



State of Wisconsin
1997 - 1998 LEGISLATURE

LRB-4767/1
MDK:kmg/jlg/kaf:jf

1997 ASSEMBLY BILL 748

January 27, 1998 - Introduced by Representatives GARD, R. POTTER, OTTE, M. LEHMAN, MUSSER, FREESE, WARD, DOBYNS, SCHNEIDER, AINSWORTH, HANSON, ALBERS, HUEBSCH, HUBLER, CARPENTER, ZIEGELBAUER, BRANDEMUEHL, ROBSON, HEBL, BOCK, HASENOHRL, MEYER, BAUMGART, GRONEMUS, BOYLE, BALDWIN, SCHAFFER and R. YOUNG, cosponsored by Senators MOEN, RUDE, GROBSCHMIDT, FITZGERALD, JAUCH, RISSER, WINEKE, CLAUSING, SCHULTZ and C. POTTER. Referred to Committee on Utilities Oversight.

1 **AN ACT to repeal** 32.03 (5) (b) 3., 32.07 (1m), 66.073 (10) (b), 196.491 (1) (a),
2 196.491 (2) (a) 1. and 2., 196.491 (2) (a) 5. and 6., 196.491 (2) (a) 8., 196.491 (2)
3 (c) and (d), 196.491 (2) (i) to (m), 196.491 (2m) (title), 196.491 (3) (d) 1., 196.491
4 (3) (f) and (ff), 196.491 (3) (g) 2., 196.491 (4) (a) 3., 196.491 (4) (b) and 196.492;
5 **to renumber** 66.073 (10) (a); **to renumber and amend** 196.01 (5), 196.375,
6 196.491 (2) (am), 196.491 (2m), 196.491 (3) (a) and 196.491 (4) (a) (intro.), 1. and
7 **2.; to consolidate, renumber and amend** 196.491 (3) (g) (intro.) and 1.; **to**
8 **amend** 30.025 (1), 30.025 (4), 30.44 (3m) (title), 30.44 (3m) (a), 30.44 (3m) (b),
9 30.44 (3m) (d), 30.45 (1r), 32.03 (5) (a), 32.03 (5) (b) 1., 32.03 (5) (b) 2., 32.06 (7),
10 32.07 (1), 32.075 (3) (a) 2., 32.09 (2m), 86.16 (1), 182.017 (1), 196.025, 196.375
11 (title), 196.49 (3) (a), 196.49 (3) (b) (intro.), 2. and 3., 196.491 (title), 196.491 (1)
12 (d), 196.491 (1) (e), 196.491 (1) (f), 196.491 (1) (g), 196.491 (2) (a) 3., 196.491 (2)
13 (a) 3m., 196.491 (2) (a) 4., 196.491 (2) (a) 7., 196.491 (2) (b) 8., 196.491 (2) (e),
14 196.491 (2) (f), 196.491 (2) (g), 196.491 (3) (b), 196.491 (3) (d) (intro.), 196.491

ASSEMBLY BILL 748

1 (3) (d) 2., 196.491 (3) (e), 196.491 (3) (hm), 196.491 (3) (j), 196.491 (3) (k), 196.493
2 (1), 196.493 (2) (intro.), 196.795 (7) (a) 1. b. and 289.29 (5); **to repeal and**
3 **recreate** 196.491 (2) (title), 196.491 (2) (a) (intro.) and 196.491 (2) (b) (intro.);
4 and **to create** 196.01 (5) (a) 4. and (b) (intro.) and 4., 196.03 (5m), 196.03 (7),
5 196.375 (2), 196.485, 196.49 (3) (e), 196.491 (1) (am), 196.491 (1) (bm), 196.491
6 (1) (p), 196.491 (1) (w), 196.491 (2) (a) 3g., 196.491 (2) (a) 3r., 196.491 (2) (a) 9.
7 to 13., 196.491 (2) (ag), 196.491 (2) (b) 9., 196.491 (2) (gm), 196.491 (3) (a) 2.,
8 196.491 (3) (a) 3. b., 196.491 (3) (d) 7., 196.491 (3) (dm) and 196.491 (5) of the
9 statutes; **relating to:** strategic energy assessments, constraints on electric
10 power transmission, control of certain transmission facilities by an
11 independent system operator, the adequacy of retail electric service supplies,
12 electric generating and transfer capacities, certification requirements
13 applicable to certain projects proposed by public utilities, standards, permits
14 and certificates of public convenience and necessity for certain electric
15 generating facilities and high-voltage transmission lines, certain out-of-state
16 sales of retail electric service, providing an exemption from emergency rule
17 procedures and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Electric generating capacity and supply

The bill requires the public service commission (PSC) to issue an order that is designed to ensure, to the extent practicable, that the aggregate total electric generating capacity that is available to serve retail customers in a specified area of the state is increased by 500 megawatts. The area of the state is the area served by the Mid-America Interconnected Network, Inc., (MAIN) which is an electric industry reliability council for a portion of the midwestern United States. At least 50 megawatts of the increased capacity must be from renewable energy sources. The PSC's order may require a public utility to construct additional electric generating facilities or procure additional electric generating capacity.

ASSEMBLY BILL 748

The bill also allows the PSC to order a public utility that serves retail electric customers to take measures to ensure that an adequate supply of retail electric service will be available to such customers at reasonable rates. The order may require such a public utility to construct electric generation or transmission facilities, purchase electric capacity and energy, or participate in regional associations, power pools and networks. The PSC is also required to establish mechanisms for the recovery of the costs of such measures.

Electric power transmission

With respect to electric power transmission, the bill requires certain public utilities to transfer control of the operation of their transmission facilities to an independent system operator. The bill also requires the PSC to issue an order to ensure that the state's electric transfer capacity is increased and to study out-of-state constraints on the transmission of electric power to customers in this state.

Independent system operator

This bill requires the PSC to order the public utilities that own transmission equipment in the area of the state served by MAIN to organize a nonprofit corporation to perform the duties of an independent system operator. The independent system operator is required to enter into an agreement, which must be approved by the PSC, with such public utilities under which control over the operation of their transmission facilities is transferred to the independent system operator. The PSC may approve the agreement only if it provides for the reasonable compensation of the public utilities based on their net investment in their transmission facilities.

The bill also requires the independent system operator to make certain efforts to ensure the reliability of the transmission system and facilitate competition in the wholesale electric power market. In addition, the public utilities are required to provide maintenance, construction and operational support to the independent system operator pursuant to contracts with the independent system operator that must be approved by the PSC. Finally, if ordered by the PSC, the independent system operator must transfer control over the transmission facilities to an interstate entity that has equivalent duties with respect to a regional area.

New electric transfer capacity

The bill requires the PSC to issue an order that is designed to ensure, to the extent practicable, that, no later than June 1, 2001, the electric transfer capacity of the area served by MAIN is no less than 3,500 megawatts. "Electric transfer capacity" is defined as the maximum amount of electric power that may be imported into an area on a simultaneous basis and in a reliable manner by way of all available transmission lines or paths.

Study of out-of-state transmission constraints

The bill directs the PSC to conduct a study on relieving transmission constraints in other states that adversely affect the reliability of electric service provided to customers in this state. The PSC must submit a report on the study to the legislature that describes the transmission constraints, the efforts undertaken

ASSEMBLY BILL 748

to relieve the constraints and any recommendations, in the form of proposed legislation or action by the PSC or the governor, for relieving the constraints.

Strategic energy assessment and certificates of public convenience and necessity

The bill eliminates the requirement for certain public utilities and cooperative associations to submit advance plans for approval by the PSC and requires instead that the PSC prepare a strategic energy assessment. In addition, the bill makes changes to the requirements pertaining to the certificates of public convenience and necessity that a person must obtain in order to construct certain electric generating facilities, transmission lines and other projects.

Strategic energy assessment

Under current law, certain public utilities and cooperative associations are required to submit biennial advance plans to the PSC that include certain information about their plans to construct the following: 1) "large electric generating facilities", which are defined as facilities with a capacity of between 12,000 and 300,000 kilowatts; 2) "bulk electric generating facilities", which are defined as facilities with a capacity of 300,000 kilowatts or more; and 3) "high-voltage transmission lines", which are defined as lines that are longer than one mile and that operate at 100 kilovolts or more. After holding a hearing on a plan, the PSC may approve a plan if the PSC finds that that plan will provide a reasonably adequate supply of electrical energy to meet the needs of the public and that the plan satisfies certain other criteria. A public utility or cooperative association must also submit an advance plan to the lower Wisconsin state riverway board (board) if it intends to construct, modify or relocate a high-voltage transmission line in the lower Wisconsin riverway (riverway). The board must approve the plan if it determines that the high-voltage transmission line will not impair, to the extent practicable, the scenic beauty or natural value of the riverway.

This bill eliminates the requirements pertaining to advance plans and requires instead that the PSC prepare an annual strategic energy assessment that evaluates the adequacy and reliability of the state's current and future energy supply. In addition, the bill requires a person to obtain a permit from the board in order to construct, modify or relocate a high-voltage transmission line in the riverway. The board may not issue the permit unless it makes the same determination as under current law.

The strategic energy assessment must identify and describe facilities that generate over 200,000 kilowatts on which public utilities, cooperative associations and certain other persons plan to begin construction within 3 years. The strategic energy assessment must also include information about high-voltage transmission lines on which a public utility or cooperative association plans to begin construction in the next 18 months. In addition, the strategic energy assessment must describe all of the following: 1) any plans for assuring that there is an adequate ability to transfer electric power into the state and the area served by MAIN; 2) the projected demand for electric power; 3) activities to discourage inefficient and excessive power use; 4) existing and planned generating facilities that use renewable energy sources; 5) the extent to which the regional bulk-power market is contributing to the

ASSEMBLY BILL 748

adequacy and reliability of the state's electrical supply; 6) the extent to which effective competition is contributing to a reliable, low-cost and environmentally sound source of electricity; and 7) whether sufficient electric capacity and energy is available at a reasonable price. The PSC must promulgate rules that require public utilities and cooperative associations to report information that is necessary for the PSC to prepare the strategic energy assessment.

The PSC is required to issue a draft version of the strategic energy assessment no later than July 1 of each year. Any state agency, county, municipality, town or person may submit comments on the draft. The PSC must hold a public hearing on the strategic energy assessment and, at least 30 days before the hearing, the PSC must make available to the public an environmental assessment that it prepares on the strategic energy assessment. Within 90 days after the hearing, the PSC must issue a final version of the draft.

Certificates of public convenience and necessity

Under current law, a person may not begin constructing a large or bulk electric generating facility or high-voltage transmission line without obtaining a certificate of public convenience and necessity (certificate) from the PSC. A person that is not a public utility or cooperative association is exempt from this requirement if the person reasonably anticipates that the person will consume no less than 70% of the aggregate kilowatt hours output from electric generating facilities in manufacturing processes at the site where the facilities are located. Before filing an application for a certificate for a large or bulk electric generating facility, a person must provide an engineering plan to the department of natural resources (DNR), which must provide the person with a list of DNR permits and approvals that, based on the engineering plan, appear to be required for the facility. In consultation with the PSC, DNR may specify whether any permits or approvals must be obtained before the PSC may issue the certificate.

Also under current law, the PSC must take final action on an application for a certificate, and DNR must take final action on an application for the permits and approvals, within specified deadlines that depend on whether the application concerns a large or bulk electric generating facility or a high-voltage transmission line. After holding a public hearing on an application for a certificate, the PSC must issue the certificate if it makes certain determinations, including the following: 1) the proposed facility or line is in substantial compliance with the most recent advance plan; 2) the proposed facility or line is necessary to satisfy the reasonable needs of the public; 3) the design and location are in the public interest; 4) the proposed facility or line will not have an undue adverse impact on environmental values; and 5) the proposed facility or line will not unreasonably interfere with orderly land use and development plans. However, the PSC may not issue a certificate until DNR issues the specified permits and approvals.

This bill changes the types of facilities that are subject to the above requirements and changes the procedure for issuing a certificate by the PSC and the permits and approval by DNR. The bill requires a person to obtain a certificate from the PSC before beginning construction of any of the following: 1) "large electric generating facilities", which the bill defines as facilities with a capacity of 50,000

ASSEMBLY BILL 748

kilowatts or more; and 2) “high-voltage transmission lines”, which the bill defines as lines that are longer than 5 miles but that operate at the same voltage as under current law.

The bill requires a person to file an application for a certificate within 6 months before beginning construction. The PSC must notify the applicant about whether an application is complete within 30 days after filing and a person may refile an incomplete application. If the PSC does not determine whether an application is complete within the 30-day deadline, the application is considered to be complete. At the same time that a person applies for a certificate, the person must provide DNR with an engineering plan and, within 30 days after receiving the plan, DNR must provide the person with a list of permits and approvals that appear to be applicable. Within 20 days after DNR provides the list, the person must apply for the permits and approvals. DNR is subject to a similar 30-day deadline in which DNR must notify an applicant about whether an application is complete. DNR must complete action on the permits and approvals within 90 days after an application is determined or considered to be complete.

Within 180 days after an application for a certificate is determined or considered to be complete, the PSC must take final action on the application, unless the circuit court for Dane County grants an extension. After holding a public hearing, the PSC may issue a certificate only if it makes the same determinations under current law described above, except for the first determination regarding compliance with an advance plan. In addition, the PSC does not have to make the 2nd determination regarding need if a large electric generating facility is a “wholesale merchant plant”, which the bill defines as electric generating facilities that do not provide service to any retail customer and that are owned by a person who is not a public utility, an affiliate of a public utility, or a cooperative association. Also, the PSC must determine that the proposed large electric generating facility or high-voltage transmission line will not have a material adverse impact on competition in the relevant wholesale electric service market. Such a determination is not required under current law. Finally, the PSC may not issue a certificate until the DNR has issued the permits and approvals identified in the list provided by the DNR.

The bill also changes the exemption from the requirement to obtain a certificate. Under the bill, a person that is not a public utility or cooperative association may qualify for the exemption only if the person is also not a public utility affiliate or otherwise affiliated with a public utility.

Public utility construction projects

Under current law, the PSC may require that a public utility obtain a certificate of public convenience and necessity before it begins certain construction projects. Under this bill, a public utility that provides electric service is exempt from this requirement if the project is not the construction of a nuclear power plant and the cost of the project is less than an amount based on the public utility’s annual gross operating revenues. If a public utility’s annual gross operating revenues are less than \$5,000,000, the exemption applies to projects that cost less than \$100,000. If such revenues are between \$5,000,000 and \$250,000,000, the exemption applies to

ASSEMBLY BILL 748

projects that cost less than 2% of the revenues. If such revenues are more than \$250,000,000, the exemption applies to projects that cost less than \$5,000,000.

Out-of-state electric power sales

The bill requires the PSC, in setting rates, to reduce the revenue requirement of a public utility by an amount that reflects the fixed capital costs of electric generating facilities within the state that are incurred to make sales to customers outside the state whom the public utility does not have a duty to serve. The bill also prohibits a public utility from making such a sale if the sale interferes with the public utility's ability to provide cost-effective, reliable electric service to customers in this state that the public utility has a duty to serve.

Large electric generating facility standards

The bill requires the PSC to promulgate rules establishing standards for the inspection, maintenance, operation and repair of large electric generating facilities that are owned by, or provide service to, public utilities. "Large electric generating facilities" are defined as facilities with a capacity of 50,000 kilowatts or more. The PSC must also promulgate rules establishing penalties for violating the standards.

Other

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 30.025 (1) of the statutes is amended to read:
2 30.025 (1) Any electric utility, as defined in s. 196.491 (1) (d), proposing to
3 construct a facility, as defined in s. 196.491 (1) (e), which facility is to be located
4 adjacent to a waterway in such a manner as to require one or more permits to be
5 issued under this chapter and ch. 31 may, in lieu of separate application for permits
6 under those chapters, submit an engineering plan together with any additional
7 information required by the department. Such plan shall be filed with the
8 department within 20 days after an application for a certificate of public convenience
9 and necessity is filed with the public service commission under s. 196.491 (3). The
10 department may require supplemental information to be furnished thereafter.

11 **SECTION 2.** 30.025 (4) of the statutes is amended to read:

ASSEMBLY BILL 748

1 30.025 (4) The permit may be issued upon stated conditions deemed necessary
2 to assure compliance with the criteria designated under sub. (3). The department
3 shall grant or deny the application within the time limit applicable under s. 196.491
4 (3) ~~(f)~~ (a) 3. b.

5 **SECTION 3.** 30.44 (3m) (title) of the statutes is amended to read:

6 30.44 **(3m)** (title) UTILITY FACILITIES; HIGH-VOLTAGE TRANSMISSION LINES.

7 **SECTION 4.** 30.44 (3m) (a) of the statutes is amended to read:

8 30.44 **(3m)** (a) A person shall apply to and receive a permit from the board
9 before constructing, modifying or relocating a utility facility or high-voltage
10 transmission line that is in the riverway.

11 **SECTION 5.** 30.44 (3m) (b) of the statutes is amended to read:

12 30.44 **(3m)** (b) A person may not be issued a permit for an activity in par. (a)
13 unless the performance standard in par. (c) is met and, for a high-voltage
14 transmission line, the board finds that the activity will not impair, to the extent
15 practicable, the scenic beauty or natural value of the riverway.

16 **SECTION 6.** 30.44 (3m) (d) of the statutes is amended to read:

17 30.44 **(3m)** (d) The use of an aboveground utility facility shall not be a basis for
18 the board to determine that all reasonable efforts will not be taken to minimize the
19 visual impact. The board may not require a high-voltage transmission line to be
20 placed underground in order to make the finding specified in par. (b).

21 **SECTION 7.** 30.45 (1r) of the statutes is amended to read:

22 30.45 **(1r)** No person may construct, modify or relocate a high-voltage
23 transmission line unless it has been approved under s. 30.44 (3m) or 196.491 (3) (d)
24 3m. or 196.492.

25 **SECTION 8.** 32.03 (5) (a) of the statutes is amended to read:

ASSEMBLY BILL 748

1 32.03 (5) (a) If an electric utility is required to obtain a certificate of public
2 convenience and necessity from the public service commission under s. 196.491 (3),
3 no right to acquire real estate or personal property appurtenant thereto or interest
4 therein for such project by condemnation shall accrue or exist under s. 32.02 or
5 32.075 (2) until such a certificate of public convenience and necessity has been
6 issued.

7 **SECTION 9.** 32.03 (5) (b) 1. of the statutes is amended to read:

8 32.03 (5) (b) 1. Such a limited interest does not run for more than 3 years; and

9 **SECTION 10.** 32.03 (5) (b) 2. of the statutes is amended to read:

10 32.03 (5) (b) 2. Activities associated with such tests or studies will be conducted
11 at reasonable hours with minimal disturbance, and the property will be reasonably
12 restored to its former state, upon completion of such tests or studies; and.

13 **SECTION 11.** 32.03 (5) (b) 3. of the statutes is repealed.

14 **SECTION 12.** 32.06 (7) of the statutes is amended to read:

15 32.06 (7) PETITION FOR CONDEMNATION PROCEEDINGS. If the jurisdictional offer
16 is not accepted within the periods limited in sub. (6) or the owner fails to consummate
17 an acceptance as provided in sub. (6), the condemnor may present a verified petition
18 to the circuit court for the county in which the property to be taken is located, for
19 proceedings to determine the necessity of taking, where such determination is
20 required, and the amount of just compensation. The petition shall state that the
21 jurisdictional offer required by sub. (3) has been made and rejected; that it is the
22 intention of the condemnor in good faith to use the property or right therein for the
23 specified purpose. It shall name the parties having an interest of record in the
24 property as near as may be and shall name the parties who are minors or persons of
25 unsound mind or unknown. The petition may not disclose the amount of the

ASSEMBLY BILL 748

1 jurisdictional offer, and if it does so it is a nullity. The petition shall be filed with the
2 clerk of the court. Notice of the petition shall be given as provided in s. 32.05 (4) to
3 all persons having an interest of record in the property, including the special
4 guardian appointed for minors or incompetent persons. A lis pendens shall be filed
5 on the date of filing the petition. The date of filing the lis pendens is the “date of
6 evaluation” of the property for the purpose of fixing just compensation, except that
7 if the property is to be used in connection with the construction of a facility, as defined
8 under s. 196.491 (1), the “date of evaluation” is the date that ~~the first advance plan~~
9 ~~identifying the property as a site or route under s. 196.491 (2) (a) 3. is filed with the~~
10 ~~public service commission, or the date which is 2 years prior to the date on which the~~
11 ~~certificate of public convenience and necessity is issued for the facility, whichever is~~
12 ~~earlier.~~ The hearing on the petition may not be earlier than 20 days after the date
13 of its filing unless the petitioner acquired possession of the land under s. 32.12 (1)
14 in which event this hearing is not necessary. If the petitioner is entitled to condemn
15 the property or any portion of it, the judge immediately shall assign the matter to the
16 chairperson of the county condemnation commissioners for hearing under s. 32.08.
17 An order by the judge determining that the petitioner does not have the right to
18 condemn or refusing to assign the matter to the chairperson of the county
19 condemnation commissioners may be appealed directly to the court of appeals.

20 **SECTION 13.** 32.07 (1) of the statutes is amended to read:

21 32.07 (1) A certificate of public convenience and necessity issued under s.
22 196.491 (3) shall constitute the determination of the necessity of the taking for any
23 lands or interests described in the certificate.

24 **SECTION 14.** 32.07 (1m) of the statutes is repealed.

25 **SECTION 15.** 32.075 (3) (a) 2. of the statutes is amended to read:

ASSEMBLY BILL 748

1 32.075 (3) (a) 2. The public service commission revokes a certificate of public
2 convenience and necessity required under s. 196.491 (3) (a) 1. or finds that a state
3 or federal agency has denied or revoked any license, permit, certificate or other
4 requirement on which completion of the public utility's project for which the land was
5 condemned is contingent or that the public utility has for any other reason
6 abandoned a project for which the condemned property was acquired.

7 **SECTION 16.** 32.09 (2m) of the statutes is amended to read:

8 32.09 (2m) In determining just compensation for property sought to be
9 condemned in connection with the construction of facilities, as defined under s.
10 196.491 (1) (e), any increase in the market value of such property occurring after the
11 date of evaluation but before the date upon which the lis pendens is filed under s.
12 32.06 (7) shall be considered and allowed to the extent it is caused by factors other
13 than the planned facility.

14 **SECTION 17.** 66.073 (10) (a) of the statutes is renumbered 66.073 (10).

15 **SECTION 18.** 66.073 (10) (b) of the statutes is repealed.

16 **SECTION 19.** 86.16 (1) of the statutes is amended to read:

17 86.16 (1) Any person, firm or corporation, including any foreign corporation
18 authorized to transact business in this state may, subject to ss. 30.44 (3m), 30.45, and
19 196.491 (3) (d) 3m. ~~and 196.492~~, with the written consent of the department with
20 respect to state trunk highways, and with the written consent of local authorities
21 with respect to highways under their jurisdiction, including connecting highways,
22 construct and operate telegraph, telephone or electric lines, or pipes or pipelines for
23 the purpose of transmitting messages, water, heat, light or power along, across or
24 within the limits of the highway.

25 **SECTION 20.** 182.017 (1) of the statutes is amended to read:

ASSEMBLY BILL 748

1 182.017 (1) RIGHT-OF-WAY FOR. Any domestic corporation organized to furnish
2 telegraph or telecommunications service or transmit heat, power or electric current
3 to the public or for public purposes, and any cooperative association organized under
4 ch. 185 to furnish telegraph or telecommunications service or transmit heat, power
5 or electric current to its members, may, subject to ss. 30.44 (3m), 30.45, 86.16, and
6 196.491 (3) (d) 3m. ~~and 196.492~~ and to reasonable regulations made by any city,
7 village or town through which its transmission lines or systems may pass, construct
8 and maintain such lines or systems with all necessary appurtenances in, across or
9 beneath any public highway or bridge or any stream or body of water, or upon any
10 lands of any owner consenting thereto, and for such purpose may acquire lands or
11 the necessary easements; and may connect and operate its lines or system with other
12 lines or systems devoted to like business, within or without this state, and charge
13 reasonable rates for the transmission and delivery of messages or the furnishing of
14 heat, power or electric light.

15 **SECTION 21.** 196.01 (5) of the statutes is renumbered 196.01 (5) (a) (intro.) and
16 amended to read:

17 196.01 (5) (a) (intro.) “Public utility” means ~~every~~ each of the following:

18 1. Every corporation, company, individual, association, their lessees, trustees
19 or receivers appointed by any court, and every sanitary district, town, village or city
20 that may own, operate, manage or control any toll bridge or all or any part of a plant
21 or equipment, within the state, for the production, transmission, delivery or
22 furnishing of heat, light, water or power either directly or indirectly to or for the
23 public. “Public utility” ~~does not include a cooperative association organized under~~
24 ~~ch. 185 for the purpose of producing or furnishing heat, light, power or water to its~~
25 ~~members only.~~ “Public utility” includes ~~any~~

ASSEMBLY BILL 748

1 2. A person engaged in the transmission or delivery of natural gas for
2 compensation within this state by means of pipes or mains and any person, except
3 a governmental unit, who furnishes services by means of a sewerage system either
4 directly or indirectly to or for the public. ~~“Public utility” includes a~~

5 3. A telecommunications utility. ~~“Public utility” does not include a~~

6 (b) 1. A holding company, as defined in s. 196.795 (1) (h), unless the holding
7 company furnishes, directly to the public, telecommunications or sewer service, heat,
8 light, water or power or, by means of pipes or mains, natural gas. ~~“Public utility” does~~
9 ~~not include any~~

10 2. A company, as defined in s. 196.795 (1) (f), which owns, operates, manages
11 or controls a telecommunications utility unless the company furnishes, directly to
12 the public, telecommunications or sewer service, heat, light, water or power or, by
13 means of pipes or mains, natural gas. ~~“Public utility” does not include a~~

14 3. A cellular mobile radio telecommunications utility.

15 **SECTION 22.** 196.01 (5) (a) 4. and (b) (intro.) and 4. of the statutes are created
16 to read:

17 196.01 (5) (a) 4. The independent system operator, as defined in s. 196.485 (1)
18 (a).

19 (b) (intro.) “Public utility” does not include any of the following:

20 4. A cooperative association organized under ch. 185 for the purpose of
21 producing or furnishing heat, light, power or water to its members only.

22 **SECTION 23.** 196.025 of the statutes is amended to read:

23 **196.025 Duties of the commission.** To the extent cost-effective, technically
24 feasible and environmentally sound, the commission shall implement the priorities
25 under s. 1.12 (4) in making all energy-related decisions and orders, including

ASSEMBLY BILL 748

1 ~~advance plan, rate setting and rule-making orders, and in preparing strategic~~
2 ~~energy assessments under s. 196.491 (2) (a) and approving certificates of public~~
3 ~~convenience and necessity under s. 196.491 (3).~~

4 **SECTION 24.** 196.03 (5m) of the statutes is created to read:

5 196.03 (5m) In setting rates for retail electric service, the commission shall
6 reduce the revenue requirement of a public utility by an amount that reflects, as
7 determined by the commission, the fixed capital costs of generating facilities within
8 the state that are incurred to make any sale to a customer outside this state that the
9 public utility does not have a duty to serve.

10 **SECTION 25.** 196.03 (7) of the statutes is created to read:

11 196.03 (7) (a) If the commission determines after notice and hearing that an
12 adequate supply of retail electric service will not be available to public utility
13 customers at reasonable rates, the commission may order a public utility that has
14 a duty to serve retail electric customers to take measures that ensure that an
15 adequate supply of retail electric service will be available to such customers at
16 reasonable rates, including doing any of the following:

17 1. Constructing or contracting for the construction of, on an individual basis
18 or jointly with other public utilities, electric generation or transmission facilities. An
19 order under this subdivision requiring a public utility to enter into contracts shall
20 require the public utility to solicit competitive bids for the contracts.

21 2. Purchasing electric capacity and energy.

22 3. Participating in regional associations, power pools and networks.

23 4. Taking any other measure that the commission determines is necessary to
24 ensure an adequate supply of retail electric service at reasonable rates.

ASSEMBLY BILL 748

1 (b) The commission shall establish mechanisms that it determines to be just
2 and reasonable for the recovery of the costs of the measures specified in par. (a).

3 **SECTION 26.** 196.375 (title) of the statutes is amended to read:

4 **196.375 (title) Adequate service; reasonable rates; reliable retail**
5 **electric service.**

6 **SECTION 27.** 196.375 of the statutes is renumbered 196.375 (1) and amended
7 to read:

8 196.375 (1) Upon complaint by any party affected, setting forth that any
9 grantee of a permit to develop hydraulic power and generate hydroelectric energy for
10 sale or service to the public is not furnishing consumers of this state with adequate
11 service at a reasonable rate as a result of sales of the energy outside of the state, the
12 commission may declare any or all contracts entered into by the grantee for the sales
13 null and void insofar as the contracts interfere with the service or rate. The
14 commission may not make a declaration under this section ~~section~~ subsection except after
15 a hearing and investigation and a recorded finding that convenience and necessity
16 require the sale of a specified part or all such energy within this state.

17 **SECTION 28.** 196.375 (2) of the statutes is created to read:

18 196.375 (2) A public utility may not make a sale of electricity from generation
19 facilities within this state to a customer outside this state that the public utility does
20 not have a duty to serve if the sale interferes with the public utility's ability to provide
21 cost-effective, reliable retail electric service to customers in this state that the public
22 utility has a duty to serve.

23 **SECTION 29.** 196.485 of the statutes is created to read:

24 **196.485 Independent system operator. (1) DEFINITIONS.** In this section:

ASSEMBLY BILL 748

1 (a) "Independent system operator" means the corporation that the commission
2 orders to be organized under sub. (2) (a).

3 (b) "Transmission area" means the area of the state that, on January 1, 1997,
4 was served by the Mid-America Interconnected Network, Inc., reliability council of
5 the North American Reliability Council.

6 (c) "Transmission facility" means any pipe, pipeline, duct, wire, line, conduit,
7 pole, tower, equipment or other structure used for the transmission of electric power.

8 (d) "Transmission utility" means a public utility that owns a transmission
9 facility and that, on January 1, 1997, provided electric service in the transmission
10 area.

11 **(2) DUTIES AND POWERS OF THE COMMISSION.** (a) No later than the first day of the
12 3rd month beginning after the effective date of this paragraph ... [revisor inserts
13 date], the commission shall order the transmission utilities to organize a corporation
14 under ch. 181 to perform the duties and exercise the powers of the independent
15 system operator. The order shall establish a deadline by which the independent
16 system operator and the transmission utilities are required to enter into an
17 agreement under sub. (4) (a) 1.

18 (b) If the commission finds that an interstate entity has or will have duties with
19 respect to a regional area that are equivalent to the duties of the independent system
20 operator with respect to the transmission area, the commission may order the
21 independent system operator to enter into an agreement to transfer control over the
22 operation of transmission facilities to the interstate entity.

23 **(3) DUTIES AND POWERS OF THE INDEPENDENT SYSTEM OPERATOR.** The independent
24 system operator shall do each of the following:

ASSEMBLY BILL 748

1 (a) Enter into an agreement under sub. (4) (a) 1. for the purpose of controlling,
2 operating, maintaining, planning and making reasonable and necessary efforts to
3 expand the electric transmission system in the transmission area.

4 (b) To the extent practicable, make efforts to do each of the following:

5 1. Provide least-cost and reliable electric transmission and control-area
6 service to all users in the transmission area.

7 2. Ensure the reliable operation of the electric transmission grid in the
8 transmission area.

9 3. Remove any advantages in the market for supply or sale of wholesale electric
10 power that are related to ownership, control or operation of transmission facilities.

11 4. Prevent any material adverse effect on competition related to control or use
12 of transmission facilities.

13 5. Prevent the use of the transmission facilities for an anticompetitive purpose.

14 6. Facilitate the development and efficient operation of an effectively
15 competitive wholesale electric power market in the transmission area.

16 7. Participate in efforts to develop an interstate entity specified in sub. (2) (b).

17 **(4) TRANSMISSION UTILITY AGREEMENTS.** (a) Each transmission utility shall do
18 each of the following:

19 1. Enter into an agreement with the independent system operator under which
20 the transmission utility transfers control over the operation of all of its transmission
21 facilities to the independent system operator.

22 2. Provide maintenance, construction and operational support to the
23 independent system operator pursuant to a contract with the independent system
24 operator.

ASSEMBLY BILL 748**SECTION 29**

1 (b) An agreement or contract specified in par. (a) 1. or 2. shall not be effective
2 until approved by the commission. The commission shall approve an agreement
3 under par. (a) 1. only if the commission finds that the agreement provides for the
4 reasonable compensation of a transmission utility based on the transmission utility's
5 net investment in its transmission facilities. The commission shall approve a
6 contract under par. (a) 2. only if the commission finds that the contract is reasonable
7 and cost-effective.

8 **SECTION 30.** 196.49 (3) (a) of the statutes is amended to read:

9 196.49 (3) (a) In this subsection, "project" means construction of any new plant,
10 equipment, property or facility of a public utility, or extension, improvement or
11 addition to its the existing plant, equipment, property, apparatus or facilities. ~~The~~
12 ~~commission may require by rule or special order that a public utility submit,~~
13 ~~periodically or at such times as the commission specifies and in such detail as the~~
14 ~~commission requires, plans, specifications and estimated costs of any proposed~~
15 ~~project which the commission finds will materially affect the public interest of a~~
16 public utility.

17 **SECTION 31.** 196.49 (3) (b) (intro.), 2. and 3. of the statutes are amended to read:

18 196.49 (3) (b) (intro.) Except as provided in ~~par.~~ pars. (d) and (e), the
19 commission may require by rule or special order ~~under par. (a)~~ that no project may
20 proceed until the commission has certified that public convenience and necessity
21 require the project. The commission may refuse to certify a project if it appears that
22 the completion of the project will do any of the following:

23 2. Provide facilities unreasonably in excess of the probable future ~~requirements~~
24 needs of the public.

ASSEMBLY BILL 748

1 3. When placed in operation, add to the cost of service without proportionately
2 increasing the value or available quantity of service to customers that the public
3 utility has a duty to serve unless the public utility waives consideration by the
4 commission, in the fixation of rates, of such consequent increase of cost of service.

5 **SECTION 32.** 196.49 (3) (e) of the statutes is created to read:

6 196.49 (3) (e) 1. A public utility that provides electric service is not required to
7 obtain commission certification under par. (b) for a project proposed by the public
8 utility, other than the construction of a nuclear power plant, as defined in s. 196.493
9 (1), that has a cost that is less than any of the following amounts, as annually
10 adjusted for inflation by the commission in rules promulgated under subd. 2.:

11 a. If the public utility's annual gross operating revenues are less than
12 \$5,000,000, \$100,000.

13 b. If the public utility's annual gross operating revenues are not less than
14 \$5,000,000 nor more than \$250,000,000, 2% of the public utility's annual gross
15 operating revenues.

16 c. If the public utility's annual gross operating revenues are more than
17 \$250,000,000, \$5,000,000.

18 2. The commission shall promulgate rules that establish requirements for
19 determining a public utility's annual gross operating revenues for purposes of subd.
20 1. and for annually adjusting the amounts specified in subd. 1. for inflation.

21 **SECTION 33.** 196.491 (title) of the statutes is amended to read:

22 **196.491** (title) ~~**Advance planning of electric**~~ **Strategic energy**
23 **assessment; electric generating facilities and transmission lines.**

24 **SECTION 34.** 196.491 (1) (a) of the statutes is repealed.

25 **SECTION 35.** 196.491 (1) (am) of the statutes is created to read:

ASSEMBLY BILL 748

1 196.491 (1) (am) “Affiliated interest” has the meaning given in s. 196.52 (1).

2 **SECTION 36.** 196.491 (1) (bm) of the statutes is created to read:

3 196.491 (1) (bm) “Cooperative association” means a cooperative association
4 organized under ch. 185 for the purpose of generating, distributing or furnishing
5 electric energy at retail or wholesale to its members only.

6 **SECTION 37.** 196.491 (1) (d) of the statutes is amended to read:

7 196.491 (1) (d) “Electric utility” means any public utility, as defined in s.
8 196.01, which is involved in the generation, distribution and sale of electric energy,
9 and any corporation, company, individual or association, and any cooperative
10 association ~~organized under ch. 185 for the purpose of generating, distributing or~~
11 ~~furnishing electric energy at retail or wholesale to its members only~~, which owns or
12 operates, or plans within the next ~~10~~ 3 years to construct, own or operate, ~~bulk~~
13 ~~electric generating facilities, large electric generating facilities or high-voltage~~
14 ~~transmission lines~~ in the state.

15 **SECTION 38.** 196.491 (1) (e) of the statutes is amended to read:

16 196.491 (1) (e) “Facility” means ~~a bulk electric generating facility~~, a large
17 electric generating facility or a high-voltage transmission line.

18 **SECTION 39.** 196.491 (1) (f) of the statutes is amended to read:

19 196.491 (1) (f) Except as provided in subs. (2) (b) 8. and (3) (d) 3m.,
20 “high-voltage transmission line” means a conductor of electric energy exceeding ~~one~~
21 ~~mile~~ 5 miles in length designed for operation at a nominal voltage of 100 kilovolts or
22 more, together with associated facilities, and does not include transmission line
23 relocations that the commission determines are necessary to facilitate highway or
24 airport projects.

25 **SECTION 40.** 196.491 (1) (g) of the statutes is amended to read:

ASSEMBLY BILL 748

1 196.491 (1) (g) “Large electric generating facility” means electric generating
2 equipment and associated facilities designed for nominal operation at a capacity of
3 ~~between 12,000 and 300,000~~ 50,000 kilowatts or more.

4 **SECTION 41.** 196.491 (1) (p) of the statutes is created to read:

5 196.491 (1) (p) “Public utility affiliate” has the meaning given in s. 196.795 (1)
6 (L).

7 **SECTION 42.** 196.491 (1) (w) of the statutes is created to read:

8 196.491 (1) (w) “Wholesale merchant plant” means electric generating
9 equipment and associated facilities located in this state that are owned and operated
10 by a person that is not a public utility, public utility affiliate, affiliated interest or
11 cooperative association and that does not provide service to any retail customer.

12 **SECTION 43.** 196.491 (2) (title) of the statutes is repealed and recreated to read:

13 196.491 (2) (title) STRATEGIC ENERGY ASSESSMENT.

14 **SECTION 44.** 196.491 (2) (a) (intro.) of the statutes is repealed and recreated to
15 read:

16 196.491 (2) (a) (intro.) The commission shall prepare an annual strategic
17 energy assessment that evaluates the adequacy and reliability of the state’s current
18 and future electrical supply. The strategic energy assessment shall do all of the
19 following:

20 **SECTION 45.** 196.491 (2) (a) 1. and 2. of the statutes are repealed.

21 **SECTION 46.** 196.491 (2) (a) 3. of the statutes is amended to read:

22 196.491 (2) (a) 3. ~~Identify the location of proposed and alternative specific sites~~
23 ~~for all bulk electric generating facilities and all~~ and describe large electric generating
24 facilities over 200,000 kilowatts ~~for which a certificate of public convenience and~~
25 ~~necessity has not been applied for under sub. (3) but the commencement of whose~~

ASSEMBLY BILL 748

1 ~~construction is planned within 3 years, or such longer period as the commission~~
2 ~~deems necessary and indicate the impacts of the proposed and alternative~~
3 ~~generating facilities on the environment and the means by which potential adverse~~
4 ~~effects on such values will be avoided or minimized; on which an electric utility plans~~
5 ~~to commence construction within 3 years and wholesale merchant plants on which~~
6 ~~a person plans to commence construction within 3 years.~~

7 **SECTION 47.** 196.491 (2) (a) 3g. of the statutes is created to read:

8 196.491 (2) (a) 3g. Assess the adequacy and reliability of purchased generation
9 capacity and energy to serve the needs of the public.

10 **SECTION 48.** 196.491 (2) (a) 3m. of the statutes is amended to read:

11 196.491 (2) (a) 3m. ~~Identify the location of tentative and alternative routes for~~
12 ~~and describe high-voltage transmission lines on which an electric utility plans to~~
13 ~~commence construction is intended to be commenced in the succeeding within 18~~
14 ~~months and indicate the effects of such transmission lines on the environment and~~
15 ~~the means by which potential adverse effects will be avoided or minimized;.~~

16 **SECTION 49.** 196.491 (2) (a) 3r. of the statutes is created to read:

17 196.491 (2) (a) 3r. Identify and describe any plans for assuring that there is an
18 adequate ability to transfer electric power into the state and the transmission area,
19 as defined in s. 196.48 (1) (b), in a reliable manner.

20 **SECTION 50.** 196.491 (2) (a) 4. of the statutes is amended to read:

21 196.491 (2) (a) 4. ~~Indicate in detail~~ Identify and describe the projected demand
22 for electric energy and the basis for determining the projected demand;.

23 **SECTION 51.** 196.491 (2) (a) 5. and 6. of the statutes are repealed.

24 **SECTION 52.** 196.491 (2) (a) 7. of the statutes is amended to read:

ASSEMBLY BILL 748

1 196.491 (2) (a) 7. Identify and describe ~~existing and planned programs and~~
2 ~~polieies~~ activities to discourage inefficient and excessive power use; and.

3 **SECTION 53.** 196.491 (2) (a) 8. of the statutes is repealed.

4 **SECTION 54.** 196.491 (2) (a) 9. to 13. of the statutes are created to read:

5 196.491 (2) (a) 9. Identify and describe existing and planned generating
6 facilities that use renewable sources of energy.

7 10. Consider the public interest in economic development, public health and
8 safety, protection of the environment and diversification of sources of energy
9 supplies.

10 11. Assess the extent to which the regional bulk-power market is contributing
11 to the adequacy and reliability of the state's electrical supply.

12 12. Assess the extent to which effective competition is contributing to a reliable,
13 low-cost and environmentally sound source of electricity for the public.

14 13. Assess whether sufficient electric capacity and energy will be available to
15 the public at a reasonable price.

16 **SECTION 55.** 196.491 (2) (ag) of the statutes is created to read:

17 196.491 (2) (ag) The commission shall promulgate rules that establish
18 procedures and requirements for an electric utility to report information that is
19 necessary for the commission to prepare strategic energy assessments under par. (a).

20 **SECTION 56.** 196.491 (2) (am) of the statutes is renumbered 196.491 (2r) and
21 amended to read:

22 196.491 (2r) (title) LOCAL ORDINANCES. No local ordinance may prohibit or
23 restrict testing activities undertaken by a an electric utility for purposes of ~~preparing~~
24 ~~advance plans or~~ determining the suitability of a site for the placement of a facility.

ASSEMBLY BILL 748

1 Any local unit of government objecting to such testing may petition the commission
2 to impose reasonable restrictions on such activity.

3 **SECTION 57.** 196.491 (2) (b) (intro.) of the statutes is repealed and recreated to
4 read:

5 196.491 (2) (b) (intro.) On or before July 1, the commission shall issue a draft
6 of the annual strategic energy assessment that it prepares under par. (a) to each of
7 the following:

8 **SECTION 58.** 196.491 (2) (b) 8. of the statutes is amended to read:

9 196.491 (2) (b) 8. The lower Wisconsin state riverway board if the plan draft
10 includes an assessment of the construction, modification or relocation of a
11 high-voltage transmission line, as defined in s. 30.40 (3r), that is located in the lower
12 Wisconsin riverway as defined in s. 30.40 (15).

13 **SECTION 59.** 196.491 (2) (b) 9. of the statutes is created to read:

14 196.491 (2) (b) 9. Each electric utility that is required to report information to
15 the commission under the rules promulgated under par. (ag).

16 **SECTION 60.** 196.491 (2) (c) and (d) of the statutes are repealed.

17 **SECTION 61.** 196.491 (2) (e) of the statutes is amended to read:

18 196.491 (2) (e) Any state agency, as defined in s. 16.375 (1), county,
19 municipality, town or person may submit written comments ~~on any plan~~ to the
20 commission on a strategic energy assessment within 180 90 days after the plan is
21 filed copies of the draft are issued under par. (b).

22 **SECTION 62.** 196.491 (2) (f) of the statutes is amended to read:

23 196.491 (2) (f) ~~Because the planning process for facilities siting otherwise~~
24 ~~incorporates consideration and analysis of environmental impact, s. Section 1.11 (2)~~
25 (c) shall not apply to ~~advance plans~~ a strategic energy assessment prepared under

ASSEMBLY BILL 748

1 par. (a) but the commission shall prepare a single environmental assessment on all
2 plans submitted for approval under par. (a) the strategic energy assessment, which
3 shall include a discussion of generic issues ~~related thereto~~. Such and environmental
4 impacts. The commission shall make the environmental assessment shall be made
5 available to the public at least 30 days prior to the hearing under par. (g). The
6 assessment on the plans is different from an environmental impact statement on a
7 particular facility in that it need not identify the environmental effects of proposed
8 sites for facilities in the plan with the same degree of detail as is required when a
9 particular facility is considered for a certificate of public convenience and necessity
10 under sub. (3). ~~The assessment need not repeat information included in an~~
11 ~~assessment prepared for a plan submitted under par. (a) on a prior reporting date and~~
12 ~~with respect to which no material additional data is required or as to which there has~~
13 ~~been no material change in circumstances. Applicable portions of such assessment~~
14 ~~may be included by reference in any environmental impact statement prepared by~~
15 ~~the commission, including a statement prepared in connection with the~~
16 ~~consideration of an application for a certificate of public convenience and necessity~~
17 ~~under sub. (3).~~

18 **SECTION 63.** 196.491 (2) (g) of the statutes, as affected by 1997 Wisconsin Act
19 35, is amended to read:

20 196.491 (2) (g) ~~Within 180~~ No sooner than 30 and no later than 90 days after
21 ~~the plan is filed~~ copies of the draft are issued under par. (b), the commission shall hold
22 a hearing ~~thereon~~ on the draft which may not be a hearing under s. 227.42 or 227.44.
23 The hearing shall be held in an administrative district, established by executive
24 order 22, issued August 24, 1970, which the commission determines will be
25 significantly affected by facilities ~~proposed in the plan to be constructed in the~~

ASSEMBLY BILL 748

1 following on which an electric utility plans to commence construction within 3 years.

2 The commission may thereafter adjourn the hearing to other locations or may
3 conduct the hearing by interactive video conference or other electronic method.

4 Notice of such hearing shall be given by class 1 notice, under ch. 985, published in
5 the official state newspaper and such other regional papers of general circulation as
6 may be designated by the commission. At such hearing the commission shall briefly

7 describe the plan strategic energy assessment and give all interested persons an
8 opportunity, subject to reasonable limitations on the presentation of repetitious
9 material, to express their views on any aspect of the plan. ~~The presentation of such~~

10 ~~views need not be under oath nor subject to cross-examination. The commission~~

11 ~~shall advise all persons present of their right to express their views orally or in~~
12 ~~writing, under oath or otherwise, and of the legal effect of each such form of testimony~~

13 strategic energy assessment. A record of unsworn testimony the hearing shall be

14 made and considered by the commission as comments on the plan strategic energy

15 assessment under par. (e). ~~Persons presenting such views shall not be parties. The~~

16 ~~utility, any state agency, county, municipality, town, or any person whose substantial~~

17 ~~rights may be adversely affected by the testing for or construction of facilities~~

18 ~~described in an advance plan, shall, upon filing written notice setting forth its~~

19 ~~interest at least 10 days in advance, be afforded all the rights of a party in a contested~~

20 ~~case.~~

21 **SECTION 64.** 196.491 (2) (gm) of the statutes is created to read:

22 196.491 (2) (gm) Based on comments received on a draft, the commission shall
23 prepare a final strategic energy assessment within 90 days after a hearing under par.

24 (g). The commission shall provide copies of the final strategic energy assessment to

ASSEMBLY BILL 748

1 any state agency, county, municipality, town or other person who submitted
2 comments on the draft under par. (e) and to the persons specified in par. (b).

3 **SECTION 65.** 196.491 (2) (i) to (m) of the statutes are repealed.

4 **SECTION 66.** 196.491 (2m) (title) of the statutes is repealed.

5 **SECTION 67.** 196.491 (2m) of the statutes is renumbered 196.491 (3) (a) 3. a. and
6 amended to read:

7 196.491 (3) (a) 3. a. ~~At least 120 days prior to the filing of an application for a~~
8 ~~certificate of public convenience and necessity under sub. (3) for a bulk or large~~
9 ~~electric generating facility, the applicant shall notify the department and the~~
10 ~~commission of its intention to make such application and At the same time that a~~
11 ~~person files an application under subd. 1., the person shall provide the department~~
12 ~~with an engineering plan showing the location of the facility, a description of the~~
13 ~~facility, including the major components thereof having of the facility that have a~~
14 ~~significant air, water or solid waste pollution potential, and a description of the~~
15 ~~anticipated effects of such the facility on air and water quality. Within 60 30 days~~
16 ~~thereafter after a person provides an engineering plan, the department shall provide~~
17 ~~the applicant person with a listing of each department permit or approval which, on~~
18 ~~the basis of the information contained in the engineering plan, appears to be required~~
19 ~~for the construction or operation of the facility. ~~The department shall, in consultation~~~~
20 ~~~~with the commission, also designate which permits and approvals, or portions~~~~
21 ~~thereof, must be obtained prior to the issuance of the certificate of public convenience~~
22 ~~and necessity. Such designation shall be based on a finding by the department that~~
23 ~~the granting or denial of the same could significantly affect overall facility design or~~
24 ~~location. At any time prior to the issuance of the certificate of public convenience and~~

ASSEMBLY BILL 748

1 ~~necessity, the department may, in consultation with the commission, waive the~~
2 ~~necessity of obtaining any such permit or approval in advance of such certificate.~~

3 **SECTION 68.** 196.491 (3) (a) of the statutes is renumbered 196.491 (3) (a) 1. and
4 amended to read:

5 196.491 (3) (a) 1. No person may commence the construction of a facility unless
6 such the person has applied for and received a certificate of public convenience and
7 necessity from the commission as provided in this section. An application in the form
8 and containing the information required by commission rules for such certificate
9 shall be filed with the commission not less than 18 months prior to the
10 commencement of construction of a bulk electric generating facility, and not less than
11 6 months prior to the commencement of construction of a large electric generating
12 facility or a high-voltage transmission line. Within 10 days after filing the
13 application, the commission shall send a copy of the application to the clerk of each
14 municipality and town in which the proposed facility is to be located and to the main
15 public library in each such county. The applicant shall apply for any permits or
16 approvals required by the department prior to the issuance of a certificate of public
17 convenience and necessity within 20 days after the application to the commission.
18 An applicant shall make a preliminary application for all other permits and
19 approvals specified under sub. (2m). Such preliminary application shall be sufficient
20 if it identifies the permits and approvals applied for and contains so much of the
21 information required for each such permit or approval as is then available to the
22 applicant. Thereafter the applicant shall supply necessary additional engineering
23 and design information as it becomes available.

24 **SECTION 69.** 196.491 (3) (a) 2. of the statutes is created to read:

ASSEMBLY BILL 748

1 196.491 (3) (a) 2. The commission shall determine whether an application filed
2 under subd. 1. is complete and, no later than 30 days after the application is filed,
3 notify the applicant about the determination. If the commission determines that the
4 application is incomplete, the notice shall state the reason for the determination. An
5 applicant may supplement and refile an application that the commission has
6 determined to be incomplete. There is no limit on the number of times that an
7 applicant may refile an application under this subdivision. If the commission fails
8 to determine whether an application is complete within 30 days after the application
9 is filed, the application shall be considered to be complete.

10 **SECTION 70.** 196.491 (3) (a) 3. b. of the statutes is created to read:

11 196.491 (3) (a) 3. b. Within 20 days after the department provides a listing
12 specified in subd. 3. a. to a person, the person shall apply for the permits and
13 approvals identified in the listing. The department shall determine whether an
14 application under this subd. 3. b. is complete and, no later than 30 days after the
15 application is filed, notify the applicant about the determination. If the department
16 determines that the application is incomplete, the notice shall state the reason for
17 the determination. An applicant may supplement and refile an application that the
18 department has determined to be incomplete. There is no limit on the number of
19 times that an applicant may refile an application under this subd. 3. b. If the
20 department fails to determine whether an application is complete within 30 days
21 after the application is filed, the application shall be considered to be complete. The
22 department shall complete action on an application under this subd. 3. b. within 90
23 days after the date on which the application is determined or considered to be
24 complete.

25 **SECTION 71.** 196.491 (3) (b) of the statutes is amended to read:

ASSEMBLY BILL 748

1 196.491 (3) (b) The commission shall hold a public hearing on ~~the~~ an
2 application that is determined or considered to be complete in the area affected
3 pursuant to s. 227.44. A class 1 notice, under ch. 985, shall be given at least 30 days
4 prior to the hearing.

5 **SECTION 72.** 196.491 (3) (d) (intro.) of the statutes is amended to read:

6 196.491 (3) (d) (intro.) Except as provided under par. (e) and s. 196.493, the
7 commission shall approve an application for a certificate of public convenience and
8 necessity ~~shall be approved~~ only if the commission determines that all of the
9 following:

10 **SECTION 73.** 196.491 (3) (d) 1. of the statutes is repealed.

11 **SECTION 74.** 196.491 (3) (d) 2. of the statutes is amended to read:

12 196.491 (3) (d) 2. The proposed facility ~~is necessary to satisfy~~ satisfies the
13 reasonable needs of the public for an adequate supply of electric energy. This
14 subdivision does not apply to a wholesale merchant plant.

15 **SECTION 75.** 196.491 (3) (d) 7. of the statutes is created to read:

16 196.491 (3) (d) 7. The proposed facility will not have a material adverse impact
17 on competition in the relevant wholesale electric service market.

18 **SECTION 76.** 196.491 (3) (dm) of the statutes is created to read:

19 196.491 (3) (dm) In making a determination required under par. (d), the
20 commission may not consider a factual conclusion in a strategic energy assessment
21 unless the conclusion is independently corroborated in the hearing under par. (b).

22 **SECTION 77.** 196.491 (3) (e) of the statutes is amended to read:

23 196.491 (3) (e) If the application does not meet the criteria under par. (d), the
24 commission shall reject the application or approve the application with such
25 modifications as are necessary for an affirmative finding under par. (d). The

ASSEMBLY BILL 748

1 commission may not issue a certificate of public convenience and necessity until the
2 department has issued all permits and approvals designated under sub. (2m) as
3 necessary prior to the issuance of the certificate of public convenience and necessity
4 identified in the listing specified in par. (a) 3. a.

5 **SECTION 78.** 196.491 (3) (f) and (ff) of the statutes are repealed.

6 **SECTION 79.** 196.491 (3) (g) (intro.) and 1. of the statutes are consolidated,
7 renumbered 196.491 (3) (g) and amended to read:

8 196.491 (3) (g) The commission shall take final action on the an application
9 within: ~~1. 180 days after the application under this subsection for large electric~~
10 ~~generating facilities or high-voltage transmission lines is determined or considered~~
11 ~~to be complete under par. (a) 2. If the commission fails to take final action within the~~
12 ~~180-day period, the commission is considered to have issued a certificate of public~~
13 ~~convenience and necessity with respect to the application, unless the commission,~~
14 ~~within the 180-day period, petitions the circuit court for Dane County for an~~
15 ~~extension of time for taking final action on the application and the court grants an~~
16 ~~extension. Upon a showing of good cause, the court may extend the 180-day period~~
17 ~~for no more than an additional 180 days.~~

18 **SECTION 80.** 196.491 (3) (g) 2. of the statutes is repealed.

19 **SECTION 81.** 196.491 (3) (hm) of the statutes is amended to read:

20 196.491 (3) (hm) The commission and the department shall schedule as many
21 hearings under this subsection as practicable at a time and place reasonably
22 convenient to the majority of persons in the area of the facility.

23 **SECTION 82.** 196.491 (3) (j) of the statutes is amended to read:

24 196.491 (3) (j) Any person whose substantial rights may be adversely affected
25 or any county, municipality or town having jurisdiction over land affected by an

ASSEMBLY BILL 748

1 ~~advance plan or a~~ certificate of public convenience and necessity may petition for
2 judicial review, under ch. 227, of any decision of the commission regarding the
3 ~~advance plan or~~ the certificate.

4 **SECTION 83.** 196.491 (3) (k) of the statutes is amended to read:

5 196.491 (3) (k) No person may purchase, or acquire an option to purchase, any
6 interest in real property knowing that such property is being purchased to be used
7 for the construction of a high-voltage transmission line unless the person gives
8 written notice to the prospective seller of the size, maximum voltage and structure
9 type of any transmission line planned to be constructed thereon and the electric
10 utility by whom it will be operated. Contracts made in violation of this paragraph
11 are subject to rescission by the seller at any time prior to the issuance of a certificate
12 of public convenience and necessity for the ~~facility~~ high-voltage transmission line by
13 the commission.

14 **SECTION 84.** 196.491 (4) (a) (intro.), 1. and 2. of the statutes, as created by 1997
15 Wisconsin Act 27, are renumbered 196.491 (4) (intro.), (a) and (b), and 196.491 (4)
16 (intro.) and (a), as renumbered, are amended to read:

17 196.491 (4) EXEMPTIONS. (intro.) Subsection ~~(2)~~ (3) does not apply to a person
18 that constructs, owns or operates electric generating equipment and associated
19 facilities if all of the following are satisfied:

20 (a) The person is not a public utility, a public utility affiliate, an affiliated
21 interest or a cooperative association organized under ch. 185 for the purpose of
22 generating, distributing or furnishing electric energy at retail or wholesale to its
23 members only.

24 **SECTION 85.** 196.491 (4) (a) 3. of the statutes is repealed.

25 **SECTION 86.** 196.491 (4) (b) of the statutes is repealed.

ASSEMBLY BILL 748

1 **SECTION 87.** 196.491 (5) of the statutes is created to read:

2 196.491 (5) LARGE ELECTRIC GENERATING FACILITY STANDARDS. (a) The
3 commission shall promulgate rules that establish all of the following:

4 1. Standards for inspecting, maintaining and repairing large electric
5 generating facilities that are owned by or provide service to public utilities.

6 2. Standards that the commission determines are necessary for the safe and
7 reliable operation of large electric generating facilities that are owned or provide
8 service to public utilities.

9 3. Requirements for making annual reports to the commission regarding
10 compliance with the standards specified in subds. 1. and 2. The commission shall
11 make the reports available for public inspection.

12 4. Penalties for violating the standards specified in subds. 1. and 2. or the
13 requirements specified in subd. 3.

14 (b) In promulgating rules that establish the standards specified in par. (a) 1.
15 and 2., the commission shall consider cost, local geographic and weather conditions,
16 electrical industry codes and engineering practices and any other factors that the
17 commission determines are related to the safe and reliable operation of the large
18 electric generating facilities.

19 (c) The commission shall conduct periodic investigations to determine
20 compliance with the rules promulgated under par. (a).

21 **SECTION 88.** 196.492 of the statutes is repealed.

22 **SECTION 89.** 196.493 (1) of the statutes is amended to read:

23 196.493 (1) DEFINITION. In this section, “nuclear power plant” means a
24 nuclear-fired large electric generating facility as defined under s. 196.491 (1) (g) ~~or~~
25 ~~a nuclear-fired bulk electric generating facility as defined under s. 196.491 (1) (a).~~

ASSEMBLY BILL 748

1 **SECTION 90.** 196.493 (2) (intro.) of the statutes is amended to read:

2 196.493 **(2)** LIMITS ON CERTIFICATION. (intro.) The commission may not certify
3 under s. 196.49 (3) (b) or 196.491 (3) any nuclear power plant ~~and may not approve~~
4 ~~under s. 196.491 (2) any plan which includes a nuclear power plant~~ unless the
5 commission finds that:

6 **SECTION 91.** 196.795 (7) (a) 1. b. of the statutes is amended to read:

7 196.795 **(7)** (a) 1. b. Any public utility or member of a cooperative association
8 organized under ch. 185 which ~~files or has filed a plan under~~ reports or has reported
9 information to the commission under the rules promulgated under s. 196.491 (2) (ag).

10 **SECTION 92.** 289.29 (5) of the statutes is amended to read:

11 289.29 **(5)** ISSUANCE OF FINAL DETERMINATION OF FEASIBILITY IN CERTAIN
12 SITUATIONS INVOLVING UTILITIES AND MINING. If a determination of feasibility is
13 ~~required under s. 196.491 (2m)~~ identified in the listing specified in s. 196.491 (3) (a)
14 3. a., the issuance of a final determination of feasibility is subject to the time limits
15 limit under s. 196.491 (3) ~~(f) and (ff)~~ (a) 3. b. If a determination of feasibility is
16 required under s. 293.43, the issuance of a final determination of feasibility is subject
17 to the time limits under s. 293.45 (2) or 293.49, whichever is applicable.

18 **SECTION 93. Nonstatutory provisions.**

19 (1) ELECTRIC GENERATION AND TRANSFER CAPACITY.

20 (a) In this subsection:

21 1. "Electric transfer capacity" means the maximum amount of electrical power
22 that may be imported into an area on a simultaneous basis and in a reliable manner
23 by way of all available transmission lines or paths.

ASSEMBLY BILL 748

1 2. "Transmission area" means the area of the state that, on January 1, 1997,
2 was served by the Mid-America Interconnected Network, Inc., reliability council of
3 the North American Reliability Council.

4 (b) No later than July 1, 1998, the public service commission shall, after notice
5 and hearing, issue an order that is designed to increase, to the extent practicable, the
6 aggregate total generating capacity that is available to serve retail electric service
7 customers in the transmission area by 500 megawatts. An order under this
8 paragraph shall do all of the following:

9 1. Require that at least 50 megawatts of the increased aggregate total
10 generating capacity be from renewable energy resources.

11 2. Require aggregate total generating capacity to be increased in a manner that
12 is cost-effective and environmentally sound.

13 3. Establish mechanisms that it determines to be just and reasonable for the
14 recovery of any costs that the public utility prudently incurs by reason of the order.

15 (c) An order under paragraph (b) may require a public utility to do any of the
16 following:

17 1. Construct additional electric generating facilities.

18 2. Enter into contracts or arrangements to procure additional electric
19 generating capacity.

20 3. Take any other action that the public service commission determines is
21 necessary to ensure the availability of reliable electric generating capacity.

22 (d) No later than January 1, 1999, the public service commission shall, after
23 notice and hearing, issue an order that is designed to ensure, to the extent
24 practicable, that, no later than June 1, 2001, the electric transfer capacity into the
25 transmission area is no less than 3,500 megawatts. An order under this paragraph

ASSEMBLY BILL 748

1 shall require electric transfer capacity to be increased in a manner that is
2 cost-effective and environmentally sound.

3 (2) STUDY ON OUT-OF-STATE TRANSMISSION CONSTRAINTS. The public service
4 commission shall conduct a study on relieving transmission constraints in other
5 states that adversely affect the reliability of electric service that is provided to
6 customers in this state and shall, no later than the first day of the 6th month
7 beginning after the effective date of this subsection, submit a report on the results
8 of the study to the legislature in the manner provided under section 13.172 (2) of the
9 statutes. The report shall include information concerning all of the following:

10 (a) A description of the transmission constraints and their effect on reliable
11 electric service in this state.

12 (b) The efforts that the commission has undertaken and plans to undertake to
13 relieve the transmission constraints, including any federal-state or interstate
14 efforts and any involvement by the commission in regulatory proceedings in other
15 jurisdictions.

16 (c) Any recommendations, in the form of proposed legislation or action by the
17 public service commission or governor, for relieving the transmission constraints.

18 (3) SUBMISSION OF PROPOSED RULES. The public service commission shall submit
19 in proposed form the rules required under section 196.491 (5) (a) of the statutes, as
20 created by this act, to the legislative council staff under section 227.15 (1) of the
21 statutes no later than July 1, 1998.

22 (4) EXEMPTION FROM EMERGENCY RULE PROCEDURES. Using the procedure under
23 section 227.24 of the statutes, the public service commission may promulgate rules
24 required under section 196.491 (5) (a) of the statutes, as created by this act, for the
25 period before the effective date of permanent rules promulgated under section

ASSEMBLY BILL 748

1 196.491 (5) (a) of the statutes, as created by this act, but not to exceed the period
2 authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding
3 section 227.24 (1) (a) and (2) (b) of the statutes, the public service commission need
4 not provide evidence of the necessity of preservation of the public peace, health,
5 safety or welfare in promulgating rules under this subsection.

SECTION 94. Initial applicability.

6
7 (1) The treatment of section 30.025 (1) and (4) of the statutes first applies to
8 engineering plans submitted in lieu of separate permit applications on the effective
9 date of this subsection.

10 (2) The treatment of sections 30.44 (3m) (a), (b) and (d), 30.45 (1r), 86.16 (1) and
11 182.017 (1) of the statutes first applies to applications for permits that are filed on
12 the effective date of this subsection.

13 (3) The treatment of sections 32.06 (7) and 32.09 (2m) of the statutes first
14 applies to petitions for condemnation proceedings that are filed on the effective date
15 of this subsection.

16 (4) The treatment of sections 196.49 (3) (a), (b) (intro.), 2. and 3. and (e), 196.491
17 (1) (a), (bm), (d), (e), (f), (g) and (w), (2m), (3) (a) 2. and 3. b., (b), (d) (intro.), 1., 2. and
18 7., (dm), (e), (f), (ff), (g) (intro.), 1. and 2., (hm), (j) and (k) and (4) (a) (intro.), 1., 2. and
19 3. and (b) and 196.493 (1) and (2) (intro.) of the statutes and the renumbering and
20 amendment of section 196.491 (3) (a) of the statutes first apply to applications for
21 certificates of public convenience and necessity that are filed on the effective date of
22 this subsection.

23 (5) The treatment of section 289.29 (5) of the statutes first applies to feasibility
24 reports that are submitted on the effective date of this subsection.

25 (END)