17 (d) *Additional information requested.* If the department determines that the
18 application is incomplete, the department shall notify the applicant in writing and
19 may make only one request for additional information during the 30-day period
20 specified in par. (c). Within 10 days after receiving all of the requested information

21 from the applicant, the department shall notify the applicant in writing as to
22 whether the application is complete. The date on which the 2nd notice under this
23 paragraph is sent shall be set as the date of closure. The department may request
24 additional information from the applicant to supplement the application, but the
25 department may not request items of information that are outside the scope of the

1 original request unless the applicant and the department both agree. A request for
2 any such additional information may not affect the date of closure.

3 (e) *Specificity of notice; limits on information.* Any notice stating that an
4 application has been determined to be incomplete or any other request for
5 information that is sent under par. (d) shall state the reason for the determination
6 or request and the specific items of information that are still needed and the
7 statutory authority explicitly requiring the information.

8 (f) *Failure to meet time limits.* If the department fails to meet the 30-day time
9 limit under par. (c) or 10-day time limit under par. (d), the application shall be
10 considered to have a date of closure that is the last day of that 30-day or 10-day time
11 period.

12 **SECTION 15.** 30.025 (2) of the statutes is amended to read:

13 30.025 (2) HEARING. Once the applicant meets the requirements of sub. (1s) (a)
14 (am), the department may schedule the matter for a public hearing. Notice of the
15 hearing shall be given to the applicant and shall be published as a class 1 notice
16 under ch. 985 and as a notice on the department's Internet Web site. The department
17 may give such further notice as it deems proper, and shall give notice to interested
18 persons requesting same. The department's notice to interested persons may be
19 given through an electronic notification system established by the department.
20 Notice of a hearing under this subsection published as a class 1 notice, as a notice on
21 the department's Internet Web site, and through the electronic notification system
22 established by the department shall include the time, date, and location of the
23 hearing, the name and address of the applicant, a summary of the subject matter of
24 the application, and information indicating where a copy of the application may be
25 viewed on the department's Internet Web site. The summary shall contain a brief,

1 precise, easily understandable, plain language description of the subject matter of
 2 the application. ~~One~~ The department shall make one copy of the application shall
 3 be available for public inspection at the office of the department, and at least one copy
 4 in the regional office of the department, and at least one copy at of the area affected.
 5 The department shall send an electronic copy of the application to the main public
 6 library, of the area affected. At the library's request, the department shall also send
 7 a paper copy of the application. Notwithstanding s. 227.42, the hearing shall be an
 8 informational hearing and may not be treated as a contested case hearing nor
 9 converted to a contested case hearing.

10 SECTION 16. 30.025 (2g) of the statutes is repealed.

11 SECTION 17. 30.025 (2m) of the statutes is created to read: ^{CS}
 12 30.025 (2m) ^{Application review; CS} SUBMISSION OF INFORMATION TO COMMISSION ^{participation in}
 13 ^{application for a} (a) The department shall review every proposed utility project ^{CS} ~~that is~~ ^{commission proceedings}

14 ~~that is~~ ^{the} ~~subject to s. 196.49 or 196.491 (3),~~ including each location, site, or route proposed for ~~the~~ ^{project}
 15 ^{for the utility project} utility ~~facility~~ ^{to} assess whether each proposed location, site, or route ^{can meet the}
 16 criteria for obtaining the individual permits or proceeding under the authority of
 17 general permits identified by the department under sub. (1m) (a). ^{that the applicant proposes for the}

18 (b) ^{If the applicant is required to obtain a certificate,} The department shall identify and communicate to the commission all of the ^{for the}
 19 following with regard to each ~~proposed~~ ^{proposed} location, site, or route ~~of a proposed~~ utility
 20 project ~~that is subject to s. 196.49 or 196.491 (3).~~

21 1. Factors that would require the department to deny one or more permits
 22 required for the proposed utility ~~facility~~ ^{project} to be ~~constructed~~ ^{undertaken} at the location or site or
 23 ^{along} ~~on~~ the route.

24 2. Factors that would require the department to impose conditions on one or
 25 more permits required for the proposed utility ~~facility~~ ^{project} to be ~~constructed~~ ^{undertaken} at the

1 location or site or ^{or along} on the route. The department shall identify the nature of the
2 conditions that ^{The department} would be required ^{to impose} and the purposes for imposing the conditions.

3 (c) The department shall provide the commission with information under par.

4 (b) that is relevant to only the statutes administered by the department and rules
5 promulgated under those statutes that the department has explicit authority to
6 enforce.

7 (d) If the application was submitted under sub. (1s) (am) 2, ^{applicant is required to obtain a certificate} the department
8 shall participate in commission investigations or proceedings under s. 196.49 or
9 196.491 (3) with regard to the proposed utility facility ^{project}.

10 SECTION 18. 30.025 (2s) (a) (intro.) of the statutes is renumbered 30.025 (2s)

11 (a) and amended to read:

12 ~~30.025 (2s) (a) The department shall treat the commission's decision under s.
13 196.49 or 196.491 (3) as concluding a conclusive finding that there is no practicable
14 alternative for the utility facility if all of the following apply: ^{project}~~

15 SECTION 19. 30.025 (2s) (a) 1. and 2. of the statutes are repealed. **STET**

16 SECTION 20. 30.025 (2s) (b) of the statutes is amended to read:

17 ~~30.025 (2s) (b) If par. (a) applies, the The department may not require the
18 applicant for the proposed utility facility to undertake further analysis of any utility
19 facility ^{project} alternatives, including an analysis of alternative methods of meeting the
20 need for the utility project or alternative locations, sites, or routes in order to satisfy
21 the criteria criterion under sub. (3). ~~The department may identify adjustments that
22 may be required to address permitting issues within the location, site, or route
23 approved by the commission under s. 196.49 or 196.491 (3).~~~~

24 SECTION 21. 30.025 (3) (intro.) and (a) of the statutes are consolidated,
25 renumbered 30.025 (3) (a) and amended to read:

Insert 8-11

INS. 8:23

1 30.025 (3) PERMIT ISSUANCE. (a) The department shall issue, any individual
 2 permit or authorize proceeding the applicant to proceed under, ~~the necessary permits~~
 3 any general permit required for the utility project if it finds that the applicant has
 4 shown that the ~~proposal~~: ^{proposed utility project is consistent} (a) ~~Complies~~ ^{complies} with environmental statutes
 5 administered by the department and rules promulgated thereunder, ~~and federal~~
 6 ~~environmental standards which~~ that the department has explicit authority to
 7 enforce.

8 SECTION 22. 30.025 (3) (b) ^{proposed} of the statutes is repealed.

9 SECTION 23. 30.025 (3) (c) to (e) of the statutes are created to read:

10 30.025 (3) (c) ^{If a utility project requires a certificate,} The department may not do any of the following:

11 1. Deny a permit for a proposed utility facility at a location or site or on a route
 12 requested in an application under sub. (1s)(a)
 13 if the department did not identify under sub. (2m) (b) 1. factors that would require
 14 it to deny the permit. ✓

14 2. Impose conditions on a permit ^{requested in an application under sub. (1s)(a)} that the department did not identify as
 15 necessary under sub. (2m) (b) 2. or that are different in nature from the conditions
 16 the department identified as necessary under sub. (2m) (b) 2.

17 ~~(1s) If an application is submitted under sub. (1s) (am) 1., the department~~
 18 ~~shall grant or deny the application within 120 days of the date of closure.~~

19 ~~(2.) If the application was submitted under sub. (1s) (am) 2., the department~~
 20 ~~shall grant or deny ^{each permit} the application within 30 days of the date on which the~~

21 commission issues its decision under s. 196.49 or 196.491 (3) or within 120 days of
 22 the date of closure, whichever is sooner.

23 (e) If the department fails to comply with the relevant time limit ^s under par. (d),
 24 a decision issuing the ~~permit~~ ^{permits requested in the application} or authorizing the applicant to proceed shall be
 25 considered to be rendered. The permit ^s or authorization ^s to proceed shall authorize

INS.
9-20

INS.
9-22

as requested
in the application

1 the ^{or utility project} activity as proposed by the applicant, but the department may impose terms and
 2 conditions on the permit or authorization that are consistent with the ~~applicant's~~
 3 ^{Application} basic proposal.

4 SECTION 24. 30.025 (4) of the statutes is amended to read:

5 30.025 (4) PERMIT CONDITIONS. ~~The permit may be issued, or the authority to~~
 6 ~~proceed under a permit may be granted, Except as provided in sub. (3) (c) 2., the~~
 7 ~~department may issue any individual permit or authorize the applicant to proceed~~
 8 ~~under any general permit required for the utility project upon stated conditions~~
 9 ~~deemed determined to be necessary to assure ensure compliance with the~~ criteria plain
 10 ~~criteria~~ designated under sub. (3). ~~The department shall grant or deny the~~
 11 ~~application for a permit for the utility facility within 30 days of the date on which the~~
 12 ~~commission issues its decision under s. 196.49 or 196.491 (3).~~

13 SECTION 25. 30.025 (4m) of the statutes is created to read:

14 30.025 (4m) BASIS OF DEPARTMENT DETERMINATIONS. When providing
 15 information to the commission under sub. (2m) or making a finding or determination
 16 under sub. (2m) (3) (a) or (4), the department shall provide to the applicant and, if
 17 the proposed utility ~~facility~~ ^{project} is subject to s. 196.49 or s. 196.491 (3), to the commission
 18 a written statement that demonstrates all of the following:

19 (a) The information, finding, or determination is consistent with the
 20 department's explicit authority under the statutes it administers and with rules
 21 promulgated by the department and federal standards that the department has
 22 explicit authority to enforce.

23 (b) The information, finding, or determination is based on sufficient facts or
 24 data and is produced using reliable principles and methods, and the department has
 25 reliably applied the principles and methods to the facts of the case.

1 SECTION 26. 30.025 (5) (title) of the statutes is repealed and recreated to read:

2 30.025 (5) (title) EXCEPTIONS.

3 SECTION 27. 30.025 (5) of the statutes is renumbered 30.025 (5) (a).

INS.
11-3

4 SECTION 28. 30.12 (1mn) of the statutes is created to read:

5 30.12 (1mn) UTILITY FACILITIES. (a) In this subsection:

6 1. "Construction" means installation, repair, replacement, removal, or
7 maintenance.

8 2. "Facility" means a facility used to transmit or distribute electricity, gas,
9 water, or telephone service or to collect sewerage.

10 3. "Structure" includes a pole, support anchor, culvert, clear-span bridge, or
11 construction mat used to protect a wetland or land below the ordinary high-water
12 mark.

13 (b) An electric public utility or a wholesale electric cooperative, as defined in
14 s. 16.957 (1) (v), is exempt from the permit requirements under this section for any
15 of the following:

16 1. The temporary use or placement within an existing utility corridor of
17 equipment or a structure for a purpose associated with the construction of a facility.

18 2. The temporary use or placement within an existing utility corridor of a
19 vehicle on the bed of a navigable water for a purpose associated with the construction
20 of a facility.

21 3. The deposit of material that is associated with the response to or cleanup of
22 a release of drilling fluid associated with directional boring, if the deposit does not
23 affect more than one-tenth of one acre.

24 SECTION 29. 30.20 (1g) (d) of the statutes is created to read:

1 30.20 (1g) (d) The removal of material that is associated with the response to
2 or cleanup of a release of drilling fluid associated with directional boring is exempt
3 from the permit and contracts requirements under this section, if the removal does
4 not affect more than one-tenth of one acre.

5 **SECTION 30.** 59.692 (1n) of the statutes is created to read:

6 59.692 (1n) (a) In this subsection, “electric cooperative” means a cooperative
7 association that is organized under ch. 185 for the purpose of providing electricity at
8 wholesale or retail to its members only.

9 (b) This section and ordinances enacted under this section do not apply to a
10 project for the construction and maintenance of electric, gas, telephone, water, or
11 sewerage collection, transmission, or distribution facilities conducted by a public
12 utility or an electric cooperative in a shoreland if one of the following applies:

13 1. The department has issued all permits required for the project.

14 2. No permits are required for the project and the person conducting the project
15 employs best management practices related to storm water management.

16 **SECTION 31.** 196.491 (3) (a) 3. a. of the statutes is amended to read:

17 196.491 (3) (a) 3. a. At least 60 days before a person files an application under
18 subd. 1., the person shall provide the department with an engineering plan if the
19 facility is a large electric generating facility. The engineering plan shall show the
20 location of the facility, a description of the facility, including the major components
21 of the facility that have a significant air, water or solid waste pollution potential, and
22 a brief description of the anticipated effects of the facility on air quality, water
23 quality, wetlands, solid waste disposal capacity, and other natural resources. Within
24 30 days after a person provides an engineering plan, the department shall provide
25 the person with a listing of each department permit or approval, other than a permit

1 as defined in s. 30.025 (1b) (b), which, on the basis of the information contained in
2 the engineering plan, appears to be required for the construction or operation of the
3 facility.

4 **SECTION 32.** 196.491 (3) (a) 3. b. of the statutes is amended to read:

5 196.491 (3) (a) 3. b. Except as provided under subd. 3. c., within 20 days after
6 the department provides a listing specified in subd. 3. a. to a person, the person shall
7 apply for the permits and approvals identified in the listing. The department shall
8 determine whether an application under this subd. 3. b. is complete and, no later
9 than 30 days after the application is filed, notify the applicant about the
10 determination. If the department determines that the application is incomplete, the
11 notice shall state the reason for the determination. An applicant may supplement
12 and refile an application that the department has determined to be incomplete.
13 There is no limit on the number of times that an applicant may refile an application
14 under this subd. 3. b. If the department fails to determine whether an application
15 is complete within 30 days after the application is filed, the application shall be
16 considered to be complete. ~~Except as provided in s. 30.025 (4), the~~ The department
17 shall complete action on an application under this subd. 3. b. for any permit or
18 approval that is required prior to construction of a facility within 120 days after the
19 date on which the application is determined or considered to be complete.

20 **SECTION 33.** 196.492 of the statutes is created to read:

21 **196.492 Siting of electric facilities. (1)** In this section, "utility facility" has
22 the meaning given in s. 30.025 (1b) (c).

23 **(2)** Subject to sub. (3), the commission shall have exclusive jurisdiction over the
24 approval of locations, sites, or routes for utility facilities that are subject to s. 196.49
25 or 196.491 (3).

1 (3) In an investigation or proceeding under s. 196.49 or 196.491 (3), the
2 commission shall consider the information provided by the department of natural
3 resources under s. 30.025 (2m) when determining the location, site, or route of a
4 utility facility that is subject to s. 30.025. *for which an application is filed with*
5 *the department of natural resources under*

(END)

submit to

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1884/P2ins.
RNK:.....

INSERT 2-9

1 SECTION 1. 30.025 (1b) (aj) of the statutes is created to read:

2 30.025 (1b) (aj) "Application" means a submission to the department that
3 requests that the department issue all of the permits that an applicant requires to
4 undertake a utility project.

5 SECTION 2. 30.025 (1b) (am) of the statutes is created to read:

6 30.025 (1b) (am) "Certificate" means a certificate issued by the commission
7 under s. 196.49 or 196.491 (3).

INSERT 3-9

as affected by 2013 Wisconsin Act 1

8 SECTION 3. 30.025 (1e) (a) of the statutes is renumbered 30.025 (1e) and
9 amended to read:

10 30.025 (1e) Except as provided in pars. (b) and (c), this section applies to a
11 proposal to construct a utility facility if the utility facility sub. (5), an applicant who
12 is required to obtain, or give notification of the wish to proceed under, one or more
13 permits in order to undertake a utility project, and who is required to obtain a
14 certificate for the utility project, is subject to the procedures under this section
15 instead of the procedures that apply to the issuance of the respective permit or
16 permits under this subchapter or subch. II, ch. 31, s. 283.33 (1) (a) or (am) or (s),
17 281.36 or subch. II or ch. 31 under
18 1341 (a).

History: 1975 c. 68; 1985 a. 332 s. 251 (1); 1997 a. 204; 2003 a. 89, 118; 2009 a. 378, 379; 2011 a. 118, 167; 2013 a. 1, 20.

INSERT 4-9

19 (Not) If the applicant is required to obtain a certificate the

INSERT 4-12

Not

1 investigations or proceedings under s. 196.49 or 196.491 (3)

INSERT 5-6

2 ~~SECTION 4. 30.025 (1s) (a) (title) of the statutes is created to read:~~

3 ~~30.025 (1s) (A)~~ Submission of application.

4 SECTION 5. 30.025 (1s) (a) of the statutes is amended to read:

5 30.025 (1s) (a) Any person proposing to construct a utility facility to which this
6 section applies After the department confers with an applicant who provides notice
7 to the department under sub. (1m), the applicant shall, in lieu of separate application
8 for permits, submit one an application for permits to the department together with
9 any additional information required by the department. The If the applicant is
10 required to obtain a certificate, the application shall be filed with the department at
11 the same time that an application a petition or other request for a certificate is filed
12 with the commission under s. 196.49 or in a manner consistent with s. 196.491 (3)
13 and. The application shall include the detailed information that the department
14 requires to determine whether an application is complete and to carry out its
15 obligations under sub. (4). The department may require supplemental information
16 to be furnished thereafter concerning each location, site, or route proposed for the
17 utility project in sufficient detail for the department to assess whether the proposed
18 location, site, or route is likely to meet the criteria for the department to issue the
19 permits identified by the department under sub. (1m) (a).

History: 1975 c. 68; 1985 a. 332 s. 251 (1); 1997 a. 204; 2003 a. 89, 118; 2009 a. 378, 379; 2011 a. 118, 167; 2013 a. 1, 20.

INSERT 5-13

20 (cm) No additional information required.

INSERT 8-11

1 30.025 (2s) (a) The If, after the department participates in a commission
 2 investigation or proceeding for a utility project as required under sub. (2m) (d), the
 3 commission approves a location, site, or route for the utility project [under] s. 196.49
 4 or 196.491 (3), the department shall treat the commission's decision under s. 196.49
 5 or 196.491 (3) approval as concluding a conclusion that there is no practicable
 6 alternative to the location, site, or route for the utility facility if all of the following
 7 apply: project. If the department imposes conditions on a permit issued for a utility
 8 project that is the subject of that investigation or proceeding, the permit conditions
 9 may not require the applicant to undertake the utility project at a location or site
 10 or along a route other than that approved by the commission. ✓

History: 1975 c. 68; 1985 a. 332 s. 251 (1); 1997 a. 204; 2003 a. 89, 118; 2009 a. 378, 379; 2011 a. 118, 167; 2013 a. 1, 20.

11 **SECTION 6.** 30.025 (2s) (b) of the statutes is repealed and recreated to read:

12 30.025 (2s) (b) If an application concerns a utility project to extend, improve,
 13 maintain, or add to an existing utility facility and a certificate is not required for the
 14 utility project, the department may not find that there is a practicable alternative
 15 to undertaking the utility project except within the existing location, site, route, or
 16 right-of-way of the utility facility. ✓

INSERT 9-20

17 (d) 1. For an application ^{submitted} (filed) with respect to a utility project for which a
 18 certificate is required, the department shall grant or deny each permit requested in
 19 the application within 30 days of the date on which the

INSERT 9-22

insert 8-23

1 2. For an application filed ^{submitted} with respect to a utility project for which a certificate
2 is not required, the department shall grant or deny each permit requested in the
3 application within 120 days of the date of closure.

INSERT 11-3

4
5 **SECTION 7.** 30.025 (5) (d) of the statutes is created to read:
6 30.025 (5) (d) This section does not apply to ~~a person~~ ^{an applicant} proposing to undertake
7 a utility project if a certificate is not required for the utility project unless the person ^{applicant}
8 elects to proceed in the manner provided under this section.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1884/P2dn
RNK:/:....

Wly

Date

Matt Pulda:

This redraft is a significant revision of the previous version of this draft. The revisions incorporate the changes requested and explained in a meeting with David Lovell, Bob Fassbender, and Vincent Mele and in a number of telephone conversations with Vincent Mele. In addition, I have made some revisions that I felt were necessary in order to eliminate redundant language and to make the language more precise consistent with my understanding of the issues. Please review the draft very closely to ensure that these changes ~~are~~ meet your intent. Additionally, please note the following:

1. This redraft provides that once the Public Service Commission (PSC) approves a site, location, or route, ^gthen the Department of Natural Resources (DNR) must treat this approval as a finding that there is no practicable alternative to this site, location, or route. The redraft also provides that if a project is for the modification of an existing utility facility, DNR may not find that there is a practicable alternative outside of the existing utility facility's site, location, route, or right-of-way. What is the effect of these findings? The language seems to imply that DNR is bound by PSC's decision about the project's site, location, or route. If that is the intention of this language, I recommend that the draft be revised to make the language more direct on this issue.

2. Throughout the draft, the language in s. 30.025 refers to a utility project's "location, site, or route". But s. 30.12 (1mn), as created in this draft, refers to a utility "corridor". Is a "corridor" the same as a "route"? If so, the language should be redrafted for consistency.

3. Section 30.12 (1mn), as created in this draft, prohibits an electric public utility or a wholesale electric cooperative from the requirements for a permit under s. 30.12 for certain activities related to the construction of a "facility". Under s. 30.12 (1mn) (a) 2., as created in the draft, "facility" is defined to mean "a facility used to transmit or distribute electricity, gas, water, or telephone service or to collect sewerage". Would an electric ^{public} utility or ^{wholesale electric} cooperative typically engage in an activity described in s. 30.12 (1mn) (b) in the draft for a facility that transmits or distributes gas, water, or telephone service or to collect sewerage? That is, shouldn't the definition of "facility" in s. 30.12 (1mn) (a) 2. be limited to facilities used to transmit or distribute only electricity?

4. Section 30.12 (1mn), as created in the draft, also seems to afford the permit exemption for an electric ^{public} utility that engages in an activity within any utility corridor.

That is, an electric utility is eligible for the exemption within the corridor of any utility, not just the electric utility seeking the exemption. Is this result intended?

public
public

Please feel free to contact me if you have any questions about this draft.

Robin N. Kite
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Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1884/P2dn
RNK:wlj:all

November 20, 2013

Matt Pulda:

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corridor. That is, an electric public utility is eligible for the exemption within the corridor of any utility, not just the electric public utility seeking the exemption. Is this result intended?

Please feel free to contact me if you have any questions about this draft.

Robin N. Kite
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1884/P2dn
RNK:wlj:all

November 20, 2013

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11/5
per
Vincent
Mele:

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Refers to
wetlands
permits -
can tie
in to
that statute

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Keep
as it
draft

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make this
change

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corridor. That is, an electric public utility is eligible for the exemption within the corridor of any utility, not just the electric public utility seeking the exemption. Is this result intended? *-yes*

Please feel free to contact me if you have any questions about this draft.

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

Kite, Robin

From: Mele, Vincent <vmele@wheelerlaw.com>
Sent: Monday, November 25, 2013 2:35 PM
To: Kite, Robin
Subject: RE: Definition of utility

Sorry, accidentally truncated the .pdf at the end:

<http://dnr.wi.gov/topic/Sectors/documents/WDNR-GP3-2013Final.pdf>

Vince Mele
Wheeler, Van Sickle & Anderson, S.C.
25 West Main Street, Suite 801
Madison, WI 53703

Telephone (608) 255-7277
Direct line (608) 441-3831
Fax (608) 255-6006

11/25 - Per Vince -
He agreed this definition is
too broad - should be only
heat, light, water, or power as
in s. 196.01(5)(a) - must specifically
include a cooperative

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From: Kite, Robin [<mailto:Robin.Kite@legis.wisconsin.gov>]
Sent: Monday, November 25, 2013 2:35 PM
To: Mele, Vincent
Subject: RE: Definition of utility

Thanks, Vince.

From: Mele, Vincent [<mailto:vmele@wheelerlaw.com>]
Sent: Monday, November 25, 2013 2:30 PM
To: Kite, Robin
Subject: Definition of utility

Robin, here is a link to the WDNR definition of utility:

<http://dnr.wi.gov/topic/Sectors/documents/WDNR-GP3-2013Final> :

"Utility means a corporation, company, cooperative, or organization that owns, operates, manages or controls the production, transmission, or distribution of electricity, heat, light, natural gas, petroleum products, or telecommunication, either directly or indirectly to or for the public or members of a cooperative." (pg 18 of the PDF, definition 29).

Please let me know if you have any more questions.

Vince Mele
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Madison, WI 53703

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Kite, Robin

From: Mele, Vincent <vmele@wheelerlaw.com>
Sent: Monday, November 25, 2013 4:29 PM
To: Kite, Robin
Subject: RE: Definition of utility

Robin, I apologize, but I would like to "simplify" the definition of utility I suggested by combining existing ss. 196.491 (1)(d), 196.01(5)(a), and 196.01(5)(b)1.

Broadening the definition of "electric utility" in s. 196.491(1)(d) with the definition of "public utility" in s. 196.01(5)(a) and the cooperative exemption in s. 196.01(5)(b)1. yields:

"Utility" means any public utility, as defined in s. 196.01, or a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power or water to its members only.

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