WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266–1946

Richard Sweet
Assistant Director
(608) 266–2982

David J. Stute, Director
Legislative Council Staff
(608) 266–1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701–2536
FAX: (608) 266–3830

CLEARINGHOUSE RULE 99–140

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. A fiscal estimate was not provided with the rule. A fiscal estimate is required under s. 227.135 (4), Stats.

b. In the treatment of s. PSC 4.05 (1), the word "generates" should be underscored.

c. The treatment clause in SECTION 2 should read: "PSC 4.10 (2) and (3) are amended to read:", since sub. (1) is not amended. Subsection (1) should not be shown.

d. Section PSC 4.30 (3) (e) should refer also to cost-effectiveness, since s. 1.12, Stats., calls for consideration of cost-effectiveness in addition to consideration of technical feasibility of alternatives.

e. Should s. PSC 4.20 (3) (c) be modified in the same manner as the rule modifies s. PSC 4.30 (5) (d) 1., to ensure parallel drafting?

f. The phrase "do all of the following" should be inserted at the end of s. PSC 4.70 (2) (b) (intro.).

4. Adequacy of References to Related Statutes, Rules and Forms

In s. PSC 4.50 (3), rather than repealing the reference to ss. PSC 2.30 to 2.66, it should be replaced with a reference to ss. 227.44 to 227.50, Stats.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Since s. PSC 4.10 (2) is being amended to parallel s. PSC 4.10 (3), to state explicitly what Type II actions are, a parallel amendment to s. PSC 4.10 (1) would seem appropriate, and would enhance the clarity of the rule.

b. With regard to s. PSC 4.20 (1m) (d), if a proposed action will affect the state as a whole, will the Public Service Commission be required to notify all 72 county clerks and chief executive officers and all state news media? This should be made clearer.

c. This rule order makes it clear that it is the commission, rather than the commission staff, that is preparing an environmental assessment. Consequently, it is the commission that is responsible for its contents. In light of this, it would seem appropriate that s. PSC 4.20 (2) (g) require that an environmental assessment include a determination as to whether the proposed action requires an environmental impact statement, as opposed to a recommendation, as the rule would modify it to require.

d. In s. PSC 4.35, new information will not affect the quality of the human environment, as the wording of these provisions suggests. What the commission means is to require supplemental documents to be prepared if new circumstances arise that could affect the quality of the human environment in a manner or to an extent not considered in the original document or if new information about the effects of the proposed action on the quality of the human environment come to light that were not considered in preparing the original document.

e. The analysis to the rule states that some of the changes to the classification of actions relating to the construction of transmission facilities are based on the recently enacted s. 196.491 (4) (c), Stats., creating an exception from the certificate of public convenience and necessity statute for new transmission lines of less than 230 kilovolts (kV) if all related construction activity takes place entirely within the area of an existing electric transmission line right-of-way. The changes in the classification system take into account the concept of construction activities taking place within existing rights-of-way but does not consider in any way the 230 kV threshold. The rule continues to use a three-tiered classification, based on voltages of more than 345 kV, 100 to 345 kV and less than 100 kV. Could this classification scheme be further modified to conform better with the legislative intent apparent from s. 196.491 (4) (c)?

f. Item z. in Table 3 addresses wholesale merchant plants with a capacity of less than 100 megawatts (MW), but no similar provision addresses wholesale merchant plants with capacities equal to or greater than 100 MW. How would this latter category of action be classified?