

2003 DRAFTING REQUEST

Bill

Received: **10/07/2003**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Jensen (608) 264-6970**

By/Representing: **John Stolzenberg**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters: **rkite**

Subject: **Nat. Res. - nav. waters
Public Util. - electric**

Extra Copies: **RJM, J. Kreye, RNK**

Submit via email: **YES**

Requester's email: **Rep.Jensen@legis.state.wi.us**

Carbon copy (CC:) to: **john.stolzenberg@legis.state.wi.us
david.lovell@legis.state.wi.us
Bob.Cowles@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Revisions to DNR and PSC approvals of electric transmission and generation facilities

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>
/?				_____			S&L
/P1	mkunkel 10/13/2003 rmarchan	kgilfoy 10/16/2003	jfrantze 10/17/2003	_____	mbarman 10/17/2003		S&L

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	10/14/2003 rkite			_____			
	10/16/2003			_____			
/1	mkunkel 10/24/2003	kgilfoy 10/24/2003	pgreensl 10/24/2003	_____	sbasford 10/24/2003	lnorthro 10/28/2003	

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<END>

At
Intro.

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/?	mkunkel	10/16 KMG	10/17	10/17 H/Ch			

FE Sent For:

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JANSON
copy Coules
- Dave Lowell
- John Stelzberg

Frost et

October 6, 2003

ASSEMBLY AND SENATE ENERGY AND UTILITIES COMMITTEES

Fall 2003 Legislative Ideas and Drafting Instructions

1) Local Government Incentives

- a) Provide equity fix for old plants.
- b) Place general structures on the local property tax.
- c) Place substations on the local property tax.
- d) Allow public land to be purchased only at market value. [Brookfield case.]

ignore until later

2) Streamlined Processes — same as Robin's package

- a) DNR/PSC permitting initiative. (Per Governor's Executive Order.)
 - i) Authorize PSC and utility applicant access to property for site investigations.
 - ii) Delete requirement in CPCN process for engineering plan submittal to DNR.
 - iii) Modify processes so once PSC issues a CPCN or CA, DNR cannot impede the application or permit processing.
 - iv) Modify ch. 30 water regulation permit hearing requirement.

done

b) Recycled right-of-way.

- i) Increasing voltage of existing transmission line.

196.491

- (a) Apply to transmission projects [or segments] that:

(i) Involve only upgrading an existing transmission line up to, but not including, 345 kv.

(ii) Do not require the condemnation of land outside of existing easements for transmission.

(b) Expand the exemption from the CPCN statute in s. 196.491 (4) (c), Stats., by replacing "a nominal voltage of less than 230 kilovolts" with "a nominal voltage of less than 345 kilovolts."

add to ch. 300 31

(c) Direct DNR [and PSC] to adopt rules specifying that a project described in (a), above, requires the preparation of an Environmental Assessment, rather than an Environmental Impact Statement.

done
p. 13
draft

(d) As an additional option, provide that local zoning may not preclude or inhibit a project that is not subject to the CPCN statute by this exemption, as projects with a CPCN are treated. [See s. 196.491 (3) (i), Stats.] ~~Additionally, this treatment could be extended to any project that receives a CA under s. 196.49, Stats.~~

ii) Adding conductors to existing poles or towers.

(a) Apply to transmission projects [or segments] that:

- (i) Involve only adding conductors to existing poles or towers.
- (ii) Do not require the condemnation of land outside of existing easements for transmission.

(b) Create a 30-day passive review process for CPCN applications for projects described in (a), above. Require the PSC to notify the applicant of receipt of a complete application for accelerated approval. Provide that a CPCN is granted and the applicant may proceed with the project if, by the 30th business day following the date of the application receipt notice, the PSC has not acted to deny the request for accelerated approval. If the PSC denies the request within that time frame, the applicant must follow the regular process to obtain a CPCN. Provide that the PSC may deny a request for accelerated approval if it determines that the public interest requires a fuller review of the proposal.

CU 30

(c) Direct the DNR to develop a general permit under s. 30.206, Stats., for a project described in (a), above.

all p. 13

c) Prioritize use of nonenvironmentally sensitive public lands (highways, forests, etc.) for transmission and pipeline corridors.

1) Direct the Department of Transportation and the Public Service Commission to develop a Memorandum of Understanding to facilitate the siting of electric transmission facilities in or along existing highway and railroad corridors.

ii) Establish that it is the policy of the state that, to the greatest extent feasible consistent with economic and engineering considerations and the protection of environmental resources, the siting of new electric transmission facilities should utilize the following options, in the order specified:

Talk to PSC

(a) Existing ^{in utility} electric transmission corridors.

(b) Highway and railroad corridors.

(c) Other corridors, such as gas pipeline corridors.

(d) Recreational trails, to the extent that the facilities can be constructed below ground and do not transect environmentally sensitive areas.

(e) New corridors.

d) Modify facility size requirements for CPCN and CA approvals.

e) Coordinated WEPA review.

done

i) Direct the PSC, when reviewing a request for a CA or a CPCN, and the DNR, when reviewing permit applications for a project for which the applicant has also applied for a CA or CPCN, to coordinate their environmental reviews, as follows:

which DNR permits - reference CEQ guidelines

- (a) Require that the two agencies prepare a joint environmental review document. Specify that, if the rules of either or both agency require the preparation of an EIS, the document shall be an EIS; otherwise, the document shall be an EA. Specify that the document shall include all information required by each agency for compliance with WEPA and for making all determinations on permit applications or other approvals before it.
- (b) Specify that the PSC shall have a coordinating role in the preparation of the joint environmental review document.
- (c) Specify that each agency shall retain the responsibility for complying with WEPA, for evaluating the environmental impacts of its actions and for compliance with WEPA and for making all determinations on permit applications or other approvals before it.

f) Place DNR on the same approval timeline/deadlines as for PSC.

i) Definitions.

(a) "Approval" means a permit, license, or approval issued by the DNR that [is required prior to the construction of a utility facility under s. 196.491 (3) (a) 3.] [is necessary to construct or operate a utility facility for which the department has specified time limits under its permit guarantee program in s. 299.05 (2)].

(b) "Utility facility" means a project, as defined in s. 196.49 (3) (a), or a facility, as defined in s. 196.491 (1) (e).

ii) Establish that if the DNR fails to make a determination on the application for an approval within the time limit specified in [s. 196.491 (3) (a) 3. b.] [in a rule promulgated under s. 299.05 (2)], then all of the following shall apply:

(a) Notwithstanding any other law, the Governor shall make the determination on the application within 30 days of the end of the time limit.

(b) The DNR may not make a determination on the application after the end of the time limit.

iii) Require the DNR to administer and enforce the determination of the Governor, including any conditions ordered by the Governor.

iv) Authorize the Governor to direct that any record created by the DNR or hearing examiner on the application be certified to the Governor for use by the Governor in making his or her determination.

~~g) Consolidate PSC and DNR hearings into a joint hearing.~~

h) Require applicant to submit preferred site/facility rather than alternatives for generation, transmission, and pipelines and WEPA to focus on applicant's preferred alternative.

~~i) Clarify that utilities are "eligible applicants" who may apply for DNR permits before condemnation is complete.~~

~~i) This idea is addressed in the draft prepared under item 2) a).~~

j) Deadline for review of interstate transmission projects.

i) Repeal s. 196.491 (3) (g) 1m., which exempts projects being reviewed by more than one state from the 180-day CPCN review deadline.

Wld off for now

+ 227 rts of review

done

- 2 sites
and full WEPA or just 2

for deadline PSC use

ii) Provide that the PSC may reopen a CPCN after final approval if there is a conflict with an approval related to the same or a related project by another state or if new information or new issues are raised by such an approval that could have influenced the PSC's approval.

k) Local government use of transmission incentive aid.

i) Create an exception to s. 16.969 (4) that authorizes a county, town, village, or city that receives a distribution of the one-time environmental impact fee for a high-voltage transmission line to use the distribution for any purpose if authorized by the PSC. [Current law requires that it be used "for park, conservancy, wetland or other similar environmental programs."]

basis for decs -

ii) Establish that a local government receiving this distribution may make a written request for this waiver from the PSC any time. Direct the PSC to respond to such a request within two weeks from the date of receiving the request.

don't do for now

l) Apply the streamlined process with deadlines to natural gas line projects in addition to large power plants and transmission line projects.

3) Act 31 Trailer Provisions

a) Eliminate mitigation payments for host communities. (Partial veto.)

b) Reestablish sunset for cogeneration incentives. (Partial veto.)

c) Authorize an incentive payment to a municipality contiguous to the site of a new baseload electric generating facility. (Partial veto.)

d) Establish in the basic distribution for a new or repowered power plant proration of the county aid, if the plant is located in more than one county.

i) Expand s. 79.04 (6) (c) 2., as created by 2003 Wisconsin Act 31, to have a similar proration based upon net book value if the production plant is located in more than one county.

e) Establish in the incentive payments for a new or repowered power plant proration provisions if the plant is located in multiple municipalities or counties.

i) Add a provision to s. 79.04 (7), as created by 2003 Wisconsin Act 31, that prorates each of the incentive payments in sub. (7) for a new or repowered production plant if the plant is located in multiple municipalities or counties.

ii) Base the proration formula on the net book value of the portion of the plant located in each municipality or county as in s. 79.04 (6) (c) 2.

f) Authorize multiple incentive payments to a municipality or county if a new cogeneration plant and a new distinct power plant powered by an alternative energy source are both located in the municipality or county.

i) Qualify the limitation in the last sentence in s. 79.04 (7) (c) 1m., as created by 2003 Wisconsin Act 31, to apply only if the payments under subds. 1. and 1m. are for the same production plant.

RB not

4) Private Sector Incentives

- a) Provide a 3 mil incentive to private landowners and 1 mil to local units of government for administering the private landowner incentive.
- b) Establish flexible methods for compensating private landowners.

5) Streamlined Processes (additional ideas)

- a) Narrow focus of subjects for transmission debates at PSC.
- b) Application completeness:
 - i) Require DNR checklist for complete application.
 - ii) Give DNR equal oversight into completeness decision, i.e., require completeness determination from both agencies based on firm criteria.
 - iii) Establish an additional condition for a complete CPCN application at PSC to be a complete air permit application of the DNR.
- c) Place DNR and PSC on same timeline with a presumptive approval for all approvals except possibly air permits.
- d) Require DNR to not change its standards, such as protecting only high-value wetlands.
- e) Codify the PSC/DNR MOU.

Compiled at the request of Senator Cowles and Representative Jensen.

By John Stolzenberg and David Lovell, Legislative Council

Drafting Instructions.

This is a bill to improve the procedures for processing utility facility applications that need both PSC and DNR approvals.

Currently, when a person wishes to build a utility facility such as an electric generating plant, an electric transmission line, or a natural gas transmission line, the person applies at the Public Service Commission (PSC or commission) for authority to build the facility and also applies at the Department of Natural Resources (DNR or department) for permits needed to build and operate the facility. These DNR permits often include wetland or water body permits under chapter 30 of the Wisconsin Statutes that may affect the selection of the site or route for a utility facility. In the past, the two agencies have cooperated on the preparation of Environmental Impact Statements for utility facilities, but have not done as much to coordinate the processing of the respective applications. As a result, the commission may choose a location or route for a facility based on a wide range of factors it considers but the DNR, after its permit review, may not authorize the same location or route. This forces the applicant to go back to the Commission to seek a modification to the construction authority it received from the commission, potentially delaying utility projects, and increasing costs which are borne by ratepayers.

The intent of this bill is to better coordinate PSC and DNR reviews of applications for utility facilities, to make the procedures more efficient without sacrificing environmental safeguards. The two agencies have recently entered into a Memorandum of Understanding that will help facilitate agency coordination. However, statutory revisions will also assist in this process.

The general aim of the bill is to coordinate the PSC's review and decision process on applications to construct utility facilities with the DNR's review and decision process on chapter 30 and 31 permit applications for utility facilities. The bill requires an applicant desiring to construct a utility facility to provide better information to both the reviewing agencies in a more timely fashion, facilitates more DNR input into PSC proceedings, and better coordinates the criteria the two agencies use in deciding on the best location or route. This will reduce the overall time necessary to review these applications.

Part I DNR ch. 30 processing changes

Chapter 30 of the statutes is the primary authority for the DNR's water and wetland responsibilities. Most requests for a permit under that chapter are processed under s. 30.02, Stats. Current s. 30.025, Stats., is an optional processing procedure for certain electric generating facilities and transmission lines. The intent of the bill is to do all of the following:

- ✓ • Make s. 30.025 the exclusive DNR provision for processing permits needed for utility facilities. Note this section also covers permits under chapter 31.

- ✓ • Make s. 30.025 apply if a person needs to get PSC authority for constructing a utility facility and that person needs to get DNR permits under chs. 30 and 31 for the same facility.
- Define a “utility facility” to cover any facility that is required to get construction authority from the PSC. The PSC authorizes construction under s. 196.491 if the facility is a large electric generating facility (power plant) or a high-voltage electric transmission line. The PSC authorizes construction of other facilities, such as natural gas transmission and distribution lines and electric distribution lines and substations, under s. 196.49.
- ✓ • A person wishing to build a utility facility shall confer with the DNR and PSC to ensure the applicant knows what permits are needed, the types of information the person has to provide, when the information must be submitted, and identifies potentially interested persons or stakeholders. During this pre-application process, the agencies should be able to review location alternatives with the applicant and eliminate possible alternatives that cannot be approved under existing law.
- ✓ • A person wishing to build a utility facility need only submit a single application to the DNR for all permits that may be needed under ch. 30 and 31. The application should include all necessary information the DNR requires. The DNR permit application is submitted at the same time as an application for authority to construct is submitted to the PSC.
- NOTE: The intent of the pre-application process and the permit submission language is to ensure the two agencies get the information necessary from an applicant to process the applications in a timely manner.
- Specific language is needed to allow an applicant under this process to apply for and obtain all permits that may be needed under ch. 30 and 31. Currently, a person building a utility facility may not necessarily be a riparian owner for purposes of some permits, and this has caused delays. The intent of this provision is not to convey any riparian interests to an applicant but to ensure that the DNR may issue appropriate permits to an applicant even though the applicant is not a riparian owner. This provision is intended as a response to cases such as *Cassidy v. DNR*, 132 Wis. 2d 153, 161 (Ct. App. 1986), which states that a sewerage district’s holding of easements for constructing a dike does not make it a riparian owner for purposes of applying for certain DNR permits.
- ✓ • Rather than holding a contested case hearing, the DNR may hold an informational hearing on the permit application. It is the DNR’s intent to hold an informational hearing for those types of activities that would otherwise have been subject to the notice and hearing provisions under s. 30.02 (3) and (4), Stats. (An interested party will have the right to request a contested case hearing under s. 227.42 after a permit is issued or denied.)
- The DNR will participate in the PSC’s proceedings with respect to the areas the DNR has an interest in. First, the DNR shall review all alternative sites and routes for a proposed project to determine if the project can be permitted under ch. 30 and 31, and the DNR shall provide this information to the PSC. Second, the DNR shall actively participate in the Commissions investigations or proceedings to analyze and provide relevant information on environmental issues,

public rights in navigable waters, location, site and route issues, and possible alternatives.

- When the PSC has issued its decision on the utility facility application, the DNR may not require the applicant to further analyze alternatives such as need, location or route. The intent of this provision is to coordinate the criteria used and the options considered for a project at both the PSC and the DNR. The effect is to ensure that any DNR “practicable alternatives” analysis (see, Wis. Admin. Code § NR 103.08) is provided at the PSC and that the two agencies ultimately authorize the same location or route. The DNR retains the authority to require an applicant to consider specific alternatives for siting a facility within the chosen location or route, but cannot require the applicant to relocate outside of the approved location or route
- The criteria the DNR uses to consider the permit application is not changed, and the DNR’s ability to condition its permit is also retained.
- The DNR is required to grant or deny its permits under ch. 30 and 31 within 30 days after the date the PSC issues its decision on the application for authority to construct the utility facility.
- *NOTE: Suggested statutory language to accomplish the intent of this bill is provided.*

Part II Access to land

In addition to better agency coordination, another matter that delays the review of applications to construct utility facilities is the inability of the reviewing agencies, in some cases, to gather information specific to proposed locations or route because access to the property is not available. This bill permits the PSC the authority to access land for the purpose of preparing environmental impact statements and for conducting other site-specific investigations relating to the preparation or review of an application to construct a utility facility.

NOTE: Suggested statutory language to accomplish the intent of this is provided.

Part III Technical correction in s. 196.491

Currently, when a person wishes to construct an electric power plant or transmission line, the person is required under s. 196.491(3)(a)3.a. to submit an engineering plan to the DNR for its review. Although the reference to an engineering plan is appropriate for a power plant, it is not a term used when transmission lines are in development. Consequently, in that statutory provision, the term “engineering plan” should only apply to generation facilities and a term such as “detailed project plan” should apply to transmission lines.

NOTE: Suggested statutory language to accomplish the intent of this is provided.

The drafting instructions and suggested statutory language were prepared by the PSC and the DNR. If there are questions about either the instructions or the suggested language, please contact the following:

For the DNR: Attorney Tom Steidl, at 266-0235 or thomas.steidl@dnr.state.wi.us

For the PSC: Attorney John Lorence, at 266-8128 or john.lorence@psc.state.wi.us

*Can talk
to these
people*

\\Drafting instructions original bill version 2.0.doc

1 *This document is a draft of proposed statutory language consistent with the drafting*
2 *instructions. In addition to revising relevant ch. 30 sections, the draft addresses*
3 *property access and engineering plans in ch. 196. Notes are shown in italics.*
4
5

6 **This is a bill to improve the procedures for processing utility facility applications**
7 **that need both PSC and DNR approvals.**
8
9

10
11 SECTION 1. 30.02 (1) and (2) of the statutes are amended to read:
12

✓ 13 **30.02 (1)** ~~In Except as provided in s. 30.025, in~~ any proceeding under this chapter where
14 public notice is required, the department shall follow the procedures in subs. (3) and (4).
15

✓ 16 **(2)** ~~In Except as provided in s. 30.025, in~~ any proceeding under this chapter where public
17 notice is not required, the department shall follow the procedures in subs. (3) and (4) if it
18 determines that substantial interests of any party may be adversely affected by the
19 proceeding.
20

21 *NOTE: These cross-references indicate, with new s. 30.025 (1e), that s. 30.025 is*
22 *the exclusive chs. 30 and 31 process for utility projects. If the s. 30.025 process is*
23 *to apply to other types of DNR permits, such as under ch. 281, corresponding*
24 *language in other DNR chapters may be needed.*
25

26
27 SECTION 2. 30.025 (title) of the statutes is amended to read:
28

✓ 29 **30.025 (title) ~~Optional permit~~ Permit procedure for ~~certain electric generating~~**
30 **~~facilities and high-voltage transmission lines~~ utility facilities.**

why use "consistent" -

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SECTION 3. 30.025 (1) of the statutes is renumbered 30.025 (1s) (a) and amended to read:

30.025 (1s) (a) Any electric utility, as defined in s. 196.491 (1) (d), person proposing to construct a utility facility, as defined in s. 196.491 (1) (e), which facility is to be located adjacent to a waterway in such a manner as to require that requires one or more permits to be issued under this chapter and ch. 31 may shall, in lieu of separate application for permits under these chapters, submit an engineering plan one application for permits together with any additional information required by the department. ~~Such plan~~ The application shall be filed with the department ~~within 20 days after~~ at the same time as an application for a ~~certificate of public convenience and necessity~~ authority to construct the utility facility is filed with the ~~public service~~ commission under s. 196.49 or in a manner consistent with s. 196.491 (3), and shall include the detailed information the department needs to deem an application complete and to carry out its obligations under sub. (4).

The department may require supplemental information to be furnished thereafter.

NOTE: The intent of par. (a) is to require an applicant to submit one permit application and to allow the department to get enough information to issue a completeness determination if required, to participate in commission proceedings, to conduct its own informational hearing, and to grant or deny appropriate permits.

SECTION 4. 30.025 (1^b), (1e) and (1m) of the statutes are created to read:

1 **30.025 (1) DEFINITIONS.** In this section:

2 (a) "Commission" means the public service commission.

3 (b) "Permit" includes permits and approvals.

4 (c) "Utility facility" includes a project, as defined in s. 196.49 (3) (a), and a facility, as
5 defined in s. 196.491 (1) (e).

6
7 *Note: The "utility facility" definition uses the word "includes" to leave open the*
8 *possibility that some other kind of project should fall under this section.*
9

10
11 **30.025 (1e) APPLICABILITY.** This section shall apply if a person proposes to construct a
12 utility facility and all of the following conditions exist:

13 (a) The person is required to obtain authorization from the commission under s. 196.49
14 or s. 196.491 before construction.

15 (b) The utility facility is required to obtain one or more permits under this chapter or ch.
16 31.

17
18 *Note: This language covers ^{large} electric, natural gas, and water utility construction*
19 *projects, as well as electric generating facilities built by non-utilities. It currently*
20 *does not cover telecommunications projects, which are exempt under s. 196.49 (1)*
21 *(ag), or interstate pipeline projects, which are not subject to PSC construction*
22 *approval. The language covers all projects that need authority by both agencies,*
23 *not just the largest projects.*
24

25
26 **30.025 (1m) PRE-APPLICATION PROCESS.** Before an application is filed under this section,

27 the department, in cooperation with the commission, shall confer with a potential

28 applicant for a permit. The department shall ensure that the potential applicant is aware

see note

1 of the types of permits that may be necessary, the information the applicant will be
2 required to provide, and the timing of information submissions to allow the department to
3 participate in commission review procedures and to process the application in a timely
4 manner. A pre-application conference shall include a preliminary assessment of the
5 project's scope for an analysis of alternatives and an identification of potential interested
6 persons.

9 SECTION 5. 30.025 (1s) (title) and (b) of the statutes are created to read:

11 **30.025 (1s) (title) APPLICATION FOR PERMITS.**

13 **30.025 (1s) (b)** A person who applies to the commission to construct a utility facility
14 under s. 196.49 or s. 196.491 is eligible to apply under par. (a) for any permit the utility
15 facility may require under this chapter or ch. 31.

17 *This provision is intended to address the current provisions under ss. 30.12 and*
18 *30.123 that require the applicant to be a riparian owner. This provision enables*
19 *a utility applicant to apply for these permits without a riparian interest, and*
20 *should also be extended to similar requirements for DNR permits issued under*
21 *other chapters. (See, e.g., Cassidy v. DNR, 132 Wis. 2d 153, 161 (Ct. App.*
22 *1986), which states that a sewerage district's holding of easements for*
23 *constructing a dike does not make it a riparian owner for purposes of applying for*
24 *certain DNR permits.)*

25 *Also - need exception in 30.12 + 30.123 also? - may be other statutes also*
26 *(MO - see 30.12(1))*

work on this more

and receive?

may require more drafting

27 SECTION 6. 30.025 (2) of the statutes is amended to read:

do we really need to say "informational"?

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30.025 (2) (title) INFORMATIONAL HEARING. Once electric utilities have met the applicant meets the requirements of sub. (1) (1s) (a), the department shall may schedule the matter for a public informational hearing. Notice of ~~the~~ an informational hearing shall be given to the applicant and shall be published as a class 1 notice under ch. 985. The department may give such further notice as it deems proper, and shall give notice to persons requesting same. One copy of the application shall be available for public inspection at the office of the department, at least one copy in the ~~district~~ regional office of the department and at least one copy at the main public library of the area affected. Notwithstanding s. 227.42, the informational hearing may not be converted to or treated as a contested case.

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NOTE: As currently written, the department may hold informational hearings on all applications, but it is not required to. It is expected that the DNR will clarify the types of applications for which it will hold informational hearings. (For comparison, the PSC does not hold hearings on all s. 196.49 applications, but does so if the application requires the preparation of an environmental impact statement or if a project is expected to generate public interest.)

21
22

SECTION 7. 30.025 (2g) and (2s) of the statutes are created to read:

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30.025 (2g) PARTICIPATION IN COMMISSION PROCEEDINGS. (a) For utility facilities subject to this section, the department shall review a proposed utility facility, including each location, site, or route proposed for the utility facility, to assess whether each location, site, or route for the utility facility can comply with this chapter and ch. 31, and provide that information to the commission.

might want to say that it is not clearly operable

that is, it is "permetable"

maybe put in the negative -

1 (b) For utility facilities subject to this section, the department shall participate in
2 commission investigations or proceedings under s. 196.49 or s. 196.491. To facilitate a
3 commission decision consistent with the department's responsibilities, the department
4 shall provide the commission with information relevant to any of the following:

5 1. Environmental issues.

6 2. Public rights in navigable waters.

7 3. Location, site or route issues. - relating to proposed location?

8 4. ~~Other~~ alternatives. - relating to other locations?

9 locations, design etc. } for that particular facility

10 NOTE: This subsection is intended to state that the DNR shall participate in the
11 PSC procedure for the review of utility facility projects. It is also intended to
12 make the criteria the two agencies use consistent during the commission
13 proceeding.

14
15
16 **30.025 (2s) CONSIDERATION OF ALTERNATIVES.** Consistent with the department's permit

17 review and participation under sub. (2g), the department shall deem the commission's

18 decision under s. 196.49 or s. 196.491 as concluding that there is no other practicable

19 alternative for the utility facility, and the department may not require an applicant to

20 undertake further analysis of any utility facility alternatives, including alternative

21 methods of meeting the need for the project, location, site, or route, in order to satisfy the

22 criteria under sub. (3). The department may identify adjustments that may be required to

23 address permitting issues within the location, site, or route approved by the commission

24 under s. 196.49 or s. 196.491.

?
- why is this language necessary?

25
This provision is intended to make clear that once PSC identifies a large parcel or corridor, DNR can only require alternatives within that corridor or parcel - Rework this provision to get at this concept

NR 103

Fundamental decision made by Commission w/ input of dept. practicable alternatives decision is made in the course of commission's deliberations

1 *Note: For a utility facility selected as a result of the commission review process,*
2 *the department may not further review alternatives before issuing permits, except*
3 *to the extent needed to specifically site a facility within the location, site, or route*
4 *selected by the commission.*
5

6
7 SECTION 8. 30.025 (3) (title) of the statutes is created to read:

8
9 **30.025 (3) (title) PERMIT ISSUANCE.**
10

11
12 SECTION 9. 30.025 (3) (intro.) of the statutes is amended to read:

13
14 **30.025 (3) (intro.)** The department shall grant the necessary permits if, ~~after hearing,~~ it
15 finds that the applicant has shown that the proposal:
16

17 *NOTE: Only the introductory provision is amended The rest of the subsection,*
18 *pars. (a) and (b), are unchanged.*
19

20
21 SECTION 10. 30.025 (4) of the statutes is amended to read:

22
23 **30.025 (4) (title) PERMIT CONDITIONS.** The permit may be issued upon stated conditions
24 deemed necessary to assure compliance with the criteria designated under sub. (3). The
25 department shall grant or deny the application ~~within the time limit applicable under s.~~

1 ~~196.491 (3) (a) 3. b~~ for ~~final~~ permits for the utility facility within 30 days of the date the
2 commission issues its decision relating to the utility facility under s. 194.49 or s. 196.491.

3
4 *not later than 30 days after
PSC issues its decision*

5 SECTION 11. 66.0119 (1) (a) of the statutes is amended to read:

6 **66.0119 Special inspection warrants.** (1) (a) "Inspection purposes" include such
7 purposes as building, housing, electrical, plumbing, heating, gas, fire, health, safety,
8 environmental pollution, water quality, waterways, use of water, food, zoning, property
9 assessment, meter and obtaining data required to be submitted in an initial site report or
10 feasibility report under subch. III of ch. 289 or s. 291.23, 291.25, 291.29 or 291.31 or an
11 environmental impact statement related to one of those reports or for obtaining
12 information related to preparation of or review of an application for approval of a
13 construction project proposed under s. 196.49 or s. 196.491 including information for an
14 evaluation of environmental features or effects of the proposal.

15

16 SECTION 12. 196.24 (4) of the statutes is created to read:

17 **196.24 (4)** The commission may conduct an inspection of property for obtaining
18 information related to the preparation of or review of an application for approval of a
19 construction project proposed under s. 196.49 or s. 196.491 including information for an
20 evaluation of environmental features or effects of the proposal.

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22 *NOTE: These two provisions address the access to property issue.*

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SECTION 13. 196.491 (3) (a) 3. a. of the statutes is amended to read:

196.491 (3) (a) 3. a. At least 60 days before a person files an application under subd. 1., the person shall provide the department with an engineering plan ~~showing~~ if the facility is a large electric generating facility or a detailed project plan if the facility is a high-voltage transmission line. The plan shall show the location of the facility, a description of the facility, including the major components of the facility that have a significant air, water or solid waste pollution potential, and a description of the anticipated effects of the facility on air and water quality. Within 30 days after a person provides an engineering or project plan, the department shall provide the person with a listing of each department permit or approval which, on the basis of the information contained in the engineering or project plan, appears to be required for the construction or operation of the facility.

NOTE: This provision is intended to address the concern that "engineering plans" are not typically prepared for electric transmission lines

(end)

Request for Jensen & Cowles
Request made by John Stolzenberg & David Howell

in practice, s. 30.025 has never really been
used - instead, s. 30.02 is used

under draft - requires 30.025 to be the
process used

p. 3 lines 26-28

PSC III.51 -

could just codify this language
~~makes no sense~~ etc.

i.e. make applicant give notice

Mike Cain - can also contact him
Mary Ellen Vollbrecht } can also talk to them
Elizabeth Kleuser

do as a P draft -

Department is not required to prepare a detailed statement under s. 1.11(2)(c), but shall prepare an environmental assessment...

↓
define EA? probably not necessary

Adm 60.02(4)



(4) "EA" or "environmental assessment" means a documented brief but comprehensive analysis of a proposed Type II action to determine its environmental impact; to study, develop, and thoroughly describe alternatives, and to determine whether the proposed action constitutes a major state action significantly affecting the quality of the human environment or involving unresolved conflicts in the use of available resources.

Adm 60.02(5)



(5) "EIS" or "environmental impact statement" means a written report prepared pursuant to s. 1.11, Stats., which contains an analysis of anticipated impacts of a proposed action, and alternatives to the proposed action, upon the human environment. The draft environmental impact statement (DEIS) is a preliminary version of the final environmental impact statement (FEIS).

NR 150.02(9)



(9) "EA" or "environmental assessment" means an environmental analysis which is prepared to inform decision-makers of a proposed action's effect on the environment, and which develops, describes and evaluates alternatives, and provides sufficient evidence to determine whether the proposed action is a major action.

NR 150.02(11)



(11) "EIS" or "environmental impact statement" means an environmental analysis which is prepared to inform decision-makers and the public of a proposed action's effect on the environment, and develops, describes and evaluates alternatives in the detailed statement required by s. 1.11, Stats.

Kite, Robin

From: Cain, Michael J
Sent: Thursday, October 02, 2003 12:26 PM
To: Stolzenberg, John
Cc: Kite, Robin; Lovell, David; Steidl, Thomas F
Subject: RE: Question on PSC/DNR bill draft

John, Dave and Robin-

The note on page 4 was for two purposes. One was to be sure we identify the issues relating to construction site storm water under NR 216. The existing rule (NR 216.42(1)) provides that the "notice of intent shall be filed by any landowner". This was a problem in recent transmission line projects where the utility did not have a land interest but was directed by the PSC to obtain these permits before the CPCN would be effective. Our position was that we could not accept an application from the CPCN applicant before they obtained land control.

In talking to others here, we may be able to resolve this problem administratively without a statutory change. We need to have further internal discussions on that issue here, but we believe we can proceed on the draft assuming we will not make a statutory change.

The Chapter 281 and 283 reference was also a placeholder for another issue we discussed but that was not reflected in the draft. If a modified Chapter 30 process is adopted, we also want to make sure that water quality certifications under Chapters 281 and 283 will procedurally track the Chapter 30 permit process. We issue water quality certs for federal wetlands under s. 283.001 and water quality certs for isolated ("non-federal wetlands") under s. 281.36(2). There is not an "ownership issue" relating to these wetlands, but we do have procedural issues we need to resolve. You can help us figure out how to best reflect that in the proposed draft.

I hope this is helpful.

Michael J. Cain

Department of Natural Resources
Bureau of Legal Services
101 S. Webster- Box 7921
Madison, WI 53707
Phone- 608-266-2177
Fax-608-266-6983

-----Original Message-----

From: Stolzenberg, John
Sent: Thursday, October 02, 2003 11:15 AM
To: Cain, Michael J
Cc: Kite, Robin; Lovell, David
Subject: Question on PSC/DNR bill draft

Mike,

David and I have gone over the PSC/DNR bill draft on the processing of utility facility applications with the LRB drafters who will be working on this draft. One question came up on a s. 30.025 provision that I could not answer, which hopefully you can.

The note on page 4, lines 17 to 24, states that this provision "should also be extended to similar requirements for DNR permits issued under other chapters." When we had discussed the draft with you earlier this week, my notes indicate that you stated that the similar requirements were in ch. NR 216 and ch. 283. When I checked these provisions, I did not see a requirement that a permit may only be issued to a riparian, and thus be similar to the concern addressed by proposed s. 30.025 (1s) (b).

Can you clarify what this part of this note was addressing and, thus, what should be added to the draft in response to it?

Thanks for the clarification.

John

John Stolzenberg
Legislative Council
266-2988

Robin -

I have a small change to the Jensen/Cowles request:

- in s. 30.025 (1e) (b) add a reference to approvals under s. 281.36 so that the section applies to permits and approvals under chs. 30 and 31 and s. 281.36.

Call me if you have questions

Thank you -

David Lovell

6-1537

JANSON
copy cards
- Dave Lowell
- John Stelzberg

Friedman

October 6, 2003

ASSEMBLY AND SENATE ENERGY AND UTILITIES COMMITTEES

Fall 2003 Legislative Ideas and Drafting Instructions

1) Local Government Incentives

- a) Provide equity fix for old plants.
- b) Place general structures on the local property tax.
- c) Place substations on the local property tax.
- d) Allow public land to be purchased only at market value. [Brookfield case.]

ignore until later

2) Streamlined Processes

— same as Robin's package

- a) DNR/PSC permitting initiative. (Per Governor's Executive Order.)
 - i) Authorize PSC and utility applicant access to property for site investigations.
 - ii) Delete requirement in CPCN process for engineering plan submittal to DNR.
 - iii) Modify processes so once PSC issues a CPCN or CA, DNR cannot impede the application or permit processing.
 - iv) Modify ch. 30 water regulation permit hearing requirement.

b) Recycled right-of-way.

- i) Increasing voltage of existing transmission line.

196.491

(a) Apply to transmission projects [or segments] that:

(i) Involve only upgrading an existing transmission line up to, but not including, 345 kv.

(?)

(ii) Do not require the condemnation of land outside of existing easements for transmission.

(b) Expand the exemption from the CPCN statute in s. 196.491 (4) (c), Stats., by replacing "a nominal voltage of less than 230 kilovolts" with "a nominal voltage of less than 345 kilovolts."

add to ch. 300 31

(c) Direct DNR [and PSC] to adopt rules specifying that a project described in (a), above, requires the preparation of an Environmental Assessment, rather than an Environmental Impact Statement.

(d) As an additional option, provide that local zoning may not preclude or inhibit a project that is not subject to the CPCN statute by this exemption, as projects with a CPCN are treated. [See s. 196.491 (3) (i), Stats.] ~~Additionally, this treatment could be extended to any project that receives a CA under s. 196.49, Stats.~~

ii) Adding conductors to existing poles or towers.

(a) Apply to transmission projects [or segments] that:

- (i) Involve only adding conductors to existing poles or towers.
- (ii) Do not require the condemnation of land outside of existing easements for transmission.

(b) Create a 30-day passive review process for CPCN applications for projects described in (a), above. Require the PSC to notify the applicant of receipt of a complete application for accelerated approval. Provide that a CPCN is granted and the applicant may proceed with the project if, by the 30th business day following the date of the application receipt notice, the PSC has not acted to deny the request for accelerated approval. If the PSC denies the request within that time frame, the applicant must follow the regular process to obtain a CPCN. Provide that the PSC may deny a request for accelerated approval if it determines that the public interest requires a fuller review of the proposal.

du 30 (c) Direct the DNR to develop a general permit under s. 30.206, Stats., for a project described in (a), above.

~~X~~ Prioritize use of nonenvironmentally sensitive public lands (highways, forests, etc.) for transmission and pipeline corridors.

1) Direct the Department of Transportation and the Public Service Commission to develop a Memorandum of Understanding to facilitate the siting of electric transmission facilities in or along existing highway and railroad corridors.

ii) Establish that it is the policy of the state that, to the greatest extent feasible consistent with economic and engineering considerations and the protection of environmental resources, the siting of new electric transmission facilities should utilize the following options, in the order specified:

talk to PSC

(a) Existing ^{inhibition} electric transmission corridors.

(b) Highway and railroad corridors.

~~(c) Other corridors, such as gas pipeline corridors.~~

(d) Recreational trails, to the extent that the facilities can be constructed below ground and do not transect environmentally sensitive areas.

d (e) New corridors.

~~d) Modify facility size requirements for CPCN and CA approvals.~~

e) Coordinated WEPA review.

i) Direct the PSC, when reviewing a request for a CA or a CPCN, and the DNR, when reviewing permit applications for a project for which the applicant has also applied for a CA or CPCN, to coordinate their environmental reviews, as follows:

which DNR permits - reference CEQ guidelines →

Deadline or PSC use

- ii) Provide that the PSC may reopen a CPCN after final approval if there is a conflict with an approval related to the same or a related project by another state or if new information or new issues are raised by such an approval that could have influenced the PSC's approval.
- k) Local government use of transmission incentive aid.
 - i) Create an exception to s. 16.969 (4) that authorizes a county, town, village, or city that receives a distribution of the one-time environmental impact fee for a high-voltage transmission line to use the distribution for any purpose if authorized by the PSC. [Current law requires that it be used "for park, conservancy, wetland or other similar environmental programs."]
 - ii) Establish that a local government receiving this distribution may make a written request for this waiver from the PSC any time. Direct the PSC to respond to such a request within two weeks from the date of receiving the request.

basis for DECIS -

don't do for now

- l) Apply the streamlined process with deadlines to natural gas line projects in addition to large power plants and transmission line projects.

3) Act 31 Trailer Provisions

C.R.B. now

- a) Eliminate mitigation payments for host communities. (Partial veto.)
- b) Reestablish sunset for cogeneration incentives. (Partial veto.)
- c) Authorize an incentive payment to a municipality contiguous to the site of a new baseload electric generating facility. (Partial veto.)
- d) Establish in the basic distribution for a new or repowered power plant proration of the county aid, if the plant is located in more than one county.
 - i) Expand s. 79.04 (6) (c) 2., as created by 2003 Wisconsin Act 31, to have a similar proration based upon net book value if the production plant is located in more than one county.
- e) Establish in the incentive payments for a new or repowered power plant proration provisions if the plant is located in multiple municipalities or counties.
 - i) Add a provision to s. 79.04 (7), as created by 2003 Wisconsin Act 31, that prorates each of the incentive payments in sub. (7) for a new or repowered production plant if the plant is located in multiple municipalities or counties.
 - ii) Base the proration formula on the net book value of the portion of the plant located in each municipality or county as in s. 79.04 (6) (c) 2.
- f) Authorize multiple incentive payments to a municipality or county if a new cogeneration plant and a new distinct power plant powered by an alternative energy source are both located in the municipality or county.
 - i) Qualify the limitation in the last sentence in s. 79.04 (7) (c) 1m., as created by 2003 Wisconsin Act 31, to apply only if the payments under subds. 1. and 1m. are for the same production plant.

4) Private Sector Incentives

DNR deadline for air emissions permit 196.44 or 19.491(3) Collect. agency (a, b) Deadline = 30 days after PSC's determinations.

hold off for now

+ 227 rts of review

(a) Require that the two agencies prepare a joint environmental review document. Specify that, if the rules of either or both agency require the preparation of an EIS, the document shall be an EIS; otherwise, the document shall be an EA. Specify that the document shall include all information required by each agency for compliance with WEPA and for making all determinations on permit applications or other approvals before it.

(b) Specify that the PSC shall have a coordinating role in the preparation of the joint environmental review document.

(c) Specify that each agency shall retain the responsibility for complying with WEPA, for evaluating the environmental impacts of its actions and for compliance with WEPA and for making all determinations on permit applications or other approvals before it.

f) Place DNR on the same approval timeline/deadlines as for PSC.

i) Definitions.

(a) "Approval" means a permit, license, or approval issued by the DNR that [is required prior to the construction of a utility facility under s. 196.491 (3) (a) 3.] [is necessary to construct or operate a utility facility for which the department has specified time limits under its permit guarantee program in s. 299.05 (2)].

(b) "Utility facility" means a project, as defined in s. 196.49 (3) (a), or a facility, as defined in s. 196.491 (1) (e).

ii) Establish that if the DNR fails to make a determination on the application for an approval within the time limit specified in [s. 196.491 (3) (a) 3. b.] [in a rule promulgated under s. 299.05 (2)], then all of the following shall apply:

(a) Notwithstanding any other law, the Governor shall make the determination on the application within 30 days of the end of the time limit.

(b) The DNR may not make a determination on the application after the end of the time limit.

iii) Require the DNR to administer and enforce the determination of the Governor, including any conditions ordered by the Governor.

iv) Authorize the Governor to direct that any record created by the DNR or hearing examiner on the application be certified to the Governor for use by the Governor in making his or her determination.

~~g) Consolidate PSC and DNR hearings into a joint hearing.~~

h) Require applicant to submit preferred site/facility rather than alternatives for generation, transmission, and pipelines and WEPA to focus on applicant's preferred alternative.

~~i) Clarify that utilities are "eligible applicants" who may apply for DNR permits before condemnation is complete.~~

~~i) This idea is addressed in the draft prepared under item 2) a).~~

j) Deadline for review of interstate transmission projects.

i) Repeal s. 196.491 (3) (g) 1m., which exempts projects being reviewed by more than one state from the 180-day CPCN review deadline.

*- 2 sites
a rd
full
WEPA
or
just 2*

- a) Provide a 3 mil incentive to private landowners and 1 mil to local units of government for administering the private landowner incentive.
- b) Establish flexible methods for compensating private landowners.

5) Streamlined Processes (additional ideas)

- a) Narrow focus of subjects for transmission debates at PSC.
- b) Application completeness:
 - i) Require DNR checklist for complete application.
 - ii) Give DNR equal oversight into completeness decision, i.e., require completeness determination from both agencies based on firm criteria.
 - iii) Establish an additional condition for a complete CPCN application at PSC to be a complete air permit application of the DNR.
- c) Place DNR and PSC on same timeline with a presumptive approval for all approvals except possibly air permits.
- d) Require DNR to not change its standards, such as protecting only high-value wetlands.
- e) Codify the PSC/DNR MOU.

Compiled at the request of Senator Cowles and Representative Jensen.

By John Stolzenberg and David Lovell, Legislative Council

September 23, 2003

ASSEMBLY AND SENATE ENERGY AND UTILITIES COMMITTEES

Fall 2003 Legislative Ideas

1) Local Government Incentives

- JK
- a) Provide equity fix for old plants.
 - b) Place general structures on the local property tax.
 - c) Place substations on the local property tax.
 - d) Allow public land to be purchased only at market value. [Brookfield case]

du 32? (PG?)

2) Streamlined Processes

- a) DNR/PSC permitting initiative. (Per Governor's Executive Order.)
 - i) Authorize PSC and utility applicant access to property for site investigations.
 - ii) Delete requirement in CPCN process for engineering plan submittal to DNR.
 - iii) Modify processes so once PSC issues a CPCN or CA, DNR can't impede the application or permit processing.
 - iv) Modify ch. 30 water regulation permit hearing requirement.
- b) Recycled right-of-way.
 - i) Expand the CPCN exclusion for constructing transmission lines in existing transmission line rights-of-way from less than 230 kv lines to 345 kv lines.
 - ii) Accelerate the approval process for adding same- or smaller-sized transmission lines on existing towers, with 10-day PSC passive review. [For example, transmission line in Beloit.]
- c) Prioritize use of nonenvironmentally sensitive public lands (highways, forests, etc.) for transmission and pipeline corridors.
- d) Modify facility size requirements for CPCN and CA approvals.
- e) Require a coordinated WEPA review with only one EIS or EA, with PSC lead.
- f) Place DNR on the same approval timeline/deadlines as for PSC.
- g) Consolidate PSC and DNR hearings into a joint hearing.
- h) Require applicant to submit preferred site/facility rather than alternatives for generation, transmission and pipelines and WEPA to focus on applicant's preferred alternative.
- i) Clarify that utilities are "eligible applicants" who may apply for DNR permits before condemnation is complete.

Drafting Instructions.

This is a bill to improve the procedures for processing utility facility applications that need both PSC and DNR approvals.

Currently, when a person wishes to build a utility facility such as an electric generating plant, an electric transmission line, or a natural gas transmission line, the person applies at the Public Service Commission (PSC or commission) for authority to build the facility and also applies at the Department of Natural Resources (DNR or department) for permits needed to build and operate the facility. These DNR permits often include wetland or water body permits under chapter 30 of the Wisconsin Statutes that may affect the selection of the site or route for a utility facility. In the past, the two agencies have cooperated on the preparation of Environmental Impact Statements for utility facilities, but have not done as much to coordinate the processing of the respective applications. As a result, the commission may choose a location or route for a facility based on a wide range of factors it considers but the DNR, after its permit review, may not authorize the same location or route. This forces the applicant to go back to the Commission to seek a modification to the construction authority it received from the commission, potentially delaying utility projects, and increasing costs which are borne by ratepayers.

The intent of this bill is to better coordinate PSC and DNR reviews of applications for utility facilities, to make the procedures more efficient without sacrificing environmental safeguards. The two agencies have recently entered into a Memorandum of Understanding that will help facilitate agency coordination. However, statutory revisions will also assist in this process.

The general aim of the bill is to coordinate the PSC's review and decision process on applications to construct utility facilities with the DNR's review and decision process on chapter 30 and 31 permit applications for utility facilities. The bill requires an applicant desiring to construct a utility facility to provide better information to both the reviewing agencies in a more timely fashion, facilitates more DNR input into PSC proceedings, and better coordinates the criteria the two agencies use in deciding on the best location or route. This will reduce the overall time necessary to review these applications.

Part I DNR ch. 30 processing changes

Chapter 30 of the statutes is the primary authority for the DNR's water and wetland responsibilities. Most requests for a permit under that chapter are processed under s. 30.02, Stats. Current s. 30.025, Stats., is an optional processing procedure for certain electric generating facilities and transmission lines. The intent of the bill is to do all of the following:

- Make s. 30.025 the exclusive DNR provision for processing permits needed for utility facilities. Note this section also covers permits under chapter 31.

- Make s. 30.025 apply if a person needs to get PSC authority for constructing a utility facility and that person needs to get DNR permits under chs. 30 and 31 for the same facility.
- Define a “utility facility” to cover any facility that is required to get construction authority from the PSC. The PSC authorizes construction under s. 196.491 if the facility is a large electric generating facility (power plant) or a high-voltage electric transmission line. The PSC authorizes construction of other facilities, such as natural gas transmission and distribution lines and electric distribution lines and substations, under s. 196.49.
- A person wishing to build a utility facility shall confer with the DNR and PSC to ensure the applicant knows what permits are needed, the types of information the person has to provide, when the information must be submitted, and identifies potentially interested persons or stakeholders. During this pre-application process, the agencies should be able to review location alternatives with the applicant and eliminate possible alternatives that cannot be approved under existing law.
- A person wishing to build a utility facility need only submit a single application to the DNR for all permits that may be needed under ch. 30 and 31. The application should include all necessary information the DNR requires. The DNR permit application is submitted at the same time as an application for authority to construct is submitted to the PSC.
- NOTE: The intent of the pre-application process and the permit submission language is to ensure the two agencies get the information necessary from an applicant to process the applications in a timely manner.
- Specific language is needed to allow an applicant under this process to apply for and obtain all permits that may be needed under ch. 30 and 31. Currently, a person building a utility facility may not necessarily be a riparian owner for purposes of some permits, and this has caused delays. The intent of this provision is not to convey any riparian interests to an applicant but to ensure that the DNR may issue appropriate permits to an applicant even though the applicant is not a riparian owner. This provision is intended as a response to cases such as *Cassidy v. DNR*, 132 Wis. 2d 153, 161 (Ct. App. 1986), which states that a sewerage district’s holding of easements for constructing a dike does not make it a riparian owner for purposes of applying for certain DNR permits.
- Rather than holding a contested case hearing, the DNR may hold an informational hearing on the permit application. It is the DNR’s intent to hold an informational hearing for those types of activities that would otherwise have been subject to the notice and hearing provisions under s. 30.02 (3) and (4), Stats. (An interested party will have the right to request a contested case hearing under s. 227.42 after a permit is issued or denied.)
- The DNR will participate in the PSC’s proceedings with respect to the areas the DNR has an interest in. First, the DNR shall review all alternative sites and routes for a proposed project to determine if the project can be permitted under ch. 30 and 31, and the DNR shall provide this information to the PSC. Second, the DNR shall actively participate in the Commissions investigations or proceedings to analyze and provide relevant information on environmental issues,

public rights in navigable waters, location, site and route issues, and possible alternatives.

- When the PSC has issued its decision on the utility facility application, the DNR may not require the applicant to further analyze alternatives such as need, location or route. The intent of this provision is to coordinate the criteria used and the options considered for a project at both the PSC and the DNR. The effect is to ensure that any DNR “practicable alternatives” analysis (see, Wis. Admin. Code § NR 103.08) is provided at the PSC and that the two agencies ultimately authorize the same location or route. The DNR retains the authority to require an applicant to consider specific alternatives for siting a facility within the chosen location or route, but cannot require the applicant to relocate outside of the approved location or route
- The criteria the DNR uses to consider the permit application is not changed, and the DNR’s ability to condition its permit is also retained.
- The DNR is required to grant or deny its permits under ch. 30 and 31 within 30 days after the date the PSC issues its decision on the application for authority to construct the utility facility.
- *NOTE: Suggested statutory language to accomplish the intent of this bill is provided.*

Part II Access to land

In addition to better agency coordination, another matter that delays the review of applications to construct utility facilities is the inability of the reviewing agencies, in some cases, to gather information specific to proposed locations or route because access to the property is not available. This bill permits the PSC the authority to access land for the purpose of preparing environmental impact statements and for conducting other site-specific investigations relating to the preparation or review of an application to construct a utility facility.

NOTE: Suggested statutory language to accomplish the intent of this is provided.

Part III Technical correction in s. 196.491

Currently, when a person wishes to construct an electric power plant or transmission line, the person is required under s. 196.491(3)(a)3.a. to submit an engineering plan to the DNR for its review. Although the reference to an engineering plan is appropriate for a power plant, it is not a term used when transmission lines are in development. Consequently, in that statutory provision, the term “engineering plan” should only apply to generation facilities and a term such as “detailed project plan” should apply to transmission lines.

NOTE: Suggested statutory language to accomplish the intent of this is provided.

The drafting instructions and suggested statutory language were prepared by the PSC and the DNR. If there are questions about either the instructions or the suggested language, please contact the following:

For the DNR: Attorney Tom Steidl, at 266-0235 or thomas.steidl@dnr.state.wi.us

For the PSC: Attorney John Lorence, at 266-8128 or john.lorence@psc.state.wi.us

\\Drafting instructions original bill version 2.0.doc

Mike Cain

1 *This document is a draft of proposed statutory language consistent with the drafting*
2 *instructions. In addition to revising relevant ch. 30 sections, the draft addresses*
3 *property access and engineering plans in ch. 196. Notes are shown in italics.*
4
5

6 **This is a bill to improve the procedures for processing utility facility applications**
7 **that need both PSC and DNR approvals.**
8
9

10
11 SECTION 1. 30.02 (1) and (2) of the statutes are amended to read:
12

13 **30.02 (1)** ~~In~~ Except as provided in s. 30.025, in any proceeding under this chapter where
14 public notice is required, the department shall follow the procedures in subs. (3) and (4).
15

16 **(2)** ~~In~~ Except as provided in s. 30.025, in any proceeding under this chapter where public
17 notice is not required, the department shall follow the procedures in subs. (3) and (4) if it
18 determines that substantial interests of any party may be adversely affected by the
19 proceeding.
20

21 *NOTE: These cross-references indicate, with new s. 30.025 (1e), that s. 30.025 is*
22 *the exclusive chs. 30 and 31 process for utility projects. If the s. 30.025 process is*
23 *to apply to other types of DNR permits, such as under ch. 281, corresponding*
24 *language in other DNR chapters may be needed.*
25

26
27 SECTION 2. 30.025 (title) of the statutes is amended to read:
28

29 **30.025 (title) ~~Optional permit~~ Permit procedure for ~~certain electric-generating~~**
30 **~~facilities and high-voltage transmission lines~~ utility facilities.**

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SECTION 3. 30.025 (1) of the statutes is renumbered 30.025 (1s) (a) and amended to read:

30.025 (1s) (a) Any electric utility, as defined in s. 196.491 (1) (d), person proposing to construct a utility facility, as defined in s. 196.491 (1) (e), which facility is to be located adjacent to a waterway in such a manner as to require that requires one or more permits to be issued under this chapter and ch. 31 may shall, in lieu of separate application for permits under those chapters, submit an engineering plan one application for permits together with any additional information required by the department. ~~Such plan~~ The application shall be filed with the department ~~within 20 days after~~ at the same time as an application for a ~~certificate of public convenience and necessity~~ authority to construct the utility facility is filed with the ~~public service~~ commission under s. 196.49 or in a manner consistent with s. 196.491 (3), and shall include the detailed information the department needs to deem an application complete and to carry out its obligations under sub. (4).

The department may require supplemental information to be furnished thereafter.

NOTE: The intent of par. (a) is to require an applicant to submit one permit application and to allow the department to get enough information to issue a completeness determination if required, to participate in commission proceedings, to conduct its own informational hearing, and to grant or deny appropriate permits.

SECTION 4. 30.025 (1), (1e) and (1m) of the statutes are created to read:

1 30.025 (1) DEFINITIONS. In this section:

2 (a) "Commission" means the public service commission.

3 (b) "Permit" includes permits and approvals.

4 (c) "Utility facility" includes a project, as defined in s. 196.49 (3) (a), and a facility, as
5 defined in s. 196.491 (1) (e).

except a project of a Telecom util.

7 *Note: The "utility facility" definition uses the word "includes" to leave open the*
8 *possibility that some other kind of project should fall under this section.*

- But NOT Telecom?

11 30.025 (1e) APPLICABILITY. This section shall apply if a person proposes to construct a
12 utility facility and all of the following conditions exist:

13 (a) The person is required to obtain authorization from the commission under s. 196.49
14 or s. 196.491 before construction.

(3) or (5)

(3) or (3m)

15 (b) The utility facility is required to obtain one or more permits under this chapter or ch.

16 31.

17
18 *Note: This language covers electric, natural gas, and water utility construction*
19 *projects, as well as electric generating facilities built by non-utilities. It currently*
20 *does not cover telecommunications projects, which are exempt under s. 196.49 (1)*
21 *(ag), or interstate pipeline projects, which are not subject to PSC construction*
22 *approval. The language covers all projects that need authority by both agencies,*
23 *not just the largest projects.*

la

26 30.025 (1m) PRE-APPLICATION PROCESS. Before an application is filed under this section,

27 the department, in cooperation with the commission, shall confer with a potential

28 applicant for a permit. The department shall ~~ensure~~ that the potential applicant is aware

advise-

*outg on ONE PSC
is dep. on
3rd party
filing
on application?*

1 of the types of permits that may be necessary, the information the applicant will be
2 required to provide, and the timing of information submissions to allow the department to
3 participate in commission review procedures and to process the application in a timely
4 manner. A pre-application conference shall include a preliminary assessment of the
5 project's scope for an analysis of alternatives and an identification of potential interested
6 persons.

9 SECTION 5. 30.025 (1s) (title) and (b) of the statutes are created to read:

11 **30.025 (1s) (title) APPLICATION FOR PERMITS.**

13 **30.025 (1s) (b)** A person who applies to the commission to construct a utility facility
14 under s. 196.49 or s. 196.491 is eligible to apply under par. (a) for any permit the utility
15 facility may require under this chapter or ch. 31.

*extend,
improve,
add -*

or receive

This provision is intended to address the current provisions under ss/ 30.12 and 30.123 that require the applicant to be a riparian owner. This provision enables a utility applicant to apply for these permits without a riparian interest, and should also be extended to similar requirements for DNR permits issued under other chapters. (See, e.g., Cassidy v. DNR, 132 Wis. 2d 153, 161 (Ct. App. 1986), which states that a sewerage district's holding of easements for constructing a dike does not make it a riparian owner for purposes of applying for certain DNR permits.)

NR 216 ?

*what other statutes - John Lawrence
Contracting*

Mike Keane (Cano)?

27 SECTION 6. 30.025 (2) of the statutes is amended to read:

1

2 **30.025 (2)** (title) INFORMATIONAL HEARING. Once ~~electric utilities have met~~ the applicant
 3 meets the requirements of sub. ~~(1)~~ (1s) (a), the department shall may schedule the matter
 4 for a public informational hearing. Notice of ~~the~~ an informational hearing shall be given
 5 to the applicant and shall be published as a class 1 notice under ch. 985. The department
 6 may give such further notice as it deems proper, and shall give notice to persons
 7 requesting same. One copy of the application shall be available for public inspection at
 8 the office of the department, at least one copy in the ~~district~~ regional office of the
 9 department and at least one copy at the main public library of the area affected.
 10 Notwithstanding s. 227.42, the informational hearing may not be converted to or treated
 11 as a contested case.

12

13 *NOTE: As currently written, the department may hold informational hearings on*
 14 *all applications, but it is not required to. It is expected that the DNR will clarify*
 15 *the types of applications for which it will hold informational hearings. (For*
 16 *comparison, the PSC does not hold hearings on all s. 196.49 applications, but*
 17 *does so if the application requires the preparation of an environmental impact*
 18 *statement or if a project is expected to generate public interest.)*

19

20

21 SECTION 7. 30.025 (2g) and (2s) of the statutes are created to read:

22

23 **30.025 (2g)** PARTICIPATION IN COMMISSION PROCEEDINGS. (a) For utility facilities
 24 subject to this section, the department shall review a proposed utility facility, including
 25 each location, site, or route proposed for the utility facility, to ^{determ.} assess whether each
 26 location, site, or route for the utility facility can comply with this chapter and ch. 31, and
 27 provide that information to the commission.

is not eligible ?

1 (b) For utility facilities subject to this section, the department shall participate in ^{global} commission investigations or proceedings under s. 196.49 or s. 196.491. To facilitate a ^{- make more specific}
2 commission decision consistent with the department's responsibilities, the department
3 shall provide the commission with information relevant to any of the following:
4

- 5 1. Environmental issues.
- 6 2. Public rights in navigable waters.
- 7 3. Location, site or route issues.
- 8 4. Other alternatives.

9

10 *NOTE: This subsection is intended to state that the DNR shall participate in the*
11 *PSC procedure for the review of utility facility projects. It is also intended to*
12 *make the criteria the two agencies use consistent during the commission*
13 *proceeding.*
14
15

16 **30.025 (2s) CONSIDERATION OF ALTERNATIVES.** Consistent with the department's permit
17 review and participation under sub. (2g), the department shall deem the commission's
18 decision under s. 196.49 or s. 196.491 as concluding that there is no other practicable
19 alternative for the utility facility, and the department may not require an applicant to
20 undertake further analysis of any utility facility alternatives, including alternative
21 methods of meeting the need for the project, location, site, or route, in order to satisfy the
22 criteria under sub. (3). The department may identify adjustments that may be required to
23 address permitting issues within the location, site, or route approved by the commission
24 under s. 196.49 or s. 196.491.
25

1 *Note: For a utility facility selected as a result of the commission review process,*
2 *the department may not further review alternatives before issuing permits, except*
3 *to the extent needed to specifically site a facility within the location, site, or route*
4 *selected by the commission.*
5

6
7 SECTION 8. 30.025 (3) (title) of the statutes is created to read:

8
9 **30.025 (3) (title) PERMIT ISSUANCE.**

10
11
12 SECTION 9. 30.025 (3) (intro.) of the statutes is amended to read:

13
14 **30.025 (3) (intro.)** The department shall grant the necessary permits if, ~~after hearing,~~ it
15 finds that the applicant has shown that the proposal:

16
17 *NOTE: Only the introductory provision is amended. The rest of the subsection,*
18 *pars. (a) and (b), are unchanged.*
19

20
21 SECTION 10. 30.025 (4) of the statutes is amended to read:

22
23 **30.025 (4) (title) PERMIT CONDITIONS.** The permit may be issued upon stated conditions
24 deemed necessary to assure compliance with the criteria designated under sub. (3). The
25 department shall grant or deny the application ~~within the time limit applicable under s.~~

1 196.491 (3) (a) 3. b for final permits for the utility facility within 30 days of the date the
2 commission issues its decision relating to the utility facility under s. 194.49 or s. 196.491.

3 "final"
4

no later than after

5 SECTION 11. 66.0119 (1) (a) of the statutes is amended to read:

6 **66.0119 Special inspection warrants.** (1) (a) "Inspection purposes" include such
7 purposes as building, housing, electrical, plumbing, heating, gas, fire, health, safety,
8 environmental pollution, water quality, waterways, use of water, food, zoning, property
9 assessment, meter and obtaining data required to be submitted in an initial site report or
10 feasibility report under subch. III of ch. 289 or s. 291.23, 291.25, 291.29 or 291.31 or an
11 environmental impact statement related to one of those reports or for obtaining
12 information related to preparation of or review of an application for approval of a
13 construction project proposed under s. 196.49 or s. 196.491 including information for an
14 evaluation of environmental features or effects of the proposal.

15
16 SECTION 12. 196.24 (4) of the statutes is created to read:

17 **196.24 (4)** The commission may conduct an inspection of property for obtaining
18 information related to the preparation of or review of an application for approval of a
19 construction project proposed under s. 196.49 or s. 196.491 including information for an
20 evaluation of environmental features or effects of the proposal.

(3)

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22 *NOTE: These two provisions address the access to property issue.*

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SECTION 13. 196.491 (3) (a) 3. a. of the statutes is amended to read:

196.491 (3) (a) 3. a. At least 60 days before a person files an application under subd. 1., the person shall provide the department with an engineering plan showing if the facility is a large electric generating facility or a detailed project plan if the facility is a high-voltage transmission line. The plan shall show the location of the facility, a description of the facility, including the major components of the facility that have a significant air, water or solid waste pollution potential, and a description of the anticipated effects of the facility on air and water quality. Within 30 days after a person provides an engineering or project plan, the department shall provide the person with a listing of each department permit or approval which, on the basis of the information contained in the engineering or project plan, appears to be required for the construction or operation of the facility.

NOTE: This provision is intended to address the concern that "engineering plans" are not typically prepared for electric transmission lines

(end)

\Combined suggested statutory language 1.1.doc

Department is not required to prepare a detailed statement under s. 1.11(2)(c), but shall prepare an environmental assessment...

↓
define EA? probably not necessary

see 196.491(2)(f)

Adm 60.02(4)



(4) "EA" or "environmental assessment" means a documented brief but comprehensive analysis of a proposed Type II action to determine its environmental impact; to study, develop, and thoroughly describe alternatives, and to determine whether the proposed action constitutes a major state action significantly affecting the quality of the human environment or involving unresolved conflicts in the use of available resources.

Adm 60.02(5)



(5) "EIS" or "environmental impact statement" means a written report prepared pursuant to s. 1.11, Stats., which contains an analysis of anticipated impacts of a proposed action, and alternatives to the proposed action, upon the human environment. The draft environmental impact statement (DEIS) is a preliminary version of the final environmental impact statement (FEIS).

NR 150.02(9)



(9) "EA" or "environmental assessment" means an environmental analysis which is prepared to inform decision-makers of a proposed action's effect on the environment, and which develops, describes and evaluates alternatives, and provides sufficient evidence to determine whether the proposed action is a major action.

NR 150.02(11)



(11) "EIS" or "environmental impact statement" means an environmental analysis which is prepared to inform decision-makers and the public of a proposed action's effect on the environment, and develops, describes and evaluates alternatives in the detailed statement required by s. 1.11, Stats.