

2003 DRAFTING REQUEST

Bill

Received: **10/28/2003**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Cowles (608) 266-0484**

By/Representing: **Todd Stuart**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters: **rkite
jkreye**

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

Extra Copies: **RJM**

Submit via email: **YES**

Requester's email: **Sen.Cowles@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Revisions to DNR and PSC approvals of utility facilities and 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>
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FE Sent For:

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Handwritten signatures and initials in the Drafting History table, including "11-10/28 mkung", "PK", and "sell".

FE Sent For:

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Kunkel, Mark

From: Stuart, Todd
Sent: Tuesday, October 28, 2003 9:55 AM
To: Kunkel, Mark
Cc: Lovell, David; Stolzenberg, John
Subject: LRB 3451/1

Hi Mark:

Rep Jensen and Sen Cowles would like to have LRB 3451/1 jacketed and introduced in each house today. Hoping to get a bill number for each ASAP.

Thanks much, please call with questions. Bret Healy from Jensen's office will be calling shortly with the same request.

Todd C. Stuart
Office of State Senator Rob Cowles
608.266.0484 Office
608.267.0304 Fax
todd.stuart@legis.state.wi.us



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3451/1
MDK/JK/RNK:kmg:ps

O-NOTE

Today
1 PM

2003 BILL

STET

3582/1

Companion
Bill

RM NOT
RUN

1 AN ACT to repeal 196.491 (3) (g) 1m.; to renumber 85.02 and 196.491 (3) (h); to
 2 renumber and amend 30.025 (1), 196.491 (3) (g) 1. and 196.491 (4) (c); to
 3 amend 15.795 (1), 16.969 (4), 30.02 (1), 30.02 (2), 30.025 (title), 30.025 (2),
 4 30.025 (3) (intro.), 30.025 (4), 66.0119 (1) (a), 79.04 (7) (c) 1m., 91.75 (4), 196.025
 5 (2) (intro.), 196.491 (3) (a) 1., 196.491 (3) (a) 3. a., 196.491 (3) (b), 196.491 (3) (d)
 6 (intro.), 196.491 (3) (e), 196.491 (3) (gm) and 196.491 (3) (j); and to create 1.12
 7 (6), 23.09 (22m), 30.025 (1b), 30.025 (1e), 30.025 (1m), 30.025 (1s) (title), 30.025
 8 (1s) (b), 30.025 (2g), 30.025 (2s), 30.025 (3m), 30.206 (1m), 79.04 (6) (c) 3., 79.04
 9 (7) (d), 85.02 (2), 196.02 (5m), 196.025 (1m), 196.025 (2m), 196.20 (7), 196.491
 10 (3) (ge), 196.491 (3b), 196.491 (4) (c) 2., 196.491 (4) (c) 3. and 196.491 (6) (title)
 11 of the statutes; relating to: construction of electric generating facilities and
 12 transmission lines, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill does all of the following: 1) changes requirements for the Public Service Commission (PSC) to approve the construction of electric generating

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facilities and transmission lines; 2) changes requirements for the Department of Natural Resources (DNR) to issue permits that are required for the construction of certain utility projects; 3) changes requirements for the PSC and DNR to consider the environmental impacts of such projects; 3) declares a state policy regarding the siting of electric transmission facilities; and 4) modifies utility aid payments.

PSC requirements

Under current law, with certain exceptions, a person may not begin the construction of certain electric generating facilities or high-voltage transmission lines before the PSC has issued a certificate of public convenience and necessity to the person. A “high-voltage transmission line” is defined as a line of more than one mile in length that is designed to operate at 100 or more kilovolts. Current law specifies the procedure that a person must follow to apply for a certificate to construct electric generating facilities or high-voltage transmission lines. In addition, current law specifies the findings that the PSC must make before issuing a certificate.

The bill changes an exemption under current law that applies to the construction of certain high-voltage transmission lines. Under current law, a certificate is not required if the line operates at 230 or less kilovolts, and if all construction activity takes place entirely within an existing electric transmission right-of-way. The bill changes the exemption to apply to a line that operates at 345 or less kilovolts. The bill also provides that construction of a line that qualifies for the exemption may proceed even if it is prohibited by a local ordinance.

The bill also creates an expedited procedure for obtaining a certificate for constructing a high-voltage transmission line. The procedure applies only if the construction is limited to adding conductors to existing transmission poles or towers and if all construction activity takes place entirely within an existing electric transmission right-of-way. The PSC must promulgate rules for applying for a certificate under the expedited procedure. If the PSC receives an application that complies with the rules, the PSC must, as soon as practicable, notify the applicant that the PSC has received a complete application. After a complete application is received, the applicant is considered to have been issued a certificate, unless the PSC notifies the applicant within 30 days after the PSC receives a complete application that the public interest requires the applicant to obtain the PSC’s approval for the construction. If the PSC makes such a notification, the bill requires the applicant to obtain a certificate that is required under current law for certain public utility construction projects, rather than the certificate of public convenience and necessity that is described above.

DNR requirements

In addition, the bill changes requirements under current law that apply to an application for a certificate to construct an electric generating facility or a high-voltage transmission line that is subject to regulatory approval in another state. Under current law, the PSC must complete action on an application within 180 days after the application is complete. (Current law also provides for an extension of this deadline under certain circumstances.) However, current law creates an exemption from the deadline if another state is also taking action on such a facility or line. This bill eliminates the exemption to the deadline. However, the bill also

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allows the PSC to reconsider an application for a certificate if another state considers certain information or issues in its proceedings that the PSC did not consider and to revoke or amend the certificate.

The bill also makes the following changes:

1. The bill allows the PSC to use a procedure under current law to obtain an inspection warrant for the purpose of inspecting property to gather information related to preparing or reviewing an application for a certificate described above. The bill specifies that the information that may be gathered includes any information necessary to evaluate environmental features or effects that are relevant to such an application.

2. The bill allows a county, town, village, or city that receives certain distributions that are funded with fees paid by persons that construct high-voltage transmission lines to use the distributions for any purpose, if the PSC finds that the purpose is in the public interest. Under current law, such distributions may be used only for park, conservancy, wetland, or other similar environmental programs.

3. The bill requires a person who applies for a certificate to construct a high-voltage line to submit a detailed project plan to DNR. Under current law, the type of plan that a person must submit to DNR for such a line is called an engineering plan, instead of a project plan.

4. The bill requires a person who applies for a certificate of public convenience and necessity for certain electric generating facilities or high-voltage transmission lines to provide a brief description of the anticipated effects of the facility or line on air and water quality, wetlands, solid waste disposal capacity, and other natural resources. Current law limits the description to effects on air and water quality.

Generally, under current law, a person proposing to construct a utility facility in a manner that requires the placement of a structure in navigable waters or that involves the construction or maintenance of a dam is required to obtain one or more permits from DNR. Current law requires DNR to hold a public hearing before granting certain of these permits. Current law also prohibits a person from discharging dredged or fill material into a nonfederal wetland unless the person is issued a water quality certification by DNR.

Under current law, electric utilities that propose to construct an electric generating facility or high-voltage transmission line adjacent to a waterway may use an optional permit procedure to obtain certain DNR permits. Under that optional procedure, if the utility must obtain more than one permit from DNR relating to the placement of structures in navigable waters or the construction or maintenance of a dam, the utility may, instead of submitting separate applications for the permits, submit an engineering plan to DNR. If the utility submits an engineering plan instead of separate applications for permits, DNR is required to schedule the entire matter for a public hearing, rather than scheduling separate hearings for each permit application. After the hearing, DNR must grant all of the necessary permits if certain conditions are met.

This bill provides that a utility facility that is required to obtain a certificate of public convenience and necessity from the PSC and that is also required to obtain one or more permits from DNR for the placement of a structure in navigable waters, or

BILL

for the construction or maintenance of a dam, or to obtain a water quality certification for discharging material in a nonfederal wetland, must use a procedure that requires the utility facility to submit only one application for all of those permits. Under that procedure, a person proposing to construct a utility facility must first notify DNR of its intention to file an application. After DNR receives the notice, DNR must confer with that person and, in cooperation with the PSC, make certain assessments and analyses concerning the project. The bill provides that once the application is completed, DNR may schedule the matter for a public hearing. The hearing may not be conducted as a contested case hearing. In a contested case, all parties must be given an opportunity for a hearing and must be given the opportunity to present evidence.

Under the bill, DNR must grant the permits for the utility facility if DNR makes certain findings, including that the proposal complies with certain environmental statutes and that it does not unduly affect public rights and interests in navigable waterways. The bill requires DNR to grant or deny the application within 30 days of the date on which the PSC issues its decision on the utility's application for a certificate of public convenience and necessity.

The bill also specifies that as a part of this permit procedure DNR must review the proposed utility facility to assess whether the location, site, or route is capable of satisfying conditions for obtaining the required permits from DNR and must provide this information to the PSC. DNR must also participate in PSC investigations or proceedings relating to the application for a certificate of public convenience and necessity for the utility facility. The bill provides that if the PSC issues the certificate for that utility facility, after considering DNR's participation in the PSC's proceedings and after considering certain other factors, DNR may not require the applicant to make any further analysis of utility facility alternatives, except that DNR may identify adjustments that may be required to address permitting issues within the location, site, or route for which the certificate is issued.

Under current law, for certain activities affecting navigable waters that are undertaken by riparian owners, or for activities relating to the construction, dredging, or enlarging of certain waterways, DNR may issue general permits authorizing a class of activities. This bill requires DNR to issue a general permit for the construction of those high-voltage transmission line projects to which the expedited procedure created in this bill for obtaining a certificate from the PSC applies.

Environmental impacts

Current law requires state agencies, including the PSC and DNR, to consider the environmental impacts of proposed actions, including proposals to issue the certificates, permits, and approvals described above. These requirements were created by the Wisconsin Environmental Policy Act (WEPA). The PSC and DNR have promulgated rules for complying with WEPA. Under these rules, the PSC or DNR must prepare an environmental impact statement (EIS) for major actions that significantly affect the quality of the human environment and an environmental assessment (EA) for actions that have the potential to significantly affect the quality

BILL

of the human environment. Based on the results of an EA, the PSC or DNR may also prepare an EIS.

The bill requires the PSC and DNR to coordinate their compliance with WEPA when the PSC and DNR receive applications for certificates, permits, and approvals that are required for the construction of electric generating facilities and high-voltage transmission lines. The bill also requires such coordination when public utilities that are not telecommunications utilities apply to the PSC for certificates authorizing other types of construction projects. Such coordination is also required when a natural gas utility applies to the PSC for a certificate authorizing a project involving switching sources of natural gas supplies.

Under the bill, if the rules of either the PSC or DNR require the preparation of an EIS for an application for a certificate, permit, or approval described above, the PSC and DNR must cooperatively prepare an EIS. If neither agency's rules require an EIS, but either agency's rules require an EA, the PSC and DNR must cooperatively prepare an EA. The joint EIS or EA that is required under the bill must include all of the information necessary for both the PSC and DNR to comply with WEPA. In addition, the bill does not waive the duty of the PSC or DNR to comply with WEPA, except that the PSC and DNR are only required to consider the project that is the subject of the application and one alternative to the project, and that alternative must be an alternative location, site, or route for the project that is specified by the person applying for the certificate, permit, or approval. Under current law, the PSC and DNR must consider more than one alternative under WEPA. In addition, the bill does not waive any duty of the PSC or DNR to take any other action required by law regarding the project.

The bill also specifies that the PSC is not required to prepare an EIS for construction of a high-voltage line that does not require a certificate from the PSC. As discussed above, this exemption is changed by the bill to apply to certain construction activities related to high-voltage transmission lines that operate at 345 or less kilovolts. Although an EIS is not required, the bill requires the PSC to prepare an EA for construction that is subject to the exemption, but only if the PSC's rules require an EA for the construction.

State policy on siting of electric transmission facilities

Current law makes certain declarations of state energy policy, including goals for conserving energy and meeting energy demands. This bill declares a new policy regarding the siting of new electric transmission facilities, including high-voltage transmission lines. The bill provides that, in the siting of such facilities, it is state policy to utilize the following corridors in the following order of priority: 1) existing utility corridors; 2) highway and railroad corridors; 3) recreational trails; and 4) new corridors. The corridors must be utilized in such a manner to the greatest extent feasible that is consistent with economic and engineering considerations and protection of the environment. Also, recreational trails must be utilized to the extent that facilities may be constructed below ground and do not significantly impact environmentally sensitive areas.

BILL

The bill also directs the PSC, DNR, and Department of Transportation to implement the policy described above in making all decisions, rules, and orders regarding the siting of new electric transmission facilities.

Utility aid payment

Under current law, generally, each municipality and county in which a power production plant is located annually receives utility aid payments based on the net value of the production plant. Beginning with utility aid payments in 2005, each municipality and county in which a production plant is located will receive a payment based on the megawatt capacity of the production plant, if the plant began operating after December 31, 2003. If a plant is located in more than one municipality, the payment is divided among the municipalities in which the plant is located based on the net value of that portion of the plant located in each municipality. Under this bill, if a plant is located in more than one county, the payment is divided among the counties in which the plant is located based on the net value of that portion of the plant located in each county.

Under current law, for production plants that begin operating after December 31, 2003, each municipality and county in which such a production plant is located may receive an additional utility aid payment based on the production plant's megawatt capacity if the plant is built on the site of an existing or decommissioned production plant or on brownfields or if the plant is a baseload electric generating facility, derives energy from an alternative energy resource, or is a cogeneration production plant. Under this bill, if such a production plant is located in more than one municipality or county, the payment is divided among the municipalities or counties in which the plant is located based on the net value of that portion of the plant located in each municipality or county.

Under current law, a county or municipality that receives a utility aid payment based on a cogeneration production plant located in the county or municipality may not receive a payment based on a production plant that derives energy from an alternative energy resource and that is located in the county or municipality. Under this bill, a county or municipality that receives a utility aid payment based on a cogeneration production plant located in the county or municipality may also receive a payment based on a production plant that derives energy from an alternative energy resource, if the production plant that derives energy from an alternative energy resource is not the cogeneration production plant.

Under this bill, generally, an electric public utility may not recover in rates the cost of any payments paid to a local unit of government to mitigate the impact of an electric generating facility on the local unit of government, unless the agreement providing for the payments is received by the PSC before June 10, 2003, and the PSC finds the agreement to be reasonable.

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

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

BILL

1 **SECTION 1.** 1.12 (6) of the statutes is created to read:

2 **1.12 (6) SITING OF ELECTRIC TRANSMISSION FACILITIES.** In the siting of new electric
3 transmission facilities, including high-voltage transmission lines, as defined in s.
4 196.491 (1) (f), it is the policy of this state that, to the greatest extent feasible that
5 is consistent with economic and engineering considerations and protection of the
6 environment, the following corridors should be utilized in the following order of
7 priority:

8 (a) Existing utility corridors.

9 (b) Highway and railroad corridors.

10 (c) Recreational trails, to the extent that the facilities may be constructed below
11 ground and that the facilities do not significantly impact environmentally sensitive
12 areas.

13 (d) New corridors.

14 **SECTION 2.** 15.795 (1) of the statutes is amended to read:

15 **15.795 (1) OFFICE OF THE COMMISSIONER OF RAILROADS.** There is created an office
16 of the commissioner of railroads which is attached to the public service commission
17 under s. 15.03, provided that s. 85.02 (1) does not apply to the office of the
18 commissioner of railroads. The commissioner of railroads shall have expertise in
19 railroad issues and may not have a financial interest in a railroad, as defined in s.
20 195.02 (1). The commissioner may not serve on or under any committee of a political
21 party. The commissioner shall hold office until a successor is appointed and
22 qualified.

23 **SECTION 3.** 16.969 (4) of the statutes is amended to read:

24 **16.969 (4)** A county, town, village, or city that receives a distribution under sub.
25 (3) (b) may use the distribution only for park, conservancy, wetland or other similar

BILL

1 environmental programs, unless the commission approves a different use under this
2 subsection. A county, town, village, or city that receives a distribution may request
3 in writing at any time that the commission approve a different use. The commission
4 shall make a decision no later than 14 days after receiving such a request. The
5 commission shall approve a request if it finds that the request is in the public
6 interest.

7 **SECTION 4.** 23.09 (22m) of the statutes is created to read:

8 **23.09 (22m) SITING OF ELECTRIC TRANSMISSION FACILITIES.** To the greatest extent
9 feasible that is consistent with economic and engineering considerations and the
10 protection of the environment, the department shall implement the policy specified
11 in s. 1.12 (6) in making all decisions, orders, and rules regarding the siting of new
12 electric transmission facilities.

13 **SECTION 5.** 30.02 (1) of the statutes is amended to read:

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

17 **SECTION 6.** 30.02 (2) of the statutes is amended to read:

18 **30.02 (2)** ~~In~~ Except as provided in s. 30.025, in any proceeding under this
19 chapter where public notice is not required, the department shall follow the
20 procedures in subs. (3) and (4) if it determines that substantial interests of any party
21 may be adversely affected by the proceeding.

22 **SECTION 7.** 30.025 (title) of the statutes is amended to read:

23 **30.025 (title) ~~Optional permit~~ Permit procedure for certain electric**
24 **generating facilities and high-voltage transmission lines utility facilities.**

BILL

1 **SECTION 8.** 30.025 (1) of the statutes is renumbered 30.025 (1s) (a) and
2 amended to read:

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

16 **SECTION 9.** 30.025 (1b) of the statutes is created to read:

17 30.025 (1b) DEFINITIONS. In this section:

18 (a) “Commission” means the public service commission.

19 (b) “Permit” means a permit or approval required under this chapter or ch. 31,
20 a storm water discharge permit required under s. 283.33 (1) (a), or a water quality
21 certification required under s. 281.36 or under rules promulgated under subch. II of
22 ch. 281 to implement 33 USC 1341 (a).

23 (c) “Utility facility” includes a project, as defined in s. 196.49 (3) (a), and a
24 facility, as defined in s. 196.491 (1) (e).

25 **SECTION 10.** 30.025 (1e) of the statutes is created to read:

BILL

1 30.025 (1e) APPLICABILITY. This section applies to a proposal to construct a
2 utility facility if all of the following conditions exist:

3 (a) The person proposing to construct the utility facility is required to obtain
4 a certificate issued by the commission under s. 196.49 or 196.491 (3) before beginning
5 construction.

6 (b) The utility facility is required to obtain one or more permits.

7 **SECTION 11.** 30.025 (1m) of the statutes is created to read:

8 30.025 (1m) PREAPPLICATION PROCESS. Before filing an application under this
9 section, a person proposing to construct a utility facility shall notify the department
10 of the intention to file an application. After receiving such notice, the department
11 shall confer with the person, in cooperation with the commission, to make a
12 preliminary assessment of the project's scope, to make an analysis of alternatives,
13 to identify potential interested persons, and to ensure that the person making the
14 proposal is aware of all of the following:

15 (a) The permits that the person may be required to obtain.

16 (b) The information that the person will be required to provide.

17 (c) The timing of information submissions that the person will be required to
18 provide in order to enable the department to participate in commission review
19 procedures and to process the application in a timely manner.

20 **SECTION 12.** 30.025 (1s) (title) of the statutes is created to read:

21 30.025 (1s) (title) APPLICATION FOR PERMITS.

22 **SECTION 13.** 30.025 (1s) (b) of the statutes is created to read:

23 30.025 (1s) (b) A person who applies to the commission for a certificate under
24 s. 196.49 or 196.491 (3) is eligible to apply under par. (a) for any permit that the utility

BILL

1 facility may require under this chapter or ch. 31, and to receive such permit
2 regardless of whether that person is a riparian owner.

3 **SECTION 14.** 30.025 (2) of the statutes is amended to read:

4 30.025 (2) HEARING. ~~Once electric utilities have met~~ the applicant meets the
5 requirements of sub. ~~(1)~~ (1s) (a), the department shall may schedule the matter for
6 a public hearing. Notice of the hearing shall be given to the applicant and shall be
7 published as a class 1 notice under ch. 985. The department may give such further
8 notice as it deems proper, and shall give notice to persons requesting same. One copy
9 of the application shall be available for public inspection at the office of the
10 department, at least one copy in the district office of the department and at least one
11 copy at the main public library of the area affected. Notwithstanding s. 227.42, the
12 hearing shall be an informational hearing and may not be treated as a contested case
13 hearing nor converted to a contested case hearing.

14 **SECTION 15.** 30.025 (2g) of the statutes is created to read:

15 30.025 (2g) PARTICIPATION IN COMMISSION PROCEEDINGS. (a) The department
16 shall review every proposed utility facility subject to this section, including each
17 location, site, or route proposed for the utility facility, to assess whether each
18 proposed location, site, or route can comply with the requirements of the required
19 permits, and shall provide that information to the commission.

20 (b) The department shall participate in commission investigations or
21 proceedings under s. 196.49 or 196.491 (3) with regard to any proposed utility facility
22 that is subject to this section. In order to ensure that the commission's decision is
23 consistent with the department's responsibilities, the department shall provide the
24 commission with information that is relevant to only the following:

25 1. Environmental issues that concern the proposed utility facility.

BILL

1 2. Public rights in navigable waters that may be affected by the proposed utility
2 facility.

3 3. Location, site, or route issues concerning the proposed utility facility,
4 including alternative locations, sites, or routes.

5 **SECTION 16.** 30.025 (2s) of the statutes is created to read:

6 30.025 (2s) CONSIDERATION OF ALTERNATIVES. (a) The department shall treat the
7 commission's decision under s. 196.49 or 196.491 (3) as concluding that there is no
8 practicable alternative for the utility facility if all of the following apply:

9 1. The department has participated in the commission's investigations or
10 proceedings under sub. (2g).

11 2. The commission's decision under s. 196.49 or 196.491 (3) is consistent with
12 the department's assessment and information under sub. (2g) considering those
13 factors required to be considered by the commission under s. 196.49 or 196.491 (3).

14 (b) If par. (a) applies, the department may not require the applicant for the
15 proposed utility facility to undertake further analysis of any utility facility
16 alternatives, including an analysis of alternative methods of meeting the need for the
17 project or alternative locations, sites, or routes in order to satisfy the criteria under
18 sub. (3). The department may identify adjustments that may be required to address
19 permitting issues within the location, site, or route approved by the commission
20 under s. 196.49 or 196.491 (3).

21 **SECTION 17.** 30.025 (3) (intro.) of the statutes is amended to read:

22 30.025 (3) PERMIT ISSUANCE. (intro.) The department shall grant the necessary
23 permits if, after hearing, it finds that the applicant has shown that the proposal:

24 **SECTION 18.** 30.025 (3m) of the statutes is created to read:

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1 30.025 (3m) ENVIRONMENTAL ASSESSMENTS FOR CERTAIN PROJECTS. The
2 department is not required to prepare an environmental impact statement under s.
3 1.11 (2) (c) for the construction of a project that is specified in s. 196.491 (4) (c) 1. and
4 for which one or more permits are required, but shall prepare an environmental
5 assessment regarding the construction.

6 **SECTION 19.** 30.025 (4) of the statutes is amended to read:

7 30.025 (4) PERMIT CONDITIONS. The permit may be issued upon stated
8 conditions deemed necessary to assure compliance with the criteria designated
9 under sub. (3). The department shall grant or deny the application ~~within the time~~
10 ~~limit applicable under s. 196.491 (3) (a) 3. b. for a permit for the utility facility within~~
11 30 days of the date on which the commission issues its decision under s. 196.49 or
12 196.491 (3).

13 **SECTION 20.** 30.206 (1m) of the statutes is created to read:

14 30.206 (1m) The department shall issue a general permit under this section
15 for the construction of projects for which the commission is considered to have issued
16 a certificate of public convenience and necessity under s. 196.491 (3b).

17 **SECTION 21.** 66.0119 (1) (a) of the statutes is amended to read:

18 66.0119 (1) (a) “Inspection purposes” ~~include~~ includes such purposes as
19 building, housing, electrical, plumbing, heating, gas, fire, health, safety,
20 environmental pollution, water quality, waterways, use of water, food, zoning,
21 property assessment, meter and obtaining data required to be submitted in an initial
22 site report or feasibility report under subch. III of ch. 289 or s. 291.23, 291.25, 291.29
23 or 291.31 or an environmental impact statement related to one of those reports.
24 “Inspection purposes” also includes purposes for obtaining information specified in
25 s. 196.02 (5m) by or on behalf of the public service commission.

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1 **SECTION 22.** 79.04 (6) (c) 3. of the statutes is created to read:

2 79.04 (6) (c) 3. For the purpose of determining the amount of the payment
3 under par. (b), if a production plant is located in more than one county, the payment
4 amount under par. (b) shall be divided among the counties in which the plant is
5 located based on the net book value of that portion of the plant located in each county
6 as of December 31, 2004, or as of the date on which the plant is operational,
7 whichever is later.

8 **SECTION 23.** 79.04 (7) (c) 1m. of the statutes, as created by 2003 Wisconsin Act
9 31, is amended to read:

10 79.04 (7) (c) 1m. Beginning with payments in 2005, if a cogeneration production
11 plant, as described in sub. (6) (a), is built and completed after December 31, 2003, and
12 has a name-plate capacity of at least one megawatt, each municipality and county
13 in which such a cogeneration production plant is located shall receive annually from
14 the public utility account a payment in an amount that is equal to the number of
15 megawatts that represents the cogeneration production plant's name-plate capacity,
16 multiplied by \$1,000. Any municipality or county that receives a payment under this
17 subdivision in any year may not receive a payment under subd. 1. in that year, if the
18 payment under subd. 1. is based on the same production plant as the payment under
19 this subdivision.

20 **SECTION 24.** 79.04 (7) (d) of the statutes is created to read:

21 79.04 (7) (d) For the purpose of determining the amount of any payment under
22 this subsection, if a production plant is located in more than one municipality or
23 county, the payment amount shall be divided among the municipalities or counties
24 in which the plant is located based on the net book value of that portion of the plant

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1 located in each municipality or county as of December 31, 2004, or as of the date on
2 which the plant is operational, whichever is later.

3 **SECTION 25.** 85.02 of the statutes is renumbered 85.02 (1).

4 **SECTION 26.** 85.02 (2) of the statutes is created to read:

5 85.02 (2) To the greatest extent feasible that is consistent with economic and
6 engineering considerations and protection of the environment, the department shall
7 implement the policy specified in s. 1.12 (6) in making all decisions, orders, and rules
8 regarding the siting of new electric transmission facilities.

9 **SECTION 27.** 91.75 (4) of the statutes is amended to read:

10 91.75 (4) Such ordinances shall be considered local ordinances for purposes of
11 s. 196.491 (3) (i) and (4) (c) 3. and shall provide that gas and electric utility uses not
12 requiring authorization under s. 196.491 (3) are special exceptions or permitted or
13 conditional uses and are uses that are consistent with agricultural use.

14 **SECTION 28.** 196.02 (5m) of the statutes is created to read:

15 196.02 (5m) PROPERTY INSPECTIONS. The commission may inspect property for
16 the purpose of obtaining any information related to the preparation or review of an
17 application for a certificate under s. 196.49 or 196.491 (3), including any information
18 necessary to evaluate any environmental features or effects that are relevant to such
19 an application.

20 **SECTION 29.** 196.025 (1m) of the statutes is created to read:

21 196.025 (1m) To the greatest extent feasible that is consistent with economic
22 and engineering considerations and protection of the environment, the commission
23 shall implement the policy specified in s. 1.12 (6) in making all decisions, orders, and
24 rules regarding the siting of new electric transmission facilities.

25 **SECTION 30.** 196.025 (2) (intro.) of the statutes is amended to read:

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1 196.025 (2) (intro.) The commission shall promulgate rules establishing
2 requirements and procedures for the commission to carry out the duties under s.
3 1.11. Rules promulgated under this subsection shall include requirements and
4 procedures for the commission to comply with sub. (2m) and for each of the following:

5 **SECTION 31.** 196.025 (2m) of the statutes is created to read:

6 196.025 (2m) (a) In this subsection:

7 1. “Department” means the department of natural resources.

8 2. “Project” means a project or construction requiring a certificate under s.
9 196.49 or 196.491 (3).

10 (b) The commission and the department shall coordinate the execution of their
11 respective duties under s. 1.11 for any action of the commission or department
12 regarding a project as follows:

13 1. If the rules of either the commission or the department require the
14 commission or the department to prepare an environmental impact statement on the
15 project, the commission and the department shall cooperatively prepare an
16 environmental impact statement.

17 2. If subd. 1. does not apply and the rules of either the commission or the
18 department require the commission or the department to prepare an environmental
19 assessment on the project, the commission and the department shall prepare an
20 environmental assessment.

21 3. The environmental impact statement or environmental assessment required
22 under subd. 1. or 2. shall include all of the information required for both the
23 commission and the department to carry out their respective duties under s. 1.11.

24 (c) Paragraph (b) does not waive any duty of the commission or the department
25 to comply with s. 1.11 or to take any other action required by law regarding a project,

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1 except that, notwithstanding s. 1.11 (2) (c) 3. and (e), the commission and the
2 department are required to consider only the project identified in the application for
3 the certificate under s. 196.49 or 196.491 (3) and one alternative to the project and
4 that alternative shall consist of any alternative location, site, or route for the project
5 that is specified by the person proposing the project.

6 **SECTION 32.** 196.20 (7) of the statutes is created to read:

7 196.20 (7) (a) In this subsection, “mitigation payment” means, as approved by
8 the commission, an unrestricted or recurring monetary payment to a local unit of
9 government in which an electric generating facility is located to mitigate the impact
10 of the electric generating facility on the local unit of government. “Mitigation
11 payment” does not include payments made or in-kind contributions for restricted
12 purposes to directly address health or safety impacts of the electric generating
13 facility on the local unit of government.

14 (b) Except as provided in par. (c), an electric public utility may not recover in
15 rates any of the following:

- 16 1. The cost of mitigation payments paid by the utility.
- 17 2. The cost of mitigation payments paid by the owner or operator of an electric
18 generating facility that the owner or operator recovers from the utility by selling
19 electricity to the utility, by leasing the facility to the utility, or by any agreement
20 between the owner or operator of the electric generating facility and the public
21 utility.

22 (c) The commission shall only approve a mitigation payment agreement that
23 is received by the commission before June 10, 2003, and, if the commission finds the
24 agreement to be reasonable, shall not subsequently modify the agreement.

25 **SECTION 33.** 196.491 (3) (a) 1. of the statutes is amended to read:

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1 196.491 (3) (a) 1. ~~No~~ Except as provided in sub. (3b), no person may commence
2 the construction of a facility unless the person has applied for and received a
3 certificate of public convenience and necessity ~~from the commission as provided in~~
4 ~~this section~~ under this subsection. An application for a certificate issued under this
5 subsection shall be in the form and containing contain the information required by
6 commission rules ~~for such certificate~~ and shall be filed with the commission not less
7 than 6 months prior to the commencement of construction of a facility. Within 10
8 days after filing the an application under this subdivision, the commission shall send
9 a copy of the application to the clerk of each municipality and town in which the
10 proposed facility is to be located and to the main public library in each such county.

11 **SECTION 34.** 196.491 (3) (a) 3. a. of the statutes is amended to read:

12 196.491 (3) (a) 3. a. At least 60 days before a person files an application under
13 subd. 1., the person shall provide the department with an engineering plan ~~showing~~
14 if the facility is a large electric generating facility or a detailed project plan if the
15 facility is a high-voltage transmission line. The engineering or project plan shall
16 show the location of the facility, a description of the facility, including the major
17 components of the facility that have a significant air, water or solid waste pollution
18 potential, and a brief description of the anticipated effects of the facility on air ~~and~~
19 quality, water quality, wetlands, solid waste disposal capacity, and other natural
20 resources. Within 30 days after a person provides an engineering or project plan, the
21 department shall provide the person with a listing of each department permit or
22 approval which, on the basis of the information contained in the engineering or
23 project plan, appears to be required for the construction or operation of the facility.

24 **SECTION 35.** 196.491 (3) (b) of the statutes is amended to read:

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

5 **SECTION 36.** 196.491 (3) (d) (intro.) of the statutes is amended to read:

6 196.491 (3) (d) (intro.) Except as provided under par. (e) and s. 196.493, the
7 commission shall approve an application filed under par. (a) 1. for a certificate of
8 public convenience and necessity only if the commission determines all of the
9 following:

10 **SECTION 37.** 196.491 (3) (e) of the statutes is amended to read:

11 196.491 (3) (e) If ~~the~~ an application filed under par. (a) 1. does not meet the
12 criteria under par. (d), the commission shall reject the application or approve the
13 application with such modifications as are necessary for an affirmative finding under
14 par. (d). The commission may not issue a certificate of public convenience and
15 necessity under this subsection until the department has issued all permits and
16 approvals identified in the listing specified in par. (a) 3. a. that are required prior to
17 construction.

18 **SECTION 38.** 196.491 (3) (g) 1. of the statutes is renumbered 196.491 (3) (g) and
19 amended to read:

20 196.491 (3) (g) The commission shall take final action on an application filed
21 under par. (a) 1. within 180 days after the application is determined or considered
22 to be complete under par. (a) 2. If the commission fails to take final action within the
23 180-day period, the commission is considered to have issued a certificate of public
24 convenience and necessity with respect to the application, unless the commission,
25 within the 180-day period, petitions the circuit court for Dane County for an

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1 extension of time for taking final action on the application and the court grants an
2 extension. Upon a showing of good cause, the court may extend the 180-day period
3 for no more than an additional 180 days . If the commission fails to take final action
4 within the extended period, the commission is considered to have issued a certificate
5 of public convenience and necessity with respect to the application.

6 **SECTION 39.** 196.491 (3) (g) 1m. of the statutes is repealed.

7 **SECTION 40.** 196.491 (3) (ge) of the statutes is created to read:

8 196.491 (3) (ge) 1. The commission may reconsider a certificate of public
9 convenience and necessity issued under this subsection for a facility if any of the
10 following applies:

11 a. Another state takes action on a matter related to the facility and the action
12 is not consistent with the issuance of the certificate.

13 b. An issue or information is considered in a proceeding in another state on a
14 matter related to the facility, the issue or information was not considered by the
15 commission, and the issue or information reasonably could have influenced the
16 commission's decision to issue the certificate.

17 2. If the commission reconsiders a certificate of public convenience and
18 necessity under subd. 1., the commission shall determine whether the application for
19 the certificate meets the criteria under par. (d) and the commission may revoke or
20 amend the certificate.

21 **SECTION 41.** 196.491 (3) (gm) of the statutes is amended to read:

22 196.491 (3) (gm) The commission may not approve an application filed after
23 October 29, 1999, under this ~~section~~ subsection for a certificate of public convenience
24 and necessity for a high-voltage transmission line that is designed for operation at
25 a nominal voltage of 345 kilovolts or more unless the approval includes the condition

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1 that the applicant shall pay the fees specified in sub. (3g) (a). If the commission has
2 approved an application under this ~~section~~ subsection for a certificate of public
3 convenience and necessity for a high-voltage transmission line that is designed for
4 operation at a nominal voltage of 345 kilovolts or more that was filed after
5 April 1, 1999, and before October 29, 1999, the commission shall require the
6 applicant to pay the fees specified in sub. (3g) (a). For any application subject to this
7 paragraph, the commission shall determine the cost of the high-voltage
8 transmission line, identify the counties, towns, villages and cities through which the
9 high-voltage transmission line is routed and allocate the amount of investment
10 associated with the high-voltage transmission line to each such county, town, village
11 and city.

12 **SECTION 42.** 196.491 (3) (h) of the statutes is renumbered 196.491 (6).

13 **SECTION 43.** 196.491 (3) (j) of the statutes is amended to read:

14 196.491 (3) (j) Any person whose substantial rights may be adversely affected
15 or any county, municipality or town having jurisdiction over land affected by a
16 certificate of public convenience and necessity for which an application is filed under
17 par. (a) 1. may petition for judicial review, under ch. 227, of any decision of the
18 commission regarding the certificate.

19 **SECTION 44.** 196.491 (3b) of the statutes is created to read:

20 196.491 (3b) **EXPEDITED REVIEW.** (a) A person who proposes to construct a
21 high-voltage transmission line may apply for a certificate of public convenience and
22 necessity under this subsection if the construction is limited to adding conductors to
23 existing transmission poles or towers and if all related construction activity takes
24 place entirely within the area of an existing electric transmission line right-of-way.

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1 (b) The commission shall promulgate rules specifying the information that
2 must be included in an application under this subsection. If the commission receives
3 an application that complies with rules, the commission shall, as soon as practicable,
4 notify the applicant that the commission has received a complete application.

5 (c) The commission is considered to have issued a certificate of public
6 convenience and necessity under sub. (3) for construction specified in an application
7 under par. (a) unless the commission notifies the applicant, no later than 30 business
8 days after the date on which the commission notifies an applicant under par. (b) that
9 the application is complete, that the commission has determined that the public
10 interest requires the applicant to obtain a certificate under s. 196.49 (3).

11 **SECTION 45.** 196.491 (4) (c) of the statutes is renumbered 196.491 (4) (c) 1. and
12 amended to read:

13 196.491 (4) (c) 1. A certificate under sub. (3) is not required for a person to
14 construct a high-voltage transmission line designed for operation at a nominal
15 voltage of less than ~~230~~ 345 kilovolts if all related construction activity takes place
16 entirely within the area of an existing electric transmission line right-of-way.

17 **SECTION 46.** 196.491 (4) (c) 2. of the statutes is created to read:

18 196.491 (4) (c) 2. The commission is not required to prepare an environmental
19 impact statement under under s. 1.11 (2) (c) for construction that is specified in subd.
20 1., but shall prepare an environmental assessment regarding the construction if an
21 environmental assessment is required under the commission's rules.

22 **SECTION 47.** 196.491 (4) (c) 3. of the statutes is created to read:

23 196.491 (4) (c) 3. If construction or utilization of a high-voltage transmission
24 line described in subd. 1. is precluded or inhibited by a local ordinance, the
25 construction and utilization of the line may nevertheless proceed.

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1 **SECTION 48.** 196.491 (6) (title) of the statutes is created to read:

2 196.491 (6) (title) WAIVER.

3 **SECTION 49. Initial applicability.**

4 (1) **REVOCATION OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY.** The
5 treatment of section 196.491 (3) (ge) of the statutes first applies to certificates of
6 public convenience and necessity issued on the effective date of this subsection.

7 (2) **UTILITY AID PAYMENTS.** The treatment of section 79.04 (6) (c) 3. and (7) (c) 1m.
8 and (d) of the statutes first applies to distributions made on the 4th Monday of July
9 2005.

10 (3) **PERMIT PROCEDURE FOR UTILITY FACILITIES.** The treatment of sections 30.02
11 (1) and (2), 30.025 (title), (1), (1b), (1e), (1m), (1s) (title) and (b), (2), (2g), (2s), (3)
12 (intro.), (3m), and (4), and 30.206 (1m) of the statutes first applies to applications for
13 permits filed with the department of natural resources on the effective date of this
14 subsection.

15

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3582/1dn

MDK:...

KMG

Sen. Cowles:

This bill is identical to LRB-3451/1.

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3582/1dn
MDK:kmg:pg

October 28, 2003

Sen. Cowles:

This bill is identical to LRB-3451/1.

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