

1997-98 SESSION  
COMMITTEE HEARING  
RECORDS

Committee Name:

Joint Committee for  
Review of  
Administrative Rules  
  
(JCR-AR)

Sample:

- Record of Comm. Proceedings
- 97hr\_AC-EdR\_RCP\_pt01a
- 97hr\_AC-EdR\_RCP\_pt01b
- 97hr\_AC-EdR\_RCP\_pt02

- Appointments ... Appt
- 
- Clearinghouse Rules ... CRule
- 
- Committee Hearings ... CH
- 
- Committee Reports ... CR
- 
- Executive Sessions ... ES
- 
- Hearing Records ... HR
- 
- Miscellaneous ... Misc
- 97hr\_JCR-AR\_Misc\_pt14
- Record of Comm. Proceedings ... RCP
-

PSC 4 - ENVIRONMENTAL  
— ANALYSIS - GENERATING RESULTS. —



# Public Service Commission of Wisconsin

Joseph P. Mettner, Chairman

610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

July 10, 1998

The Honorable Robert Welch, Co-chairman  
Joint Committee for Review of Administrative Rules  
1 E. Main St., Room 201  
Madison, WI 53703

JUL 13 1998

The Honorable Glenn Grothman, Co-chairman  
Joint Committee for Review of Administrative Rules  
125 West  
State Capitol Building  
Madison, WI 53703

Re: In the Matter of Proposed Emergency Revision of Chapter PSC 4, 1-AC-179  
Wis. Adm. Code – Environmental Analysis

Dear Senator Welch and Representative Grothman:

A JCRAR memo dated January 27, 1989, requested that rule-making agencies provide advance notice to the Joint Committee of their intent to adopt emergency rules. Please accept this letter as advance notification of the Public Service Commission's intent to promulgate an emergency rule. The proposed rule would remove the requirement that the Commission prepare a draft environmental impact statement as part of its review of certain applications to build electric generating plants.

The Commission is scheduled to consider adoption of this proposed emergency rule at its open meeting on July 14, 1998. A copy of the proposed rule is enclosed. If you have any questions please contact Mr. David Ludwig, Electric Division Legal Counsel, at (608) 266-5621 or Ms. Kathleen Zuelsdorff, WEPA coordinator, at (608) 266-2730.

Sincerely,

David A. Ludwig  
Attorney for the Commission

DAL:mcm:L:\Letters\WEPA advance notice to JCRAR.doc

Enclosure

# PUBLIC SERVICE COMMISSION OF WISCONSIN

## Memorandum

July 8, 1998

### FOR COMMISSION AGENDA

TO: The Commission

FROM: Susan E. Stratton, Administrator *SS*  
Kathleen J. Zuelsdorff, WEPA Coordinator *KJZ*  
David A. Ludwig, Attorney *DL*  
Electric Division

RE: In the Matter of Proposed Emergency Revision of Chapter PSC 4, 1-AC-179  
Wis. Adm. Code – Environmental Analysis

Suggested Minute: The Commission approved an order to promulgate emergency rules relating to the preparation of draft environmental impact statements for projects filed by winning bidders under 1997 Wis. Act 204, Section 96 (1). The Commission directed staff to complete the filings required for submittal of rules.

Attached are a proposed order and related documents to adopt an emergency rule, dealing with the need to prepare a draft environmental impact statement when the Commission is reviewing certain generating plant projects. 1997 Wisconsin Act 204, Section 96 (1) grants the Commission only 90 days to complete its CPCN review of project applications filed by winning bidders of the three bid competitions now being run by Wisconsin Electric Power Company, Wisconsin Power & Light Company, and Madison Gas and Electric Company. This emergency rule removes the requirement that the Commission complete a draft EIS for these projects, before preparing a final EIS.

Under s. 227.24 (1), Stats., an emergency rule can be promulgated without first proceeding through the legislative review process. Instead, emergency rules take effect upon publication in the official state newspaper. On the other hand, an emergency rule lasts for only 150 days, although the Joint Committee for Review of Administrative Rules can extend an emergency rule for up to 120 days. The Joint Committee has also requested state agencies to notify it in advance when promulgating emergency rules. By a copy of this memo to the co-chairs of the Joint Committee, this notice has been completed.

If the Commission approves this order, Commission staff will send the emergency rule and necessary related documents to the Revisor of Statutes and Secretary of State and will forward the rule for publication. Under s. 227.24 (4), Stats., the Commission must hold a public hearing on an emergency rule within 45 days after promulgation. Commission staff recommends holding this hearing at the Commission's offices on August 4, 1998. Commission staff will prepare a Notice of Hearing according to your instructions as to location and date.

DAL:mcm:L:\Commemo\WEPA emergency rule cover memo.doc  
Enclosures

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

In the Matter of Proposed Emergency Revision of Chapter PSC 4,  
Wis. Adm. Code – Environmental Analysis

1-AC-179

**ORDER OF THE PUBLIC SERVICE COMMISSION  
ADOPTING EMERGENCY RULES**

The public service commission of Wisconsin adopts an emergency rule to amend PSC 4.30 (4) (a) and (5) (a) and (b), relating to the preparation of draft environmental impact statements for electric generating plant projects that must be reviewed in 90 days.

Analysis by the Wisconsin Public Service Commission

Statutory authority: ss. 196.02 (1) and (3), 227.11 and 227.24, Stats.

Statute interpreted: s. 1.11, Stats., and 1997 Wis. Act 204 Section 96 (1).

The Wisconsin environmental policy act (WEPA) requires that all state agencies carefully examine the environmental consequences of major actions that significantly affect the quality of the human environment. Part of that examination includes the preparation of an environmental impact statement (EIS).

The Commission has implemented rules to administer its obligations under WEPA. These rules require preparation of a draft EIS, a preliminary evaluation of the environmental impacts associated with a proposed action. The Commission's rules prescribe that copies of the draft EIS must be distributed widely, and that the public must be notified of the draft EIS's

availability. The Commission allots at least a 45-day period for receipt of comments from the public, unless it shortens the review period for cause. The Commission then prepares a final EIS, modifying its draft EIS as a result of comments received or other information it collects. The Commission also distributes its final EIS to a large group of interested persons. The Commission holds a public hearing on each proposed action for which it has prepared a final EIS. Under current rules, the public is allowed at least a 30-day period to review the final EIS, because (unless it shortens the period for cause) the Commission issues a notice of the hearing and delivers copies of the final EIS at least 30 days before the hearing is scheduled. Notice of the hearing is delivered by mail to known interested persons and is published in local newspapers.

Recent changes in state law have significantly shortened the time available to the Commission to complete its review of certain major actions. Under s. 196.491, Stats., large electric generating facilities cannot be built in Wisconsin unless the Commission issues a certificate of public convenience and necessity (CPCN). 1997 Wisconsin Act 204, Section 96 (1), requires Madison Gas & Electric Company, Wisconsin Power & Light Company, and Wisconsin Electric Power Company each to complete their bidding processes and select a winning bid for the construction of new electric generating plants by July 31, 1998. This session law requires each winning contractor to submit a CPCN application to the Commission by August 31, 1998, and requires the Commission to complete its review of these applications within 90 days. Under Commission rules, an EIS must be prepared for each of these projects.

The requirement that final action on a bidder's CPCN application be taken within 90 days makes it impossible for the Commission to perform all the steps it would ordinarily undertake to complete its review. Preparation and publication of a draft EIS, issuing a notice of its

availability and the 45-day review period consume much of the time involved in reviewing a CPCN application. These elements of the Commission's process are designed to broaden public understanding of utility projects and encourage public input into the Commission's review, but they are not required by law. The Commission cannot prepare a draft EIS and also perform its legally required duties (produce and distribute a final EIS, conduct hearings on the project, accept post-hearing briefs and issue a decision) in 90 days. The Commission therefore proposes to amend its rules so that it will prepare a final EIS, without first issuing a draft EIS, when conducting its 90-day review of CPCN applications from the winning bidders.

#### Fiscal Estimate

A fiscal estimate is attached to this order.

#### Statement of Emergency

The Commission's review of CPCN applications from the winning bidders under 1997 Wis. Act 204, Section 96 (1), will commence when completed applications are filed. This is likely to occur on or before August 31, 1998, at which point state law grants the Commission only 90 days to finish its review of the project applications. Permanent rules cannot be adopted in time to affect the Commission's review period. Preservation of the public peace, health, safety or welfare necessitate putting this rule into effect immediately, so that the Commission can complete its review process in a timely manner.

#### Environmental Analysis

This is a Type III action under s. PSC 4.10 (3), Wis. Adm. Code. No unusual circumstances suggesting the likelihood of significant environmental consequences have come to

Docket I-AC-179

the Commission's attention. Neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment is required.

### ORDER OF ADOPTION

Pursuant to ss. 196.02 (1) and (3), 227.11 and 227.24, Stats., and 1997 Wis. Act 204 Section 96 (1), the Commission amends ss. PSC 4.30 (4) (a) and (5) (a) and (b), Wis. Adm. Code. The attached emergency rules take effect upon publication.

Dated at Madison, Wisconsin, \_\_\_\_\_

By the Commission:

\_\_\_\_\_  
Lynda L. Dorr  
Secretary to the Commission

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Attachments



**Attachment 1.**

**EMERGENCY RULES**

SECTION 1. PSC 4.30 (4) (a) and (5) (a) and (b) are amended to read:

PSC 4.30 (4) (a) A draft EIS is a preliminary document, clearly describing a proposed project and the alternatives being considered so that other persons can begin assessing the environmental effects of the proposal. A draft EIS is not required for projects specified in 1997 Wis. Act 204, Section 96 (1).

(5) (a) Following the public review period on a draft EIS, the commission staff shall prepare a final EIS. The final EIS may vary from the draft EIS in scope, based on comments received on the draft EIS or other pertinent information which becomes known to the commission staff. The final EIS shall contain the information described in sub. (3). For projects specified in 1997 Wis. Act 204, Section 96 (1), a draft EIS will not precede the final EIS.

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

SECTION 2. EFFECTIVE DATE. As provided in s. 227.24 (1) (c), Stats., the rules contained in this emergency order take effect upon publication in the official state newspaper.

(End)

**FISCAL ESTIMATE**

DOA-2048 N(R10/96)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

**Subject**

Emergency rule relating to draft environmental impact statements

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Decrease Costs

Local:  No local government costs

- 1.  Increase Costs
  - Permissive
  - Mandatory
- 2.  Decrease Costs
  - Permissive
  - Mandatory

- 3.  Increase Revenues
  - Permissive
  - Mandatory
- 4.  Decrease Revenues
  - Permissive
  - Mandatory

5. Types of Local Governmental Units Affected:
- Towns
  - Villages
  - Cities
  - Counties
  - Others \_\_\_\_\_
  - School Districts
  - WTCS Districts

**Fund Sources Affected**

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

**Affected Ch. 20 Appropriations**

20.155(1)(g)

**Assumptions Used in Arriving at Fiscal Estimate**

1997 Wis. Act 204 requires that three utilities complete their RFP bidding processes by the summer of 1998, and that the Public Service Commission review the winning bidders' electric generating plant projects within 90 days after complete project applications are filed. This law accelerates the normal process of developing and reviewing such projects, but the Commission's existing appropriations and staff levels are sufficient to handle the increased workload associated with this shorter timeline.

**Long-Range Fiscal Implications**

None.

Agency/Prepared by (Name & Phone No.)

PSC, Gordon Grant 267-9066

*G. Amis / 66.*

Authorized Signature/Telephone No.

*J. Parrino 267-7709*

Date

07/09/98

CERTIFICATE

STATE OF WISCONSIN )  
 )  
PUBLIC SERVICE COMMISSION ) SS  
OF WISCONSIN )

I, Lynda L. Dorr, Secretary to the Public Service Commission of Wisconsin and custodian of the official records, certify that the attached order adopting emergency rules relating to the preparation of draft environmental impact statements for electric generating plant projects that must be reviewed in 90 days, docket 1-AC-179, was duly approved and adopted by this Commission at its open meeting on July 14, 1998.

I further certify that this copy has been compared by me with the original on file in this Commission and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Public Service Commission of Wisconsin at Madison, Wisconsin, this \_\_\_\_\_ day of July, 1998.

---

Lynda L. Dorr  
Secretary to the Commission  
Public Service Commission of Wisconsin



# Public Service Commission of Wisconsin

Joseph P. Mettner, Chairman

610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

The Honorable Robert Welch, Co-chairman  
Joint Committee for Review of Administrative Rules  
1 East Main St., Room 201  
Madison, WI 53703

The Honorable Glenn Grothman, Co-chairman  
Joint Committee for Review of Administrative Rules  
125 West  
State Capitol Building  
Madison, WI 53703

Re: In the Matter of Proposed Emergency Revision of Chapter PSC 4, 1-AC-179  
Wis. Adm. Code – Environmental Analysis

Dear Senator Welch and Representative Grothman:

At its open meeting on July 14, 1998, the Public Service Commission adopted an emergency rule concerning the preparation of draft environmental impact statements when the Commission is reviewing electric generating plant projects filed by winning bidders under 1997 Wis. Act 204, Section 96 (1). Enclosed please find copies of a certificate, Commission order with attached emergency rule, and fiscal estimate regarding this emergency rule. If you have questions or concerns, please contact Commission attorney Mr. David A. Ludwig at (608) 266-5621 or Commission WEPA Coordinator Ms. Kathleen J. Zuelsdorff at (608) 266-2730.

Dated at Madison, Wisconsin, \_\_\_\_\_

By the Commission:

Lynda L. Dorr  
Secretary to the Commission

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Enclosures

cc: Mr. William Esbeck  
Office of the Governor  
Mr. Mark Bugher, Secretary  
Department of Administration



# Public Service Commission of Wisconsin

Joseph P. Mettner, Chairman

610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

The Honorable Douglas La Follette  
Secretary of State  
Office of the Secretary of State  
30 West Mifflin St, 10th Floor  
Madison, WI 53707-7848

Mr. Gary L. Poulson, Deputy Revisor  
Revisor of Statutes Bureau  
1 West Wilson St., Room 800  
Madison, WI 53703-3233

Re: In the Matter of Proposed Emergency Revision of Chapter PSC 4, 1-AC-179  
Wis. Adm. Code – Environmental Analysis

Dear Secretary La Follette and Mr. Poulson:

At its open meeting on July 14, 1998, the Public Service Commission adopted an emergency rule relating to the preparation of draft environmental impact statements. Pursuant to s. 227.20, Stats., an agency is required to file a certified copy of each rule it adopts with the offices of the Secretary of State and the Revisor of Statutes.

Enclosed for filing are certified copies of the Order of the Public Service Commission Adopting Emergency Rules, which amends certain provisions of s. PSC 4.30, Wis. Adm. Code.

Mr. Poulson's filing also includes an additional uncertified copy of the rules and a disk version of the rule text.

If you have any further questions or concerns, please contact Mr. David Ludwig, Attorney, Electric Division, at (608) 266-5621.

Dated at Madison, Wisconsin, \_\_\_\_\_

By the Commission:

Lynda L. Dorr  
Secretary to the Commission

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Enclosures



# Public Service Commission of Wisconsin

Joseph P. Mettner, Chairman

610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

July 15, 1998

To: The Wisconsin Legislature

From: Susan E. Stratton, Administrator  
Electric Division

*Susan E. Stratton*

JUL 17 1998

Re: In the Matter of Proposed Emergency Revision of Chapter PSC 4,  
Wis. Adm. Code – Environmental Analysis

1-AC-179

At its open meeting on July 14, 1998, the Public Service Commission adopted an emergency rule concerning the preparation of draft environmental impact statements when the Commission is reviewing electric generating plant projects filed by winning bidders under 1997 Wis. Act 204, Section 96 (1). Enclosed please find copies of the Notice of Hearing and Adoption of Rules and fiscal estimate regarding this emergency rule.

If you have questions or concerns, please contact Commission attorney Mr. David A. Ludwig at (608) 266-5621 or Commission WEPA Coordinator Ms. Kathleen J. Zuelsdorff at (608) 266-2730.

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Enclosures

cc: Chairman Joseph P. Mettner, PSC  
Bert Garvin, PSC  
Jason Kratochwill, PSC

**DATE MAILED**  
JULY 16, 1998

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of Proposed Emergency Revision of Chapter PSC 4,  
Wis. Adm. Code—Environmental Analysis

1-AC-179

**NOTICE OF ADOPTION OF EMERGENCY RULES BY THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

**NOTICE OF EMERGENCY RULE HEARING**

Hearing Date:	Tuesday, August 4, 1998, 9:00 a.m.
Hearing Location:	Public Service Commission 610 North Whitney Way Madison, Wisconsin

Comments Due: August 18, 1998 – Noon	Address Comments To: Lynda L. Dorr Public Service Commission P.O. Box 7854 Madison, WI 53707-7854
FAX Due Date: August 17, 1998 – Noon	

On July 14, 1998, the Public Service Commission adopted an emergency rule amending s. PSC 4.30 (4) (a) and (5) (a) and (b), Wis. Adm. Code. These amendments relate to the preparation of draft environmental impact statements for electric generating plant projects that must be reviewed in 90 days. A copy of the emergency rule is attached.

NOTICE IS GIVEN that a public hearing will be held with respect to this emergency rule in the Amnicon Falls Hearing Room, Public Service Commission, 610 North Whitney Way, Madison, Wisconsin 53705, on Tuesday, August 4, 1998, at 9:00 a.m. This building is accessible to people in wheelchairs through the Whitney Way main floor entrance (lobby). Parking for people with disabilities is available along the south side of the building. Any party with a disability who needs accommodations should contact Richard Teslaw at (608) 267-9766.

The record in this proceeding will be held open until Tuesday, August 18, 1998, for receipt of any written comments. Written comments should be submitted to Lynda L. Dorr,

The requirement that final action on a bidder's CPCN application be taken within 90 days makes it impossible for the Commission to perform all the steps it would ordinarily undertake to complete its review. Preparation and publication of a draft EIS, issuing a notice of its availability and the 45-day review period consume much of the time involved in reviewing a CPCN application. These elements of the Commission's process are designed to broaden public understanding of utility projects and encourage public input into the Commission's review, but they are not required by law. The Commission cannot prepare a draft EIS and also perform its legally required duties (produce and distribute a final EIS, conduct hearings on the project, accept post-hearing briefs, and issue a decision) in 90 days. The Commission therefore proposes to amend its rules so that it will prepare a final EIS, without first issuing a draft EIS, when conducting its 90-day review of CPCN applications from the winning bidders.

### **Fiscal Estimate**

1997 Wisconsin Act 204 requires that three utilities complete their RFP bidding processes by the summer of 1998, and that the Commission review the winning bidders' electric generating plant projects within 90 days after complete project applications are filed. This law accelerates the normal process of developing and reviewing such projects, but the Commission's existing appropriations and staff levels are sufficient to handle the increased workload associated with this shorter timeline. No fiscal impact of the emergency rule is expected on state or local units of government.

### **Initial Regulatory Flexibility Analysis**

This emergency rule will have no significant adverse impact on small businesses.

### **Environmental Analysis**

This is a Type III action under s. PSC 4.10 (3), Wis. Adm. Code. No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission's attention. Neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment is required.

### **Statement of Emergency**

The Commission's review of CPCN applications from the winning bidders under 1997 Wis. Act 204, Section 96 (1), will commence when completed applications are filed. This is likely to occur on or before August 31, 1998, at which point state law grants the Commission only 90 days to finish its review of the project applications. Permanent rules cannot be adopted in time to affect the Commission's review period. Preservation of the public peace, health, safety or welfare necessitate putting this rule into effect immediately, so that the Commission can complete its review process in a timely manner.



## EMERGENCY RULES

SECTION 1. PSC 4.30 (4) (a) and (5) (a) and (b) are amended to read:

PSC 4.30 (4) (a) A draft EIS is a preliminary document, clearly describing a proposed project and the alternatives being considered so that other persons can begin assessing the environmental effects of the proposal. A draft EIS is not required for projects specified in 1997 Wis. Act 204, Section 96 (1).

(5) (a) Following the public review period on a draft EIS, the commission staff shall prepare a final EIS. The final EIS may vary from the draft EIS in scope, based on comments received on the draft EIS or other pertinent information which becomes known to the commission staff. The final EIS shall contain the information described in sub. (3). For projects specified in 1997 Wis. Act 204, Section 96 (1), a draft EIS will not precede the final EIS.

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

SECTION 2. EFFECTIVE DATE. As provided in s. 227.24 (1) (c), Stats., the rules contained in this emergency order take effect upon publication in the official state newspaper.

(End)



# Public Service Commission of Wisconsin

Joseph P. Mettner, Chairman

610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

The Honorable Robert Welch, Co-chairman  
Joint Committee for Review of Administrative Rules  
1 East Main St., Room 201  
Madison, WI 53703

The Honorable Glenn Grothman, Co-chairman  
Joint Committee for Review of Administrative Rules  
125 West  
State Capitol Building  
Madison, WI 53703

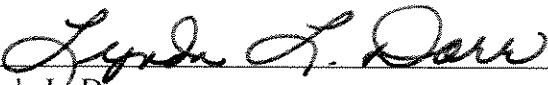
Re: In the Matter of Proposed Emergency Revision of Chapter PSC 4, 1-AC-179  
Wis. Adm. Code – Environmental Analysis

Dear Senator Welch and Representative Grothman:

At its open meeting on July 14, 1998, the Public Service Commission adopted an emergency rule concerning the preparation of draft environmental impact statements when the Commission is reviewing electric generating plant projects filed by winning bidders under 1997 Wis. Act 204, Section 96 (1). Enclosed please find copies of a certificate, Commission order with attached emergency rule, and fiscal estimate regarding this emergency rule. If you have questions or concerns, please contact Commission attorney Mr. David A. Ludwig at (608) 266-5621 or Commission WEPA Coordinator Ms. Kathleen J. Zuelsdorff at (608) 266-2730.

Dated at Madison, Wisconsin, July 14, 1998

By the Commission:

  
Lynda L. Dorr  
Secretary to the Commission

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Enclosures

cc: Mr. William Esbeck  
Office of the Governor  
Mr. Mark Bugher, Secretary  
Department of Administration


CERTIFICATE

STATE OF WISCONSIN )  
 )  
PUBLIC SERVICE COMMISSION ) SS  
OF WISCONSIN )

I, Lynda L. Dorr, Secretary to the Public Service Commission of Wisconsin and custodian of the official records, certify that the attached order adopting emergency rules relating to the preparation of draft environmental impact statements for electric generating plant projects that must be reviewed in 90 days, docket 1-AC-179, was duly approved and adopted by this Commission at its open meeting on July 14, 1998.

I further certify that this copy has been compared by me with the original on file in this Commission and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Public Service Commission of Wisconsin at Madison, Wisconsin, this 14<sup>th</sup> day of July, 1998.

  
\_\_\_\_\_  
Lynda L. Dorr  
Secretary to the Commission  
Public Service Commission of Wisconsin

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of Proposed Emergency Revision of Chapter PSC 4,  
Wis. Adm. Code – Environmental Analysis

1-AC-179

**ORDER OF THE PUBLIC SERVICE COMMISSION  
ADOPTING EMERGENCY RULES**

The Public Service Commission of Wisconsin (Commission) adopts an emergency rule to amend s. PSC 4.30(4)(a) and (5)(a) and (b), Wis. Adm. Code, relating to the preparation of draft environmental impact statements for electric generating plant projects that must be reviewed in 90 days.

**ANALYSIS BY THE WISCONSIN PUBLIC SERVICE COMMISSION**

Statutory authority: ss. 196.02 (1) and (3), 227.11 and 227.24, Stats.

Statute interpreted: s. 1.11, Stats., and 1997 Wis. Act 204 Section 96 (1).

The Wisconsin Environmental Policy Act (WEPA) requires that all state agencies carefully examine the environmental consequences of major actions that significantly affect the quality of the human environment. Part of that examination includes the preparation of an environmental impact statement (EIS).

The Commission has implemented rules to administer its obligations under WEPA. These rules require preparation of a draft EIS, a preliminary evaluation of the environmental impacts associated with a proposed action. The Commission's rules prescribe that copies of the draft EIS must be distributed widely, and that the public must be notified of the draft EIS's availability. The Commission allots at least a 45-day period for receipt of comments from the public, unless it shortens the review period for cause. The Commission then prepares a final EIS, modifying its draft EIS as a result of comments received or other information it collects. The Commission also distributes its final EIS to a large group of interested persons. The Commission holds a public hearing on each proposed action for which it has prepared a final EIS. Under current rules, the public is allowed at least a 30-day period to review the final EIS, because (unless it shortens the period for cause) the Commission issues a notice of the hearing and delivers copies of the final EIS at least 30 days before the hearing is scheduled. Notice of the hearing is delivered by mail to known interested persons and is published in local newspapers.

Recent changes in state law have significantly shortened the time available to the Commission to complete its review of certain major actions. Under s. 196.491, Stats., large electric generating facilities cannot be built in Wisconsin unless the Commission issues a Certificate of Public Convenience and Necessity (CPCN). 1997 Wisconsin Act 204, Section 96 (1), requires Madison Gas and Electric Company, Wisconsin Power and Light Company, and Wisconsin Electric Power Company each to complete their bidding processes and select a winning bid for the construction of new electric generating plants by July 31, 1998. This session law requires each winning contractor to submit a CPCN application to the Commission by August 31, 1998, and requires the Commission to complete its review of these applications within 90 days. Under Commission rules, an EIS must be prepared for each of these projects.

The requirement that final action on a bidder's CPCN application be taken within 90 days makes it impossible for the Commission to perform all the steps it would ordinarily undertake to complete its review. Preparation and publication of a draft EIS, issuing a notice of its availability and the 45-day review period consume much of the time involved in reviewing a CPCN application. These elements of the Commission's process are designed to broaden public understanding of utility projects and encourage public input into the Commission's review, but they are not required by law. The Commission cannot prepare a draft EIS and also perform its legally required duties (produce and distribute a final EIS, conduct hearings on the project, accept post-hearing briefs and issue a decision) in 90 days. The Commission therefore proposes to amend its rules so that it will prepare a final EIS, without first issuing a draft EIS, when conducting its 90-day review of CPCN applications from the winning bidders.

#### **FISCAL ESTIMATE**

A fiscal estimate is attached to this order.

#### **STATEMENT OF EMERGENCY**

The Commission's review of CPCN applications from the winning bidders under 1997 Wis. Act 204, Section 96 (1), will commence when completed applications are filed. This is likely to occur on or before August 31, 1998, at which point state law grants the Commission only 90 days to finish its review of the project applications. Permanent rules cannot be adopted in time to affect the Commission's review period. Preservation of the public peace, health, safety or welfare necessitate putting this rule into effect immediately, so that the Commission can complete its review process in a timely manner.

## ENVIRONMENTAL ANALYSIS

This is a Type III action under s. PSC 4.10 (3), Wis. Adm. Code. No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission's attention. Neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment is required.

## ORDER OF ADOPTION

Pursuant to ss. 196.02 (1) and (3), 227.11 and 227.24, Stats., and 1997 Wis. Act 204 Section 96 (1), the Commission amends ss. PSC 4.30 (4) (a) and (5) (a) and (b), Wis. Adm. Code. The attached emergency rules take effect upon publication.

Dated at Madison, Wisconsin,

July 14, 1998

By the Commission:

Lynda L. Dorr

Lynda L. Dorr  
Secretary to the Commission

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Attachments

**EMERGENCY RULES**

SECTION 1. PSC 4.30 (4) (a) and (5) (a) and (b) are amended to read:

PSC 4.30 (4) (a) A draft EIS is a preliminary document, clearly describing a proposed project and the alternatives being considered so that other persons can begin assessing the environmental effects of the proposal. A draft EIS is not required for projects specified in 1997 Wis. Act 204, Section 96 (1).

(5) (a) Following the public review period on a draft EIS, the commission staff shall prepare a final EIS. The final EIS may vary from the draft EIS in scope, based on comments received on the draft EIS or other pertinent information which becomes known to the commission staff. The final EIS shall contain the information described in sub. (3). For projects specified in 1997 Wis. Act 204, Section 96 (1), a draft EIS will not precede the final EIS.

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

SECTION 2. EFFECTIVE DATE. As provided in s. 227.24 (1) (c), Stats., the rules contained in this emergency order take effect upon publication in the official state newspaper.

(End)

LRB or Bill No./Adm. Rule No.  
Rule-Making

Amendment No. if Applicable

**FISCAL ESTIMATE**

DOA-2048 N(R10/96)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

**Subject**

Emergency rule relating to draft environmental impact statements

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Decrease Costs

Local:  No local government costs

- 1.  Increase Costs
  - Permissive
  - Mandatory
- 2.  Decrease Costs
  - Permissive
  - Mandatory

- 3.  Increase Revenues
  - Permissive
  - Mandatory
- 4.  Decrease Revenues
  - Permissive
  - Mandatory

5. Types of Local Governmental Units Affected:
- Towns
  - Villages
  - Cities
  - Counties
  - Others \_\_\_\_\_
  - School Districts
  - WTCS Districts

**Fund Sources Affected**

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

**Affected Ch. 20 Appropriations**

20.155(1)(g)

**Assumptions Used in Arriving at Fiscal Estimate**

1997 Wis. Act 204 requires that three utilities complete their RFP bidding processes by the summer of 1998, and that the Public Service Commission review the winning bidders' electric generating plant projects within 90 days after complete project applications are filed. This law accelerates the normal process of developing and reviewing such projects, but the Commission's existing appropriations and staff levels are sufficient to handle the increased workload associated with this shorter timeline.

**Long-Range Fiscal Implications**

None.

Agency/Prepared by (Name & Phone No.)

PSC, Gordon Grant 267-9066

*J. Parrino / 66.*

Authorized Signature/Telephone No.

*J. Parrino*

*267-7709*

Date

07/09/98