

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: **06/24/99**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Senate Democratic Caucus**

By/Representing: **Walter**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Public Util. - misc.**

Extra Copies:

Pre Topic:

SDC:.....Walter - Am. #4015,

Topic:

Sewer systems subject to PSC resolution of right-of-way disputes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 06/24/99			_____			
/1	kunkemd 06/27/99	wjackson 06/27/99	martykr 06/28/99	_____	lrb_docadmin 06/28/99		

FE Sent For:

<END>

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/?	jkreye 06/24/99 kunkemd	/1 Wlj 6/27	Lmb/27	<u>Dh</u> <u>Rm</u> 4/27			

FE Sent For:

<END>

Senator Decker

Public Service Commission

4015

Motion:

Move to add to sewer systems to section 196.04(4) of the state statutes.

The intent of this motion is to add sewer systems to the list of utilities that are subject to the fee established in Chapter 132 of the PSC's Administrative Code. Cable operator's were added to section 196.04(4) in 97 budget.

196.04(4)

(4) If the parties cannot agree and the commission finds that public convenience and necessity or the rendition of reasonably adequate service to the public requires that a public utility, telecommunications provider or cable operator, as defined in s. 66.082 (2) (b), be permitted to extend its lines on, over or under the right-of-way of any railroad, or requires that the tracks of any railroad be extended on, over or under the right-of-way of any public utility, telecommunications provider or cable operator, the commission may order the extension by the public utility, telecommunications provider, cable operator or railroad on, over or under the right-of-way of the other if it will not materially impair the ability of the railroad, telecommunications provider, cable operator or public utility, on, over or under whose right-of-way the extension would be made, to serve the public. The commission shall prescribe lawful conditions and compensation which the commission deems equitable and reasonable in light of all the circumstances.

196.04 - ANNOT.

History: 1983 a. 53; 1985 a. 297 ss. 25, 76; 1993 a. 496; 1995 a. 27; 1997 a. 27.

196.04 - ANNOT.

Standard applicable to determination of compensation under sub. (4) discussed. Wis. Central LTD. v. PSC, 170 W (2d) 558, 490 NW (2d) 27 (Ct. App. 1992).

CHAPTER PSC 132. COMPENSATION AND CONDITIONS FOR PUBLIC UTILITY FACILITIES WITHIN RAILROAD RIGHT-OF-WAY

PSC 132.01 Purpose.

(1) The purpose of this chapter is to set forth the compensation to be paid and conditions to be met by a public utility for the construction of new facilities or the maintenance of existing facilities within a railroad right-of-way in cases where the utility and railroad cannot agree.

(2) These rules shall be applicable to all future facilities and, except as provided in s. PSC 132.03 (1), shall be applicable to all existing facilities if agreements concerning existing facilities do not exist, expire, or are terminated.

(3) These rules shall be applicable to public utility facilities constructed within railroad right-of-way, whether on public or private property.

History: Cr. Register, January, 1996, No. 481, eff. 2-1-96.

PSC 132.02 Definitions.

In this chapter:

(1) "Commission" means the public service commission.

(2) "Facilities" means cables, conduits, wires, pipes and structures used by a public utility to transmit utility service.

(3) "Public utility" has the meaning given in s. 196.01 (5), Stats., and includes a "telecommunications provider," as defined in s. 196.01 (8p), Stats.

(4) "Railroad" has the meaning given in s. 195.02, Stats.

(5) "Within" means across, intersecting, on, over, perpendicular to, or under.

Note: The definition of the term "within" does not include facilities "along" or "parallel to" railroad right-of-way.

History: Cr. Register, January, 1996, No. 481, eff. 2-1-96.

PSC 132.03 Compensation.

(1) (a) Unless otherwise agreed to by the parties and subject to sub. (2), a public utility which locates its facilities within the right-of-way of a railroad shall compensate the railroad \$500 for each crossing. The payment shall be a one-time payment, in lieu of any license fees, to reimburse the railroad for expenses incurred by the railroad as a result of the construction of the facilities and, in the case of a private crossing, to compensate the

railroad for the locating of the facilities within the right-of-way.

(b) Unless otherwise agreed to by the parties, the one-time payment under par. (a) does not apply to public utility facilities located within a railroad right-of-way on the effective date of this paragraph February 1, 1996.

(2) (a) In this subsection:

1. "Direct expenses" does not include a contribution to profit but may include any of the following:

- a. The cost of inspecting the crossing site before, during or after construction.
- b. Administrative costs, such as the costs of entering the new crossing on the railroad's books, maps and property records.
- c. The cost of flagging during construction.
- d. Any other costs incurred due to actual construction.

2. "Special circumstances" means unique characteristics of a parcel of property which enhance its value above that of a typical parcel of railroad right-of-way. "Special circumstances" may include the parcel's relationship to other property, the existence of unique topography or natural resources or other unusual characteristics.

(b) A railroad may petition the commission for compensation greater than the amount under sub. (1) if the railroad and the public utility cannot agree on compensation and the railroad incurs extraordinary direct expenses as a result of the construction of the facilities or believes that special circumstances exist. If a petition is filed, the commission shall determine whether extraordinary direct expenses are incurred or whether special circumstances exist and the amount of compensation to be paid to the railroad.

(3) If grade crossing markings or signs are damaged during construction, the party responsible for the damage shall pay the replacement costs, unless otherwise agreed to by the parties.

History: Cr. Register, January, 1996, No. 481, eff. 2-1-96.

PSC 132.04 Casing.

A railroad may not require a gas public utility to encase any steel pipeline facilities installed within the railroad's right-of-way. A gas public utility shall determine whether and how its facilities should be cased and shall comply with all applicable state and federal pipeline safety rules and regulations.

History: Cr. Register, January, 1996, No. 481, eff. 2-1-96.

PSC 132.05 Insurance.

Unless otherwise agreed to by the parties:

(1) A railroad and a public utility shall each determine for itself the amount and scope of insurance it shall carry to cover risks associated with the property of the railroad or the facilities of the utility within a railroad right-of-way.

(2) A railroad and a public utility shall indemnify the other for damages resulting from its own negligence

related to the presence of utility facilities within the railroad right-of-way.

History: Cr. Register, January, 1996, No. 481, eff. 2-1-96.

PSC 132.06 Notification of construction; emergencies; repair and maintenance.

(1) Unless otherwise agreed to by the parties, a railroad or public utility shall, at its own expense, notify the other of emergencies, planned repair and construction or similar operations within a railroad right-of-way if the operation may affect the other. Except for emergencies, initial notification of intent to construct shall be made not less than 21 days before construction and notification of actual construction shall be made not less than three working days before construction begins.

(2) Unless otherwise agreed to by the parties, a railroad or public utility shall establish, at its own expense, a mechanism for receiving notification of emergencies 24 hours per day, 7 days per week. For every public utility facility located within a railroad right-of-way, each shall inform the other of an emergency telephone number, the name of a person responsible for processing the notification and any other information necessary for dealing with an emergency situation.

(3) Unless otherwise agreed to by the parties, a railroad or public utility shall each repair and maintain its own property or facilities located within a railroad right-of-way and may not perform regular or emergency maintenance or repair of the other's property or facilities.

(4) Unless otherwise agreed to by the parties, a public utility shall relocate its facilities within a railroad right-of-way if the relocation is reasonably necessary for railroad operations. The relocation expenses shall be paid by the utility unless the facilities to be relocated serve only the railroad.

(5) In meeting notification and response responsibilities under this section, a railroad or public utility shall comply with ss. 66.047 and 182.0175, Stats., applicable federal law, and orders and rules of the commission.

History: Cr. Register, January, 1996, No. 481, eff. 2-1-96.

PSC 132.07 Emergencies, reimbursement.

Unless otherwise agreed to by the parties:

(1) A railroad or public utility shall reimburse the other for expenses reasonably incurred which result from emergencies caused by the property or facilities of each that is located within the railroad right-of-way.

(2) A railroad or public utility shall reimburse the other for reasonable miscellaneous expenses incurred by one party at the other's request.

History: Cr. Register, January, 1996, No. 481, eff. 2-1-96.

PSC 132.08 Physical description of facilities.

(1) Upon placement of new facilities, a public utility shall, at its own expense, provide a railroad with a physical description of those new facilities located within the railroad's right of way. The description shall include the installed location and depth of any underground facilities.

(2) A public utility or railroad shall provide the other with a physical description of any alterations or additions to its property or facilities located within the railroad right-of-way in the area of the utility's facilities.

History: Cr. Register, January, 1996, No. 481, eff. 2-1-96.

PSC 132.09 Removal of facilities.

Public utility facilities may remain in a railroad right-of-way unless the commission approves abandonment of the facilities and orders the abandoned facilities to be removed.

History: Cr. Register, January, 1996, No. 481, eff. 2-1-96.

PSC 132.10 Disputes.

(1) Unless otherwise agreed to by the parties:

(a) A railroad may not refuse to permit a public utility to construct facilities within a right-of-way solely because of a dispute between the parties concerning compensation for or conditions to the right of placing the facilities within the railroad right-of-way.

(b) Subject to sub. (2), a public utility may proceed with construction while the dispute is resolved under s. PSC 132.03 (2), s. 196.04 (4), Stats., or another method mutually selected by the parties.

(2) If a public utility constructs facilities within a railroad right-of-way while a dispute is pending and, after notice and hearing, the commission determines that the facilities are located in an unreasonable location or constructed in an unsafe manner, the commission may order the public utility to remove or modify the facilities at the utility's expense.

History: Cr. Register, January, 1996, No. 481, eff. 2-1-96.

modify

61257

Agency: Public Service Commission - Agencywide

caucus number 4015

duplicate flag:
duplicate with:

Other reference numbers:	LFB Sum #:
bill number/amendment number:	
LRB draft #	LRB P-draft:

description: Add sewer systems to the list of utilities that are subject to the fee established in Chapter 132 of the PSC's Administrative Code. Cable operator's were added to section 196.04(4) in the 97 budget. See attached.

other notes **Modify to: see attached language from David Lovell**

drafting instructions:

more instructions:

Agency: **Public Service Commission - Agencywide**

Number of Amendments: 1

Senator Decker

Motion

60.77(4)

CP04015

Move to add a sewerage system operated by a municipality under 66.07(6), town sanitary district operated under subchapter 9 of chapter 60, a metropolitan sewerage district operated under 66.20 through 66.26 or section 66.88 through 66.918, or a lake sewerage district acting under 33.22(3) to section 196.04 of the state statutes.

The intent is to treat a sewerage district on the same basis as telecommunications, public utilities or cable providers are treated by section 196.04(4) of the state statutes.

Any question on the language please feel free to contact David Lovell of Leg. Council at 6-1304.

SDC:.....Walker - Am. #4015, Sewer systems subject to PSC resolution of
right-of-way disputes

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 1179, line 21: after that line insert:

3 "SECTION 2309q. 196.04 (4)[✓] of the statutes is renumbered 196.04 (4) (b)[✓] and
4 amended to read:

5 196.04 (4) (b) If the parties cannot agree and the commission finds that public
6 convenience and necessity or the rendition of reasonably adequate service to the
7 public requires that a public utility, telecommunications provider, sewerage system
8 operator or cable operator, ~~as defined in s. 66.082 (2) (b)~~, be permitted to extend its
9 lines on, over or under the right-of-way of any railroad, or requires that the tracks
10 of any railroad be extended on, over or under the right-of-way of any public utility,

1 telecommunications provider, sewerage system operator or cable operator, the
2 commission may order the extension by the public utility, telecommunications
3 provider, sewerage system operator, cable operator or railroad on, over or under the
4 right-of-way of the other if it will not materially impair the ability of the railroad,
5 telecommunications provider, sewerage system operator, cable operator or public
6 utility, on, over or under whose right-of-way the extension would be made, to serve
7 the public. The commission shall prescribe lawful conditions and compensation
8 which the commission deems equitable and reasonable in light of all the
9 circumstances.

10 History: 1983 a. 53; 1985 a. 297 ss. 25, 76; 1993 a. 496; 1995 a. 27; 1997 a. 27.

11 **SECTION 2309s.** 196.04 (4) (a) of the statutes is created to read:

12 196.04 (4) (a) In this subsection:

13 1. "Cable operator" has the meaning given in s. 66.082 (2) (b). ✓

14 2. "Sewerage system operator" means any of the following:

15 a. A municipality that operates a sewerage system under s. 66.076. ✓

16 b. A town sanitary district commission that operates a sewerage system under
17 60.77 (4). ✓

18 c. A city or village that obtains a sewerage system under s. 60.79. ✓

19 d. A metropolitan sewerage district commission that operates a sewerage
20 system under s. 66.24 (2) or 66.89 (1). ✓

21 e. A public inland lake protection and rehabilitation district that exercises the
22 powers of a town sanitary district under s. 33.22 (3) and that operates a sewerage
23 system under s. 60.77 (4). ✓

(END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb1257/1
MDK:wlj:km

SDC:.....Walter - Am. #4015, Sewer systems subject to PSC resolution of
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18 d. A metropolitan sewerage district commission that operates a sewerage
19 system under s. 66.24 (2) or 66.89 (1).

20 e. A public inland lake protection and rehabilitation district that exercises the
21 powers of a town sanitary district under s. 33.22 (3) and that operates a sewerage
22 system under s. 60.77 (4)."

23 (END)