

State of Wisconsin



1997 Assembly Bill 940

Date of enactment: April 28, 1998

Date of publication*: May 11, 1998

1997 WISCONSIN ACT 204

AN ACT *to repeal* 32.03 (5) (b) 3., 32.07 (1m), 66.073 (10) (b), 196.491 (1) (a), 196.491 (2) (a) 1. and 2., 196.491 (2) (a) 5. and 6., 196.491 (2) (a) 8., 196.491 (2) (c) and (d), 196.491 (2) (i) to (m), 196.491 (2m) (title), 196.491 (3) (d) 1., 196.491 (3) (f) and (ff), 196.491 (3) (g) 2., 196.491 (3) (hm), 196.491 (4) (a) (intro.), 196.491 (4) (a) 3. and 196.492; *to renumber* 66.073 (10) (a), 196.377 and 196.491 (4) (a) 1. and 2.; *to renumber and amend* 32.02 (5), 196.39, 196.491 (2) (am), 196.491 (2m), 196.491 (3) (a) and 196.491 (4) (b); *to consolidate, renumber and amend* 196.491 (3) (g) (intro.) and 1.; *to amend* 30.025 (1), 30.025 (4), 30.44 (3m) (title), 30.44 (3m) (a), 30.44 (3m) (b), 30.44 (3m) (d), 30.45 (1r), 32.03 (5) (a), 32.03 (5) (b) 1., 32.03 (5) (b) 2., 32.06 (7), 32.07 (1), 32.075 (3) (a) 2., 32.09 (2m), 86.16 (1), 182.017 (1), 196.24 (3), 196.491 (title), 196.491 (1) (d), 196.491 (1) (e), 196.491 (1) (g), 196.491 (2) (a) 3., 196.491 (2) (a) 3m., 196.491 (2) (a) 4., 196.491 (2) (a) 7., 196.491 (2) (b) 8., 196.491 (2) (e), 196.491 (2) (f), 196.491 (2) (g), 196.491 (3) (b), 196.491 (3) (d) (intro.), 196.491 (3) (d) 2., 196.491 (3) (d) 3., 196.491 (3) (e), 196.491 (3) (j), 196.491 (3) (k), 196.493 (1), 196.493 (2) (intro.), 196.53, 196.795 (7) (a) 1. b., 196.795 (11) (b) and 289.29 (5); *to repeal and recreate* 196.491 (2) (title), 196.491 (2) (a) (intro.) and 196.491 (2) (b) (intro.); and *to create* 32.02 (5) (a), 196.03 (5m), 196.377 (title), 196.377 (2), 196.39 (2), 196.485, 196.491 (1) (am), 196.491 (1) (bm), 196.491 (1) (w), 196.491 (2) (a) 3g., 196.491 (2) (a) 3r., 196.491 (2) (a) 9. to 13., 196.491 (2) (ag), 196.491 (2) (b) 9. and 10., 196.491 (2) (gm), 196.491 (3) (a) 2., 196.491 (3) (a) 3. b., 196.491 (3) (d) 7., 196.491 (3) (dm), 196.491 (3) (g) 1m., 196.491 (3m), 196.491 (4) (c), 196.491 (5), 196.494 and 196.795 (5) (pm) of the statutes; **relating to:** strategic energy assessments, certification requirements applicable to certain projects proposed by public utilities, certificates of public convenience and necessity for certain electric generating facilities and high-voltage transmission lines, independent system operator or transmission owner of electric transmission system, certain out-of-state retail electric sales, ownership and operation of wholesale merchant plants, service standards for electric generation, transmission or distribution facilities, regional transmission planning and granting rule-making authority.

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

SECTION 1. 30.025 (1) of the statutes is amended to read:

30.025 (1) Any electric utility, as defined in s. 196.491 (1) (d), proposing to construct a 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 one or more permits to be issued under this chapter and ch. 31 may, in lieu of separate application for permits under those chapters, submit an engineering plan together with any additional information required by the department. Such plan shall be filed with the department within 20 days after an application for a certificate of public convenience and necessity is filed with the public service commission under s. 196.491 (3). The department may

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

require supplemental information to be furnished thereafter.

SECTION 2. 30.025 (4) of the statutes is amended to read:

30.025 (4) The permit may be issued upon stated conditions deemed necessary to assure compliance with the criteria designated under sub. (3). The department shall grant or deny the application within the time limit applicable under s. 196.491 (3) ~~(f)~~ **(a) 3. b.**

SECTION 3. 30.44 (3m) (title) of the statutes is amended to read:

30.44 (3m) (title) UTILITY FACILITIES; HIGH-VOLTAGE TRANSMISSION LINES.

SECTION 4. 30.44 (3m) (a) of the statutes is amended to read:

30.44 (3m) (a) A person shall apply to and receive a permit from the board before constructing, modifying or relocating a utility facility or high-voltage transmission line that is in the riverway.

SECTION 5. 30.44 (3m) (b) of the statutes is amended to read:

30.44 (3m) (b) A person may not be issued a permit for an activity in par. (a) unless the performance standard in par. (c) is met and, for a high-voltage transmission line, the board finds that the activity will not impair, to the extent practicable, the scenic beauty or natural value of the riverway.

SECTION 6. 30.44 (3m) (d) of the statutes is amended to read:

30.44 (3m) (d) The use of an aboveground utility facility shall not be a basis for the board to determine that all reasonable efforts will not be taken to minimize the visual impact. The board may not require a high-voltage transmission line to be placed underground in order to make the finding specified in par. (b).

SECTION 7. 30.45 (1r) of the statutes is amended to read:

30.45 (1r) No person may construct, modify or relocate a high-voltage transmission line unless it has been approved under s. 30.44 (3m) or 196.491 (3) (d) 3m. ~~or 196.492.~~

SECTION 8. 32.02 (5) of the statutes is renumbered 32.02 (5) (b) and amended to read:

32.02 (5) (b) Any Wisconsin corporation engaged in the business of transmitting or furnishing heat, power or electric light for the public or any foreign transmission provider for the construction and location of its lines or for ponds or reservoirs or any dam, dam site, flowage rights or undeveloped water power.

SECTION 9. 32.02 (5) (a) of the statutes is created to read:

32.02 (5) (a) “Foreign transmission provider” means a foreign corporation that satisfies each of the following:

1. The foreign corporation is an independent system operator, as defined in s. 196.485 (1) (d), or an independent transmission owner, as defined in s. 196.485 (1)

(dm), that is approved by the applicable federal agency, as defined in s. 196.485 (1) (c).

2. The foreign corporation controls transmission facilities, as defined in s. 196.485 (1) (h), in this and another state.

SECTION 10. 32.03 (5) (a) of the statutes is amended to read:

32.03 (5) (a) If an electric utility is required to obtain a certificate of public convenience and necessity from the public service commission under s. 196.491 (3), no right to acquire real estate or personal property appurtenant thereto or interest therein for such project by condemnation shall accrue or exist under s. 32.02 or 32.075 (2) until such a certificate of public convenience and necessity has been issued.

SECTION 11. 32.03 (5) (b) 1. of the statutes is amended to read:

32.03 (5) (b) 1. Such a limited interest does not run for more than 3 years; and

SECTION 12. 32.03 (5) (b) 2. of the statutes is amended to read:

32.03 (5) (b) 2. Activities associated with such tests or studies will be conducted at reasonable hours with minimal disturbance, and the property will be reasonably restored to its former state, upon completion of such tests or studies; and.

SECTION 13. 32.03 (5) (b) 3. of the statutes is repealed.

SECTION 14. 32.06 (7) of the statutes is amended to read:

32.06 (7) **PETITION FOR CONDEMNATION PROCEEDINGS.** If the jurisdictional offer is not accepted within the periods limited in sub. (6) or the owner fails to consummate an acceptance as provided in sub. (6), the condemnor may present a verified petition to the circuit court for the county in which the property to be taken is located, for proceedings to determine the necessity of taking, where such determination is required, and the amount of just compensation. The petition shall state that the jurisdictional offer required by sub. (3) has been made and rejected; that it is the intention of the condemnor in good faith to use the property or right therein for the specified purpose. It shall name the parties having an interest of record in the property as near as may be and shall name the parties who are minors or persons of unsound mind or unknown. The petition may not disclose the amount of the jurisdictional offer, and if it does so it is a nullity. The petition shall be filed with the clerk of the court. Notice of the petition shall be given as provided in s. 32.05 (4) to all persons having an interest of record in the property, including the special guardian appointed for minors or incompetent persons. A lis pendens shall be filed on the date of filing the petition. The date of filing the lis pendens is the “date of evaluation” of the property for the purpose of fixing just compensation, except that if the property is to be used in connection with the construction

of a facility, as defined under s. 196.491 (1), the "date of evaluation" is the date that ~~the first advance plan identifying the property as a site or route under s. 196.491 (2)-(a) 3. is filed with the public service commission, or the date which is 2 years prior to the date on which~~ the certificate of public convenience and necessity is issued for the facility, ~~whichever is earlier.~~ The hearing on the petition may not be earlier than 20 days after the date of its filing unless the petitioner acquired possession of the land under s. 32.12 (1) in which event this hearing is not necessary. If the petitioner is entitled to condemn the property or any portion of it, the judge immediately shall assign the matter to the chairperson of the county condemnation commissioners for hearing under s. 32.08. An order by the judge determining that the petitioner does not have the right to condemn or refusing to assign the matter to the chairperson of the county condemnation commissioners may be appealed directly to the court of appeals.

SECTION 15. 32.07 (1) of the statutes is amended to read:

32.07 (1) A certificate of public convenience and necessity issued under s. 196.491 (3) shall constitute the determination of the necessity of the taking for any lands or interests described in the certificate.

SECTION 16. 32.07 (1m) of the statutes is repealed.

SECTION 17. 32.075 (3) (a) 2. of the statutes is amended to read:

32.075 (3) (a) 2. The public service commission revokes a certificate of public convenience and necessity required under s. 196.491 (3) (a) 1, or finds that a state or federal agency has denied or revoked any license, permit, certificate or other requirement on which completion of the public utility's project for which the land was condemned is contingent or that the public utility has for any other reason abandoned a project for which the condemned property was acquired.

SECTION 18. 32.09 (2m) of the statutes is amended to read:

32.09 (2m) In determining just compensation for property sought to be condemned in connection with the construction of facilities, as defined under s. 196.491 (1) (e), any increase in the market value of such property occurring after the date of evaluation but before the date upon which the lis pendens is filed under s. 32.06 (7) shall be considered and allowed to the extent it is caused by factors other than the planned facility.

SECTION 19. 66.073 (10) (a) of the statutes is renumbered 66.073 (10).

SECTION 20. 66.073 (10) (b) of the statutes is repealed.

SECTION 21. 86.16 (1) of the statutes is amended to read:

86.16 (1) Any person, firm or corporation, including any foreign corporation authorized to transact business in this state may, subject to ss. 30.44 (3m), 30.45, and 196.491 (3) (d) 3m. ~~and 196.492~~, with the written consent

of the department with respect to state trunk highways, and with the written consent of local authorities with respect to highways under their jurisdiction, including connecting highways, construct and operate telegraph, telephone or electric lines, or pipes or pipelines for the purpose of transmitting messages, water, heat, light or power along, across or within the limits of the highway.

SECTION 22. 182.017 (1) of the statutes is amended to read:

182.017 (1) **RIGHT-OF-WAY FOR.** Any domestic corporation organized to furnish telegraph or telecommunications service or transmit heat, power or electric current to the public or for public purposes, ~~and any an independent system operator, as defined in s. 196.485 (1) (d), an independent transmission owner, as defined in s. 196.485 (1) (dm), or a cooperative association organized under ch. 185 to furnish telegraph or telecommunications service or transmit heat, power or electric current to its members, may, subject to ss. 30.44 (3m), 30.45, 86.16, and 196.491 (3) (d) 3m. and 196.492~~ and to reasonable regulations made by any city, village or town through which its transmission lines or systems may pass, construct and maintain such lines or systems with all necessary appurtenances in, across or beneath any public highway or bridge or any stream or body of water, or upon any lands of any owner consenting thereto, and for such purpose may acquire lands or the necessary easements; and may connect and operate its lines or system with other lines or systems devoted to like business, within or without this state, and charge reasonable rates for the transmission and delivery of messages or the furnishing of heat, power or electric light.

SECTION 23. 196.03 (5m) of the statutes is created to read:

196.03 (5m) The commission shall promulgate rules establishing requirements and procedures for the commission, in setting rates for retail electric service, to reflect the assignment of costs and the treatment of revenues from sales to customers outside this state that the public utility does not have a duty to serve.

SECTION 24. 196.24 (3) of the statutes is amended to read:

196.24 (3) The commission may conduct any number of investigations contemporaneously through different agents, and may delegate to any agent the authority to take testimony bearing upon any investigation or at any hearing. The decision of the commission shall comply with s. 227.46 and shall be based upon its records and upon the evidence before it, except that, notwithstanding s. 227.46 (4), a decision maker may hear a case or read or review the record of a case if the record includes a synopsis or summary of the testimony and other evidence presented at the hearing that is prepared by the commission staff. Parties shall have an opportunity to demonstrate to a decision maker that a synopsis or summary prepared under this subsection is not sufficiently complete or accu-

rate to fairly reflect the relevant and material testimony or other evidence presented at a hearing.

SECTION 25. 196.377 (title) of the statutes is created to read:

196.377 (title) Renewable energy sources.

SECTION 26. 196.377 of the statutes is renumbered 196.377 (1).

SECTION 27. 196.377 (2) of the statutes is created to read:

196.377 (2) EASTERN WISCONSIN UTILITIES. (a) In this subsection:

1. “Eastern Wisconsin utility” means a public utility, other than a municipal utility that, on the effective date of this subdivision [revisor inserts date], provided retail electric service to customers in the geographic area of the state that was served by the reliability council on that date.

2. “Municipality” means a city, town or village.

3. “Municipal utility” means a public utility that is a municipality or that is wholly owned or operated by a municipality.

4. “Reliability council” means the Mid–America Interconnected Network, Inc., reliability council of the North American Electric Reliability Council.

(b) Except as provided in par. (d), no later than December 31, 2000, each eastern Wisconsin utility shall construct or procure, on a competitive basis, the construction of an aggregate total of 50 megawatts of new electric capacity in this state that is, to the satisfaction of the commission, generated from renewable energy sources. Each eastern Wisconsin utility shall construct or procure the construction of a share of the aggregate total required under this paragraph that corresponds to the utility’s share, as determined by the commission, of the aggregate demand for electricity that is supplied by the utilities in this state.

(c) An eastern Wisconsin utility may procure the construction required under par. (a) by issuing requests for proposals no later than September 30, 1998.

(d) The commission may allow an eastern Wisconsin utility to comply with the requirements under par. (b) by a date that is later than December 31, 2000, if the commission determines that the later date is necessary due to circumstances beyond the utility’s control.

(e) Any new electric capacity that is generated from a wind power project for which an eastern Wisconsin utility has received a proposal before the effective date of this paragraph [revisor inserts date], may be counted in determining whether the utility has satisfied the requirements under par. (b).

(f) The commission shall allow an eastern Wisconsin utility to recover in its retail electric rates any costs that are prudently incurred by the utility in complying with the requirements under par. (b).

SECTION 28. 196.39 of the statutes is renumbered 196.39 (1) and amended to read:

196.39 (1) The commission at any time, ~~on its own motion or upon motion of an interested party,~~ and upon notice to the public utility and after opportunity to be heard, may rescind, alter or amend any order fixing rates, tolls, charges or schedules, or any other order made by the commission, and may reopen any case following the issuance of an order in the case, for any reason.

(3) Any order rescinding, altering, amending or reopening a prior order shall have the same effect as an original order.

(4) Within 30 days after service of an order, the commission may correct an error or omission in the order related to transcription, typing or calculation without hearing if the correction does not alter the intended effect of the order.

SECTION 29. 196.39 (2) of the statutes is created to read:

196.39 (2) An interested party may request the reopening of a case under s. 227.49.

SECTION 30. 196.485 of the statutes is created to read:
196.485 Independent system operator. (1) DEFINITIONS. In this section:

(a) “Affiliated interest of a person” means any of the following:

1. Any person owning or holding directly or indirectly 5% or more of the voting securities of the person.

2. Any person in any chain of successive ownership of 5% or more of voting securities of the person.

3. Any corporation 5% or more of whose voting securities is owned by any person owning 5% or more of the voting securities of the person or by any person in any chain of successive ownership of 5% or more of the voting securities of the person.

4. Any person who is an officer or director of the person or of any corporation in any chain of successive ownership of 5% or more of the voting securities of the person.

5. Any corporation operating a servicing organization for furnishing supervisory, construction, engineering, accounting, legal or similar services to the person, which corporation has one or more officers or one or more directors in common with the person, and any other corporation which has directors in common with the person if the number of directors of the corporation is more than one–third of the total number of the person’s directors.

6. Any subsidiary of the person.

(b) “Cooperative” means a cooperative association organized under ch. 185.

(c) “Federal agency” means, with respect to a transmission utility that is a cooperative, the rural utilities service and, with respect to a transmission utility that is a public utility, the federal energy regulatory commission.

(d) “Independent system operator” means an independent system operator that requires the approval of a

federal agency to operate transmission facilities in this state or a region.

(dm) "Independent transmission owner" means a person that satisfies each of the following:

1. The person does not own electric generation facilities or does not sell electric generation capacity or energy in a market within the geographic area that, on December 31, 1997, was served by the Mid-America Interconnected Network, Inc., Mid-Continent Area Power Pool, East Central Area Reliability Coordination Agreement or Southwest Power Pool reliability council of the North American Electric Reliability Council.

3. The person is not an affiliated interest of a person specified in subd. 1.

(e) "Region" means an interstate geographic area that includes any portion of this state.

(f) "Rural utilities service" means the agency in the federal department of agriculture that is the successor to the rural electrification administration.

(fm) "Subsidiary" means any person, 5% or more of the securities of which are directly or indirectly owned by another person.

(g) "Transmission area" means the area of the state that, on January 1, 1997, was served by the Mid-America Interconnected Network, Inc., reliability council of the North American Electric Reliability Council.

(h) "Transmission facility" means any pipe, pipeline, duct, wire, line, conduit, pole, tower, equipment or other structure used for the transmission of electric power as determined by the public service commission on the basis of factors for identifying a transmission facility that are specified in the orders of the federal energy regulatory commission under 16 USC 824d and 824e.

(i) "Transmission utility" means a cooperative or public utility that owns a transmission facility in this state and that provides transmission service in this state.

(2) COMMISSION POWERS AND DUTIES. (a) By June 30, 2000, if a transmission utility has not transferred control over its transmission facilities to an independent system operator that is approved by the applicable federal agency or divested, with approval of the applicable federal agency and, for a public utility, the commission, its interest in its transmission facilities to an independent transmission owner, the commission shall, subject to par. (am), order the transmission utility to apply to the applicable federal agency to do one of the following:

1. Transfer control of the transmission utility's transmission facilities to an independent system operator that has received the approval of the federal agency to operate in a region.

2. If the federal agency has not approved an independent system operator specified in subd. 1., transfer control over the transmission utility's transmission facilities to an independent system operator that is intended to operate in a region.

3. If the transmission utility does not, or is not able to, to the satisfaction of the commission, transfer its transmission facilities to an independent system operator specified in subd. 2., divest the transmission utility's interest in its transmission facilities to an independent transmission owner.

(am) The commission may waive the requirement to issue an order against a transmission utility under par. (a) if each of the following is satisfied:

1. The transmission utility has filed an application with the applicable federal agency for approval to transfer control of its transmission facilities to an independent system operator or to divest its interest in its transmission facilities to an independent transmission owner.

2. The commission finds that the waiver is reasonably expected to result in a more expeditious transfer of control to an independent system operator or divestment of interest to an independent transmission owner than would result under an order issued under par. (a). In making a finding under this subdivision, the commission shall consider the need for a reasonably prompt transition period for the transfer of control or divestment of interest that ensures, to the maximum extent practicable, the continued reliability of the electric transmission system in this state.

(b) By June 30, 2000, the commission shall, except as provided in par. (bm), order each transmission utility in this state that is a public utility to identify and separately account for the cost of retail transmission service and to take all retail transmission service from an independent system operator or independent transmission owner.

(bm) The commission may issue an order under par. (b) after June 30, 2000, if the commission determines that a later date is necessary due to circumstances beyond the control of a transmission utility, including regulatory delays at the commission or applicable federal agency.

(c) The commission has jurisdiction to do all things necessary and convenient to enforce the requirements of this section.

(3) INDEPENDENT SYSTEM OPERATOR AND INDEPENDENT TRANSMISSION OWNER DUTIES. (a) If an independent system operator that has control over transmission facilities in this state determines that there is a need for additional transmission facilities in this state, the independent system operator shall order any transmission utility that has transferred control over transmission facilities to the independent system operator to, subject to the requirements of ss. 196.49 and 196.491 (3), expand the portion of the electric transmission system that is in this state and under the control of the independent system operator or construct additional transmission facilities in that portion of the transmission system. An independent system operator may issue an order under this paragraph only if a transmission utility that is subject to the order is reasonably compensated for the costs incurred in complying with the order.

(bm) If each of the transmission utilities in the transmission area that are public utilities have not transferred control over their transmission facilities to the same independent system operator, the independent system operator that controls transmission facilities in the transmission area shall ensure that, by itself or pursuant to a long-term agreement with another independent system operator, the transmission facilities in the transmission area are planned, constructed, operated, maintained and controlled as a single transmission system.

(b) If an independent transmission owner determines that there is a need for additional transmission facilities in a portion of the electric transmission system of this state that consists of transmission facilities the interest in which has been divested to the independent transmission owner by a transmission utility, the independent transmission owner shall, subject to the requirements of ss. 196.49 and 196.491 (3), expand that portion of the electric transmission system or construct additional transmission facilities in that portion.

(c) An independent transmission owner or an independent system operator shall operate transmission facilities over which it has control in a manner that does each of the following:

1. To the maximum extent practicable, eliminates advantages in electric generation, wholesale and retail markets that are otherwise related to ownership, control or operation of transmission facilities over which it has control.

2. Satisfies the reasonable needs of transmission users in this state for reliable, low-cost and competitively priced electric service.

(4) TRANSMISSION UTILITIES. (a) A transmission utility may not transfer control over, or divest its interest in, its transmission facilities to an independent system operator or independent transmission owner unless, to the satisfaction of the commission, each of the following requirements is satisfied:

1. The independent system operator or independent transmission owner is the sole provider of all transmission service to all users of its transmission system in this state, including the provision of retail transmission service to users that are public utilities.

2. The independent system operator or independent transmission owner has authority over transmission facilities that is sufficient for the independent system operator or independent transmission owner to ensure the reliability of its transmission system.

3. The independent system operator or independent transmission owner has sufficient authority to carry out the duties specified in sub. (3).

(b) A transmission utility that transfers control over its transmission facilities to an independent system operator shall, subject to the approval of the applicable federal agency, provide reasonable and cost-effective construction, operation and maintenance services to the indepen-

dent system operator that are required for operation of the transmission facilities.

SECTION 31. 196.491 (title) of the statutes is amended to read:

196.491 (title) Advance planning of electric Strategic energy assessment; electric generating facilities and transmission lines.

SECTION 32. 196.491 (1) (a) of the statutes is repealed.

SECTION 33. 196.491 (1) (am) of the statutes is created to read:

196.491 (1) (am) “Affiliated interest” has the meaning given in s. 196.52 (1).

SECTION 34. 196.491 (1) (bm) of the statutes is created to read:

196.491 (1) (bm) “Cooperative association” means a cooperative association organized under ch. 185 for the purpose of generating, distributing or furnishing electric energy at retail or wholesale to its members only.

SECTION 35. 196.491 (1) (d) of the statutes is amended to read:

196.491 (1) (d) “Electric utility” means any public utility, as defined in s. 196.01, which is involved in the generation, distribution and sale of electric energy, and any corporation, company, individual or association, and any cooperative association ~~organized under ch. 185 for the purpose of generating, distributing or furnishing electric energy at retail or wholesale to its members only,~~ which owns or operates, or plans within the next 40 ~~3~~ years to construct, own or operate, ~~bulk electric generating facilities, large electric generating facilities or high-voltage transmission lines~~ in the state.

SECTION 36. 196.491 (1) (e) of the statutes is amended to read:

196.491 (1) (e) “Facility” means ~~a bulk electric generating facility,~~ a large electric generating facility or a high-voltage transmission line.

SECTION 37. 196.491 (1) (g) of the statutes is amended to read:

196.491 (1) (g) “Large electric generating facility” means electric generating equipment and associated facilities designed for nominal operation at a capacity of ~~between 12,000 and 300,000 kilowatts~~ 100 megawatts or more.

SECTION 38. 196.491 (1) (w) of the statutes is created to read:

196.491 (1) (w) “Wholesale merchant plant” means electric generating equipment and associated facilities located in this state that do not provide service to any retail customer and that are owned and operated by any of the following:

1. Subject to the approval of the commission under sub. (3m) (a), an affiliated interest of a public utility.

2. A person that is not a public utility.

SECTION 39. 196.491 (2) (title) of the statutes is repealed and recreated to read:

1997 Assembly Bill 940

– 7 –

196.491 (2) (title) STRATEGIC ENERGY ASSESSMENT.

SECTION 40. 196.491 (2) (a) (intro.) of the statutes is repealed and recreated to read:

196.491 (2) (a) (intro.) The commission shall prepare a biennial strategic energy assessment that evaluates the adequacy and reliability of the state's current and future electrical supply. The strategic energy assessment shall do all of the following:

SECTION 41. 196.491 (2) (a) 1. and 2. of the statutes are repealed.

SECTION 42. 196.491 (2) (a) 3. of the statutes is amended to read:

196.491 (2) (a) 3. Identify ~~the location of proposed and alternative specific sites for all bulk electric generating facilities and all~~ and describe large electric generating facilities over 200,000 kilowatts for which a certificate of public convenience and necessity has not been applied for under sub. (3) but the commencement of whose construction is planned within 3 years, or such longer period as the commission deems necessary and indicate the impacts of the proposed and alternative generating facilities on the environment and the means by which potential adverse effects on such values will be avoided or minimized; on which an electric utility plans to commence construction within 3 years.

SECTION 43. 196.491 (2) (a) 3g. of the statutes is created to read:

196.491 (2) (a) 3g. Assess the adequacy and reliability of purchased generation capacity and energy to serve the needs of the public.

SECTION 44. 196.491 (2) (a) 3m. of the statutes is amended to read:

196.491 (2) (a) 3m. Identify ~~the location of tentative and alternative routes for~~ and describe high-voltage transmission lines on which an electric utility plans to commence construction is intended to be commenced in the succeeding 18 months and indicate the effects of such transmission lines on the environment and the means by which potential adverse effects will be avoided or minimized; within 3 years.

SECTION 45. 196.491 (2) (a) 3r. of the statutes is created to read:

196.491 (2) (a) 3r. Identify and describe any plans for assuring that there is an adequate ability to transfer electric power into the state and the transmission area, as defined in s. 196.485 (1) (g), in a reliable manner.

SECTION 46. 196.491 (2) (a) 4. of the statutes is amended to read:

196.491 (2) (a) 4. ~~Indicate in detail~~ Identify and describe the projected demand for electric energy and the basis for determining the projected demand.

SECTION 47. 196.491 (2) (a) 5. and 6. of the statutes are repealed.

SECTION 48. 196.491 (2) (a) 7. of the statutes is amended to read:

196.491 (2) (a) 7. Identify and describe ~~existing and planned programs and policies~~ activities to discourage inefficient and excessive power use; ~~and.~~

SECTION 49. 196.491 (2) (a) 8. of the statutes is repealed.

SECTION 50. 196.491 (2) (a) 9. to 13. of the statutes are created to read:

196.491 (2) (a) 9. Identify and describe existing and planned generating facilities that use renewable sources of energy.

10. Consider the public interest in economic development, public health and safety, protection of the environment and diversification of sources of energy supplies.

11. Assess the extent to which the regional bulk-power market is contributing to the adequacy and reliability of the state's electrical supply.

12. Assess the extent to which effective competition is contributing to a reliable, low-cost and environmental-sound source of electricity for the public.

13. Assess whether sufficient electric capacity and energy will be available to the public at a reasonable price.

SECTION 51. 196.491 (2) (ag) of the statutes is created to read:

196.491 (2) (ag) The commission shall promulgate rules that establish procedures and requirements for reporting information that is necessary for the commission to prepare strategic energy assessments under par. (a).

SECTION 52. 196.491 (2) (am) of the statutes is renumbered 196.491 (2r) and amended to read:

196.491 (2r) (title) LOCAL ORDINANCES. No local ordinance may prohibit or restrict testing activities undertaken by a an electric utility for purposes of ~~preparing advance plans or~~ determining the suitability of a site for the placement of a facility. Any local unit of government objecting to such testing may petition the commission to impose reasonable restrictions on such activity.

SECTION 53. 196.491 (2) (b) (intro.) of the statutes is repealed and recreated to read:

196.491 (2) (b) (intro.) On or before July 1, 2000, and on or before July 1 of each even-numbered year thereafter, the commission shall issue a draft of the biennial strategic energy assessment that it prepares under par. (a) to each of the following:

SECTION 54. 196.491 (2) (b) 8. of the statutes is amended to read:

196.491 (2) (b) 8. The lower Wisconsin state riverway board if the ~~plan draft~~ includes an assessment of the construction, modification or relocation of a high-voltage transmission line, as defined in s. 30.40 (3r), that is located in the lower Wisconsin riverway as defined in s. 30.40 (15).

SECTION 55. 196.491 (2) (b) 9. and 10. of the statutes are created to read:

196.491 (2) (b) 9. Each person that is required to report information to the commission under the rules promulgated under par. (ag).

10. The clerk of each city, village, town and county that, as determined by the commission, is affected by the assessment.

SECTION 56. 196.491 (2) (c) and (d) of the statutes are repealed.

SECTION 57. 196.491 (2) (e) of the statutes is amended to read:

196.491 (2) (e) Any state agency, as defined in s. 16.375 (1), county, municipality, town or person may submit written comments ~~on any plan~~ to the commission on a strategic energy assessment within ~~480~~ 90 days after the ~~plan is filed~~ copies of the draft are issued under par. (b).

SECTION 58. 196.491 (2) (f) of the statutes is amended to read:

196.491 (2) (f) ~~Because the planning process for facilities siting otherwise incorporates consideration and analysis of environmental impact, s. Section 1.11 (2) (c) shall not apply to advance plans a strategic energy assessment prepared under par. (a) but the commission shall prepare a single environmental assessment on all plans submitted for approval under par. (a) the strategic energy assessment, which shall include a discussion of generic issues related thereto. Such and environmental impacts. The commission shall make the environmental assessment shall be made available to the public at least 30 days prior to the hearing under par. (g). The assessment on the plans is different from an environmental impact statement on a particular facility in that it need not identify the environmental effects of proposed sites for facilities in the plan with the same degree of detail as is required when a particular facility is considered for a certificate of public convenience and necessity under sub. (3). The assessment need not repeat information included in an assessment prepared for a plan submitted under par. (a) on a prior reporting date and with respect to which no material additional data is required or as to which there has been no material change in circumstances. Applicable portions of such assessment may be included by reference in any environmental impact statement prepared by the commission, including a statement prepared in connection with the consideration of an application for a certificate of public convenience and necessity under sub. (3).~~

SECTION 59. 196.491 (2) (g) of the statutes, as affected by 1997 Wisconsin Act 35, is amended to read:

196.491 (2) (g) Within 180 No sooner than 30 and no later than 90 days after the plan is filed copies of the draft are issued under par. (b), the commission shall hold a hearing thereon on the draft which may not be a hearing under s. 227.42 or 227.44. The hearing shall be held in an administrative district, established by executive order 22, issued August 24, 1970, which the commission de-

termines will be significantly affected by facilities ~~proposed in the plan to be constructed in the following on which an electric utility plans to commence construction within 3 years.~~ The commission may thereafter adjourn the hearing to other locations or may conduct the hearing by interactive video conference or other electronic method. Notice of such hearing shall be given by class 1 notice, under ch. 985, published in the official state newspaper and such other regional papers of general circulation as may be designated by the commission. At such hearing the commission shall briefly describe the plan strategic energy assessment and give all interested persons an opportunity, subject to reasonable limitations on the presentation of repetitious material, to express their views on any aspect of the plan. ~~The presentation of such views need not be under oath nor subject to cross-examination. The commission shall advise all persons present of their right to express their views orally or in writing, under oath or otherwise, and of the legal effect of each such form of testimony~~ strategic energy assessment. A record of ~~unsworn testimony~~ the hearing shall be made and considered by the commission as comments on the plan strategic energy assessment under par. (e). ~~Persons presenting such views shall not be parties. The utility, any state agency, county, municipality, town, or any person whose substantial rights may be adversely affected by the testing for or construction of facilities described in an advance plan, shall, upon filing written notice setting forth its interest at least 10 days in advance, be afforded all the rights of a party in a contested case.~~

SECTION 60. 196.491 (2) (gm) of the statutes is created to read:

196.491 (2) (gm) Based on comments received on a draft, the commission shall prepare a final strategic energy assessment within 90 days after a hearing under par. (g). The commission shall provide copies of the final strategic energy assessment to any state agency, county, municipality, town or other person who submitted comments on the draft under par. (e) and to the persons specified in par. (b).

SECTION 61. 196.491 (2) (i) to (m) of the statutes are repealed.

SECTION 62. 196.491 (2m) (title) of the statutes is repealed.

SECTION 63. 196.491 (2m) of the statutes is renumbered 196.491 (3) (a) 3. a. and amended to read:

196.491 (3) (a) 3. a. ~~At least 120 days prior to the filing of an application for a certificate of public convenience and necessity under sub. (3) for a bulk or large electric generating facility, the applicant shall notify the department and the commission of its intention to make such application and At least 60 days before a person files an application under subd. 1., the person shall provide the department with an engineering plan showing the location of the facility, a description of the facility, including the major components thereof having of the facility that~~

~~have a significant air, water or solid waste pollution potential, and a description of the anticipated effects of such the facility on air and water quality. Within 60 30 days thereafter after a person provides an engineering plan, the department shall provide the applicant person with a listing of each department permit or approval which, on the basis of the information contained in the engineering plan, appears to be required for the construction or operation of the facility. The department shall, in consultation with the commission, also designate which permits and approvals, or portions thereof, must be obtained prior to the issuance of the certificate of public convenience and necessity. Such designation shall be based on a finding by the department that the granting or denial of the same could significantly affect overall facility design or location. At any time prior to the issuance of the certificate of public convenience and necessity, the department may, in consultation with the commission, waive the necessity of obtaining any such permit or approval in advance of such certificate.~~

SECTION 64. 196.491 (3) (a) of the statutes is renumbered 196.491 (3) (a) 1. and amended to read:

196.491 (3) (a) 1. No person may commence the construction of a facility unless ~~such the~~ person has applied for and received a certificate of public convenience and necessity from the commission as provided in this section. An application in the form and containing the information required by commission rules for such certificate shall be filed with the commission not less than 48 months prior to the commencement of construction of a bulk electric generating facility, and not less than 6 months prior to the commencement of construction of a large electric generating facility or a high-voltage transmission line. Within 10 days after filing the application, the commission shall send a copy of the application to the clerk of each municipality and town in which the proposed facility is to be located and to the main public library in each such county. ~~The applicant shall apply for any permits or approvals required by the department prior to the issuance of a certificate of public convenience and necessity within 20 days after the application to the commission. An applicant shall make a preliminary application for all other permits and approvals specified under sub. (2m). Such preliminary application shall be sufficient if it identifies the permits and approvals applied for and contains so much of the information required for each such permit or approval as is then available to the applicant. Thereafter the applicant shall supply necessary additional engineering and design information as it becomes available.~~

SECTION 65. 196.491 (3) (a) 2. of the statutes is created to read:

196.491 (3) (a) 2. The commission shall determine whether an application filed under subd. 1. is complete and, no later than 30 days after the application is filed, notify the applicant about the determination. If the com-

mission determines that the application is incomplete, the notice shall state the reason for the determination. An applicant may supplement and refile an application that the commission has determined to be incomplete. There is no limit on the number of times that an applicant may refile an application under this subdivision. If the commission fails to determine whether an application is complete within 30 days after the application is filed, the application shall be considered to be complete.

SECTION 66. 196.491 (3) (a) 3. b. of the statutes is created to read:

196.491 (3) (a) 3. b. Within 20 days after the department provides a listing specified in subd. 3. a. to a person, the person shall apply for the permits and approvals identified in the listing. The department shall determine whether an application under this subd. 3. b. is complete and, no later than 30 days after the application is filed, notify the applicant about the determination. If the department determines that the application is incomplete, the notice shall state the reason for the determination. An applicant may supplement and refile an application that the department has determined to be incomplete. There is no limit on the number of times that an applicant may refile an application under this subd. 3. b. If the department fails to determine whether an application is complete within 30 days after the application is filed, the application shall be considered to be complete. The department shall complete action on an application under this subd. 3. b. for any permit or approval that is required prior to construction of a facility within 120 days after the date on which the application is determined or considered to be complete.

SECTION 67. 196.491 (3) (b) of the statutes is amended to read:

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

SECTION 68. 196.491 (3) (d) (intro.) of the statutes is amended to read:

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

SECTION 69. 196.491 (3) (d) 1. of the statutes is repealed.

SECTION 70. 196.491 (3) (d) 2. of the statutes is amended to read:

196.491 (3) (d) 2. The proposed facility ~~is necessary to satisfy~~ satisfies the reasonable needs of the public for an adequate supply of electric energy. This subdivision does not apply to a wholesale merchant plant.

SECTION 71. 196.491 (3) (d) 3. of the statutes is amended to read:

196.491 (3) (d) 3. The design and location or route is in the public interest considering alternative sources of supply, alternative locations or routes, individual hardships, engineering, economic, safety, reliability and environmental factors, except that the commission may not consider alternative sources of supply or engineering or economic factors if the application is for a wholesale merchant plant. In its consideration of environmental factors, the commission may not determine that the design and location or route is not in the public interest because of the impact of air pollution if the proposed facility will meet the requirements of ch. 285.

SECTION 72. 196.491 (3) (d) 7. of the statutes is created to read:

196.491 (3) (d) 7. The proposed facility will not have a material adverse impact on competition in the relevant wholesale electric service market.

SECTION 72m. 196.491 (3) (dm) of the statutes is created to read:

196.491 (3) (dm) In making a determination required under par. (d), the commission may not consider a factual conclusion in a strategic energy assessment unless the conclusion is independently corroborated in the hearing under par. (b).

SECTION 73. 196.491 (3) (e) of the statutes is amended to read:

196.491 (3) (e) If the application does not meet the criteria under par. (d), the commission shall reject the application or approve the application with such modifications as are necessary for an affirmative finding under par. (d). The commission may not issue a certificate of public convenience and necessity until the department has issued all permits and approvals ~~designated under sub. (2m) as necessary prior to the issuance of the certificate of public convenience and necessity identified in the listing specified in par. (a) 3. a. that are required prior to construction.~~

SECTION 74. 196.491 (3) (f) and (ff) of the statutes are repealed.

SECTION 75. 196.491 (3) (g) (intro.) and 1. of the statutes are consolidated, renumbered 196.491 (3) (g) 1. and amended to read:

196.491 (3) (g) 1. The commission shall take final action on the an application within: ~~1. 180 days after the application under this subsection for large electric generating facilities or high-voltage transmission lines is determined or considered to be complete under par. (a) 2.~~ If the commission fails to take final action within the 180-day period, the commission is considered to have issued a certificate of public convenience and necessity with respect to the application, unless the commission, within the 180-day period, petitions the circuit court for Dane County for an extension of time for taking final action on the application and the court grants an extension. Upon a showing of good cause, the court may extend the

180-day period for no more than an additional 180 days . If the commission fails to take final action within the extended period, the commission is considered to have issued a certificate of public convenience and necessity with respect to the application.

SECTION 76. 196.491 (3) (g) 1m. of the statutes is created to read:

196.491 (3) (g) 1m. Subdivision 1. does not apply to an application for a certificate of public convenience and necessity if another state is also taking action on the same or a related application.

SECTION 77. 196.491 (3) (g) 2. of the statutes is repealed.

SECTION 78. 196.491 (3) (hm) of the statutes is repealed:

SECTION 79. 196.491 (3) (j) of the statutes is amended to read:

196.491 (3) (j) Any person whose substantial rights may be adversely affected or any county, municipality or town having jurisdiction over land affected by ~~an advance plan or a~~ certificate of public convenience and necessity may petition for judicial review, under ch. 227, of any decision of the commission regarding ~~the advance plan or~~ the certificate.

SECTION 80. 196.491 (3) (k) of the statutes is amended to read:

196.491 (3) (k) No person may purchase, or acquire an option to purchase, any interest in real property knowing that such property is being purchased to be used for the construction of a high-voltage transmission line unless the person gives written notice to the prospective seller of the size, maximum voltage and structure type of any transmission line planned to be constructed thereon and the ~~electric utility person~~ by whom it will be operated. Contracts made in violation of this paragraph are subject to rescission by the seller at any time prior to the issuance of a certificate of public convenience and necessity for the ~~facility~~ high-voltage transmission line by the commission.

SECTION 81. 196.491 (3m) of the statutes is created to read:

196.491 (3m) **WHOLESALE MERCHANT PLANTS.** (a) *Commission approval required.* Except as provided in par. (e), an affiliated interest of a public utility may not own, control or operate a wholesale merchant plant without the approval of the commission. The commission shall grant its approval only if each of the following is satisfied:

1. The public utility has transferred control over its transmission facilities, as defined in s. 196.485 (1) (h), to an independent system operator, as defined in s. 196.485 (1) (d), that is approved by the federal energy regulatory commission or the public utility has divested its interest in the transmission facilities to an independent transmission owner, as defined in s. 196.485 (1) (dm).

2. The commission finds that the ownership, control or operation will not have a substantial anticompetitive effect on electricity markets for any classes of customers.

(b) *Duty to promulgate rules.* 1. The commission shall promulgate rules that establish requirements and procedures for an affiliated interest to apply for an approval under par. (a). The rules shall do each of the following:

a. Describe the showing that an applicant is required to make for the commission to grant an approval under par. (a).

am. Establish screening tests and safe harbors for proposed wholesale merchant plant projects, including projects in which an affiliated interest is a passive investor and over which the affiliated interest is not able to exercise control or influence and projects in which an affiliated interest's ownership interest is less than 5%.

b. Describe the analytical process that the commission shall use in determining whether to make a finding under par. (a) 2. and describe the factors specified in subd. 3.

c. Allow an interested person to request a hearing on an application under s. 227.42.

2. The analytical process specified in subd. 1. b. shall, to the extent practicable, be consistent with the analytical process described in the enforcement policy of the federal department of justice and the federal trade commission regarding horizontal acquisitions and mergers that are subject to 15 USC 1, 18 or 45.

3. The commission shall use the following factors in determining whether to make a finding under par. (a) 2.:

a. The degree of market concentration resulting from the affiliated interest's proposed ownership, operation or control.

b. The extent of control that the affiliated interest proposes to exercise over the wholesale merchant plant.

d. Any other factor that the commission determines is necessary to determine whether to make a finding under par. (a) 2.

(c) *Sales by affiliated interests.* 1. In this paragraph:

a. "Electric sale" means a sale of electricity that is generated at a wholesale merchant plant that is owned, operated or controlled by an affiliated interest.

b. "Firm sale" means an electric sale in which electricity is intended to be available to a purchaser at all times during a specified period on an uninterrupted basis.

2. The commission shall review any electric sale by an affiliated interest to a public utility with which the affiliated interest is affiliated. If the commission finds that an electric sale is not in the public interest, the commission shall do any of the following:

a. Disallow the public utility's costs related to the sale in a rate-setting proceeding.

b. Order the public utility to provide a refund, in an amount determined by the commission, to its customers.

c. Order the public utility or affiliated interest to take any action that the commission determines is in the public interest, except that the commission may not order the public utility or affiliated interest to void the sale.

3. An affiliated interest may not make any firm sale to a public utility with which the affiliated interest is affiliated if the firm sale satisfies any of the following:

a. The period of the firm sale is 3 years or more.

b. The period of the firm sale is less than 3 years and either the public utility or the affiliated interest has an option to extend the period to 3 years or more.

(d) *Retail sales outside this state.* The commission may not promulgate rules or issue orders that prohibit owners or operators of wholesale merchant plants from providing electric service to retail customers in another state.

(e) *Exemption.* An approval under par. (a) is not required for an affiliated interest to own, operate or control a wholesale merchant plant in Grant County if the affiliated interest owned, operated or controlled the wholesale merchant plant before January 1, 1998.

SECTION 82. 196.491 (4) (a) (intro.) of the statutes, as created by 1997 Wisconsin Act 27, is repealed.

SECTION 83. 196.491 (4) (a) 1. and 2. of the statutes, as created by 1997 Wisconsin Act 27, are renumbered 196.491 (4) (b) 1. and 2.

SECTION 84. 196.491 (4) (a) 3. of the statutes, as created by 1997 Wisconsin Act 27, is repealed.

SECTION 85. 196.491 (4) (b) of the statutes, as created by 1997 Wisconsin Act 27, is renumbered 196.491 (4) (b) (intro.) and amended to read:

196.491 (4) (b) (intro.) Subsection (3) does not apply to a person that constructs electric generating equipment and associated facilities if the person satisfies ~~the requirements specified in par. (a) 1. and 2.~~ each of the following:

SECTION 86. 196.491 (4) (c) of the statutes is created to read:

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

SECTION 87. 196.491 (5) of the statutes is created to read:

196.491 (5) SERVICE STANDARDS FOR ELECTRIC GENERATION, TRANSMISSION AND DISTRIBUTION FACILITIES. The commission shall promulgate rules that establish all of the following:

(a) Standards for inspecting, maintaining and repairing each of the following:

1. Electric generation facilities in this state that are owned by public utilities or provide service to public utilities under contracts with terms of 5 years or more.

2. Electric transmission or distribution facilities in this state that are owned by public utilities.

(b) Standards that the commission determines are necessary for the safe and reliable operation of each of the following:

1. Electric generation facilities in this state that are owned by public utilities or provide service to public utilities under contracts with terms of 5 years or more.

2. Electric transmission or distribution facilities in this state that are owned by public utilities.

SECTION 88. 196.492 of the statutes is repealed.

SECTION 89. 196.493 (1) of the statutes is amended to read:

196.493 (1) DEFINITION. In this section, “nuclear power plant” means a nuclear-fired large electric generating facility as defined under s. 196.491 (1) (g) ~~or a nuclear-fired bulk electric generating facility as defined under s. 196.491 (1) (a).~~

SECTION 90. 196.493 (2) (intro.) of the statutes is amended to read:

196.493 (2) LIMITS ON CERTIFICATION. (intro.) The commission may not certify under s. 196.49 (3) (b) or 196.491 (3) any nuclear power plant ~~and may not approve under s. 196.491 (2) any plan which includes a nuclear power plant~~ unless the commission finds that:

SECTION 91. 196.494 of the statutes is created to read:

196.494 Regional transmission planning. (1) In this section:

(a) “Electric utility” means a public utility, other than a municipal utility, as defined in s. 196.377 (2) (a) 3., that provides retail electric service to customers in this state.

(b) “Transmission facility” means any pipe, pipeline, duct, wire, line, conduit, pole, tower, equipment or other structure used for the transmission of electric power as determined by the commission.

(2) The commission shall conduct a study on identifying and relieving any constraint on an intrastate or interstate electric transmission system that adversely affects the reliability of transmission service provided to electric customers in this state and shall, no later than September 1, 1998, submit a report on the results of the study to the legislature in the manner provided under s. 13.172 (2).

(3) No later than December 31, 2004, the commission may, under this subsection, issue an order requiring an electric utility to construct or procure, on a competitive basis, the construction of transmission facilities specified by the commission in its order if the commission determines that, based on the results of the study under sub. (2), such construction is necessary to relieve a constraint on a transmission system and the construction will materially benefit the customers of the electric utility or other electric utilities or of an independent system operator, as defined in s. 196.485 (1) (d), or independent transmission owner, as defined in s. 196.485 (1) (dm).

(4) The commission shall allow an electric utility to recover in its retail electric rates any costs that are pruden-

tly incurred by the utility in complying with an order under sub. (3).

SECTION 92. 196.53 of the statutes is amended to read:

196.53 Franchise, foreign corporation not to have. No license, permit or franchise to own, operate, manage or control any plant or equipment for the production, transmission, delivery or furnishing of heat, light, water or power may be granted or transferred to a foreign corporation. This section does not apply to an independent system operator, as defined in s. 196.485 (1) (d), or an independent transmission owner, as defined in s. 196.485 (1) (dm), that is approved by the applicable federal agency, as defined in s. 196.485 (1) (c), and that controls transmission facilities, as defined in s. 196.485 (1) (h), in this and another state.

SECTION 93. 196.795 (5) (pm) of the statutes is created to read:

196.795 (5) (pm) 1. In this paragraph:

a. “Foreign affiliate” means a person that is engaged in the production, transmission, delivery or furnishing of heat, light, power or natural gas either directly or indirectly to or for use of the public in another state, that is incorporated under the laws of another state, that is an affiliated interest, as defined in s. 196.52 (1), of a public utility and that is operated on an integrated system basis, as determined by the commission, with the public utility.

b. “Reliability council area” means the geographic area that, on December 31, 1997, was served by the Mid-America Interconnected Network, Inc., Mid-Continent Area Power Pool, East Central Area Reliability Coordination Agreement or Southwest Power Pool reliability council of the North American Electric Reliability Council.

c. “Wholesale merchant plant” means a wholesale merchant plant, as defined in s. 196.491 (1) (w), except that its location is not limited to this state, that is located in the reliability council area and that is owned, operated or controlled by an affiliated interest of a public utility.

2. The assets of a wholesale merchant plant shall not be included in the sum of the assets of a public utility affiliate under par. (p) 1. a., b. or c. and shall not be included in a nonutility affiliate’s total assets under par. (p) 2. a. if the requirements specified in s. 196.491 (3m) (a) 1. and 2. are satisfied or if the wholesale merchant plant qualifies for the exemption under s. 196.491 (3m) (e).

3. The assets of a foreign affiliate shall be included in the sum of the assets of a public utility affiliate under par. (p) 1. a., b. or c. and shall not be included in a nonutility affiliate’s total assets under par. (p) 2. a.

SECTION 94. 196.795 (7) (a) 1. b. of the statutes is amended to read:

196.795 (7) (a) 1. b. Any public utility or member of a cooperative association organized under ch. 185 which ~~files or has filed a plan under reports or has reported~~

information to the commission under the rules promulgated under s. 196.491 (2) (ag).

SECTION 94m. 196.795 (11) (b) of the statutes is amended to read:

196.795 (11) (b) This section shall be deemed to legalize and confirm the formation, prior to November 28, 1985, of any holding company, which is not itself a public utility, and shall be deemed to legalize and confirm the operations and issuances of securities of the holding company, except that nothing in this section shall be deemed to prevent the commission from imposing reasonable terms, limitations or conditions on any holding company which are consistent with the requirements of sub. (5) (pm) or which are consistent with and necessary to satisfy the requirements of sub. (5) (b) to (o) and (q) to (s) or which relate to future investments by the holding company unless the holding company owns, operates, manages or controls a telecommunications utility and does not also own, operate, manage or control a public utility which is not a telecommunications utility.

SECTION 95. 289.29 (5) of the statutes is amended to read:

289.29 (5) ISSUANCE OF FINAL DETERMINATION OF FEASIBILITY IN CERTAIN SITUATIONS INVOLVING UTILITIES AND MINING. If a determination of feasibility is ~~required under s. 196.491 (2m)~~ identified in the listing specified in s. 196.491 (3) (a) 3. a., the issuance of a final determination of feasibility is subject to the time ~~limits~~ limit under s. 196.491 (3) (f) and (ff) (a) 3. b. If a determination of feasibility is required under s. 293.43, the issuance of a final determination of feasibility is subject to the time limits under s. 293.45 (2) or 293.49, whichever is applicable.

SECTION 96. Nonstatutory provisions.

(1) REQUESTS FOR PROPOSALS FOR ELECTRIC GENERATION CAPACITY.

(a) In this subsection:

1. "Certificate" means a certificate issued by the commission under section 196.49 of the statutes or under section 196.491 (3) of the statutes, as affected by this act.

2. "Commission" means the public service commission.

3. "Contractor" means a person specified in paragraph (b) 3. that enters into a contract with an eastern Wisconsin utility for the construction of electric generation capacity.

4. "Department" means the department of natural resources.

5. "Eastern Wisconsin utility" has the meaning given in section 196.377 (2) (a) 1. of the statutes, as created by this act.

6. "Reliability council" has the meaning given in section 196.377 (2) (a) 4. of the statutes, as created by this act.

(b) By July 31, 1998, or a later date approved by the commission, each eastern Wisconsin utility that, before the effective date of this paragraph, has issued a request

for proposals soliciting bids for contracts for the construction of new electric generation capacity shall do each of the following:

1. Complete its evaluation of the bids that were submitted in response to the request for proposals.

2. Select the bids for which it intends to award the contracts.

3. Enter into contracts with the persons who submitted the bids specified in subdivision 2. for the construction of the new electric generation capacity.

(c) Notwithstanding section 196.491 (3) (a) 1. of the statutes, as affected by this act, no later than August 31, 1998, each eastern Wisconsin utility specified in paragraph (b) (intro.) shall apply to the commission for any certificate that is required for construction of new electric generation capacity under the contracts into which it enters under paragraph (b) 3. and, if required under section 196.491 (3) (a) 3. a. of the statutes, as affected by this act, submit an engineering plan to the department as specified in section 196.491 (3) (a) 3. a. of the statutes, as affected by this act.

(d) Notwithstanding section 196.491 (3) (a) 3. a. and b. of the statutes, as affected by this act, if an eastern Wisconsin utility specified in paragraph (b) (intro.) submits an engineering plan to the department under paragraph (c), the eastern Wisconsin utility and the department shall satisfy each of the following:

1. Within 15 days after the eastern Wisconsin utility provides the engineering plan, the department shall provide the eastern Wisconsin utility with a listing of each department permit or approval which, on the basis of the information contained in the engineering plan, appears to be required for the construction or operation of the facility.

2. Within 10 days after the department provides a listing specified in subdivision 1., the eastern Wisconsin utility shall apply for the permits and approvals identified in the listing.

3. The department shall determine whether an application under subdivision 2. is complete and, no later than 15 days after the application is filed, notify the applicant about the determination. If the department determines that the application is incomplete, the notice shall state the reason for the determination. An eastern Wisconsin utility may supplement and refile an application that the department has determined to be incomplete. There is no limit on the number of times that an applicant may refile an application under this subdivision. If the department fails to determine whether an application is complete within 15 days after the application is filed, the application shall be considered to be complete.

4. The department shall complete action on an application submitted under subdivision 2. or refiled under subdivision 3. within 45 days after the date on which the application is determined or considered to be complete under subdivision 3.

(e) Notwithstanding section 196.491 (3) (a) 2., (b) and (g) 1. and 2. of the statutes, as affected by this act, the commission and an eastern Wisconsin utility specified in paragraph (b) (intro.) that applies for a certificate under section 196.491 (3) of the statutes, as affected by this act, shall satisfy each of the following:

1. The commission shall determine whether the application is complete and, no later than 15 days after the application is filed, notify the applicant about the determination. If the commission determines that the application is incomplete, the notice shall state the reason for the determination. An eastern Wisconsin utility may supplement and refile an application that the commission has determined to be incomplete. There is no limit on the number of times that an eastern Wisconsin utility may refile an application under this subdivision. If the commission fails to determine whether an application is complete within 15 days after the application is filed, the application shall be considered to be complete.

2. The commission shall hold a public hearing on an application that is determined or considered to be complete under subdivision 1. in the area affected pursuant to section 227.44 of the statutes and, at least 15 days prior to the hearing, shall give a class 1 notice regarding the hearing under chapter 985 of the statutes.

3. The commission shall take final action on the application within 90 days after the application is determined or considered to be complete under subdivision 1. If the commission fails to take final action within the 90-day period, the commission is considered to have issued a certificate with respect to the application.

(2) SUBMISSION OF PROPOSED RULES.

(a) The public service commission shall submit in proposed form the rules required under section 196.03 (5m) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 6th month beginning after the effective date of this paragraph.

(b) The public service commission shall submit in proposed form the rules required under section 196.491 (3m) (b) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 6th month beginning after the effective date of this paragraph.

(3) EXEMPTION FROM EMERGENCY RULE PROCEDURES.

(a) Using the procedure under section 227.24 of the statutes, the public service commission may promulgate rules required under section 196.03 (5m) of the statutes, as created by this act, for the period before the effective date of permanent rules promulgated under section 196.491 (3m) (b) of the statutes, as created by this act, but not to exceed the period authorized under section 227.24

(1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (2) (b) of the statutes, the public service commission need not provide evidence of the necessity of preservation of the public peace, health, safety or welfare in promulgating rules under this paragraph.

(b) Using the procedure under section 227.24 of the statutes, the public service commission may promulgate rules required under section 196.491 (3m) (b) of the statutes, as created by this act, for the period before the effective date of permanent rules promulgated under section 196.491 (3m) (b) of the statutes, as created by this act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (2) (b) of the statutes, the public service commission need not provide evidence of the necessity of preservation of the public peace, health, safety or welfare in promulgating rules under this paragraph.

SECTION 97. Initial applicability.

(1) The treatment of section 30.025 (1) and (4) of the statutes first applies to engineering plans submitted in lieu of separate permit applications on the effective date of this subsection.

(2) The treatment of sections 30.44 (3m) (a), (b) and (d), 30.45 (1r), 86.16 (1) and 182.017 (1) of the statutes first applies to applications for permits that are filed on the effective date of this subsection.

(3) The treatment of sections 32.02 (5) (a), 32.06 (7) and 32.09 (2m) of the statutes and the renumbering and amendment of section 32.02 (5) of the statutes first apply to petitions for condemnation proceedings that are filed on the effective date of this subsection.

(4) The treatment of section 196.24 (3) of the statutes first applies to records of cases that are read or reviewed on the effective date of this subsection.

(5) The treatment of section 196.39 (2) of the statutes and the renumbering and amendment of section 196.39 of the statutes first apply to orders issued and cases initiated on the effective date of this subsection.

(6) The treatment of sections 196.491 (1) (am), (bm), (e), (g) and (w), (2m), (3) (a) 2. and 3. b., (b), (d) (intro.), 1., 2., 3. and 7., (dm), (e), (f), (ff), (g) (intro.), 1., 1m. and 2., (hm), (j) and (k) and (4) (a) (intro.), 1., 2. and 3., (b) and (c) and 196.493 (1) and (2) (intro.) of the statutes and the renumbering and amendment of section 196.491 (3) (a) of the statutes first apply to applications for certificates of public convenience and necessity that are filed on the effective date of this subsection.

(7) The treatment of section 289.29 (5) of the statutes first applies to feasibility reports that are submitted on the effective date of this subsection.

SECTION 98m. Effective dates. This act takes effect on the day after publication, except as follows:

1997 Assembly Bill 940

– 15 –

(1) STRATEGIC ADVANCE PLAN. The treatment of sections 196.491 (title), (1) (a) and (d) and (2) (title), (a) (intro.), 1., 2., 3., 3g., 3m., 3r., 4., 5., 6., 7., 8. and 9. to 13., (ag), (am), (b) (intro.), 8., 9. and 10., (c), (d), (e), (f), (g), (gm) and (i) to (m) and 196.795 (7) (a) 1. b. of the statutes takes effect on January 1, 1999.
