



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

| | |
|---|---|
| 2003 Wisconsin Act 89 [2003 Senate Bill 300] | Review and Approval of Proposed Energy Utility Facilities |
| 2003 Acts: www.legis.state.wi.us/2003/data/acts/ | Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm |

2003 Wisconsin Act 89 creates a process designed to coordinate, and thereby shorten, the review and approval by the Department of Natural Resources (DNR) and the Public Service Commission (PSC) of proposed energy utility facilities, such as electric power plants, electric transmission lines, and natural gas pipelines. The process relates to the DNR's issuance of ch. 30 and other navigable waters permits and the PSC's issuance of certificates of approval (CA) and certificates of public convenience and necessity (CPCN). Expedited procedures are created for certain approvals, and other modifications are made to improve the facility siting and review process.

COORDINATION OF DNR AND PSC REVIEW PROCESSES

The Act requires the DNR, in cooperation with the PSC, to consult with a person proposing to construct a utility facility prior to the person applying for navigable waters permits. The applicant must submit a single, consolidated application to the DNR for these permits at the same time that it applies to the PSC for a CA or CPCN. The DNR's "practicable alternatives" analysis required under water quality certifications is incorporated into the PSC's proceedings under specified conditions. The DNR is required to issue final permits not more than 30 days after the PSC has issued its decision approving a CA or CPCN.

The DNR and PSC must coordinate the execution of their respective duties under the Wisconsin Environmental Policy Act (WEPA) for any action of the PSC or DNR regarding a project requiring a CA or CPCN and a DNR navigable waters permit. The Act limits the number of alternative locations, sites, or routes for a utility facility that the agencies must consider in this process.

PROVISIONS SPECIFIC TO ELECTRIC TRANSMISSION LINES

The Act simplifies the PSC's process for reviewing certain electric transmission line projects that utilize existing transmission corridors, popularly referred to as "recycled right-of-way."

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

The Act creates a general state policy on the siting of electric transmission facilities as part of the state energy policy in s. 1.12, Stats., and directs the PSC, Department of Transportation, and DNR to implement the policy in making all decisions, orders, and rules regarding the siting of these facilities. This policy states priorities for types of corridors to be used in the siting of these facilities.

The Act applies a 180-day deadline (which may be extended to up to 360 days by the Dane County Circuit Court) for final PSC action on a complete CPCN application for an interstate project. Under prior law, this deadline applied to all CPCN applications except for interstate projects.

OTHER PROVISIONS

The Act authorizes the PSC to inspect property, under a special inspection warrant, to obtain information related to the preparation or review of a CPCN or CA application. In addition, it authorizes an electric utility to negotiate with a property owner, or the owner's agent, prior to receiving a CPCN for a project and, significantly for this purpose, prior to having the power to condemn land for the project.

Counties and municipalities receive a one-time payment to mitigate environmental impacts of high-voltage transmission lines under the "Reliability 2000" provisions of 1999 Wisconsin Act 9. Act 89 authorizes a county or municipality to seek PSC approval to expand the allowable uses of these payments and authorizes the PSC to approve the proposed uses if it finds that the uses are in the public interest.

The Act modifies the generation incentive aids and related provisions created by 2003 Wisconsin Act 31 by restoring the limitations on mitigation payments, which were partially vetoed by Governor Doyle in signing Act 31, and making changes related to incentive payments for facilities located in more than one county or more than one municipality and to the application of the cogeneration incentive.

The Act requires the PSC to determine, in approving a CA or CPCN, that brownfield sites are used for the project, to the extent practicable.

Additional Information

For a more detailed description of Act 89, see Information Memorandum 2004-5, *New Law on the Siting and Review of Proposed Energy Utility Facilities (2003 Wisconsin Act 89)* (May 20, 2004), available at: http://www.legis.state.wi.us/lc/jlc04/im_2004_5.pdf.

Effective Date: 2003 Wisconsin Act 89 took effect on December 18, 2003. In general, the Act first applies to applications submitted to the DNR and PSC on that date.

Prepared by: David L. Lovell, Senior Analyst, and John Stolzenberg,
Chief of Research Services

January 29, 2004
Revised July 1, 2004