



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2005 Wisconsin Act 29**  
[2005 Assembly Bill 441]

### **Certificates of Public Convenience and Necessity for Large Power Plants**

Wisconsin's public utility law specifies that, in general, no person may construct a large electric generating facility (i.e., a power plant with a capacity of 100 megawatts or more) or a high voltage transmission line exceeding one mile in length and having a capacity of at least 100 kilowatts unless the Public Service Commission (PSC) has issued a certificate of public convenience and necessity (CPCN) for the facility or line.

**2005 Wisconsin Act 29** provides that the PSC may not determine that a CPCN application for a large electric generating facility is incomplete if the application is complete in all regards except that one or more of the following applies:

- Transmission facilities. In the situation in which the applicant is not responsible for the construction of transmission facilities that the generating facility will require, the application includes some, but not all, of the information needed to evaluate or approve the transmission facilities.
- Alternative Sites. The two alternative sites presented in the application are contiguous or proximate, provided that at least one of the sites is on a brownfield or is the site of a former or existing large electric generating facility.
- Required Permits and Approvals. The applicant has not yet obtained all permits and approvals required for construction of the facility.

Under a separate requirement in the prior CPCN statute, an applicant for a CPCN for a large electric generating facility or transmission line must have received all permits and approvals required by the DNR for construction of the facility or line before the PSC may issue the CPCN to the applicant. Act 29 repeals this requirement. This repeal also eliminates a conflict in the statutes created by 2003 Wisconsin Act 89. That act requires that, for some, but not all projects that require a CPCN, the DNR

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

must grant or deny all required DNR water resource related permits “within 30 days” of (i.e., after) of the date on which the PSC approves the CPCN. [s. 30.025 (4), Stats.]

**Additional Information**

2005 Assembly Bill 441, which was enacted as 2005 Wisconsin Act 29, was introduced in response to parts of a Dane County Circuit Court Order that interpreted the CPCN statute and vacated the PSC’s approval of the CPCN for the construction of the Elm Road Generating Station by the Wisconsin Energy Corporation and several of its subsidiaries. The Wisconsin Supreme Court overturned the circuit court’s order on June 28, 2005. See *Clean Wisconsin, Inc. v. Public Service Commission*, No. 2004AP003179, 2005 WI 93, 700 N.W. 2d 768. Information on this CPCN is posted at the PSC’s website at <http://psc.wi.gov/utilityinfo/electric/cases/ptfElmR/ptfElmRd-index.htm>.

***Effective Date:*** Act 29 takes effect on August 27, 2005. The Act first applies to CPCN applications filed with, pending before, or reopened or reconsidered by the PSC on August 27, 2005.

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JES:ksm