(JMB Draft: 4/19/23)

CHAPTER 31

SOLAR ENERGY SYSTEMS
(Created April 27, 2023)

Exhibit A The Kenosha County Ordinance

Exhibit B Sections 66.0401 and 66.0403, Wisconsin Statutes (2021-2022)

Exhibit C Section 196.491, Wisconsin Statutes (2020-2021)

31.01 SHORT TITLE

This Chapter shall be known and may be cited as the "Town Solar Energy Systems Ordinance", and/or as the "Town SES Ordinance".

31.02 AUTHORIZING STATUTES

This Town SES Ordinance is authorized by Sections 66.0401 and 66.0403 of the Wisconsin Statutes (2021-2022), for adoption by the Town of Randall (the "Town"). The Wisconsin Legislature has enacted a regulatory statutory system for Solar Energy Systems, with the State of Wisconsin Public Service Commission (the "PSC") being the primary regulatory agency. The said regulatory/statutory system, however, outlines and describes a role that may be played by local municipal bodies, as described in Sections 66.0401 and 66.0403, copies of which are attached to this Town SES Ordinance as Exhibit B, for convenient reference. This Town SES Ordinance is adopted by the Town under and pursuant to the said authorizing provisions contained in Sections 66.0401 and 66.0403, Wis. Stats. (2021-2022). The phrase "Solar Energy System" is hereinafter referred to using such phrase, and/or as an "SES", as may be appropriate.

31.03 APPLICABILITY

This Town SES Ordinance applies to Solar Energy Systems that have electric generative equipment and related facilities designed for a nominal operation at a total and cumulative capacity that IS LESS THAN 100 megawatts, per Section 196.491(1)(g) of the Wisconsin Statutes, a copy of which is attached hereto, for convenient reference, as Exhibit C.

31.04 RELATION OF THIS ORDINANCE TO THE KENOSHA COUNTY ORDINANCE: IN GENERAL

The County of Kenosha, Wisconsin has adopted a Solar Energy System ordinance, referred to (by the County) as "Ordinance No. 6", a copy of which is attached to this Town SES Ordinance as Exhibit A, for convenient reference. The following provisions shall apply to the use of Ordinance No. 6, as the Town may from time to time elect, on a case-by-case basis:

a) The adoption of the County of Kenosha Ordinance No. 6 (hereinafter referred to as "Ordinance No. 6" and/or as the "County SES Ordinance") by the Town in this Town SES Ordinance shall not, and does not, create any obligation on the part of the Town to enforce its provisions. Rather, the County SES Ordinance is adopted by the Town, so that the Town may, from time to time, should the Town so elect, apply one or more of the provisions of the County SES Ordinance, with respect to the Application for an SES Permit then being considered by the Town.

b) Additionally, under the provisions of Section 66.0401(6)(b)(2), Wis. Stats. (2021-2022), by virtue of both the County and the Town having their own SES Ordinances, "the more restrictive terms of the 2 ordinances [shall] apply to the town...."

c) As noted in above Subsection (a) of this Section 31.04, however, there is no duty or obligation created for the Town to enforce and/or apply the provisions of the County SES Ordinance, except for such provisions of the County SES Ordinance (if any at all) that the Town may expressly indicate are a part of the Town's consideration of an Application for an SES then before the Town. It shall be the duty and obligation of the County of Kenosha, if it so elects, to enforce the County SES Ordinance (and not the Town), except for the specific provisions of the County SES Ordinances that the Town may, from time to time, elect to apply and enforce, as stated above.

d) It shall be, and hereby is, a rebuttable presumption that the ordinance provisions (of this Town SES Ordinance and any expressly-indicated provisions of the County SES Ordinance) being applied and enforced by the Town in any Application proceeding for an SES Permit shall be, and are, the "more restrictive terms", as cited in above Subsection (b).

e) Any future modifications and/or amendments of the Ordinance No. 6 that may be made thereto by the County of Kenosha are not included in this Town SES Ordinance, except as may be expressly adopted and enacted by the Town. In this Town SES Ordinance, the County of Kenosha Ordinance No. 6 is hereinafter referred to as the "County SES ordinance".

31.05 ADOPTION BY REFERENCE, AND USE BY THE TOWN OF THE COUNTY SES ORDINANCE AND RELATED LAWS OF WISCONSIN

The "Ordinance No. 6" that has been adopted by the County of Kenosha, Wisconsin (the "County SES Ordinance"), a copy of which is attached to this Town SES Ordinance as Exhibit A, is incorporated by reference and made a part of this Town SES Ordinance, except:

a) The Nomenclature. All references to the County of Kenosha in the County SES Ordinance shall be interpreted to be the Town of Randall, and all references in the County SES Ordinance to any and all employees, departments, committees, commissions, and/or agencies of the County of Kenosha shall be interpreted to be the Town Board of the Town (except as the Town Board may, from time to time, delegate to one or more of its own Town employees, departments, committees, commissions, and/or agencies).

b) Case-By-Case Exceptions. The Town Board of the Town may, on a case-by-case basis, (i) clarify one or more of the provisions of the County SES Ordinance, with respect to its applicability to the Solar Energy System then before the Town, and/or (ii) as a default procedure, expressly make applicable the portions of the County SES Ordinance that the Town Board wishes to apply, as further described in above Section 31.04.

c) Definitions. The definitions contained in the County SES Ordinance shall apply to the Town SES Ordinance, except to the extent (i) defined in this Town SES

Ordinance, (ii) clarified and/or excepted by the Town Board (as allowed above), and/or (iii) the definitions contained in any relevant provisions of the laws of Wisconsin that may control (including, but not limited to, Sections 66.0401, 66.0403, and 196.491 of the Wisconsin Statutes), in which case the controlling provisions contained in laws of Wisconsin shall apply, as the same may be applicable and/or used by the Town.

d) The Permit. The "Permit" for an SES System, as defined in Section 66.0403 of the Wisconsin Statutes, shall also be deemed and interpreted as a "Conditional Use Permit" in and under the provisions of this Town SES Ordinance, in the deliberations and proceedings of the Town pertaining to an Application for a Permit.

e) The Applicable Standards. All of the standards, considerations, and/or limitations contained in (i) this Town SES Ordinance, and/or (ii) the provisions of the laws of Wisconsin pertaining to SES Systems, and/or (iii) the laws of Wisconsin pertaining to Conditional Use Permits, whichever is more stringent and/or restrictive, shall be followed by the Town Board of the Town in its deliberations and proceedings pertaining to an Application for a Permit, and/or any other matters before the Town regarding a Solar Energy System.

f) The Zoning Districts. This Town SES Ordinance shall apply to all of the Zoning Districts in the Town of Randall.

31.06 APPLICATION FOR A SOLAR ENERGY SYSTEM PERMIT

An applicant (the "Applicant") for a Solar Energy System permit (the "Permit") shall file with the Town Clerk of the Town an application (the "Application") for the Permit. The Application shall be in writing, and contain the following information and documents:

a) Identity of the Principal Parties. The names, street/office address, email address, and telephone numbers of (i) the Applicant, (ii) the owner(s) of the real property on which the SES will be constructed, (iii) the persons and/or attorney(ies) who will be representing the Applicant with respect to the Application for the Permit, and (iv) the contractor(s) and/or engineer(s) that will be constructing the SES.

b) Detailed Description. Information and documents regarding the type, nature, specifications, and location of the proposed SES. This shall include, but not be limited to, (i) manufacturer specifications and drawings/photographs of the proposed SES, (ii) drawings of the location of the proposed SES on the real property that will be used for the construction project, (iii) the estimated total (and itemized) cost for the SES Project, and (iv) the timing of the SES construction Project.

c) Town Application Form. The completion, signing, and submittal by the Applicant of a form, in any format, that the Town may create and/or require and/or request of the Applicants for such projects.

d) Additional Information. Such additional information and/or documents as the Town may request of the Applicant and/or the Owner(s) of the said real property. On a case by case basis, such additional information may include, but not be limited to, the information and/or documents the County of Kenosha requires of its applicants under the County SES Ordinance.

e) Application Fee. Payment of the Application fee (the "Fee") established, from time to time, by the Town. Additionally, as may also be determined and required from time to time by the Town, on a case by base basis, the creation and submittal of a Letter of Credit, for the benefit of the Town, from a financial institution and in an amount approved by the Town, to cover 125% of the estimated costs that the Town reasonably expects it will incur to review and consider the Application for the SES.

31.07 APPLICATION PROCEDURES

Sections 66.0401 and 66.0403 of the Wisconsin Statutes contains certain time frames and time deadlines for the consideration, deliberations, hearings, and final determination of Applications for a Permit. Those time frames and deadlines contained in Sections 66.0401 and 66.0403, attached hereto as Exhibit B (whether the copy attached as Exhibit B, and/or any future amendments, modifications, and/or replacement laws regarding the same) shall be followed by the Town Board with respect to Applications for a Permit filed with the Town. In that regard, in keeping with the said Sections 66.0401 and 66.0403 of the Wisconsin Statutes, and reading them together, the following provisions and procedures shall be followed by the Town when an Application is filed with the Town for a Permit:

a) The Filing of the Application. The Application for a Permit shall be filed with the Office of the Town Clerk, at the Town of Randall Town Hall, located at 34530 Bassett Road, Burlington, Wisconsin 53105. The date on which the Application is actually received by the Town Clerk and/or other Town Staff, at the Town Clerk's Office, shall be deemed the official date of the Application (no matter what other date may be inserted in the Application). Upon the request of the Town, the Applicant shall also send the Application electronically, via an email, to the Town Clerk.

b) The Completeness of the Application. Upon the filing of the Application, the Town Board shall initially review the same, to determine if the Application is complete in its form and content. The Town shall notify the Applicant of its determination as to whether the Application is complete or incomplete.

c) Incomplete Application. If the Town Board determines that the Application is not complete, the Town shall notify the Applicant, in writing, of that determination, and include in that notification an itemization of the reasons the Application was determined to be incomplete. The Applicant may then supplement and/or refile the Application, to make it a complete Application. There is no limit on the number of times that the Applicant may take such curative steps to make the application

complete. If the Town Board fails to make a final determination as to the completeness of the Application within forty-five (45) days after the date of the filing of the Application (see Subsection (a) above), the Application shall be considered to be complete.

d) A Complete Application. At such time that the Application is complete:

(i) The Town shall notify the Applicant via email or other writing that the Application is complete; and

(ii) The Town shall publish a Class I Notice, under Chapter 985 of the Wisconsin Statutes, that an application for a permit for an SES has been filed with the Town; and

(iii) The Applicant shall, upon learning that the Application filed with the Town is complete, send to all of the owners of parcels of land (i) adjoining the parcel on which the SES will be located, and (ii) within 500 feet of the parcel on which the SES will be located (whether adjoining or not adjoining the SES parcel) a written notice of the filing of the Application with the Town. The Applicant shall provide to the Town an affidavit of the sending of this notice.

31.08 REVIEW STANDARDS

The Town Board, in its deliberations and final determination as to whether to grant or deny the Application for a Permit, and/or if granted, the terms and conditions of the granted Permit, shall follow the legal standards that are described and outlined in (i) Section 60.61(4e) of the Wisconsin Statutes (pertaining to a Conditional Use Permit), and (ii) Sections 66.0401 and 66.0403 of the Wisconsin Statutes (pertaining to Solar Energy Systems), and (iii) any other laws of the State of Wisconsin that may apply to the said determination process. The stricter standards contained in the foregoing cited laws shall apply to the Town's determination process.

31.09 TOWN BOARD HEARINGS

The Town Board shall hold one or more hearings on the Application for the Permit. The Town Board shall also involve the Town Plan Commission in its proceedings, as the Town Board may, from time to time, elect. With respect to such a hearing(s), the following provisions shall apply:

a) Notice to be Given by the Town. With at least a prior thirty (30) day written notice (the "Hearing Notice") given by the Town to the persons/entities described in below subsection (b), the Town Board shall hold a public hearing (the "Public Hearing") on the Application for the Permit. [Special Note: This Public Hearing makes moot the statutory right of the persons receiving the Hearing Notice described in below Subsection (b), to require such a Public Hearing.]

b) Persons/Entities to Receive the Hearing Notice. The Hearing Notice described in above Subsection (a) shall be given by the Town, by regular U.S. Mail (with a postmark date at least 30 days prior to the Public Hearing), to all owners of land adjoining the proposed location of the SES, as described above, and (i) the Applicant, (ii) news media, and (iii) any other persons/entities requesting such a notice from the Town.

c) Certain Specific Public Hearing Procedures.

(i) Follow PSC Rules. To the extent the same exist, the Town Board shall follow the hearing procedures promulgated by the Public Service Commission, pursuant to Section 196.378(4g)(c)(3), Wis. Stats. (2021-2022) (and as may be updated or amended, from time to time, in the future).

(ii) The Record. A record of the Public Hearing shall be created and then kept by the Town, including a tape recording of the Public Hearing, copies of all documents (including the Application for the Permit) received by the Town regarding the application for the Permit (whether at the Public Hearing or otherwise), the decision of the Town Board on the Application for the Permit, and a record in conformance with any rules promulgated by the Public Service Commission for a record, under Section 196.378(4g)(c)(2), Wis. Stats. (2021-2022) (and as may be updated or amended in the future).

(iii) Applicant's Right to Present Information at the Public Hearing. At the Public Hearing, the Applicant shall be given an ample, but reasonable, opportunity and amount of time to (i) present information and documents to the Town Board, and (ii) to respond to any questions or stated concerns/objections to the Application for a Permit that may be raised at the Public Hearing.

31.10 THE TOWN BOARD DECISION

After the Public Hearing described in above Section 31.09, whether immediately after the Public Hearing or at a subsequent Town Board meeting, the Town Board shall vote (by a roll call vote) and make a decision (the "Decision") on (i) whether to grant or deny the Application for the Permit, and (ii) if granted, the terms and conditions to be made a part of the Permit so granted. Pursuant to Section 66.0401(4)(c), Wis. Stats., the Decision shall be based on written findings of fact that are supported in the Record of the Public Hearing. The Town Board may prepare such written findings of fact either immediately after the conclusion of the Public Hearing, or thereafter, in time for consideration and Decision by the Town Board at a subsequent meeting. (Unless statutory time deadlines require otherwise, and/or the Town Board elects otherwise, the final consideration and Decision by the Town Board shall occur at a subsequent meeting.)

31.11 THE TIMING OF THE TOWN BOARD'S DECISION

Under Section 66.0401(4)(d), Wis. Stats., the Town Board shall make a Decision on the Application for the Permit within ninety (90) days after the date on which the Town notifies the Applicant that the Application for the Permit is complete. This 90-day time period may be extended by the Town Board, under the provisions of Section 66.0401(4)(e), Wis. Stats., but, per that statute, such an extension shall not exceed an additional 90 days. If the Town Board fails to make a Decision on the Application for the Permit within the 90-day time period and/or any lawfully extended time period, then, under Section 66.0401(4)(d), the Application is automatically deemed approved.

31.12 NO RESTRICTIONS ON OTHER LANDS

The Town shall not take any steps to impose any conditions or restrictions on the other parcels of land located in the vicinity of the parcel of land on which the SES is proposed to be constructed. Such conditions/restrictions on other parcels of land are allowed, on a voluntary basis for the Town, but not mandatorily required of the Town, under Section 66.0401(5)(b), Wis. Stats. The Town is taking this position, even if the Applicant for the Permit requests such action by the Town in the Application, given what the Town Board perceives as potential legal issues and related litigation pertaining to the impositions of such conditions/restrictions on the said other lands.

31.13 RECORDING THE GRANTING OF THE PERMIT

If the Application is approved and a Permit granted/issued by the Town Board, then the following further procedures shall be undertaken by the Town:

a) Notice of the Granting of the Permit. The Town shall prepare a written notice ("Notice of Granted Permit") having a format and content which makes it a recordable document, of the granting of the Permit.

b) Content of Notice of Granted Permit. The Notice of Granted Permit shall contain the name, address, legal description of the owner's Property on which the SES will be built, and such other information as Section 66.0401(6), Wis. Stats. (or other applicable law) may require.

c) Recording of Notice of Granted Permit. The Notice of Granted Permit shall be recorded by the Applicant, at the appropriate Office of the Register of Deeds, at the Applicant's cost and expense. Upon such recording, the Applicant shall file with the Office of the Town Clerk a recorded copy of the said Notice of Granted Permit.

31.14 CURATIVE PROCEDURE

The Town has adopted this Town SES Ordinance after careful drafting and careful consideration, in an attempt to honor and comply with all of the provisions of the Wisconsin Statutes and case law that apply to the construction of an SES. If the Applicant, and/or any other person, believes that (i) the Town's actions, and/or (ii) the application of this Town SES Ordinance

is, in any manner, in conflict with the said laws of Wisconsin, the Applicant/other persons shall so notify the Town, to give the Town the opportunity to consider the said objection, make a decision regarding the same, and amend or alter the proceedings being followed by the Town, if the Town so decides.

31.15 APPEAL

Any person aggrieved by a determination made by the Town Board with respect to its decision in matters covered by this Town SES Ordinance may appeal the matter to (i) the Kenosha County Circuit Court, under Section 66.0403(8), Wis. Stats.; and/or (ii) the State of Wisconsin Public Service Commission, under Section 66.0401(5), Wis. Stats. [Special Note: The two statutes cited above are presently in conflict, by their express terms, in that presently Section 66.0401(5) states that an appeal to the PSC is the sole appellate procedure, while Section 66.0403(8) indicates the appeal shall go to the Circuit Court. Both of the cited, which are attached hereto as Exhibit C, statutes are from the 2021-2022 publication of the Wisconsin Statutes.] To the extent allowed in the appellate proceedings, the prevailing party in the appeal shall be awarded its reasonable costs and reasonable attorney fees incurred for the appeal, payable by the non-prevailing party.

31.16 FINAL RESTORATION OF THE SES LOCATION

a) Within One Hundred Eighty (180) Days after the date on which the SES is no longer being operated (whether by the original Applicant for the SES Permit and/or by a subsequent owner(s) of the SES) the then-existing record-title owner (the "Owner") of the real property (the "Property") on which the SES is physically located shall take steps, at the cost and expense of the Owner, to (i) remove the SES equipment and structures from the Property, and (ii) return the physical condition of the Property to its original physical condition (collectively, the "Restoration"), provided however such Restoration shall not include any original landscaping, forestation, and/or buildings or other structures on the Property.

b) The date on which the SES is "no longer being operated" shall be defined as the day immediately following a time period of 180 consecutive days in which the SES existing on the Property is not managed, supervised, and monitored by an owner(s) of the SES.

c) If the Owner fails to timely complete the Restoration of the Property, the Town may take such steps, as it may elect, to (i) pursue such relief and remedies as may be available to it in law and/or in equity, in the Kenosha County Circuit Court system, and/or (ii) take such other steps as may be allowed under the laws of Wisconsin to accomplish the Restoration, all at the cost and expense of the Owner. Such costs and expenses payable by the Owner shall include not only the costs of Restoration incurred by the Town, but also the actual reasonable attorney fees and related enforcement costs incurred by the Town, whether incurred prior to any litigation being filed and/or after litigation is initiated. (The filing of such a legal action in Kenosha County Circuit Court, however, is not a condition precedent for the

obligation of the Owner to pay to the Town the costs and expenses described above.)

31.17 GOVERNING LAW AND VENUE

This Ordinance shall be governed, controlled, construed, and interpreted by, and under, the laws of the State of Wisconsin (without giving effect to any conflict of law provisions). Except as may be otherwise provided in Sections 66.0401 and/or 66.0403 of the Wisconsin Statutes, venue for any legal action or proceeding arising under or pertaining to this Ordinance shall solely and exclusively be Kenosha County Circuit Court in Kenosha County, Wisconsin.

The foregoing Ordinance was adopted at a regular meeting of the Town Board of the Town of Randall, Kenosha County, Wisconsin, on April 27, 2023.

TOWN OF RANDALL

By: Paula Soderman
Paula Soderman
Town Chairman

Attest: Callie Rucker
Callie Rucker
Town Clerk

ORDINANCE No. 6

1st Reading: 10-18-2022
2nd Reading: 11-1-2022

Presented to County Board

Date 11-1-2022

Action by County Board

- ☒ Adopted as presented 11-01-2022
- ☐ Adopted as amended ____-___-____
- ☐ Referred to _____ ____-___-____
- ☐ Defeated ____-___-____
- ☐ Withdrawn ____-___-____

Attest By _____
County Board Chairman

Presented to County Executive 11-01-2022

By _____
County Clerk

Action by County Executive

- ☒ Approved 11-02-2022
- ☐ Vetoed ____-___-____

By _____
County Executive

Veto action by County Board

- ☐ Overridden ____-___-____

EXHIBIT A
Page 1 of 20

Kenosha County

BOARD OF SUPERVISORS

ORDINANCE NO. 6

Subject: An Ordinance to Amend the text of the Kenosha County General Zoning and Shoreland/Floodplain Zoning Ordinance. The proposed text changes will create a Solar Energy Systems ordinance compliant with Section 66.0401 & 66.0403 of the Wisconsin State Statutes			
Original ☐	Corrected ☐	2nd Correction ☐	Resubmitted ☐
Date Submitted: October 18, 2022		Date Resubmitted:	
Submitted By: Planning, Development & Extension Education Committee			
Fiscal Note Attached ☐		Legal Note Attached ☐	
Prepared By: Andy M Buehler, Director Division of Planning Operations		Signature: DocuSigned by: 6E0F0810D051497...	

WHEREAS, Kenosha County proposes to amend Chapter 12 Kenosha County General Zoning and Shoreland/Floodplain Zoning Ordinance to Amend to create a Solar Energy Systems ordinance compliant with Section 66.0401 & 66.0403 of the Wisconsin State Statutes, and;

WHEREAS, the Kenosha County Planning, Development and Extension Education Committee held a public hearing on the request on October 12, 2022.

NOW, THEREFORE BE IT RESOLVED that pursuant to the authority granted by Sections 59.69 and 59.594(2)(a) of the Wisconsin State Statutes, the Kenosha County Board of Supervisors does hereby ordain that Chapter 12 of the Municipal Code of Kenosha County entitled "Kenosha County General Zoning and Shoreland/Floodplain Zoning Ordinance" be and hereby is changed by the following additions, deletions and amendments and is amended to read as set forth in the attached Exhibit A, pertaining to text changes to Section 12.31.010, 12.31.020, 12.31.040, 12.35.010 and the creation of 12.27.010.

Approved by:

PLANNING, DEVELOPMENT & EXTENSION EDUCATION COMMITTEE	Aye	No	Abstain	Excused
Aaron Karow, Chair	☒	☐	☐	☐
Daniel Gaschke, Vice Chair	☒	☐	☐	☐
Brian Bashaw	☒	☐	☐	☐
John Franco	☒	☐	☐	☐
Ed Kubicki	☐	☐	☐	☒
John O'Day	☒	☐	☐	☐
Andy Berg	☐	☐	☐	☒

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EXHIBIT "A"

Solar Energy Systems (SES)

12.27.010 PURPOSE

The purpose of this Chapter is to adopt and incorporate the requirements and standards of Wis. Stats., 66.0401 and 66.0403 to regulate Solar Energy Systems (hereinafter referred to as "SES") for the production of electricity and/or conversion of energy for uses on-site as well as those systems which produce electricity for off-site use and distribution. The regulations of this chapter have been established to ensure SES are sited, constructed, maintained, operated, and decommissioned in a manner that maximizes utilization of Kenosha County's solar energy resources, while also balancing the need for clean renewable energy and protecting the public health, safety and welfare of the community.

(a) SES equal to 100 MW or greater shall follow the requirements of the PSC and must enter into a MOU with the County and the Town.

(b) SES less than 100MW designed to provide energy to off-site uses and/or export to the wholesale or retail sale market, are considered a commercial use and are subject to the conditional use permit process as described in Section 12.40 of this Ordinance.

(c) The Department will use the most recent industry accepted standards (U.S. Department of Energy) as it relates to average single-family electrical usage, daily watt hours formula, local peak sun hour numbers, or any other related standards for SES determinations.

(d) Kenosha County is not responsible to remove or force the removal of any structures or vegetation on adjacent properties that may exist at the time of installation or may be constructed/installed in the future to block any portion of the SES.

(e) All applications regulated by this chapter may be subject to additional conditions and restrictions consistent with but no more restrictive than those in Wis. Stats., 66.0401(1m). Where such conditions are considered and applied on a case-by-case basis; as well as satisfy one of the following:

1. Serves to preserve or protect the public health or safety.

2. Does not significantly increase the cost of the system or significantly decrease its efficiency.

3. Allows for an alternative system of comparable cost and efficiency.

12.27.020 DEFINITIONS

Battery Energy Storage Systems (BESS)– device that enables stored energy to be

released when users need it most.

Individual Use Solar Energy System – a solar energy system, on-grid or off-grid, that generates electricity for the individual property owner with either building mounted or ground mounted solar collectors that are an accessory use for consumption to the principal use of the property not exceeding the capacity limits of this ordinance.

Off-Grid Solar Energy System – solar energy system that is not connected to an existing substation or electric transmission infrastructure.

On-grid Solar Energy System – solar energy system that is connected to an existing substation or electric transmission infrastructure

Operation and Maintenance (O&M) – a plan that details how the SES will be maintained and operated in a manner that maximizes utilization of Kenosha County's solar energy resources, while also balancing the need for clean renewable energy and protecting the public health, safety and welfare of the community.

Reflector or Reflector System – used in SES to concentrate sunlight onto the solar structure.

Solar Collector – as defined in State Statute 66.0403(j): a device, structure or part of a structure whose substantial purpose is to transform solar energy into thermal, mechanical, chemical or electrical energy.

Solar Farm – a solar energy system that generates electricity to serve many customers by wholesale or retail sale and not primarily for consumption on the property on which the system is located and is on-grid. The main land use of the property is to the solar energy system, requiring conditional use approval.

Solar Energy Systems (SES) – equipment that directly converts and then transfers solar energy into usable forms of thermal or electrical energy. A solar energy system is either for individual users or a commercial user who develops a Solar Farm. A solar energy system includes solar collectors, frames, supports and any mounting hardware, battery storage equipment, converters or invertors.

Operation and Maintenance (O&M) – a plan that details how the SES will be maintained and operated in a manner that maximizes utilization of Kenosha County's solar energy resources, while also balancing the need for clean renewable energy and protecting the public health, safety and welfare of the community.

12.27.030 ZONING PERMIT REQUIRED

(a) An owner must obtain the County's approval before constructing a SES or expanding an existing or previously approved SES, and no SES may be installed, constructed, or expanded without a zoning permit issued by the Department of Planning & Development (hereinafter referred to as the "Department") under Section 12.05.010 of this Ordinance.

(b) The owner must pay an application fee at the time the application for a SES is filed

with the Department.

(c) A zoning permit issued by the Department expires if construction of the SES is not commenced within 18 months from the date of the permit

12.27.040 DISTRICTS

(a) An Individual Use SES may be located, as an accessory use, in all zoning districts subject to the requirements, standards, and processes set forth in this Ordinance.

(b) A Solar Farm ground-mounted SES may be located in the A-1, A-2, A-4, and I-1 Districts as a conditional use, subject to the requirements set forth in Section 12.40 of this Ordinance and this SES Ordinance.

12.27.050 APPLICATION REQUIREMENTS

(a) Plan applications for an SES shall meet the requirements of Section 12.05-1(h) of this Ordinance, contain the information specified in Wis. Stat. § 66.0401 and § 66.0403 and be accompanied by to scale horizontal and vertical (elevation) drawings.

(b) Provide the Manufacturer name, model number and total capacity.

(c) Roof Mounted SES except flat roofs, he elevation drawing(s) must show the highest finished slope of the solar collector and the slope of the finished roof surface on which it is mounted.

(d) Flat Roof Mounted SES, a drawing shall be submitted showing the following:

1. The distance to the roof edge and any parapets on the building and shall identify the height of the building on the street frontage side.

2. The proposed distance to property lines, right-of-way, and/or easement.

3. The highest finished height of the solar collector as well as the finished surface of the roof.

12.27.60 CONDITIONS REQUIRED FOR APPROVAL

(a) Capacity:

1. Residential Districts:
   a. Less than 1 acre in area: capacity of the SES shall not exceed 7 kilowatts in rated capacity.
   b. Equal to or greater than 1 acre, but less than 10 acres in area: capacity of the SES shall not to exceed 15 kilowatts in rated capacity.

2. Agricultural, Commercial, Manufacturing, Institutional and Park-Recreational Districts: capacity of the SES shall not exceed over 110% of the electricity needs of the property. Property Owner shall furnish applicable data.

3. Solar Farm: capacity of the SES less than 100 MW.

(b) Height: SES must meet the following height requirements:

1. Roof mounted SES shall not exceed the maximum allowed height in any zoning district, unless the system extends less than one foot from the surface from which it is directly attached or if the roof pitch is 2/12 or less then the system shall not extend more than 6 feet.

2. Ground or pole mounted SES shall not exceed 15 feet in height when oriented at maximum tilt.

(c) Setback(s):

1. Roof mounted SES In addition to the structure setback, the collector surface and mounting devices shall not extend beyond the exterior perimeter of the building on which the system is mounted or built.

2. Ground or pole mounted SES Ground or pole mounted SES may not extend into the required yard setbacks for the District when oriented at minimum design tilt.

(d) Location:

1. Shall not be located in the 100-year floodplain.

2. Shall not be located in a designated wetland.

(e) Coverage: Roof mounted SES, excluding building-integrated systems, shall plan for adequate roof access for fire-fighting purposes to the south-facing or flat roof upon which the panels are mounted.

(f) Grades: the area of the SES shall not be artificially elevated to bring fill as to elevate the SES area higher than the existing grades of the property.

(g) Visibility: SES shall be designed to blend into the architecture of the building to the extent such provisions do not diminish solar production or increase costs, consistent with Wis. Stats., 66.0401.

(h) Reflectors: All SES using a reflector to enhance solar production shall minimize reflected light from the reflector affecting adjacent or nearby properties. Measures to minimize reflected light include selective placement of the system, screening on the north side of the solar collector, modifying the orientation of the system, reducing use of the reflector system, or other remedies that limit reflected light.

(i) Historic Buildings: SES on buildings within HO Historical Overlay District adopted under this Ordinance or on locally designated historic buildings (exclusive of State or Federal historic designation) must receive approval from the Advisory Historical Preservation Commission, consistent with the standards for SES on historically designated buildings published by the U.S. Department of Interior.

(j) Other standards and codes: All commercial use SES shall be in compliance with all applicable local, state and federal regulatory codes, including the State of Wisconsin Uniform Building Code, as amended; and the National Electric Code, and if necessary the Wisconsin State Plumbing Code; as amended.

1. All roof mounted and/or integrated SES shall only be permitted if it determined the additional weight, infrastructure, and/or modifications will not

compromise the structural integrity of the building.

(k) Wires: All electrical wires associated with a ground mounted solar energy system, other than wires necessary to connect the solar energy system to the tower wiring, the tower wiring to the disconnect junction box, and the grounding wires, must be located underground.

(l) Noise: All converters and inverters shall be located away from adjacent residences.

(m) Good Repair: An owner shall construct, operate, repair, maintain and replace solar energy system facilities as needed to keep the solar energy system in good repair and operating condition in a manner that protects the public health, safety, and welfare of the community.

(n) Utility Notification: All on-grid SES shall comply with the interconnection requirements of the electric utility.

12.40 CONDITIONAL USE

138. Solar Farm in the A-1, A-2, A-4, and I-1 Districts.

(a) Minimum lot size and frontage: 10 acres with 300 feet on a public street.

(b) Minimum setbacks: as measured from the foundation of any associated system building, the outer edge of battery storage system, convertor or invertor or from the solar collector extended at full tilt parallel to the ground:

1. Street yard - not less than 65 feet from the right-of-way of all Federal, State, and County Trunk highways and not less than 40 feet from the right-of-way of all other roads
2. Side yard – not less than 50 feet from the property boundary lines of non-participating landowners and 100 feet from any adjacent landowner dwelling unit.
3. Shore yard – not less than 75 feet
4. For adjoining participating landowners, the setback requirement may be established pursuant to mutual agreement between Solar Farm Owner and participating property owners.

(c) Maximum height for solar collectors: 15 feet in height when oriented at maximum tilt.

(d) Shall not be located within the 100-year floodplain.

(e) Shall not be located within a designated wetland.

(f) Any buildings associated with the Solar Farm shall meet the building requirements specified in the underlying zoning district related to building size and height.

(g) Any Solar Farm that is on-grid shall comply with the Public Service Commission of Wisconsin's Rule 119, Rules for Interconnecting Distributed Generation Facilities.

(h) Agreement Exhibits: The following exhibits shall be submitted:

1. Proposed Site Plan: Exhibit A is the proposed plan for above-ground facilities of the Solar Farm.
2. Proposed Haul Route: Exhibit B is a map depicting proposed Solar Farm equipment Haul Routes.
3. Construction Schedule: Exhibit C is the proposed Construction Schedule.
4. Vegetation Management Plan: Exhibit D is the Vegetation Management Plan.
5. Drain Tile Management Plan: Exhibit E is the Drain Tile Management Plan.
6. Decommissioning Plan: Exhibit F is the Decommissioning Plan.

(i) Archeology: Shall conduct an Archeological Site Assessment with review by the Wisconsin State Historical Preservation Office.

(j) Fencing Other than the fencing directly surrounding the Solar Farm substation, O&M and BESS the Solar Farm's perimeter fencing shall consist of "deer fencing" (wire mesh), which can be described in greater detail as a six (6) to ten (10) foot in height woven wire partition with posts. Fences will be set within/inside property lines or rights-of-way edges unless otherwise requested from the landowner.

1. Installed fencing shall be adequately maintained at all times during the Solar Farm operation. The depths of the fence posts shall be installed per prudent engineering practice based on the height of the fence and the type and slope of the terrain. Impairments to either the woven wire or wooden posts shall be remedied within two weeks of written notification from the Department. "Leaning" of the fence shall not be allowed to exceed plus or minus 10 degrees of perpendicular. In the event leaning or tilting of the fence does occur, it will be corrected back to perpendicular within two weeks of receiving written notice on the issue.

(k) Visual Considerations: The Solar Farm shall not be used for any type of advertising. The Solar Farm may erect and maintain a single Solar Farm identification sign subject to sign requirements of section 12.14. The Solar Farm shall be minimally lighted so as not to disturb neighboring properties. Necessary lighting to provide safety and security of facilities shall meet the lighting requirements of Chapter 12.18.8-1, Municipal Code of Kenosha County. Solar Farm Owner will provide the County with a description of permanent Solar Farm lighting plans when available.

(l) Drain Tile: Solar Farm Owner shall contract with an experienced and qualified regional drain tile contractor to gather information concerning participating landowner drain tile, avoid said tile where commercially reasonable, and mitigate the landowner and non-participating landowners' drainage issues where significant impact is expected as a result of drain tile alteration. The Solar Farm Owner agrees to discuss and address identified drain tile concerns at the post-construction meeting to finalize remedies to known drainage issues on either participating or non-participating property. Solar Farm Owner shall receive, investigate, and remedy drain tile issues due to the Solar Farm that arise subsequent to the post-construction meeting pursuant to the Drain Tile Management Plan attached hereto as Exhibit E.

1. If drainage infrastructure or systems are damaged by the Solar Farm and the result is reduced drainage performance that adversely affects non-participating landowners, Solar Farm Owner shall restore the drainage infrastructure or system to pre-existing condition or better in accordance with the Drain Tile Management

Plan attached as Exhibit E. Pre-existing condition shall mean the flow capacity existing immediately prior to the Solar Farm commencing construction. If previous flow capacity cannot be determined, Solar Farm Owner and landowners agree to negotiate an adequate solution in good faith. Solar Farm Owner is responsible for all expenses related to repairs, restoration, relocations, reconfigurations and replacements of drainage infrastructure and systems that are damaged by the Solar Farm as provided in Exhibit E. The intent of this Section is to make landowners whole where drainage infrastructure or systems are damaged by the Solar Farm. For example, and without limitation due to enumeration, if damage to drainage infrastructure or systems is caused by the Solar Farm on a participating property ("Solar Farm-related Damage"), and the Solar Farm-related Damage causes damages to non-participating property owners upstream of the Solar Farm-related Damage, including crop loss and/or blowout damage to the drain tile system on the non-participating owner's property, Solar Farm Owner shall reasonably compensate the non-participating owner for crop loss and for repairs to the non-participating property owner's drain tile system. Solar Farm Owner agrees to cooperate with non-participating landowners as outlined in Exhibit E that desire to repair or replace drainage tile affecting their properties to the extent that such work does not interfere with the Solar Farm or its related facilities. Solar Farm Owner will not unreasonably withhold approval for access to the Property that lies outside of any fenced solar collector area, to the extent participating property owners also agree to such access.

2. For purposes of this agreement, participating landowner or property owner shall mean a property owner who has signed a solar lease and easement agreement, collection easement, or purchase option for the use of his or her property for solar generation, construction access, and/or placement of facilities associated with the Solar Farm. Non-participating landowner or property owner shall mean a property owner who is not a participating landowner. A solar lease and easement agreement does not include a good neighbor agreement.

(m) Stormwater Management and Erosion Control: Solar Farm Owner shall ensure compliance with Chapter 17, Municipal Code of Kenosha County, on stormwater management and shall ensure that a plan for compliance with said chapter is presented at the pre-construction meeting. Solar Farm Owner will comply with stormwater and erosion control requirements imposed by the Wisconsin Department of Natural Resources (WDNR).

(n) Ground cover and buffer areas: The following provisions shall be met related to the clearing of existing vegetation and establishment of vegetated ground cover. Additional requirements and standards may apply as required by the Department and/or Planning, Development and Extension Education Committee (PDEEC).

1. Large-scale removal of mature trees on the site is discouraged. The Department may set additional restrictions on tree clearing or require mitigation for cleared trees.
2. To the greatest extent possible, the topsoil shall not be removed during development, unless part of a remediation effort.
3. Soils shall be planted and maintained for the duration of operation in perennial vegetation to prevent erosion, manage run off, and improve soil.
4. Seeds should include a mix of grasses and wildflowers (pollinator habitat), exclusively native to the region of the solar Farm site that, which will result in a

short stature prairie with a diversity of forbs or flowering plants that bloom throughout the growing season. Blooming shrubs may be used in buffer areas as appropriate for visual screening.

5. Seed mixes and maintenance practices shall be consistent with those recommendations made by the Department and/or Wisconsin DNR.

6. The applicant shall submit a financial guarantee in the form of a letter of credit, cash deposit or bond in favor of the Community equal to one hundred twenty-five (125) percent of the costs to meet the ground cover and buffer area standard. The financial guarantee shall remain in effect until vegetation is 75% established.

7. Solar Farm Owner shall contact every owner of residential property immediately adjacent to solar collector and discuss in good faith a reasonable, strategically-located visual buffer of plants that, upon mutual agreement, shall be installed at Solar Farm Owner's expense prior to the completion of construction of the Solar Farm. Where the Solar Farm Owner and the adjacent property owner are unable to agree on the type of visual buffer and the adjacent property owner makes a request in writing to Solar Farm Owner to provide a visual buffer, the Solar Farm owner shall install a vegetative buffer on the Solar Farm site equal to the length of the non-participating residence and designed to achieve at least 50% opacity at ground level within 5 years. Proposals and plans for vegetative buffers will be finalized in writing by the pre-construction meeting with the Department.

8. Solar Farm Owner shall submit a vegetative buffer plan for a visual barrier along all roadways subject to approval by the Department .

(o) Road Use: The Solar Farm Owner and its successors, assigns, contractors, agents and representatives may use public roads as part of the construction, operation, maintenance and repair of the Solar Farm. The Solar Farm Owner acknowledge that in connection with construction, operation and maintenance of electric collection lines, communications cables and other equipment, that Solar Farm facilities may cross road rights-of-way and/or drainage systems. The Solar Farm Owner agrees that it shall seek and obtain all permits typically required of others, such as driveway permits and rights-of-way crossing permits. It is agreed that all road rights-of-way crossing shall be by underground borings perpendicular to the right-of-way, plus or minus 30 degrees. All underground borings shall commence and terminate outside of the road right-of-way.

1. The Solar Farm Owner further agrees that the construction process may cause wear, tear, and damage to the roads identified to be used, including the Haul Roads. The Solar Farm Owner agrees, in lieu of seeking repair, restoration, or reconstruction of these roads following the completion of the Solar Farm's construction, that the Solar Farm Owner shall provide the County compensation in the form of a lump sum payment in an amount to be determined by Solar Farm Owner's qualified third party engineer, based on pre-construction and post-construction road condition analysis's following general industry best practices, for the repair or reconstruction of the impacted roads. Pre-construction and post-construction analysis shall include review of the surface and subsurface of the road. The Solar Farm Owner's qualified third-party engineer shall be selected from a list of Kenosha County certified engineering consultants. The County shall provide the list of County certified engineering consultants at the request of the Solar Farm Owner. If the County elects to forego the lump sum payment, the Solar Farm Owner agree they may also utilize a contractor chosen and managed by the developer to complete necessary road repairs. All road repairs shall be inspected

and approved by the County superintendent to ensure that the repair meets County standards. The extent of such repair will be negotiated at the post-construction meeting and will be based on the road condition analysis of the third-party engineer. The County shall relieve the Solar Farm Owner of any other repair or reconstruction obligations or responsibilities upon receipt of such payment. The County shall determine, at its sole discretion, how to utilize those funds for the repair of the impacted roads after their use for construction traffic for the Solar Farm ends. The Solar Farm Owner shall negotiate in good faith a similar road use provision related to decommissioning, expansion or repowering of the Solar Farm.

2. Throughout the construction of the Solar Farm, the Solar Farm Owner shall work cooperatively to maintain public road infrastructure in a safe condition for passage by the public. During the ongoing construction of the Solar Farm, Solar Farm Owner, at its expense, shall repair any significant damage that jeopardizes the safety of the travelling public. The County superintendent shall continuously monitor County roads and shall notify the Solar Farm Owner of damages that presents safety concerns to the travelling public and shall require the Solar Farm Owner to carry out the necessary repair to mitigate the unsafe road condition. In the event a unsafe road condition exists that presents a safety hazard to the public use of the road and is not promptly repaired by Solar Farm Owner within one week after receipt of notice of the unsafe condition, the County may make emergency road repairs, or order emergency road repairs to be performed by qualified contractors, and Solar Farm Owner will promptly reimburse the County for reasonable emergency road repairs.

3. Solar Farm Owner shall be responsible for addressing applicable road use issues with other entities to the extent they have jurisdiction over roads to be used for the Solar Farm.

(p) Foundations: A qualified engineer shall certify, by sealed stamped and signed plans that the foundation and design of the solar panels racking and support is within accepted professional standards, given local soil and climate conditions.

(q) Power and communication lines: Power and communication lines running between banks of solar panels and to nearby electric substations or interconnections with buildings shall be buried underground. Exemptions may be granted by the Department in instances where shallow bedrock, water courses, or other elements of the natural landscape interfere with the ability to bury lines, or distance makes undergrounding infeasible, at the discretion of the Department as shown by adequate soil borings.

(r) Agricultural Protection: Commercial use SES must comply with site assessment or soil identification standards that are intended to protect agricultural soils.

(s) Aviation Protection: For Solar Farms located within 1,000 feet of an airport or within approach zones of an airport or landing strip, the applicant must complete and provide the results of the Solar Glare Hazard Analysis Tool (SGHAT) for the Airport Traffic Control Tower cab and final approach paths, consistent with the Interim Policy, FAA Review of Solar Energy Solar Farms on Federally Obligated Airports, or most recent version adopted by the FAA

(t) Decommissioning. Solar Farm Owner shall implement the Decommissioning Plan attached as Exhibit F to this Agreement upon permanent cessation of the commercial operation of the Solar Farm. For the purposes of this Agreement, permanent cessation of the commercial operation of the solar Farm shall mean that the entire Solar Farm has ceased commercial operation for a consecutive period of twelve (12) months for reasons other than a force majeure event. The Solar Farm shall be deemed to be in commercial operation if the Solar Farm is under active construction activities including but not limited to construction activities in connection with Solar Farm-wide replacements or upgrades.

1. The Solar Farm Owner acknowledge that the Decommissioning Plan shall be submitted that includes a detailed Decommissioning Cost Analysis and will provide such a plan to the County when the analysis is available. The Solar Farm Owner agrees that the Decommissioning Plan shall require Solar Farm Owner to, at a minimum:

2. Notify the Department when permanent cessation has been determined.
3. Remove, at its expense, all Solar Farm components including but not limited to solar collectors and associated facilities to a depth of 4 feet and properly dismantle all components that shall be disposed of at a licensed solid waste disposal facility and/or otherwise in a manner consistent with federal, state, and local regulations;
4. Restore the land to a condition reasonably similar to pre-existing conditions, including de-compacting areas where solar Farm access roads were installed and any other areas of substantial soil compaction. The Solar Farm's Access Roads can remain in place if requested by the property owner.
5. Prior to the issuance of a zoning permit, the Solar Farm owner shall post a commercially reasonable financial assurance (bond, letter of credit) in the amount of the difference between the reasonably estimated costs of decommissioning the Solar Farm and the reasonably estimated salvage value of the Solar Farm improvements, as determined by a qualified engineer. The costs of this determination are to be paid by the Solar Farm Owner. The need for and amount of the financial assurance shall be reviewed by a qualified engineer, and if applicable, updated approximately every 5 years.
6. All solar equipment shall be decommissioned and disposed of in accordance with State, Federal and local regulations.

(u) Replacement of Lost Property Tax Revenue: Properties hosting qualifying utility generating facilities under Chapter 76 Wis. Stats. and approved by the PSCW are removed from the local property tax roll. Solar Farm Owner will establish a program (the "Lost Revenue Program") to reimburse the local school districts for lost revenue following completion of the Solar Farm, when the specific, qualified utility properties are identified. The Lost Revenue Program will calculate the amount of lost revenue based on local tax rates for the land at the time the Solar Farm is placed in service. Payment amount for each taxing authority will be increased annually by Two Percent (2%). Solar Farm Owner will execute the Lost Revenue Program only to the extent the amount promised is recoverable by the Solar Farm Owner through approval by the PSCW of rates under Wis. Stat. 196.20. The Solar Farm Owner's obligation to make such payments shall be suspended if the State adopts or implements a new mechanism to replace the Utility Aid Shared Revenue payments, to the extent that the new payment system provides payments equal or greater than the payments provided herein. In such case of

suspension of payments, the Solar Farm Owner's payment obligations as set forth herein will only be reinstated if such new payment system is eliminated by the Legislature.

(v) Insurance

1. For Individual Use Solar Energy Systems
   a. Owner
      1) At all times during construction and operation owner shall maintain a current liability policy covering bodily injury and property damage in the form of a homeowners or other applicable policy providing liability coverage as approved by Kenosha County
         a With the exception of homeowners coverage shall include:
            1 Commercial General Liability - $1,000,000 per occurrence; $2,000,000 general aggregate; $1,000,000 personal and advertising injury; $2,000,000 products-completed operations aggregate; $10,000 medical expense
            2 Coverage shall list Kenosha County as Additional Insured
            3 Coverage shall be primary and non-contributory to the insurance of Kenosha County
            4 Coverage shall provide a Waiver of Subrogation in favor of Kenosha County
   b. Contractor
      1) At all times during construction and/or maintenance contractor and any subcontractor shall maintain insurance policies with the following listed minimum insurance coverages and minimum limits of liability from insurers licensed to do business in the State of Wisconsin and having at least an A.M. Best rating of A-
      2) Commercial General Liability - $1,000,000 per occurrence; $2,000,000 general aggregate (on a per project basis); $1,000,000 personal and advertising injury; $2,000,000 products-completed operations aggregate; $10,000 medical expense
         a Coverage shall list the Owner and Kenosha County as Additional Insureds
         b Coverage shall be primary and non-contributory to the insurance of Owner and Kenosha County
         c Coverage shall provide a Waiver of Subrogation in favor of Owner and Kenosha County
         d The products-completed operations coverage shall be maintained for the combined period of the limitation and repose statutes of the State of Wisconsin
         e Policies may not contain any residential exclusions or limitations on height of work
      3) Automobile Liability - $1,000,000 Combined Single Limit
         a Coverage shall list the Owner and Kenosha County as Additional Insureds

4) Workers Compensation & Employers Liability – Workers Compensation as required by the State of Wisconsin Statute. $1,0000,000 employers liability for each bodily injury by accident, bodily injury by disease and annual aggregate

a Coverage shall provide a Waiver of Subrogation in favor of Owner and Kenosha County

5) Umbrella/Excess Liability - $5,000,000 each occurrence; $5,000,000 annual aggregate; $5,000,000 completed operations aggregate

a The policy shall follow form to the Employers Liability, Commercial General Liability and Commercial Auto Liability policies

6) Pollution Liability – $1,000,000 per claim and $1,000,000 annual aggregate

a Coverage shall list the Owner and Kenosha County as Additional Insureds

7) Professional Liability - If architectural or engineering services are being performed by Contractor or Subcontractor coverage shall include limits of at least $1,000,000 per claim and $1,000,000 annual aggregate

8) Unmanned Aircraft/Drone Liability – If drone is used with respect to construction and/or maintenance of the system coverage shall include a limit of at least $1,000,000

2. For Solar Farms

a. Owner

1) At all times during construction and operation owner shall maintain Commercial General Liability - $1,000,000 per occurrence; $2,000,000 general aggregate; $1,000,000 personal and advertising injury; $2,000,000 products-completed operations aggregate; $10,000 medical expense

2) Coverage shall list Kenosha County as Additional Insured

3) Coverage shall be primary and non-contributory to the insurance of Kenosha County

4) Coverage shall provide a Waiver of Subrogation in favor of Kenosha County

b. Umbrella/Excess Liability - $1,000,000 each occurrence; $1,000,000 annual aggregate; $1,000,000 completed operations aggregate

1) The policy shall follow form to the Commercial General Liability policy

3. Contractor

a. At all times during construction and/or maintenance contractor and any subcontractor shall maintain insurance policies with the following listed minimum insurance coverages and minimum limits of liability from insurers licensed to do business in the State of Wisconsin and having at least an A.M. Best rating of A-

1) Commercial General Liability - $1,000,000 per occurrence; $2,000,000 general aggregate (on a per project basis); $1,000,000

personal and advertising injury; $2,000,000 products-completed operations aggregate; $10,000 medical expense

a Coverage shall list the Owner and Kenosha County as Additional Insureds

b Coverage shall be primary and non-contributory to the insurance of Owner and Kenosha County

c Coverage shall provide a Waiver of Subrogation in favor of Owner and Kenosha County

d The products-completed operations coverage shall be maintained for the combined period of the limitation and repose statutes of the State of Wisconsin

2) Automobile Liability - $1,000,000 Combined Single Limit

a Coverage shall list the Owner and Kenosha County as Additional Insureds

3) Workers Compensation & Employers Liability – Workers Compensation as required by the State of Wisconsin Statute. $1,0000,000 employers liability for each bodily injury by accident, bodily injury by disease and annual aggregate

a Coverage shall provide a Waiver of Subrogation in favor of Owner and Kenosha County

4) Umbrella/Excess Liability - $10,000,000 each occurrence; $10,000,000 annual aggregate; $10,000,000 completed operations aggregate

a The policy shall follow form to the Employers Liability, Commercial General Liability and Commercial Auto Liability policies

5) Pollution Liability – $2,000,000 per claim and $2,000,000 annual aggregate

a Coverage shall list the Owner and Kenosha County as Additional Insureds

6) Professional Liability - If architectural or engineering services are being performed by Contractor or Subcontractor coverage shall include limits of at least $2,000,000 per claim and $2,000,000 annual aggregate

7) Unmanned Aircraft/Drone Liability – If drone is used with respect to construction and/or maintenance of the system coverage shall include a limit of at least $1,000,000

(w) Limitations upon authority: The Department review and action in the matter shall be subject to the limitations imposed by 66.0401, Wis. Stats. In the event the applicant believes the County has exceeded its authority in this regard, the applicant shall notify the County, and the Town may reconsider the matter. In that event, the applicable permit authority of the County may modify the requirements of this section as applied to that application, on a case-by-case basis if, and only to the extent, such modification is necessary to ensure that applicable laws are followed. This section is intended to allow case-by-case consideration of the standards of § 66.0401(1m), Wis. Stats., as needed.

Red Strikethrough = Text Removed

Green Underline = New Text

12.31.010 A-1 agricultural preservation district.

(d) *Conditional Uses (see also section 12.40.080) (8/6/02).*

1. Air strips, landing fields and hangars for personal or agricultural related uses

2. Community living arrangements having 9 but not more than 15 persons and in conformance with all state statutory requirements

3. Concrete and asphalt batch plants temporarily located on a parcel

4. Event Barns

5. Gas and electric utility uses not requiring authorization under Wisconsin Statutes, section 196.491(3)

6. Housing for farm laborers or caretakers

7. Housing for seasonal or migratory farm workers

8. Kennels (Commercial or noncommercial)

9. A second single-family farm related residential dwelling

10. Large wind energy system

11. Solar Farm

~~11~~12. Storage of recreational vehicles, boats or snowmobiles

~~12~~13. Utility substation

~~13~~14. Bed and breakfast establishments (8/9/94)

~~14~~15. Riding stables and indoor riding arenas (public)

~~15~~16. Borrow pits (temporary); stockpiling or filling of clean fill materials

12.31.020 A-2 general agricultural district.

(d) Conditional Uses (see also section 12.40.080) (8/6/02)

1. Air strips, landing fields and hangars for personal or agricultural related uses

2. Assemblies over 5000 or more individuals

3. Community living arrangements having 9 but not more than 15 persons and in conformance with all state statutory requirements

4. Concrete and asphalt batch plant temporarily located on a parcel

5. Event Barns

6. Housing for farm laborers or caretakers

7. Kennels (commercial or noncommercial)

8. Large wind energy system

9. Storage of recreational vehicles, boats and snowmobiles

10. Utility substations

11. Bed and breakfast establishments (8/9/94)

12. Borrow pits (temporary); stockpiling or filling of clean fill materials

13. Riding stables and indoor riding arenas (public)

14. Solar Farm

12.31.040 A-4 agricultural land holding district.

(d) *Conditional Uses (see also section 12.40.080).*

1. Air strips, landing fields and hangars for personal or agricultural related uses

2. Bed and breakfast establishments (8/9/94)

3. Borrow pits (temporary) stockpiling or filling of clean fill materials (8/6/02)

~~2~~4. Community living arrangements having 9 but not more than 15 persons and in conformance with all state statutory requirements

~~3~~5. Concrete and asphalt batch plants temporarily located on a parcel

46. Gas and electric utility uses not requiring authorization under Wisconsin Statutes, section 196.491(3)

57. Housing for farm laborers or caretakers (8/6/02)

68. Housing for seasonal or migratory farm workers

9. Large wind energy systems

710. A sSecond single-family farm related residential dwelling

11. Solar Farm

812. Storage of recreational vehicles, boats or snowmobiles

913. Utility substation

~~10. Large wind energy systems~~

~~11. Bed and breakfast establishments (8/9/04)~~

~~12. Borrow pits (temporary); stockpiling or filling of clean fill materials (8/6/02)~~

~~13~~14. Riding stables and indoor arenas (public) (8/6/02)

12.35.010 I-1 institutional district.

(d) *Conditional Uses (see also section 12.40.080) (8/6/02).*

1. Airport, heliport pads, aircraft hangars for storage and equipment maintenance; aircraft sales and service.

2. Bus terminals

3. Cemeteries

4. Large wind energy system

5. Penal, reform, disciplinary and mental institutions

6. Power and heat generating plants

7. Railroad depots

8. Solar Farm

~~8~~9. School auditoriums, gymnasiums and stadiums

~~9~~10. Utility substations

~~10~~11. Water storage tanks and towers and radio and television transmitting and receiving towers, microwave relay stations

(4) DUTIES OF COUNCIL. The council shall conduct an analysis of governmental services provided by the political subdivision with which the council is affiliated. In conducting such an analysis, the council shall do all of the following:

(a) Establish specific benchmarks for performance, including goals related to intergovernmental cooperation to provide governmental services.

(b) Conduct research and establish new methods to promote efficiency in the delivery of governmental services.

(c) Identify and recommend collaborative agreements to be developed with other political subdivisions to deliver governmental services.

(5) DATA COLLECTION AND ANALYSIS. (a) A council may conduct an analysis of a governmental service provided by the political subdivision with which the council is affiliated on its own or after receiving any of the following:

1. A written suggestion regarding delegating a governmental service to a private person.

2. A written complaint that a governmental service provided by the political subdivision is competing with the same or a similar service provided by a private person.

3. A written suggestion by a political subdivision employee or political subdivision employee labor organization to review a governmental service delegated to a private person.

(b) After receiving a suggestion or complaint under par. (a), the council shall meet to decide whether an analysis of the governmental service indicated in the suggestion or complaint is necessary. The council may hold hearings, conduct inquiries, and gather data to make its decision. If the council decides to analyze a governmental service under this paragraph, the council shall do all of the following:

1. Determine the costs of providing the governmental service, including the cost of personnel and capital assets used in providing the service.

2. Determine how often and to what extent the governmental service is provided and the quality of the governmental service provided.

3. Make a cost–benefit determination based on the findings under subds. 1. and 2.

4. Determine whether a private person can provide the governmental service at a cost savings to the political subdivision providing the service and at a quality at least equal to the quality of the service provided by the political subdivision.

5. If the council decides that a governmental service is not suitable for delegating to a private person, determine whether the governmental service should be retained in its present form, modified, or eliminated.

(c) After completing an analysis under par. (b), the council shall make a recommendation to the political subdivision providing the governmental service analyzed under par. (b) and publish the council's recommendation. The recommendation shall specify the recommendation's impact on the political subdivision and the political subdivision's employees.

(6) TRAINING AND ASSISTANCE. The board of regents of the University of Wisconsin System shall direct the extension to assist councils created under this section in performing their duties under subs. (4) and (5). The board of regents shall ensure that council members are trained in how to do all of the following:

(a) Conduct an analysis of a governmental service.

(b) Determine ways to improve the efficiency of delivering a governmental service.

(c) Establish, quantify, and monitor performance standards.

(d) Prepare the reports required under sub. (7) (a) and (b).

(7) REPORTS. (a) On or before June 30, 2002, each council shall submit a report to the department describing the council's activities.

(b) On or before June 30, 2003, each council shall submit a final report to the department describing the council's activities and recommendations and the extent to which its recommendations have been adopted by the political subdivision with which the council is affiliated. A report submitted under this paragraph shall provide a detailed explanation of all analyses conducted under subs. (4) and (5).

(c) On or before July 31, 2003, the department shall submit a report concerning the activities and recommendations described in the reports submitted under pars. (a) and (b) to the legislature under s. 13.172 (2) and to the governor. The department's report shall describe ways to implement such recommendations statewide.

History: 2001 a. 16.

66.0317 Cooperation region. (1) DEFINITIONS. In this section:

(a) "Cooperation region" means a federal standard metropolitan statistical area. For purposes of this section, if only a part of a county is located in a federal standard metropolitan statistical area the entire county is considered to be located in the federal standard metropolitan statistical area.

(b) "Governmental service" has the meaning given in s. 66.0316 (1) (e).

(d) "Municipality" means any city, village, or town.

(2) AREA COOPERATION COMPACTS. (a) 1. Except as provided in subd. 3., beginning in 2003, a municipality shall enter into an area cooperation compact with at least 2 municipalities or counties located in the same cooperation region as the municipality, or with any combination of at least 2 such entities, to perform at least 2 governmental services.

3. A municipality that is not adjacent to at least 2 other municipalities located in the same cooperation region as the municipality may enter into a cooperation compact with any adjacent municipality or with the county in which the municipality is located to perform the number of governmental services as specified under subd. 1.

(b) An area cooperation compact shall provide a plan for any municipalities or counties that enter into the compact to collaborate to provide governmental services. The compact shall provide benchmarks to measure the plan's progress and provide outcome–based performance measures to evaluate the plan's success. Municipalities and counties that enter into the compact shall structure the compact in a way that results in significant tax savings to taxpayers within those municipalities and counties.

History: 2001 a. 16, 106; 2005 a. 164; 2021 a. 238.

SUBCHAPTER IV

REGULATION

66.0401 Regulation relating to solar and wind energy systems. (1e) DEFINITIONS. In this section:

(a) "Application for approval" means an application for approval of a wind energy system under rules promulgated by the commission under s. 196.378 (4g) (c) 1.

(b) "Commission" means the public service commission.

(c) "Political subdivision" means a city, village, town, or county.

(d) "Wind energy system" has the meaning given in s. 66.0403 (1) (m).

(1m) AUTHORITY TO RESTRICT SYSTEMS LIMITED. No political subdivision may place any restriction, either directly or in effect, on the installation or use of a wind energy system that is more restrictive than the rules promulgated by the commission under s. 196.378 (4g) (b). No political subdivision may place any restriction, either directly or in effect, on the installation or use of a solar energy system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy

system, unless the restriction satisfies one of the following conditions:

(a) Serves to preserve or protect the public health or safety.

(b) Does not significantly increase the cost of the system or significantly decrease its efficiency.

(c) Allows for an alternative system of comparable cost and efficiency.

(2) AUTHORITY TO REQUIRE TRIMMING OF BLOCKING VEGETATION. Subject to sub. (6) (a), a political subdivision may enact an ordinance relating to the trimming of vegetation that blocks solar energy, as defined in s. 66.0403 (1) (k), from a collector surface, as defined under s. 700.41 (2) (b), or that blocks wind from a wind energy system. The ordinance may include a designation of responsibility for the costs of the trimming. The ordinance may not require the trimming of vegetation that was planted by the owner or occupant of the property on which the vegetation is located before the installation of the solar or wind energy system.

(3) TESTING ACTIVITIES. A political subdivision may not prohibit or restrict any person from conducting testing activities to determine the suitability of a site for the placement of a wind energy system. A political subdivision objecting to such testing may petition the commission to impose reasonable restrictions on the testing activity.

(4) LOCAL PROCEDURE. (a) 1. Subject to subd. 2., a political subdivision that receives an application for approval shall determine whether it is complete and, no later than 45 days after the application is filed, notify the applicant about the determination. As soon as possible after receiving the application for approval, the political subdivision shall publish a class 1 notice, under ch. 985, stating that an application for approval has been filed with the political subdivision. If the political subdivision 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 political subdivision has determined to be incomplete. There is no limit on the number of times that an applicant may refile an application for approval. If the political subdivision fails to determine whether an application for approval is complete within 45 days after the application is filed, the application shall be considered to be complete.

2. If a political subdivision that receives an application for approval under subd. 1. does not have in effect an ordinance described under par. (g), the 45–day time period for determining whether an application is complete, as described in subd. 1., does not begin until the first day of the 4th month beginning after the political subdivision receives the application. A political subdivision may notify an applicant at any time, after receipt of the application and before the first day of the 4th month after its receipt, that it does not intend to enact an ordinance described under par. (g).

3. On the same day that an applicant makes an application for approval under subd. 1. for a wind energy system, the applicant shall mail or deliver written notice of the application to the owners of land adjoining the site of the wind energy system.

4. A political subdivision may not consider an applicant's minor modification to the application to constitute a new application for the purposes of this subsection.

(b) A political subdivision shall make a record of its decision making on an application for approval, including a recording of any public hearing, copies of documents submitted at any public hearing, and copies of any other documents provided to the political subdivision in connection with the application for approval. The political subdivision's record shall conform to the commission's rules promulgated under s. 196.378 (4g) (c) 2.

(c) A political subdivision shall base its decision on an application for approval on written findings of fact that are supported by the evidence in the record under par. (b). A political subdivision's procedure for reviewing the application for approval shall conform to the commission's rules promulgated under s. 196.378 (4g) (c) 3.

(d) Except as provided in par. (e), a political subdivision shall approve or disapprove an application for approval no later than 90 days after the day on which it notifies the applicant that the application for approval is complete. If a political subdivision fails to act within the 90 days, or within any extended time period established under par. (e), the application is considered approved.

(e) A political subdivision may extend the time period in par. (d) if, within that 90–day period, the political subdivision authorizes the extension in writing. Any combination of the following extensions may be granted, except that the total amount of time for all extensions granted under this paragraph may not exceed 90 days:

1. An extension of up to 45 days if the political subdivision needs additional information to determine whether to approve or deny the application for approval.

2. An extension of up to 90 days if the applicant makes a material modification to the application for approval.

3. An extension of up to 90 days for other good cause specified in writing by the political subdivision.

(f) 1. Except as provided in subd. 2., a political subdivision may not deny or impose a restriction on an application for approval unless the political subdivision enacts an ordinance that is no more restrictive than the rules the commission promulgates under s. 196.378 (4g) (b).

2. A political subdivision may deny an application for approval if the proposed site of the wind energy system is in an area primarily designated for future residential or commercial development, as shown in a map that is adopted, as part of a comprehensive plan, under s. 66.1001 (2) (b) and (f), before June 2, 2009, or as shown in such maps after December 31, 2015, as part of a comprehensive plan that is updated as required under s. 66.1001 (2) (i). This subdivision applies to a wind energy system that has a nominal capacity of at least one megawatt.

(g) A political subdivision that chooses to regulate wind energy systems shall enact an ordinance, subject to sub. (6) (b), that is no more restrictive than the applicable standards established by the commission in rules promulgated under s. 196.378 (4g).

(5) PUBLIC SERVICE COMMISSION REVIEW. (a) A decision of a political subdivision to determine that an application is incomplete under sub. (4) (a) 1., or to approve, disapprove, or impose a restriction upon a wind energy system, or an action of a political subdivision to enforce a restriction on a wind energy system, may be appealed only as provided in this subsection.

(b) 1. Any aggrieved person seeking to appeal a decision or enforcement action specified in par. (a) may begin the political subdivision's administrative review process. If the person is still aggrieved after the administrative review is completed, the person may file an appeal with the commission. No appeal to the commission under this subdivision may be filed later than 30 days after the political subdivision has completed its administrative review process. For purposes of this subdivision, if a political subdivision fails to complete its administrative review process within 90 days after an aggrieved person begins the review process, the political subdivision is considered to have completed the process on the 90th day after the person began the process.

2. Rather than beginning an administrative review under subd. 1., an aggrieved person seeking to appeal a decision or enforcement action of a political subdivision specified in par. (a) may file an appeal directly with the commission. No appeal to the commission under this subdivision may be filed later than 30 days after the decision or initiation of the enforcement action.

3. An applicant whose application for approval is denied under sub. (4) (f) 2. may appeal the denial to the commission. The commission may grant the appeal notwithstanding the inconsistency of the application for approval with the political subdivision's planned residential or commercial development if the commission determines that granting the appeal is consistent with the public interest.

(c) Upon receiving an appeal under par. (b), the commission shall notify the political subdivision. The political subdivision shall provide a certified copy of the record upon which it based its decision or enforcement action within 30 days after receiving notice. The commission may request of the political subdivision any other relevant governmental records and, if requested, the political subdivision shall provide such records within 30 days after receiving the request.

(d) The commission may confine its review to the records it receives from the political subdivision or, if it finds that additional information would be relevant to its decision, expand the records it reviews. The commission shall issue a decision within 90 days after the date on which it receives all of the records it requests under par. (c), unless for good cause the commission extends this time period in writing. If the commission determines that the political subdivision's decision or enforcement action does not comply with the rules it promulgates under s. 196.378 (4g) or is otherwise unreasonable, the political subdivision's decision shall be superseded by the commission's decision and the commission may order an appropriate remedy.

(e) In conducting a review under par. (d), the commission may treat a political subdivision's determination that an application under sub. (4) (a) 1. is incomplete as a decision to disapprove the application if the commission determines that a political subdivision has unreasonably withheld its determination that an application is complete.

(f) Judicial review is not available until the commission issues its decision or order under par. (d). Judicial review shall be of the commission's decision or order, not of the political subdivision's decision or enforcement action. The commission's decision or order is subject to judicial review under ch. 227. Injunctive relief is available only as provided in s. 196.43.

(6) APPLICABILITY OF A POLITICAL SUBDIVISION OR COUNTY ORDINANCE. (a) 1. A county ordinance enacted under sub. (2) applies only to the towns in the county that have not enacted an ordinance under sub. (2).

2. If a town enacts an ordinance under sub. (2) after a county has enacted an ordinance under sub. (2), the county ordinance does not apply, and may not be enforced, in the town, except that if the town later repeals its ordinance, the county ordinance applies in that town.

(b) 1. Subject to subd. 2., a county ordinance enacted under sub. (4) applies only in the unincorporated parts of the county.

2. If a town enacts an ordinance under sub. (4), either before or after a county enacts an ordinance under sub. (4), the more restrictive terms of the 2 ordinances apply to the town, except that if the town later repeals its ordinance, the county ordinance applies in that town.

(c) If a political subdivision enacts an ordinance under sub. (4) (g) after the commission's rules promulgated under s. 196.378 (4g) take effect, the political subdivision may not apply that ordinance to, or require approvals under that ordinance for, a wind energy system approved by the political subdivision under a previous ordinance or under a development agreement.

History: 1981 c. 354; 1981 c. 391 s. 210; 1993 a. 414; 1999 a. 150 ss. 78, 79, 84; Stats. 1999 s. 66.0401; 2001 a. 30; 2009 a. 40.

This section is a legislative restriction on the ability of municipalities to regulate solar and wind energy systems. The statute is not superseded by s. 66.0403 or municipal zoning or conditional use powers. A municipality's consideration of an application for a conditional use permit for a system under this section must be in light of the restrictions placed on local regulation by this section. State ex rel. Numrich v. City of Mequon Board of Zoning Appeals, 2001 WI App 88, 242 Wis. 2d 677, 626 N.W.2d 366, 00–1643.

Sub. (1) [now sub. (1m)] requires a case–by–case approach, such as a conditional use permit procedure, and does not allow political subdivisions to find legislative facts or make policy. The local governing arm must hear the specifics of the particular system and then decide whether a restriction is warranted. It may not promulgate an ordinance in which it arbitrarily sets a "one size fits all" scheme of requirements for any system. The conditions listed in sub. (1) (a) to (c) are the standards circumscribing the power of political subdivisions, not openings for them to make policy that is contrary to the state's expressed policy. Ecker Brothers v. Calumet County, 2009 WI App 112, 321 Wis. 2d 51, 772 N.W.2d 240, 07–2109.

66.0403 Solar and wind access permits. (1) DEFINITIONS. In this section:

(a) "Agency" means the governing body of a municipality which has provided for granting a permit or the agency which the governing body of a municipality creates or designates under sub. (2). "Agency" includes an officer or employee of the municipality.

(b) "Applicant" means an owner applying for a permit under this section.

(c) "Application" means an application for a permit under this section.

(d) "Collector surface" means any part of a solar collector that absorbs solar energy for use in the collector's energy transformation process. "Collector surface" does not include frames, supports and mounting hardware.

(e) "Collector use period" means 9 a.m. to 3 p.m. standard time daily.

(f) "Impermissible interference" means the blockage of wind from a wind energy system or solar energy from a collector surface or proposed collector surface for which a permit has been granted under this section during a collector use period if such blockage is by any structure or vegetation on property, an owner of which was notified under sub. (3) (b). "Impermissible interference" does not include:

1. Blockage by a narrow protrusion, including but not limited to a pole or wire, which does not substantially interfere with absorption of solar energy by a solar collector or does not substantially block wind from a wind energy system.

2. Blockage by any structure constructed, under construction or for which a building permit has been applied for before the date the last notice is mailed or delivered under sub. (3) (b).

3. Blockage by any vegetation planted before the date the last notice is mailed or delivered under sub. (3) (b) unless a municipality by ordinance under sub. (2) defines impermissible interference to include such vegetation.

(g) "Municipality" means any county with a zoning ordinance under s. 59.69, any town with a zoning ordinance under s. 60.61, any city with a zoning ordinance under s. 62.23 (7), any 1st class city or any village with a zoning ordinance under s. 61.35.

(h) "Owner" means at least one owner, as defined under s. 66.0217 (1) (d), of a property or the personal representative of at least one owner.

(i) "Permit" means a solar access permit or a wind access permit issued under this section.

(j) "Solar collector" means a device, structure or a part of a device or structure a substantial purpose of which is to transform solar energy into thermal, mechanical, chemical or electrical energy.

(k) "Solar energy" means direct radiant energy received from the sun.

(L) "Standard time" means the solar time of the ninetieth meridian west of Greenwich.

(m) "Wind energy system" means equipment and associated facilities that convert and then store or transfer energy from the wind into usable forms of energy.

(2) PERMIT PROCEDURE. The governing body of every municipality may provide for granting a permit. A permit may not affect any land except land which, at the time the permit is granted, is within the territorial limits of the municipality or is subject to an extraterritorial zoning ordinance adopted under s. 62.23 (7a), except that a permit issued by a city or village may not affect extraterritorial land subject to a zoning ordinance adopted by a county or a town. The governing body may appoint itself as the agency to process applications or may create or designate another agency to grant permits. The governing body may provide by ordinance that a fee be charged to cover the costs of processing applications.

The governing body may adopt an ordinance with any provision it deems necessary for granting a permit under this section, including but not limited to:

(a) Specifying standards for agency determinations under sub. (5) (a).

(b) Defining an impermissible interference to include vegetation planted before the date the last notice is mailed or delivered under sub. (3) (b), provided that the permit holder shall be responsible for the cost of trimming such vegetation.

(3) PERMIT APPLICATIONS. (a) In a municipality which provides for granting a permit under this section, an owner who has installed or intends to install a solar collector or wind energy system may apply to an agency for a permit.

(b) An agency shall determine if an application is satisfactorily completed and shall notify the applicant of its determination. If an applicant receives notice that an application has been satisfactorily completed, the applicant shall deliver by certified mail or by hand a notice to the owner of any property which the applicant proposes to be restricted by the permit under sub. (7). The applicant shall submit to the agency a copy of a signed receipt for every notice delivered under this paragraph. The agency shall supply the notice form. The information on the form may include, without limitation because of enumeration:

1. The name and address of the applicant, and the address of the land upon which the solar collector or wind energy system is or will be located.

2. That an application has been filed by the applicant.

3. That the permit, if granted, may affect the rights of the notified owner to develop his or her property and to plant vegetation.

4. The telephone number, address and office hours of the agency.

5. That any person may request a hearing under sub. (4) within 30 days after receipt of the notice, and the address and procedure for filing the request.

(4) HEARING. Within 30 days after receipt of the notice under sub. (3) (b), any person who has received a notice may file a request for a hearing on the granting of a permit or the agency may determine that a hearing is necessary even if no such request is filed. If a request is filed or if the agency determines that a hearing is necessary, the agency shall conduct a hearing on the application within 90 days after the last notice is delivered. At least 30 days prior to the hearing date, the agency shall notify the applicant, all owners notified under sub. (3) (b) and any other person filing a request of the time and place of the hearing.

(5) PERMIT GRANT. (a) The agency shall grant a permit if the agency determines that:

1. The granting of a permit will not unreasonably interfere with the orderly land use and development plans of the municipality;

2. No person has demonstrated that she or he has present plans to build a structure that would create an impermissible interference by showing that she or he has applied for a building permit prior to receipt of a notice under sub. (3) (b), has expended at least $500 on planning or designing such a structure or by submitting any other credible evidence that she or he has made substantial progress toward planning or constructing a structure that would create an impermissible interference; and

3. The benefits to the applicant and the public will exceed any burdens.

(b) An agency may grant a permit subject to any condition or exemption the agency deems necessary to minimize the possibility that the future development of nearby property will create an impermissible interference or to minimize any other burden on any person affected by granting the permit. Such conditions or exemptions may include but are not limited to restrictions on the location of the solar collector or wind energy system and requirements for the compensation of persons affected by the granting of the permit.

(6) RECORD OF PERMIT. If an agency grants a permit:

(a) The agency shall specify the property restricted by the permit under sub. (7) and shall prepare notice of the granting of the permit. The notice shall include the identification required under s. 706.05 (2) (c) for the owner and the property upon which the solar collector or wind energy system is or will be located and for any owner and property restricted by the permit under sub. (7), and shall indicate that the property may not be developed and vegetation may not be planted on the property so as to create an impermissible interference with the solar collector or wind energy system which is the subject of the permit unless the permit affecting the property is terminated under sub. (9) or unless an agreement affecting the property is filed under sub. (10).

(b) The applicant shall record with the register of deeds of the county in which the property is located the notice under par. (a) for each property specified under par. (a) and for the property upon which the solar collector or wind energy system is or will be located.

(7) REMEDIES FOR IMPERMISSIBLE INTERFERENCE. (a) Any person who uses property which he or she owns or permits any other person to use the property in a way which creates an impermissible interference under a permit which has been granted or which is the subject of an application shall be liable to the permit holder or applicant for damages, except as provided under par. (b), for any loss due to the impermissible interference, court costs and reasonable attorney fees unless:

1. The building permit was applied for prior to receipt of a notice under sub. (3) (b) or the agency determines not to grant a permit after a hearing under sub. (4).

2. A permit affecting the property is terminated under sub. (9).

3. An agreement affecting the property is filed under sub. (10).

(b) A permit holder is entitled to an injunction to require the trimming of any vegetation which creates or would create an impermissible interference as defined under sub. (1) (f). If the court finds on behalf of the permit holder, the permit holder shall be entitled to a permanent injunction, damages, court costs and reasonable attorney fees.

(8) APPEALS. Any person aggrieved by a determination by a municipality under this section may appeal the determination to the circuit court for a review.

(9) TERMINATION OF SOLAR OR WIND ACCESS RIGHTS. (a) Any right protected by a permit under this section shall terminate if the agency determines that the solar collector or wind energy system which is the subject of the permit is:

1. Permanently removed or is not used for 2 consecutive years, excluding time spent on repairs or improvements.

2. Not installed and functioning within 2 years after the date of issuance of the permit.

(b) The agency shall give the permit holder written notice and an opportunity for a hearing on a proposed termination under par. (a).

(c) If the agency terminates a permit, the agency may charge the permit holder for the cost of recording and record a notice of termination with the register of deeds, who shall record the notice with the notice recorded under sub. (6) (b) or indicate on any notice recorded under sub. (6) (b) that the permit has been terminated.

(10) WAIVER. A permit holder by written agreement may waive all or part of any right protected by a permit. A copy of such agreement shall be recorded with the register of deeds, who shall record such copy with the notice recorded under sub. (6) (b).

(11) PRESERVATION OF RIGHTS. The transfer of title to any property shall not change the rights and duties under this section or under an ordinance adopted under sub. (2).

(12) CONSTRUCTION. (a) This section may not be construed to require that an owner obtain a permit prior to installing a solar collector or wind energy system.

(b) This section may not be construed to mean that acquisition of a renewable energy resource easement under s. 700.35 is in any way contingent upon the granting of a permit under this section.

History: 1981 c. 354; 1983 a. 189 s. 329 (14); 1983 a. 532 s. 36; 1993 a. 414; 1995 a. 201; 1999 a. 150 s. 82; Stats. 1999 s. 66.0403; 2007 a. 97; 2009 a. 40.

The common law right to solar access is discussed. Prah v. Maretti, 108 Wis. 2d 223, 321 N.W.2d 182 (1982).

The owner of an energy system does not need a permit under this section. Barring enforceable municipal restrictions, an owner may construct a system without prior municipal approval. This section benefits and protects the owner of the system by restricting the use of nearby property to prevent an interference with the system. State ex rel. Numrich v. City of Mequon Board of Zoning Appeals, 2001 WI App 88, 242 Wis. 2d 677, 626 N.W.2d 366, 00–1643.

Wisconsin recognizes the power of the sun: Prah v. Maretti and the solar access act. 1983 WLR 1263.

66.0404 Mobile tower siting regulations. (1) DEFINITIONS. In this section:

(a) "Antenna" means communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of mobile services.

(b) "Application" means an application for a permit under this section to engage in an activity specified in sub. (2) (a) or a class 2 collocation.

(c) "Building permit" means a permit issued by a political subdivision that authorizes an applicant to conduct construction activity that is consistent with the political subdivision's building code.

(d) "Class 1 collocation" means the placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free standing support structure for the facility but does need to engage in substantial modification.

(e) "Class 2 collocation" means the placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free standing support structure for the facility or engage in substantial modification.

(f) "Collocation" means class 1 or class 2 collocation or both.

(g) "Distributed antenna system" means a network of spatially separated antenna nodes that is connected to a common source via a transport medium and that provides mobile service within a geographic area or structure.

(h) "Equipment compound" means an area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities.

(i) "Existing structure" means a support structure that exists at the time a request for permission to place mobile service facilities on a support structure is filed with a political subdivision.

(j) "Fall zone" means the area over which a mobile support structure is designed to collapse.

(k) "Mobile service" has the meaning given in 47 USC 153 (33).

(L) "Mobile service facility" means the set of equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment, that is necessary to provide mobile service to a discrete geographic area, but does not include the underlying support structure.

(m) "Mobile service provider" means a person who provides mobile service.

(n) "Mobile service support structure" means a freestanding structure that is designed to support a mobile service facility.

(o) "Permit" means a permit, other than a building permit, or approval issued by a political subdivision which authorizes any of the following activities by an applicant:

1. A class 1 collocation.

2. A class 2 collocation.

3. The construction of a mobile service support structure.

(p) "Political subdivision" means a city, village, town, or county.

(q) "Public utility" has the meaning given in s. 196.01 (5).

(r) "Search ring" means a shape drawn on a map to indicate the general area within which a mobile service support structure should be located to meet radio frequency engineering requirements, taking into account other factors including topography and the demographics of the service area.

(s) "Substantial modification" means the modification of a mobile service support structure, including the mounting of an antenna on such a structure, that does any of the following:

1. For structures with an overall height of 200 feet or less, increases the overall height of the structure by more than 20 feet.

2. For structures with an overall height of more than 200 feet, increases the overall height of the structure by 10 percent or more.

3. Measured at the level of the appurtenance added to the structure as a result of the modification, increases the width of the support structure by 20 feet or more, unless a larger area is necessary for collocation.

4. Increases the square footage of an existing equipment compound to a total area of more than 2,500 square feet.

(t) "Support structure" means an existing or new structure that supports or can support a mobile service facility, including a mobile service support structure, utility pole, water tower, building, or other structure.

(u) "Utility pole" means a structure owned or operated by an alternative telecommunications utility, as defined in s. 196.01 (1d); public utility, as defined in s. 196.01 (5); telecommunications utility, as defined in s. 196.01 (10); political subdivision; or cooperative association organized under ch. 185; and that is designed specifically for and used to carry lines, cables, or wires for telecommunications service, as defined in s. 182.017 (1g) (cq); for video service, as defined in s. 66.0420 (2) (y); for electricity; or to provide light.

(2) NEW CONSTRUCTION OR SUBSTANTIAL MODIFICATION OF FACILITIES AND SUPPORT STRUCTURES. (a) Subject to the provisions and limitations of this section, a political subdivision may enact a zoning ordinance under s. 59.69, 60.61, or 62.23 to regulate any of the following activities:

1. The siting and construction of a new mobile service support structure and facilities.

2. With regard to a class 1 collocation, the substantial modification of an existing support structure and mobile service facilities.

(b) If a political subdivision regulates an activity described under par. (a), the regulation shall prescribe the application process which a person must complete to engage in the siting, construction, or modification activities described in par. (a). The application shall be in writing and shall contain all of the following information:

1. The name and business address of, and the contact individual for, the applicant.

2. The location of the proposed or affected support structure.

3. The location of the proposed mobile service facility.

4. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.

5. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.

6. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has

action within the initial 90–day period, or the extended 90–day time period, the commission is considered to have issued the certificate or approval for construction with respect to the application.

(6) If the commission finds that any public utility has taken or is about to take an action which violates or disregards a rule or special order under this section, the commission, in its own name either before or after investigation or public hearing and either before or after issuing any additional orders or directions it deems proper, may bring an action in the circuit court of Dane County to enjoin the action. If necessary to preserve the existing state of affairs, the court may issue a temporary injunction pending a hearing upon the merits. An appeal from an order or judgment of the circuit court may be taken to the court of appeals.

History: Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1977 c. 187; 1979 c. 110 s. 60 (9); 1983 a. 53; 1985 a. 60; 1993 a. 496; 1995 a. 227; 2003 a. 89; 2007 a. 227; 2011 a. 22, 32, 155; 2013 a. 125, 300; 2015 a. 299; 2017 a. 58, 136; 2017 a. 365 s. 112; 2021 a. 24, 85, 86.

Cross–reference: See also chs. PSC 112, 113, 114, and 133, Wis. adm. code.

There is no hearing requirement for the issuance of a certificate authorizing service. Adams–Marquette Electric Cooperative v. PSC, 51 Wis. 2d 718, 188 N.W.2d 515 (1971).

The "public" in sub. (3) (b) includes all electric consumers in the state, not only the ratepayers of the utility seeking authorization. Wisconsin Power & Light Co. v. PSC, 148 Wis. 2d 881, 437 N.W.2d 888 (Ct. App. 1989).

Sub. (3) controls a utility's application to construct an out–of–state electric generating facility. Section 196.491 (3) applies exclusively to in–state facilities. Under s. 196.01 (5) (a) and sub. (1) (am), every public utility has availed itself of the state's regulatory jurisdiction by obtaining authorization to engage in public utility business. Therefore, when the Public Service Commission reviews an application under sub. (3) it is a statutory entity that is being regulated, not a person's activity of constructing a facility, as is the case under s. 196.491 (3). Wisconsin Industrial Energy Group v. Public Service Commission, 2012 WI 89, 342 Wis. 2d 576, 819 N.W.2d 240, 10–2762.

196.491 Strategic energy assessment; electric generating facilities and transmission lines; natural gas lines.

(1) DEFINITIONS. In this section:

(am) "Affiliated interest" has the meaning given in s. 196.52 (1).

(b) "Commencement of construction" means site clearing, excavation, placement of facilities or any other substantial action adversely affecting the natural environment of the site, but does not mean borings necessary to determine foundation conditions or other preconstruction monitoring to establish background information related to site or environmental suitability.

(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.

(c) "Department" means the department of natural resources.

(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, which owns or operates, or plans within the next 3 years to construct, own or operate, facilities in the state.

(e) "Facility" means a large electric generating facility or a high–voltage transmission line.

(f) Except as provided in subs. (2) (b) 8. and (3) (d) 3m., "high–voltage transmission line" means a conductor of electric energy exceeding one mile in length designed for operation at a nominal voltage of 100 kilovolts or more, together with associated facilities, and does not include transmission line relocations that are within an electronics and information technology manufacturing zone designated under s. 238.396 (1m) or that the commission determines are necessary to facilitate highway or airport projects.

(g) "Large electric generating facility" means electric generating equipment and associated facilities designed for nominal operation at a capacity of 100 megawatts or more.

(w) 1. "Wholesale merchant plant" means, except as provided in subd. 2., 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:

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

b. A person that is not a public utility.

2. "Wholesale merchant plant" does not include an electric generating facility or an improvement to an electric generating facility that is subject to a leased generation contract, as defined in s. 196.52 (9) (a) 3.

(2) STRATEGIC ENERGY ASSESSMENT. (a) 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:

3. Identify and describe large electric generating facilities on which an electric utility plans to commence construction within 3 years.

3g. Assess the adequacy and reliability of purchased generation capacity and energy to serve the needs of the public.

3m. Identify and describe high–voltage transmission lines on which an electric utility plans to commence construction within 3 years.

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.

4. Identify and describe the projected demand for electric energy and the basis for determining the projected demand.

7. Identify and describe activities to discourage inefficient and excessive power use.

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 environmentally 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.

(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).

(b) 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:

1. Department of administration.

2. Department of safety and professional services.

3. Department of health services.

4. Department of justice.

5. Department of natural resources.

6. Department of transportation.

7. The director or chairperson of each regional planning commission constituted under s. 66.0309 which has jurisdiction over any area where a facility is proposed to be located or which requests a copy of such plan.

8. The lower Wisconsin state riverway board if the 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).

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.

(e) Any state agency, as defined in s. 16.310 (1), county, municipality, town, or person may submit written comments to the commission on a strategic energy assessment within 90 days after copies of the draft are issued under par. (b).

(f) Section 1.11 (2) (c) shall not apply to a strategic energy assessment prepared under par. (a).

(g) No sooner than 30 and no later than 90 days after copies of the draft are issued under par. (b), the commission shall hold a hearing 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 determines will be significantly affected by facilities 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 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 strategic energy assessment. A record of the hearing shall be made and considered by the commission as comments on the strategic energy assessment under par. (e).

(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).

Cross-reference: See also ch. PSC 111, Wis. adm. code.

(2r) LOCAL ORDINANCES. No local ordinance may prohibit or restrict testing activities undertaken by an electric utility for purposes of 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.

(3) CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY. (a) 1. Except as provided in sub. (3b), no person may commence the construction of a facility unless the person has applied for and received a certificate of public convenience and necessity under this subsection. A person who proposes to construct a large electric generating facility may apply for a certificate for that facility and for another certificate for an associated high–voltage transmission line for which a certificate under this subsection is required by submitting a single application, and the commission shall consider that single application by conducting a single proceeding and applying the requirements of this subsection to each facility addressed in that application in the same manner that the commission applies the requirements of this subsection to facilities for which separate applications are filed. An application for a certificate issued under this subsection shall be in the form and contain the information required by commission rules and shall be filed with the commission not less than 6 months prior to the commencement of construction of a facility. Within 10 days after filing an application under this subdivision, the commission shall send an electronic 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. At the request of such a clerk or main public library, the commission shall also send a paper copy of the application.

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 commission 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 or refiled, the application shall be considered to be complete. Within 10 days after the commission determines that an application is complete or the application is considered to be complete, the commission shall send an electronic copy of the complete 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. At the request of such a clerk or main public library, the commission shall also send a paper copy of the application.

2m. If an application for a large electric generating facility is complete in all other respects, the commission shall determine that the application is complete under subd. 2. even if one or more of the following apply:

a. The application includes some but not all of the information necessary to evaluate or approve the construction of transmission facilities that may be associated with the proposed electric generating facility; and a person other than the applicant will construct, or be responsible for the construction of, the transmission facilities; and the application is not a single application for both a certificate for a large electric generating facility and another certificate for a high–voltage transmission line.

b. The applicant proposes alternative construction sites for the facility that are contiguous or proximate, provided that at least one of the proposed sites is a brownfield, as defined in s. 238.13 (1) (a), or the site of a former or existing large electric generating facility.

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

3. a. At least 60 days before a person files an application under subd. 1., the person shall provide the department with an engineering plan if the facility is a large electric generating facility. The engineering plan shall show the location of the facility, a description of the facility, including the major components of the facility that have a significant air, water or solid waste pollution potential, and a brief description of the anticipated effects of the facility on air quality, water quality, wetlands, solid waste disposal capacity, and other natural resources. Within 30 days after a person provides an engineering plan, the department shall provide the 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.

b. Except as provided under subd. 3. c., 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. Except as provided in s. 30.025 (4), 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.

c. The 20–day deadline specified in subd. 3. b. for applying for the applicable permits and approvals specified in the listing provided by the department does not apply to a person proposing

to construct a utility facility for ferrous mineral mining and processing activities governed by subch. III of ch. 295.

(b) The commission shall hold a public hearing on an application filed under par. (a) 1. 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.

(d) Except as provided under par. (e), the commission shall approve an application filed under par. (a) 1. for a certificate of public convenience and necessity only if the commission determines all of the following:

2. The proposed facility satisfies the reasonable needs of the public for an adequate supply of electric energy. This subdivision does not apply to a wholesale merchant plant.

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.

3m. For a high–voltage transmission line, as defined in s. 30.40 (3r), that is to be located in the lower Wisconsin state riverway, as defined in s. 30.40 (15), the high–voltage transmission line will not impair, to the extent practicable, the scenic beauty or the natural value of the riverway. The commission may not require that a high–voltage transmission line, as defined in s. 30.40 (3r), be placed underground in order for it to approve an application.

3r. For a high–voltage transmission line that is proposed to increase the transmission import capability into this state, existing rights–of–way are used to the extent practicable and the routing and design of the high–voltage transmission line minimizes environmental impacts in a manner that is consistent with achieving reasonable electric rates.

3t. For a high–voltage transmission line that is designed for operation at a nominal voltage of 345 kilovolts or more, the high–voltage transmission line provides usage, service or increased regional reliability benefits to the wholesale and retail customers or members in this state and the benefits of the high–voltage transmission line are reasonable in relation to the cost of the high–voltage transmission line.

4. The proposed facility will not have undue adverse impact on other environmental values such as, but not limited to, ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water and recreational use. In its consideration of the impact on other environmental values, the commission may not determine that the proposed facility will have an undue adverse impact on these values because of the impact of air pollution if the proposed facility will meet the requirements of ch. 285.

5. The proposed facility complies with the criteria under s. 196.49 (3) (b) if the application is by a public utility as defined in s. 196.01.

6. The proposed facility will not unreasonably interfere with the orderly land use and development plans for the area involved.

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

8. For a large electric generating facility, brownfields, as defined in s. 238.13 (1) (a), are used to the extent practicable.

(dg) In making a determination under par. (d) that applies to a large electric generating facility, if the large electric generating facility is a wind energy system, as defined in s. 66.0403 (1) (m), the commission shall consider whether installation or use of the facility is consistent with the standards specified in the rules promulgated by the commission under s. 196.378 (4g) (b).

(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).

(e) If an application filed under par. (a) 1. 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).

(g) The commission shall take final action on an application filed under par. (a) 1. within 180 days after the application 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 chairperson of the commission extends the time period for no more than an additional 180 days for good cause. 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.

(gm) The commission may not approve an application filed after October 29, 1999, under this subsection for a certificate of public convenience and necessity for a high–voltage transmission line that is designed for operation at a nominal voltage of 345 kilovolts or more unless the approval includes the condition that the applicant shall pay the fees specified in sub. (3g) (a). If the commission has approved an application under this subsection for a certificate of public convenience and necessity for a high–voltage transmission line that is designed for operation at a nominal voltage of 345 kilovolts or more that was filed after April 1, 1999, and before October 29, 1999, the commission shall require the applicant to pay the fees specified in sub. (3g) (a). For any application subject to this paragraph, the commission shall determine the cost of the high–voltage transmission line, identify the counties, towns, villages and cities through which the high–voltage transmission line is routed and allocate the amount of investment associated with the high–voltage transmission line to each such county, town, village and city.

(i) If installation or utilization of a facility for which a certificate of convenience and necessity has been granted is precluded or inhibited by a local ordinance, the installation and utilization of the facility may nevertheless proceed.

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

(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 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 high–voltage transmission line by the commission.

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

(b) The commission shall promulgate rules specifying the information that must be included in an application under this subsection. If the commission receives an application that complies

with rules, the commission shall, as soon as practicable, notify the applicant that the commission has received a complete application.

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

(3c) COMMENCEMENT OF CONSTRUCTION OF LARGE ELECTRIC GENERATING FACILITIES. (a) Except as provided in par. (b), an electric utility that has received a certificate of public convenience and necessity under sub. (3) for constructing a large electric generating facility shall commence construction no later than one year after the latest of the following:

1. The date on which the commission issues the certificate of public convenience and necessity.

2. The date on which the electric utility has been issued every federal and state permit, approval, and license that is required prior to commencement of construction.

3. The date on which every deadline has expired for requesting administrative review or reconsideration of every federal and state permit, approval, and license that is required prior to commencement of construction.

4. The date on which the electric utility has received the final decision, after exhaustion of judicial review, in every proceeding for judicial review described in sub. (3) (j).

(b) Upon showing of good cause, the commission may grant an extension to the deadline specified in par. (a).

(c) If an electric utility does not commence construction of a large electric generating facility within the deadline specified in par. (a) or extended under par. (b), the certificate of public convenience and necessity is void, and the electric utility may not commence construction of the large electric generating facility.

(3e) CONVEYANCE OF PROPERTY TO AN ELECTRIC OR NATURAL GAS UTILITY. (ag) In this subsection:

1. "Certificate" means, with respect to an electric utility, a certificate of public convenience and necessity under sub. (3) and, with respect to a natural gas public utility, a certificate under s. 196.49.

2. "Electric utility" has the meaning given in s. 196.485 (1) (bs).

3. "Line" means, with respect to an electric utility, a high–voltage transmission line and, with respect to a natural gas public utility, a natural gas transmission or distribution line.

4. "Utility" means an electric utility or natural gas public utility.

(am) Notwithstanding s. 32.03 (1), if a utility receives a certificate from the commission for the construction of a line over, on, or under land owned by a county, city, village, town, public board or commission, the owner of the land shall convey to the utility, at fair market value as determined under par. (b), the interest in the land necessary for the construction, operation, and maintenance of the line. This paragraph applies to a line for which construction commences before, on, or after February 6, 2016, except that this paragraph does not affect the terms of any conveyance of an interest in land that was completed before February 6, 2016.

(b) If the utility and owner of the land cannot agree on the fair market value of the interest in land sought by the utility within 90 days after the utility notifies the owner that the certificate has been issued, the issue of the fair market value of the interest shall be determined by an arbitrator appointed by the circuit court of the county in which the land is located, except that the utility and owner of the land may agree to extend the 90–day period by an additional 90 days if necessary to reach an agreement concerning fair market value in lieu of arbitration. The interest in land shall be conveyed to the utility upon commencement of the arbitration proceeding. Any arbitration under this paragraph shall be conducted on an expedited basis to the extent that an expedited proceeding is available. The arbitrator and circuit court appointing the arbitrator shall have the powers and duties specified in ch. 788. The decision of an arbitrator concerning fair market value shall be binding on the parties, except as otherwise provided under ch. 788.

(3g) FEES FOR CERTAIN HIGH–VOLTAGE TRANSMISSION LINES. (a) A person who receives a certificate of public convenience and necessity for a high–voltage transmission line that is designed for operation at a nominal voltage of 345 kilovolts or more under sub. (3) shall pay the department of administration an annual impact fee as specified in the rules promulgated by the department of administration under s. 16.969 (2) (a) and shall pay the department of administration a one–time environmental impact fee as specified in the rules promulgated by the department of administration under s. 16.969 (2) (b).

(b) A person that pays a fee under par. (a) may not use the payment to offset any other mitigation measure that is required in an order by the commission under sub. (3) regarding the certificate of public convenience and necessity specified in par. (a).

(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 percent.

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 merger enforcement policy, as defined in s. 196.485 (1) (dr).

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, "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.

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.

(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.

Cross–reference: See also s. PSC 100.11, Wis. adm. code.

(4) EXEMPTIONS. (b) Subsection (3) does not apply to a person that constructs electric generating equipment and associated facilities if the person satisfies each of the following:

1. The person is not a public utility or 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.

2. The person shows to the satisfaction of the commission that the person reasonably anticipates, at the time that construction of the equipment or facilities commences, that on each day that the equipment and facilities are in operation the person will consume no less than 70 percent of the aggregate kilowatt hours output from the equipment and facilities in manufacturing processes at the site where the equipment and facilities are located or in ferrous mineral mining and processing activities governed by subch. III of ch. 295 at the site where the equipment and facilities are located.

(c) 1e. In this paragraph, "centerline" means a line drawn through the centerline of an electric transmission line along its length.

1m. Except as provided in subd. 1s., 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 345 kilovolts if not more than one–half mile of the centerline of the new high–voltage transmission line is located more than 60 feet on either side of the centerline of an existing electric transmission line operating at a nominal voltage of 69 kilovolts or more and all of the following apply:

a. The project will not have undue adverse environmental impacts.

b. The new high–voltage transmission line requires the acquisition in total of one–half mile or less of rights–of–way from landowners from which rights–of–way would not be required to be acquired for the existing electric transmission line.

1s. A certificate under sub. (3) is not required for a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power, or water to its members to construct a high–voltage transmission line designed for operation at a nominal voltage of less than 345 kilovolts if all related construction activity takes place entirely within the area of an existing electric transmission line right–of–way.

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

3. If construction or utilization of a high–voltage transmission line described in subd. 1m. or 1s. is precluded or inhibited by a local ordinance, the construction and utilization of the line may nevertheless proceed.

(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.

(6) WAIVER. The commission may waive compliance with any requirement of this section to the extent necessary to restore service which has been substantially interrupted by a natural catastrophe, accident, sabotage or act of God.

History: 1975 c. 68, 199; 1979 c. 221, 361; 1983 a. 53 s. 114; 1983 a. 192, 401; 1985 a. 182 s. 57; 1989 a. 31; 1993 a. 184; 1995 a. 27 ss. 9116 (5), 9126 (19); 1995 a. 227, 409; 1997 a. 27, 35, 204; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 33, 89; 2005 a. 24, 29; 2007 a. 20 s. 9121 (6) (a); 2009 a. 40, 378, 379; 2011 a. 32, 155; 2011 a. 260 s. 81; 2013 a. 1, 10, 125, 173; 2015 a. 148, 344; 2017 a. 58, 136; 2019 a. 9; 2021 a. 24, 239.

Cross–reference: See also ch. PSC 112, Wis. adm. code.

It was reasonable for the PSC to issue a certificate conditioned on the issuance of DNR permits when legislatively imposed time constraints could not have been met if sub. (3) (c) had been strictly followed and all permits required before the issuance of the certificate. Responsible Use of Rural & Agricultural Land v. PSC, 2000 WI 129, 239 Wis. 2d 660, 619 N.W.2d 888, 99–2430.

While sub. (3) (a) 1. does not provide standards to determine if an application for a certificate of public convenience and necessity is complete, it specifically states that an application must contain the information required by PSC rules and PSC is not free to ignore those requirements in making its completeness determination. Although the PSC's decision that an application is complete is not itself a final decision, it is nonetheless subject to judicial review. Clean Wisconsin, Inc. v. Public Service Commission, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768, 04–3179.

Interpreting a PSC rule to require a certificate of public convenience and necessity applicant to file the actual regulatory approvals before the application can be deemed to be complete would conflict with sub. (3) (a) 3. a. and b. The statute expressly contemplates that an applicant will not have the required DNR permits in hand at the time the PSC must render its completeness determination. Clean Wisconsin, Inc. v. Public Service Commission, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768, 04–3179.

There is nothing unreasonable in the PSC determining an application to be complete yet requesting further information to assist in its review of the certificate of public convenience and necessity application. Clean Wisconsin, Inc. v. Public Service Commission, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768, 04–3179.

Sub. (3) (i) expressly withdraws the power of municipalities to act, once the PSC has issued a certificate of public convenience and necessity, on any matter that the PSC has addressed or could have addressed in that administrative proceeding. American Transmission Co., LLC v. Dane County, 2009 WI App 126, 321 Wis. 2d 138, 772 N.W.2d 731, 08–2604.

Section 196.49 (3) controls a utility's application to construct an out–of–state electric generating facility. Sub. (3) applies exclusively to in–state facilities. Under s. 196.01 (5) (a) and s. 196.491 (1) (am), every public utility has availed itself of Wisconsin's regulatory jurisdiction by obtaining authorization to engage in public utility business. Therefore, when the Public Service Commission reviews an application under s. 196.49 (3) it is a statutory entity that is being regulated, not a person's activity of constructing a facility, as is the case under sub. (3). Wisconsin Industrial Energy Group v. Public Service Commission, 2012 WI 89, 342 Wis. 2d 576, 819 N.W.2d 240, 10–2762.

The Public Service Commission's (PSC) interpretation of the reasonable needs of the public is not limited to the existing infrastructure's ability to "keep the lights on." Rather, PSC takes into account additional relevant factors in making its determination, such as increased reliability, economic benefits, and public policy considerations. PSC's interpretation of "reasonable needs" comports with the intent of sub. (3) (d). Town of Holland v. Public Service Commission, 2018 WI App 38, 382 Wis. 2d 799, 913 N.W.2d 914, 17–1129.

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

TOWN OF RANDALL

RESOLUTION NUMBER: 2023-001

TITLE: ORDINANCE TO CREATE CHAPTER 31 OF THE ORDINANCES OF THE TOWN OF RANDALL, PERTAINING TO SOLAR ENERGY SYSTEMS

WHEREAS, it is desired to create Chapter 31 of the Ordinances of the Town of Randall, pertaining to Solar Energy Systems; and

WHEREAS, the Town Board of the Town of Randall wishes to create such Chapter in the manner described in the attached Exhibit X.

NOW, THEREFORE, the Town Board of the Town of Randall, Kenosha County, Wisconsin, does hereby create, Chapter 31 of the Ordinances of the Town of Randall as described in the attached Exhibit X.

Dated this 3rd day of April, 2023.

TOWN OF RANDALL

By: Paula A Soderman
Paula A. Soderman, Town Chair

Attest: Callie Rucker
Callie Rucker, Town Clerk