

**COOPERATIVE AGREEMENT
BETWEEN
WISCONSIN DEPARTMENT OF NATURAL RESOURCES
AND
PUBLIC SERVICE COMMISSION OF WISCONSIN**

PART ONE: Purpose and General Principles

1.1 Statement Of Purpose

The Wisconsin Department of Natural Resources (DNR) and the Public Service Commission of Wisconsin (PSC) recognize that the Wisconsin Legislature has charged DNR with the responsibility for protecting and enhancing the State's natural resources and has charged PSC with ensuring that energy services are provided in an efficient, environmentally responsible manner. Our dedicated, professional employees have a shared responsibility to serve the public interest.

Existing statutes and rules provide a framework for the review and approval of energy construction projects. The goal of this agreement and the liaison procedures is to ensure that the review of proposed energy construction projects (construction projects) proceeds in a timely and efficient manner that assures that energy needs are met and environmental protection is achieved consistent with our respective agency regulatory authorities.

This agreement also specifies procedures to coordinate DNR and PSC compliance with the Wisconsin Environmental Policy Act (WEPA) in the course of making respective regulatory decisions regarding construction projects. This agreement supersedes the December 2001 DNR and PSC Cooperative Agreement with respect to construction projects and remains in effect until amended or rescinded by the mutual concurrence of the Chairperson of the PSC and the Secretary of the DNR.

Process and staffing limitations can inhibit the efficient and timely review of certain construction projects. The DNR and PSC will work cooperatively to assure that the procedures and staff are in place to fulfill our respective regulatory responsibilities. Therefore, PSC and DNR agree to consult and cooperate in a timely manner to make certain that our mutual goals and responsibilities are met.

1.2 General Principles Of The Cooperative Agreement

- (a) This cooperative agreement serves both as the basic guidance and policy direction to PSC and DNR to coordinate the timely review of construction projects to ensure that the projects meet regulatory requirements, including compliance with WEPA (PART TWO), and as the basis for interagency coordination in larger scale policy and planning efforts of either agency (PART THREE). This agreement is intended to facilitate public participation, promote consistent evaluation and provide more certainty with respect to the review of construction projects.
- (b) This agreement pertains to all energy construction projects that are subject to PSC regulatory authority. In particular, the agreement relates to applications for a certificate of authority (CA) under Wis. Stat. § 196.49 and for a certificate of public convenience and necessity (CPCN) under Wis. Stat. § 196.491.
- (c) It is the intent of this agreement that the DNR and PSC review of all proposed construction projects be completed within the time period specified in all applicable statutory and rule provisions.
- (d) It is the intent of this agreement that the DNR and PSC, through consultation and management efforts, will ensure that staffing needs are anticipated and that mechanisms are in place to provide the necessary staff resources to complete the review and processing of these projects in a timely manner.
- (e) It is the intent of this agreement that joint review of construction projects will result in mutual concurrence by the agencies on appropriate procedures to ensure that approved construction projects comply with the statutory and rule obligations of each agency.
- (f) It is the intent of this agreement that any conflicts be resolved informally by the primary agency contacts and in a timely manner, consistent with the agencies' review procedures, regulatory deadlines and the need for effective environmental protection. DNR staff and PSC staff will maintain close communications to achieve the objectives of this agreement. If the conflicts cannot be resolved informally, the conflict resolution procedures of section 2.6 will be used.
- (g) This agreement is not intended to limit the agencies statutory authority or any potential enforcement actions by either agency. If either DNR or PSC initiates enforcement action with respect to a construction project, it shall, as soon as reasonably possible, notify the other agency of the enforcement proceeding.

PART TWO: Liaison Procedures for Project Review

2.1 Project Pre-Application Process: Planning And Preliminary Design

- (a) The PSC and DNR shall coordinate the information that is made available to applicants regarding the data and documentation that are necessary for the agencies to review proposed construction projects.
- (b) The primary points of contact between the agencies at the pre-application phase of a project are the DNR's PSC Liaison and the PSC Administrator responsible for the particular construction project. DNR's PSC Liaison and PSC Administrator (or designee) shall be responsible for coordinating the assessment of proposed construction projects.
- (c) PSC shall inform DNR of proposed construction projects and provide copies of documentation of proposed construction projects within five days of the PSC's receipt of the documents. The PSC and DNR shall consult regarding each proposed construction project. The agencies shall consult with prospective applicants regarding the proposed construction project, alternative route(s) and/or site(s), criteria to be used for evaluation of proposals, timelines, scoping meetings, and other aspects of agency review procedure.
- (d) PSC and DNR shall review proposed construction projects and make preliminary judgments concerning what permits and approvals may be required and what information is necessary to comply with applicable environmental and regulatory requirements. DNR, in making its review and preliminary judgments, shall recognize that it is the policy of the state to provide a reliable, secure and economic energy generation, transmission and distribution system that minimizes negative environmental impacts and reflects the total public interest. The PSC shall recognize that the review of proposed construction projects must take into consideration potential adverse impacts to the State's land, water, air, and biological resources and that it is the intent of this agreement to assure, through coordination and cooperation with the DNR throughout the regulatory process, that appropriate consideration be given to these potential impacts. In such considerations, both agencies shall keep in mind the total needs of the public as well as the specific regulatory responsibilities that each agency is mandated to administer.
- (e) The PSC and DNR shall coordinate the determination of the completeness of permit and CA and CPCN applications for construction projects under Wis. Stat. §§ 196.49 and 196.491. The PSC shall not consider an application complete until it has been reviewed and determined to be sufficient by both agencies for development of the EIS or EA. The agencies shall confer and consult regarding completeness determinations for CA and CPCN applications and related permits that are required prior to construction. As a consequence, DNR and PSC expect to complete review of proposed construction projects within the time period provided in Wis. Stat. ch. 196.

2.2 WEPA Review Process

- (a) The DNR and PSC shall consult regarding the level of environmental review that is appropriate for compliance with WEPA for each specific construction project. The agencies shall independently determine the review that is appropriate based on considerations such as:
1. Existing administrative rules;
 2. The extent of the agencies' authority over the project;
 3. The type of technology proposed (including ancillary facilities); and
 4. Site characteristics for the proposed project and the ancillary facilities.
- (b) In some cases, these WEPA process decisions may result in each agency conducting a different process or level of review. Both agencies may decide to prepare an Environmental Impact Statement (EIS), both may prepare an Environmental Assessment (EA), one may prepare an EA and the other an EIS, or one agency may decide not to prepare any WEPA document at all. A brief discussion of each option is outlined below.
1. When both agencies determine that preparation of a joint EIS is warranted for a construction project, the PSC shall assume the role of lead agency since it has the broadest decision responsibility.

DNR shall consider whether to jointly prepare the EIS, or to adopt the PSC document. Appropriate participation and technical assistance by DNR staff shall be determined by consultation between the agencies.
 2. If both agencies determine that an EA is needed, they may jointly prepare it with responsibilities for content similar to those for an EIS.
 3. If one agency prepares an EIS and the other prepares an EA, each agency shall provide information related to aspects of the project that are under its authority. This information sharing may include review and comment on the EIS or EA and participation in the hearing process of the preparing agency.
 4. If only one agency prepares an EIS or EA, the other agency shall provide information related to aspects of the project that are under its authority. This information sharing may include review and comment on the EIS or EA and participation in the hearing process of the preparing agency.

2.3 Procedures For Joint Preparation Of An EIS Or EA

- (a) When a joint WEPA document is prepared, the DNR and PSC will coordinate their environmental and regulatory review of the subject projects.
- (b) As the lead agency, the PSC determines the process, and is responsible, with input from the DNR, for developing the scope of the EIS or EA, directing document preparation activities, and public review of the EIS or EA.
- (c) The agencies shall jointly provide the applicant with specific information regarding the data and documentation to be included in a project application. Issues raised in scoping may supplement the agencies' initial content outline.
- (d) The scoping process to identify issues to be considered in the EIS or EA may include public meetings (held by the applicant, the agencies, and/or local municipalities) or solicitation of comments from the affected or interested public.
- (e) The preparation of the EIS or EA shall proceed according to applicable agency rules. Throughout the preparation of the document, each agency shall have final editorial authority over its portions of the documents, subject to lead agency non-substantive editorial and publication responsibilities.

2.4 Responsibilities of Each Agency in Preparing a Joint EIS or EA

- (a) Each agency shall be responsible for verifying relevant materials supplied by the applicant, based on its expertise and legal responsibilities. If outside analysis of an application is needed, the agencies shall agree on the source of that expertise.
- (b) The PSC has principal responsibility for developing content related to the power system, social and economic issues, land use planning, transportation, human health and welfare (including electric and magnetic fields), the natural environment in general, and other elements that may be considered in its decisions or are subject to its authority. DNR is responsible for preparing, or ensuring the accuracy of, the portions of the document that describe activities it regulates (emissions, water source and discharge, stream crossings, effects on municipal wells, and solid waste disposal). DNR also will provide information and expertise as needed for the evaluation of impacts on terrestrial and aquatic life.

2.5 Project Review And Decision

- (a) The primary points of contact for the application review phase of the construction project shall be the DNR's PSC Liaison and the PSC Administrator (or designee). The review phase begins with the determination that an application for PSC approval is complete and ends with the issuance of the PSC's decision. The construction phase of the project begins after the PSC issues its decision to approve the construction project.

- (b) DNR shall participate in PSC's review process by providing information and expertise as needed for those activities DNR regulates and for the evaluation of impacts on terrestrial and aquatic life. DNR's participation shall facilitate route or site location, and consideration of other potential environmental effects of the proposed project.
- (c) Public notice of the availability of the EIS or EA shall be circulated as required by the applicable rules of the agencies. PSC will be the recipient of written comments, and will provide all comments to DNR in a timely manner. Responsibility for responding to public comments or addressing additional issues will be based on agency expertise and authority.
- (d) PSC will conduct the public hearing on an EIS, generally as part of the CA or CPCN hearing. During public hearings on the EIS, each agency shall make its staff available to answer questions from the public and interveners on those portions of the EIS for which it is responsible. DNR witnesses may testify on their role in preparing the EIS, or present the positions of the agency.
- (e) Following completion of the hearings and response to public comments, each agency shall independently determine its compliance with WEPA. The final regulatory decisions of both agencies will be made independently upon completion of the hearing and review process.
- (f) DNR and PSC shall monitor the construction projects that are approved to ensure that the environmental commitments and regulatory requirements for the project are being met.
- (g) If conflict occurs regarding construction issues, the PSC's Administrator (or designee) and DNR's PSC Liaison shall attempt to resolve the conflict. In the event the conflict remains unresolved, a formal conflict resolution process, as outlined in section 2.6, shall be used.

2.6 Conflict Resolution Process

- (a) Both agencies encourage efforts to prevent interagency conflicts in reviewing energy construction projects from occurring in the first place and to informally resolve any interagency conflicts which may occur before invoking the formal conflict resolution process. If a conflict cannot be resolved informally by agency personnel, either agency may initiate the conflict resolution process described in this section. It is the expressed intent of both agencies that every reasonable effort be made to resolve any conflict within three weeks (21 calendar days) after the date either agency determines that the conflict exists. Steps in the conflict resolution process may be consolidated or eliminated on a case-by case basis by agreement of both agencies.

- (b) If a conflict is identified that cannot be resolved within a reasonable time after the conflict is first identified, the DNR and PSC staff who have identified the conflict shall work through their respective supervisors to jointly prepare a written summary of the issue and remaining points of conflict and to identify which agency desires to initiate the conflict resolution process. The summary shall be hand delivered to the respective DNR PSC Liaison and PSC Administrator (or designee).
- (c) The formal conflict resolution process consists of the following steps:
1. The DNR's PSC Liaison and the PSC Administrator (or designee) will meet in a timely manner and make every reasonable effort to resolve the conflict informally. If they are unable to reach agreement, they will jointly prepare a written description of the issue and the remaining points of conflict, which will be hand delivered or faxed to the appropriate supervisors in their respective agencies. Step 1 shall be completed within a total of seven calendar days.
 2. The Division Administrators, and no more than two additional representatives from each agency, will meet in a timely manner and make every reasonable effort to resolve the conflict. If the Administrators are unable to reach agreement within seven calendar days, they will each notify the Chairperson and Secretary in writing.
 3. The Secretary and Chairperson will meet to resolve the conflict and may appoint, at any time, a mutually acceptable mediator to assist in resolving the conflict. If the agency heads decide to use a mediator, the mediator will have no authority to impose a settlement on either agency. The cost, if any, of a mediator will be borne by the agency initiating the conflict resolution process. This step, whether a mediator is involved or not, is expected to be completed within seven calendar days, unless extended by mutual agreement of the agency heads. The Secretary and Chairperson will either agree on a specific solution to the conflict or will agree that the issues will be resolved through alternative means.

PART THREE: Statewide Policy and Planning

3.1 Development Of Statewide Policy Related To Construction Projects And Activities

- (a) At PSC's initiative, DNR and PSC shall meet at least annually to evaluate work scheduling needs and priorities for construction projects. At each meeting the DNR and PSC shall update timetables and evaluate how this cooperative agreement is working.
- (b) On an annual basis, the DNR PSC Liaison and the PSC Administrator (or designee) shall prepare a report summarizing activities under this agreement during the previous calendar year. The report shall be provided to the agency heads and appropriate interested parties on an annual basis.

3.2 DNR And PSC Policies, Plans And Projects

- (a) DNR and PSC agree that before taking any action that may directly relate to construction projects planning, energy construction, or the review of construction projects that they will consult with the other agency regarding such proposed actions. For most actions, the DNR's PSC Liaison and the PSC Administrator (or designee) shall act as the main point of contact for other DNR staff and for PSC staff.
- (b) Examples of actions that should involve notice to the other party include:
 1. Development of new or revised administrative rules.
 2. Proposed development of or revision of statutory requirements which modify the review process or criteria for approval of projects.
 3. Any long range planning or property management proposal that may affect the potential for future energy project approval or modification.

**PART FOUR: Adequate Resources for Reviewing and Monitoring
Projects**

4.1 Staffing Resources

DNR and PSC agree to provide adequate staffing resources to accomplish the purposes of the agreement, including the review of proposed construction projects, the issuance of necessary permits and approvals within applicable statutory and regulatory timeframes, and the monitoring of projects for which approvals and permits have been issued. DNR will develop a specific work unit with responsibility for coordinating the Department’s review and approval of construction projects. The work unit will report to the DNR’s Division of Enforcement Administrator.

PART FIVE: Amendments and Signatures

5.1 Amendments To This Agreement

This agreement may be amended by any document that expressly states that it amends this agreement and that is executed by the DNR Secretary and PSC Chairperson.

5.2 Signatures

This agreement shall remain in effect until amended or rescinded by the mutual concurrence of the DNR Secretary and the PSC Chairperson.

Scott Hassett, Secretary
Wisconsin Department of Natural Resources

Date

Burneatta Bridge
Public Service Commission of Wisconsin

Date