

2005 ASSEMBLY BILL 441

May 26, 2005 – Introduced by Representatives MONTGOMERY and HONADEL, cosponsored by Senators COWLES and PLALE. Referred to Committee on Energy and Utilities.

1 **AN ACT** *to amend* 196.491 (3) (e); and *to create* 196.491 (3) (a) 2m. of the
2 statutes; **relating to:** applications for certificates of public convenience and
3 necessity for certain electric generating facilities.

Analysis by the Legislative Reference Bureau

Under current law, a person may not construct an electric generating facility with a capacity of 100 megawatts or more (facility) unless the Public Service Commission (PSC) has issued a certificate of public convenience and necessity (CPCN) for the facility. Current law imposes deadlines on the PSC's consideration of an application that are based on the date that the PSC determines that the application is complete. (If the PSC fails to determine whether an application is complete, current law specifies a date that the application is considered to be complete, and the deadlines are based on the date that the application is considered to be complete.) Current law also specifies the criteria for the PSC to determine whether to issue a CPCN. One of the criteria is whether the design and location of the facility is in the public interest based on, among other things, alternative locations.

This bill imposes requirements on the PSC's determination regarding whether an application for a CPCN is complete. Under the bill, if an application is complete in all other respects, the PSC must determine that the application is complete even if one or more of the following apply: 1) the application includes some but not all of the information necessary to evaluate or approve the construction of transmission facilities that may be associated with the facility and a person other than the

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applicant will construct, or be responsible for the construction of, the transmission facilities; 2) the applicant proposes alternative construction sites that are contiguous or proximate, provided that at least one of the proposed sites is an abandoned, idle, or underused industrial or commercial site the expansion or redevelopment of which is adversely affected by environmental contamination or is the site of a former or existing facility; or 3) the applicant has not yet obtained all the permits or approvals required for constructing the facility.

Current law also requires that, before a person may apply to the PSC for a CPCN for a facility, the person must provide a plan for the proposed facility to the Department of Natural Resources (DNR), which must identify the DNR permits and approvals required for construction or operation of the facility. Current law imposes deadlines on both the applicant and DNR with respect to applying and considering applications for such permits and approvals. Current law provides that the PSC may not issue a CPCN for a facility until DNR has issued to the applicant the DNR permits and approvals that the DNR has identified are required prior to construction (construction permits and approvals). Current law also requires the PSC to take final action on an application for a CPCN by a deadline that begins to run on the date that the application is considered complete. If the PSC fails to take final action by the deadline, current law provides that the PSC is considered to have issued the CPCN. In cases where DNR has not issued the construction permits and approvals before the deadline, the PSC has taken final action on an application for a CPCN by providing that the CPCN only takes effect when DNR issues such permits and approvals.

The bill also eliminates the provision under current law that the PSC may not issue a CPCN until the applicant has obtained all of the construction permits and approvals. As a result, the PSC may issue a CPCN for a facility before an applicant obtains the construction permits and approvals. The bill does not otherwise affect the requirements for the construction permits and approvals.

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

- 1 **SECTION 1.** 196.491 (3) (a) 2m. of the statutes is created to read:
- 2 196.491 **(3)** (a) 2m. If an application for a large electric generating facility is
- 3 complete in all other respects, the commission shall determine that the application
- 4 is complete under subd. 2. even if one or more of the following apply:
- 5 a. The application includes some but not all of the information necessary to
- 6 evaluate or approve the construction of transmission facilities that may be
- 7 associated with the proposed electric generating facility and a person other than the

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1 applicant will construct, or be responsible for the construction of, the transmission
2 facilities.

3 b. The applicant proposes alternative construction sites for the facility that are
4 contiguous or proximate, provided that at least one of the proposed sites is a
5 brownfield, as defined in s. 560.13 (1) (a) or the site of a former or existing large
6 electric generating facility.

7 c. The applicant has not yet obtained all the permits or approvals required for
8 construction.

9 **SECTION 2.** 196.491 (3) (e) of the statutes is amended to read:

10 196.491 (3) (e) If an application filed under par. (a) 1. does not meet the criteria
11 under par. (d), the commission shall reject the application or approve the application
12 with such modifications as are necessary for an affirmative finding under par. (d).
13 ~~The commission may not issue a certificate of public convenience and necessity under~~
14 ~~this subsection until the department has issued all permits and approvals identified~~
15 ~~in the listing specified in par. (a) 3. a. that are required prior to construction.~~

16 **SECTION 3. Initial applicability.**

17 (1) The treatment of section 196.491 (3) (a) 2m. and (e) of the statutes first
18 applies to applications filed with, pending before, or reopened or reconsidered by, the
19 public service commission on the effective date of this subsection.

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(END)