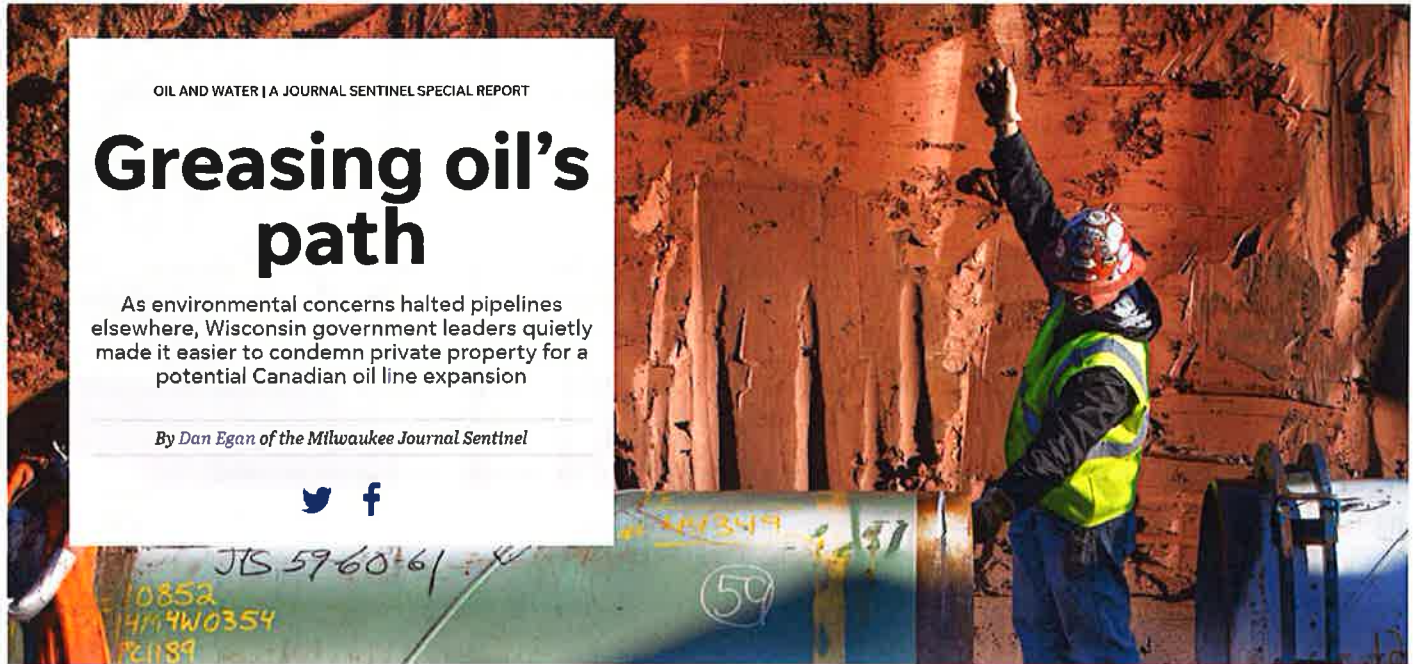


OIL AND WATER | A JOURNAL SENTINEL SPECIAL REPORT

# Greasing oil's path

As environmental concerns halted pipelines elsewhere, Wisconsin government leaders quietly made it easier to condemn private property for a potential Canadian oil line expansion

By Dan Egan of the Milwaukee Journal Sentinel



**Superior** — Jeremy Engelking was on his way back from a deer hunt in 2009 when he tried to stop a construction crew from completing a 1,000-mile oil pipeline running from western Canada to an oil distribution center in his hometown on the shore of Lake Superior.

Wearing a blaze orange parka on that blustery December morning, the 27-year-old pulled his green Honda ATV in front of the workers' heavy equipment and told them to stop.

Cellphones were drawn, 911 was called and a sheriff's deputy arrived within minutes to quash the one-man protest of a pipe being laid by Canadian pipeline giant Enbridge, Inc.

"I pulled out my taser and ordered Engelking to turn around away from me and go down on his knees," a Douglas County Sheriff's law enforcement officer identified only as Sgt. Smith wrote in his official report. "Engelking complied at which point he was placed in handcuffs and escorted off the work sight (sic) back to my squad. Engelking was informed he was under arrest."

Engelking's hunting rifle, which remained in its case during the incident, was confiscated, as was his ATV. Engelking was hauled off to jail on charges of trespassing.

On his own property.

It took more than five years for the courts to sort it all out, but it turned out that the law enforcement officers got everything backward that morning.

It turned out that Engelking, whom a pipeline construction worker acknowledged was "polite and calm" during the entire incident, was not the one trespassing.

The pipeline was.

That pipeline is one of six that now cross the Engelking property. Collectively, they can carry more than 2.5 million barrels of crude oil per day, an around-the clock flow fast enough to fill an Olympic-sized pool every 10 minutes.

The Engelking family — Jeremy and his parents — were awarded \$150,000 in 2014 for what the court determined was Enbridge's unlawful construction of the pipe across the family land.

The court found that Enbridge made a mistake in interpreting the rights to lay pipe across the land — rights its predecessor had purchased for \$60 under a 1949 easement agreement with a previous property owner. Even so, the court allowed the new pipe to remain on the Engelking property and the oil to keep flowing.

Much of the Enbridge oil flowing into Superior comes from the tar sands deposits of western Canada. This "unconventional" oil is reviled by environmentalists because of the energy it takes to tap the tar-like substance, push it through pipes to refineries and then convert it to gasoline.

Shutting the oil flow to refineries was not the Engelkings' reason for objecting to the new pipeline. Their problem was they feared the wording in a new easement agreement Enbridge wanted them to sign would let the company claim even more use of their land in coming years.

When the family did not sign off on the new easement, Enbridge laid the pipe anyway, later arguing in court — unsuccessfully — that the language in the 1949 easement gave it authority to do so.

"It's not that we're against the pipelines," Jeremy Engelking said. "We just didn't want to agree to give Enbridge additional rights to our land."

But Enbridge doesn't necessarily need a property owner's permission to legally claim use of his or her land. The company has a history in Wisconsin of rolling over reluctant landowners' wishes by turning to the government to allow it to claim private land through eminent domain, one of the most awesome powers government wields.

Eminent domain allows the government to compel an individual to sell his or her private property, or the use of it, for a project that the government deems a public need, such as highways and power lines.

Of course, people need oil as much as they need roads or schools or electricity. But just how much oil do we need?

The final destination of all the oil flowing across the Engelking property is hard to peg. Most of it flows down an existing pipeline corridor that runs the length of Wisconsin, from Superior to the Illinois border.

From there much of it flows to refineries in the central U.S. and Canada — and beyond. Most of the oil is refined in the U.S., but that doesn't mean it necessarily stays and is burned in U.S. autos.

U.S. gasoline exports to rival economies — including China, India, Singapore and Brazil — have increased nearly five-fold in the past decade and now hover around 5 million barrels per day.

Crude oil exports from the U.S., which had been largely prohibited for decades after the energy crisis of the early 1970s, have soared since that ban was lifted in late 2015 to about 1 million barrels per day.

As these exports increase, the federal Energy Information Administration predicts U.S. gasoline consumption will drop by about 1 million barrels in the next decade as sales of fuel efficient and electric vehicles continue to rise, accounting for more than 25% of the market by 2027.

Meanwhile, increasing volumes of tar sands oil keep coming out of the ground in western Canada, and Enbridge is now constructing a new pipe from Alberta to Superior to replace a deteriorating line that is nearly 50 years old.

If Enbridge succeeds in getting permits for the \$7 billion project from the state of Minnesota, it is likely going to need to construct another pipeline flowing out of Superior to the Illinois border.

At the same time, political pressure is growing to close two 64-year-old pipelines in Michigan that lie at the bottom of the Straits of Mackinac. A study financed by Enbridge hints a likely alternative path for that oil to get to market would be the Wisconsin pipeline system that crosses more than 1,000 parcels of private land. Many of those properties are owned by individuals who, like the Engelkings, have no interest in allowing another pipeline across their property.

And, like the Engelkings, their resistance might not make a difference.

In 2015, Enbridge persuaded Wisconsin Republicans, who have long expressed vigorous support for private property rights, to change the state's eminent domain law. The change makes it easier for the company to turn to the government to force property owners to allow construction crews to bury new pipes across their land.

The move stunned many citizens in the path of the potential pipeline, but it came as no surprise to those who have resisted the company's expansion efforts in recent years.

"Enbridge seems to have this kind of entitlement mentality that we are a big corporation and we have a right to do this, and you can't stop us," said the Engelkings' attorney, Kevin Sandstrom.

And, so far, nobody in Wisconsin has.

'Good news' goes bad

The caller who interrupted James Botsford's dinner in early spring 2013 told the Wausau resident he had just hit the jackpot.

"We have good news," said an Enbridge representative. "Your land has been selected as a possible location along a proposed corridor for a new pipeline."

The land Enbridge was eyeing is a 160-acre patch of eastern North Dakota farmland that has been in the Botsford family for decades. The parcel is just down the road from Botsford's grandfather's old farm, where the young Botsford spent summers helping him raise wheat, oats, sunflowers and soybeans.

The Enbridge representative explained that the company's proposed "Sandpiper Pipeline," designed to carry North Dakota shale oil to the Enbridge terminal in Superior, would likely be crossing the Botsford family property and that he would have a check coming as compensation.

Botsford told him not to waste the paper.

The retired attorney, who moved to Wisconsin in 1991, maintains he is no environmental warrior, but said he and his wife have zero interest in helping Enbridge get North Dakota's shale oil to market.

The couple views shale oil as a particularly troublesome fuel due to environmental damage caused by hydraulic fracturing, or fracking, that is required to bring it to the surface.

"We drive cars and tractors and lawnmowers," Botsford said, acknowledging his own oil dependence.

"But when 'Big Oil' knocks on your door and dangles a bag of silver and says, we'd like you to materially participate in putting a lot more carbon into the atmosphere, especially from this extra carbon-laden oil that we can only get out by fracking, which brings an additional layer of toxins ... those things combined made me tell them: No. I don't want to participate."

Botsford eventually found himself as the lone holdout of all the property owners along the North Dakota portion of the 616-mile route.

He said pressure to cede a 50-foot swath across a half mile of his land came from friendly Enbridge representatives — at first. The initial offer, he said, was for about \$12,000, and when he declined the company doubled it. Then the offers kept climbing, to \$35,000, to \$38,000 and then to \$51,000.

Each offer came with a follow-up call from Enbridge asking if Botsford and his wife were going to sign the agreement.

"I kept saying: 'It's a matter of principle. My wife and I don't want your money, and we're not going to participate.'"

Botsford said he finally got a call from "a corporate muckety-muck." He doesn't recall his name, but Botsford remembers what he told him: "You know we are never going to say, 'Yes.' So why don't you go around us?" Botsford recalled. "He said: 'Mr. Botsford, you don't understand — We are Enbridge. We don't go around anything. We go through it.'"

"That was it for me," Botsford said, "and I responded — and this is verbatim — 'Well, in that case: (Expletive) you.'"

The company's hard line, Botsford said, elevated his principled stand against the pipeline. Suddenly it wasn't just about trying to block the flow of unconventional oil.

in North Dakota.

"This was a foreign corporation, a Canadian-based corporation, wanting to condemn our land and their whole purpose of this pipeline was to get this oil to the Great Lakes to sell it on the world market," he said. "How could this be justified as a public use for a North Dakota land owner?"

Enbridge sued Botsford, and eventually won the right to claim the use of the Botsfords' property through eminent domain.

The Botsfords didn't give up.

They pressed their case to the North Dakota Supreme Court, and that is where Enbridge backed down.

One likely reason is that in fall 2016 Enbridge announced it was pulling back on its plans for the Sandpiper line and instead investing in the Dakota Access Pipeline, which runs from North Dakota to Illinois.

To settle with Botsford, Enbridge returned to him the easement granting the company the right to bury the pipeline on his property, and the company made a written promise in court to never again seek his property for a pipeline route. It also paid his attorneys fees.

Botsford's home near Wausau is not along Enbridge's Wisconsin pipeline route, but he is closely following the controversy over the potential for a new pipeline running out of Superior because it would likely require easement acquisitions along the entire route which could lead to fights similar to the one he fought in North Dakota.

He said if the company does push ahead with a statewide easement expansion, he expects a much more ferocious fight from Wisconsin landowners than what took place in North Dakota.

"Wisconsin is more worldly, more analytical. More critical," he said. "I don't think Enbridge will be able to steamroll over the people of Wisconsin to the degree they did in North Dakota."

'This is about property rights'

Most of the Canadian oil coursing out of the city of Superior — roughly 20% of the nation's imports — flows through an underground cluster of pipes along an 80-foot wide swath of mostly private land stretching the length of Wisconsin.

Enbridge's predecessor acquired the right to use most all the Wisconsin properties by negotiating deals with individual owners a half century ago. Enbridge's fight with the Engelking family notwithstanding, the company maintains its relationship with those property owners over the years has been based on "trust and ethical dealings," and indeed there are many landowners across the state who have no problem with Enbridge's pipes running under their properties.

Yet the company in recent months has come under blistering criticism from a growing number of landowners who are accusing Enbridge of brutish tactics when it comes to pumping ever-increasing volumes of oil across their property.

The newest Enbridge pipe in Wisconsin opened in 2009, but the company has since added pumps to bump up pressure that allows its capacity to double from an initial 400,000 barrels per day to 900,000 barrels per day. It could soon be carrying 1.2 million barrels per day.

Retired physician Paul Harkins was among more than 50 property owners who drove to Madison in May to tell lawmakers about their sour dealings with Enbridge. He was still stinging from trouble he had with the company during construction of the 2009 pipeline.

In addition to Enbridge's 80-foot-wide easement, the company commonly also has the right to temporarily use additional land beyond the easement borders for maintenance and construction projects related to the pipes.

In Harkins' case, he said Enbridge wanted to cut a swath of trees almost right up to his house to make it easier for construction crews to squeeze the new pipe into the 80-foot easement.

Harkins ended up in court and prevailed in stopping the company from cutting down the trees and endangering his septic system by rolling heavy equipment over it. The pipeline was built anyway and the battle cost him thousands of dollars in legal fees, but he nevertheless claimed victory because he stopped Enbridge from ravaging his property outside Marshfield.

The victory came with a lot of stress — he said he was essentially threatened with financial ruin for trying to stop the crews from leveling his trees.

"It's very intimidating to have a \$35 billion company in your face saying they are going to sue you with the full force of the company," Harkins said.

His victory was short-lived; crews returned to his property a few years ago to conduct a new survey.

The company says it may some day need to expand its easements on private properties across Wisconsin to build a new pipeline because, according to Enbridge engineers, the company's existing easement can hold no more pipes.

The company insists that no decision has been made on whether to pursue a new line crossing the state, let alone a new round of easement acquisitions on private properties along the corridor.

Even so, the company this summer began construction of the 14 mile-long Wisconsin portion of a new \$7 billion line that runs from Alberta to the Enbridge's terminal at Superior.

A pitched battle is under way over the Minnesota pipeline permit to complete the line, and if Enbridge prevails, company critics say that almost surely will necessitate a new pipeline running out of Superior — you can't add to the flow into Superior without expanding the flow out of Superior.

Enbridge, in fact, has previously told its investors it is considering a twin to the Superior-to-Illinois line that opened in 2009 and will soon be capable of carrying 1.2 million barrels per day.

Furthermore, in 2014 crews surveyed lands straddling the existing Wisconsin easement. That included taking an inventory of houses, barns, sheds and other structures and natural features up to 300 feet beyond the current easement border. Company officials say they are not eyeing an easement expansion that wide. If they do eventually move ahead with an expansion, they have said they are considering adding something closer to 50 feet.

Harkins isn't waiting for Enbridge to make up its mind on whether or how to proceed. He's already saying no — and not because he's worried about how a new pipeline could add to the Earth's rising temperatures.

"I'm not an environmental extremist," said the Rhinelander native with undergraduate and medical degrees from the University of Wisconsin. "This is about property rights. This is about safety. And it's about property values."

It may be an uphill fight. While Enbridge says talk of an expansion is premature, it recently became easier for the company to claim use of private properties along the existing pipeline corridor.

The company has the Wisconsin Legislature to thank for that.

Republicans make exception for Enbridge

Just hours before the Fourth of July holiday weekend started in 2015, the Legislature slipped into the state budget bill a 24-page wish list of last-minute measures -- most of which had nothing to do with the state budget.

One of those — a move to gut the state open records law and make it easier for politicians to cut secret deals — was revealed and reversed after public outcry from citizens across the state.

Compared to the other 65 items on the list, number 51 stands out for the profound impact it could have on landowners across the state. It is called "PSC Condemnation Authority for Oil Pipeline Companies."

The PSC is the state Public Service Commission, a three-person board that regulates utilities and many liquids delivered by pipeline, including oil.

The PSC has the authority to condemn private property, a maneuver that has commonly and historically been used to acquire property for government projects that serve all citizens, things like construction of roads, schools and landfills.

But the ability of private companies to gain government support in seizing private lands for profit grew substantially in 2005, when the U.S. Supreme Court ruled that governments can force transfer of private land from one owner to another in the name of economic development.

In their landmark decision — *Kelo vs. New London, Conn.* — the justices ruled that a group of property owners had to sell their homes so they could be replaced with office buildings, condominiums and retail development that would generate more property tax revenue for the city.

The 5-4 decision by the court's liberal justices, joined by swing vote Anthony Kennedy, drew a stinging rebuke from their conservative colleagues as an outrageous case of government overreach.

"Something has gone seriously awry with this Country's interpretation of the Constitution," Justice Clarence Thomas wrote in his dissenting opinion. "Though citizens are safe from the government in their homes, the homes themselves are not." The Connecticut residents lost their properties, but the hoped-for development was never built.

Even so, many conservatives contend the damage done by the ruling extends far beyond the borders of those vacant New London lots.

Some states responded by reining in the authority of governments to claim private lands, specifically for pipelines.

Wisconsin's Republican leadership took a different tack.

The one-paragraph addition in the 2015 state budget bill appeared innocuous enough: "Delete the reference to 'corporation' and substitute 'business entity' in the current law provision which conveys the authority to condemn real estate and personal property to corporations that transmit oil or related products in pipelines in Wisconsin and that maintain a terminal or product delivery facilities in Wisconsin..."

Public records reveal that the tweak in wording was inserted after lobbying on behalf of a U.S. Enbridge subsidiary — Enbridge Energy, Limited Partnership.

Limited liability partnerships are formed for a variety of reasons, including lowering business taxes and limiting a company's exposure to lawsuits involving bankruptcies, or accidents.

The problem for Enbridge was that a limited partnership entity wasn't specifically mentioned in Wisconsin law as an eligible enterprise to acquire property through condemnation.

Enbridge learned this in 2008 when it requested permission from the Public Service Commission to use condemnation to claim additional private properties while constructing its latest pipeline.

Most property owners affected by the expansion negotiated agreements with the company to allow increased rights to use of their land. But in some places along the line the company needed some government muscle to acquire additional rights from the unwilling.

The Public Service Commission gave Enbridge the go-ahead to claim the properties. But in a statement accompanying the approval, one commission member noted that the wording in state law made it ambiguous as to whether Enbridge's limited partnership status made it eligible to acquire private property through condemnation, which she called "one of the state's most dramatic powers" and one that "must be applied solemnly."

Seven years later, Enbridge lobbyists went to work on Republican legislative staff to ensure the company would not be denied future condemnation authority based on its limited liability partnership status.

Email exchanges in the summer of 2015, initially obtained by Wisconsin Public Radio, show an Enbridge lobbyist pressed state legislation drafters to get a change in the description of a business eligible to condemn property from a "corporation" to any "business entity."

When one legislative drafter noted that the change may not be needed because Enbridge had been granted the right to condemn property for the pipeline project in 2008, Enbridge pressed harder.

"The change needs to be made," an Enbridge attorney explained in an email to an Enbridge lobbyist at the time. "The PSC is not like a court. A finding in one contested case has no binding precedential value for another contested case."

Two weeks later, with no public notice or hearing, the company got from the legislature the change it sought.

This is not a blank check for Enbridge to condemn any property it desires. The company would still need approval from the Public Service Commission, which would have to find the project is in the "public interest." But it does remove an obstacle for the commissioners to give Enbridge the ability to condemn private lands. All of the commissioners have been appointed by business-friendly Gov. Scott Walker, who signed the budget changing the law.

Neither the offices of Assembly Speaker Robin Vos nor Senate Majority Leader Scott Fitzgerald responded to repeated requests to answer questions about the law change.

Walker's staff also did not respond to emails inquiring about the change in the law.

Brian Jorde, an attorney who has been consulting Wisconsin property owners along the existing Enbridge pipeline route, said it is impossible to reconcile principles of conservatism with condemning private lands in order to build pipelines to benefit a for-profit company that serves refineries outside the region.

"It's the reality, I think, of economics and dollars superseding values. Because if your value system, as a conservative, is individual rights, individual freedom, defending the constitution, then you could no way ever, morally or ethically, fundamentally support a foreign for-profit company that is going to take those very rights from your neighbors or yourself," he said. "It absolutely cannot be squared."

That argument held sway with central Wisconsin's Wood County Commission late this summer. In a 10-8 vote, the board approved a non-binding resolution asking the state legislature and Walker to change the state condemnation law to prohibit the taking of private land by for-profit oil pipeline companies.

A similar resolution passed Oct. 10 in Walworth County and another one is in the works in Jefferson County. All of the counties are along the Enbridge route.

#### A public necessity?

Paul Wehking, who describes himself as conservative, is nervous about the future of his home, in which he and his wife have raised two teenage boys and near which the Enbridge pipelines run.

Wehking is not asking for anyone's sympathy for having to live with the lines already crossing his property; he knew there was a pipeline easement on the land when he bought his Dane County house 17 years ago.

He didn't protest when a new line was added in 2002, nor when two more lines were added in 2009, including a smaller one that carries a highly volatile "diluent." That is a chemical concoction pumped from the Chicago area to western Canada that liquefies the clay-like tar sands oil so it can be piped south.

Wehking said this diluent line came with a safety packet for the family that included a glow stick, a whistle and a list of Do's and Don'ts should a leak occur. The "don't" list included turning on lights (hence the glow stick), starting a car, or using a cellphone, all of which could spark an explosion.

He said the to-do list was fairly simple.

"They basically tell you to run," he said. "Upwind."

Wehking isn't demanding the diluent line or any other pipe be moved. He just doesn't want Enbridge to be allowed to expand the easement further into his yard, and possibly into his living room.

"I don't think they are evil," Wehking said of Enbridge. "It's just that we'd rather not be infringed upon further — or be condemned and have to move out of there."

Wehking can't understand how the company could be allowed to claim his land for the benefit of its stockholders. And he doesn't buy the argument that the line is necessary for the citizens of the state. Beyond a short-term bump in construction jobs, he said he doesn't see how a new pipeline will significantly boost Wisconsin's economy.

"I haven't seen anything that says how Wisconsin benefits having this thing plowing its way through the state, corner to corner," Wehking said. "If you could see something tangible, in terms of gas prices or jobs here in Wisconsin, that would be one thing."

The Minnesota Department of Commerce recently reached a similar conclusion. In September, it weighed in against construction of the new Enbridge line running from Alberta across the state and into Superior.

The department commissioned a study from the global energy economics consulting firm, London Economics International, to evaluate the need for a new line that could more than double the current line's existing flow from 390,000 barrels per day to 844,000 barrels.

The report's conclusion: Refineries in Minnesota and the Upper Midwest "have been operating at high levels of utilization, which indicates both they are not short of physical supplies of crude oil and have little room to increase total crude runs."

Minnesota's commerce department concluded the state would be better off if Enbridge's existing decrepit line were shut down and the new line not built because the oil is not needed. Enbridge contends the department based its decision on a "flawed analysis" and argues that the oil flowing in the line is indeed a necessity.

Necessity is the operative word for one prominent Wisconsin conservative voice when it comes to eminent domain.

"Eminent domain should only be used for public necessities," Mark Belling said during his Feb. 16 show on WISN-AM radio. He was talking about a push by the Village of Brown Deer to claim a piece of private property to build a new public works facility, a move Belling did not see as essential.

If that landowner did not want to sell, he said, it is the village's responsibility to find someone who does. That's how capitalism works.

"There is a difference between a public necessity and a public improvement or a public good," said Belling.

When asked by the Journal Sentinel about his opinion regarding the pipeline issue as it relates to his views on eminent domain, Belling declined to comment, saying he was not familiar enough with the details.

During his Feb. 16 show he noted that some conservatives tend to invoke their principles regarding eminent domain on a case-by-case basis.

"Many of the people who are on my side — the conservative side — they change their opinion on this if the project is something that they like."



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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director*

TO: REPRESENTATIVE ADAM JARCHOW

FROM: Larry Konopacki, Principal Attorney

RE: Provisions in 2015 Act 55 Related to Oil Pipeline Companies

DATE: February 25, 2016

This memorandum provides brief answers to questions that you posed regarding the impact of the recently enacted state budget bill (2015 Act 55) on the eminent domain powers of companies that own and operate pipelines for carrying oil or related products in this state, and on state regulations applicable to these companies.

**1. Does Act 55 grant any new powers of eminent domain or condemnation authority to oil pipeline companies?**

No. Act 55 does allow an oil pipeline company that is authorized to use eminent domain authority to be organized as a different type of business other than a "corporation," but the Act did not expand the eminent domain authority of such companies.

**2. Does Act 55 change any of the state permitting requirements that oil pipeline companies must meet to site, construct, or operate a new or expanded oil pipeline?**

Act 55 did not change any state permitting requirements specific to oil pipelines. At the local level, the Act did prohibit towns and counties from imposing requirements that are expressly preempted by federal or state law as conditions for approving a conditional use permit for an oil pipeline, and prohibited them from imposing insurance requirements on an operator of an oil pipeline company if it carries specified insurance. There is some question as to whether towns or counties had either of these authorities prior to the Act.

Act 55 also made certain generally applicable changes to state regulations that may apply to particular oil pipeline projects, such as the changes to shoreland zoning and culvert permitting laws contained in the Act, but the Act did not contain any changes specifically applicable to oil pipeline companies.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

LAK:jal



## **The Rights of Landowners Under Wisconsin Eminent Domain Law**

Procedures Under sec. 32.06 Wisconsin Statutes

## **FOREWORD**

This pamphlet is published by the Wisconsin Department of Commerce in cooperation with the Attorney General, pursuant to sec. 32.26 (6), of Wisconsin statutes. The pamphlet is to be given to property owners or their representatives by the acquiring authority prior to initiation of negotiations for property being acquired for a public project.

The material in this pamphlet provides information on how the condemnation process works in Wisconsin. It should serve as a reference for you, but it is not intended to cover every possible eventuality or every right you may have in individual cases. A further source of information is Chapter 32 of the Wisconsin statutes which contains the law that is summarized in this pamphlet.

Direct questions about this pamphlet to:

Relocation Unit  
Bureau of Planning & Technical Assistance  
Wisconsin Department of Commerce  
P.O. Box 7970  
Madison, WI 53707  
(608) 261-8404

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## INTRODUCTION

In recent times there has been an increasing demand placed upon government for services in transportation, education, utilities, housing and other areas of public concern. At the same time, the available supply of land for these projects has been shrinking dramatically. Consequently, government has had to resort to its right to acquire private land for public uses even without the consent of private owners -- the eminent domain power.

This power derives from the Wisconsin Constitution, Art. IX, sec. 3. The Legislature has

### FEDERAL LAW

When a project is receiving federal financial assistance, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) may provide additional or different protections than those outlined in this pamphlet. You should receive supplemental information from the acquiring authority if federal law applies.

delegated this power by statute to numerous authorities and has specified the purposes for which such power can be used. Generally, departments, municipalities, boards, commissions, public officers, and various public and quasi-public corporations are delegated this power. Some of the purposes for which the Legislature has specified that condemnation can be used are highway construction or improvement, reservoirs, dams, public utility sites, waste treatment facilities, city redevelopment and energy lines.

Wisconsin has long had statutes regulating the exercise of eminent domain power. This pamphlet is intended to give citizens information about Wisconsin's eminent domain procedure, the workings of the condemnation process, and the rights of property owners in this process. It is, by necessity, of a general nature and is not a substitute for legal advice in individual cases, since many

aspects of Wisconsin law cannot be covered in general terms. Another source of information for citizens is the particular authority which is acquiring the property.

The goal is to achieve equality of information for both parties during the negotiation process and to reach satisfactory settlements, equitable to both the property owner and the public, through the statutory process.

## **THE LANGUAGE OF EMINENT DOMAIN**

(This glossary defines terms used in the pamphlet)

### **Acquiring Authority**

A public or quasi-public entity vested with the constitutional or statutory power to acquire private property for a public use.

### **Additional Items Payable**

Persons displaced by the public project are to be fairly compensated by the payment of relocation assistance and assistance in the acquisition of replacement housing.

### **Appraisal**

A written report, by a professional and disinterested person skilled in valuation, describing the property that is to be acquired and reaching a documented conclusion as to the fair market value of such property.

### **Certificate of Compensation**

A document recorded with the register of deeds when a sale is negotiated between the owner and the acquiring authority. It contains the names of persons with a record interest in the property, a legal description, the typed of interest acquired, and the amount of compensation. All persons named should be sent a copy and a notice of the right to appeal the amount of compensation.

### **Condemnation Commission**

A group of local residents, appointed by the circuit court of a county for fixed terms, who have the authority to determine just compensation for the property being acquired.

### **Date of Acquisition**

The day the award of the condemnation commission is paid to the property owner or to the circuit court for the benefit of the property owner.

### **Date of Evaluation**

The day on which the lis pendens is recorded in the office of the register of deeds in the county where the land is located. The fair market value of the property on this day is just compensation to the property owner for the acquisition. For negotiated sales, the date of acquisition and the date of evaluation is the date the conveyance is recorded with the register of deeds.

### **Determination of Necessity**

A finding, made by the acquiring authority or the court, that the authority has the right to acquire private land for a specific public use.

### **Easement**

An interest in real property which gives the acquiring authority the legal right to use the property for a specific purpose or to restrict the property owner's use of the land. Ownership and title to the property remain with the property owner.

### **Eminent Domain**

The power of the state to acquire private property for a public use.

**Fair Market Value**

The amount for which property could be sold in the open market between a willing buyer and a willing seller.

**Full Narrative Appraisal**

A detailed and comprehensive description of the process an appraiser uses in regard to a certain property to reach an opinion of its fair market value. The opinion must contain the appraiser's rationale for determining value and be documented by market data which supports the appraiser's rationale.

**Incidental Expenses**

Reasonable and necessary amounts, defined by statute, payable to the owner of real property acquired for a public use. Generally, incidental expenses compensate for expenses you may incur in transfer of your property to the acquiring authority. They include recording fees, mortgage prepayment penalties and other items.

**Jurisdictional Offer**

A written notice given by the acquiring authority to the owner of property and any mortgagee of record which informs the recipients of the proposed public use, what property is being acquired, and the amount of compensation to be paid.

**Lis Pendens**

A notice filed with the register of deeds when the acquiring authority files a petition with the court seeking a hearing before the condemnation commission. It notifies all interested parties that the property described is in the process of being acquired for a public use. The day the lis pendens is filed is the "date of evaluation," except in the case of an acquisition by a public utility, or a negotiated sale.

**Litigation Expenses**

The sum of the costs, disbursements and expenses including reasonable attorney, appraisal and engineering fees necessary to prepare for, or participate in, actual or anticipated proceedings before a condemnation commission or any court.

**Severance Damages**

Damages which may result when only part of a person's property is condemned. Generally, these items of damage compensate for any loss in value of the remaining property due to the acquisition.

**Uneconomic Remnant**

Any portion of the property remaining after a partial acquisition which is of little value or substantially impaired economic viability due to its size, shape or condition.

## **PART ONE BEFORE NEGOTIATIONS TO ACQUIRE PROPERTY BEGINS**

After you have been contacted by the acquiring authority, you have the right to a **full narrative appraisal** of the property sought to be acquired. This appraisal is done by an appraiser hired or employed by the agency, and the law requires the appraiser to confer with the owner or the owner's representative, if reasonably possible, when making the appraisal. Any and all appraisals made by the acquiring authority must be provided to you.

You have the right to have your own full narrative appraisal of the property made by a qualified appraiser. The reasonable cost of this appraisal may be submitted to the acquiring authority for payment, if the appraisal meets the standards set forth in sec. 32.09 of Wisconsin statutes, but, if you have such an appraisal made and wish to be paid for its cost, it must be submitted to the authority within 60 days after you receive the authority's full narrative appraisal. Your appraisal will be considered during negotiations.

The acquiring authority is required to make a determination of its need for the property. The way this **determination of necessity** is made varies depending on what type of agency is acquiring the property and the purpose for which it is being acquired.

If a public utility seeks your property for an electric generating plant or high-voltage transmission line, it applies to the Public Service Commission for a **certificate of public convenience and necessity**. This application must be filed by the Public Service Commission with the city or town clerk in the area where the facility is located, as well as the main public library in the county. The issuance of the certificate of public convenience and necessity provides the determination of necessity for the acquisition of the needed property.

Most other authorities seeking land for proposed projects make their own determinations of necessity. The statute lists the authorities who have the power to make their own determinations. In all other cases, the circuit court, upon a petition by the acquiring authority, makes the determination. These records are available for public inspection.

If a public project, other than a town highway, involves the acquisition of any interest in any farm operation of more than five acres, the Department of Agriculture, Trade and Consumer Protection (DATCP) may be required to prepare an **agricultural impact statement** prior to the acquisition of any land. Even if the acquisition is less than five acres, DATCP may prepare a statement if the acquisition will have a significant effect on the farm operation.

If an environmental impact statement is required by another statute, the requirements of the agricultural impact statement may be met by the environmental impact statement. Also, if an easement for an electric transmission line, excluding a high voltage line, is being acquired over a farm operation, an agricultural impact statement is not required.

A "farm operation" is defined by law as an activity conducted primarily for the production of commodities for sale or home use in such quantity that the commodities contribute materially to the support of the farm operator.

The acquiring authority may gather the necessary information for the impact statement. DATCP must prepare the statement within 60 days after receiving the information from the acquiring authority. After preparation, the statement must be published by DATCP. For a 30 day period after publication, the acquiring authority is precluded from negotiating with the property owner or making a jurisdictional offer.

The law also requires that the agricultural impact statement be distributed by DATCP to various offices and individuals. You can obtain a copy from your local library or from any local unit of government in the area affected. You may also request a copy directly from DATCP.

## PART TWO THE NEGOTIATION PERIOD

After appraisals are completed, the acquiring authority must attempt to negotiate with the owner or the owner's representative for purchase of the needed property. The statutes require that you be provided an informational pamphlet on eminent domain procedure **before** negotiation begins. If you are also displaced as a result of the acquisition, the law requires that you receive a pamphlet on **relocation benefits**. The owner's full narrative appraisal must be considered as a part of the negotiation. Also, any rights you may have for additional items payable (relocation benefits) can be included in the negotiations.

During negotiations, the acquiring authority must provide a map showing all property affected by the proposed project. Along with this map you must be given the names of at least 10 neighboring landowners to whom offers are being made. The names of all offerees if less than 10 owners are affected must be given. Any maps in the possession of the authority showing the property affected can be inspected, and copies will be made available at reasonable cost. At this point, condemnation is not involved, only negotiations for purchase.

If you agree to a negotiated purchase, the acquiring authority must record the conveyance and a **certificate of compensation** with the register of deeds in the county where the land is located. Also, all owners of record should receive by certified mail the certificate of compensation and a notice of their right to appeal within **six months** after the date of the recording of the certificate. Such an appeal would challenge the amount of compensation received by the property owner. The appeal would be initiated by filing a petition with the circuit court. The judge then assigns the appeal to the chairperson of the county condemnation commission. All persons with a record interest in the property will be notified of the appeal.

The date the conveyance is recorded is the date of acquisition and the date of evaluation.

## PART THREE PARTIAL ACQUISITIONS AND EASEMENTS

If only a part of your property is acquired, other than for an easement, two different calculations may be made to determine the fair market value of the part acquired. In such partial acquisitions, fair market value is the greater amount of either the fair market value of the part acquired or the difference between the value of your property **before** the acquisition and its value after, giving effect to severance damages set forth in sec. 32.09 of Wisconsin Statutes.

If only part of your property is acquired and you are left with an **uneconomic remnant**, the acquiring authority must also offer to acquire the uneconomic remnant. You must consent to the acquisition in order for the remnant to be acquired.

When an easement over your property is acquired, the compensation required is the difference between the value of your property immediately **before** the date of evaluation and its value immediately **after** the date of evaluation. Severance damages may also be paid where such damages exist and are allowed by statute.

If your land is zoned or used for agricultural purposes and an easement is acquired for a high voltage transmission line or a fuel pipeline, you will be entitled to choose between a lump sum

payment for the easement or an annual payment representing just compensation for the acquiring of the easement for one year. The acquiring authority should be able to answer any questions on your eligibility for this choice and the terms of each alternative. Sec. 32.09 (6r) (a), (b), and (c) of Wisconsin statutes details the law on lump sum versus annual payments.

#### **PART FOUR**

### **THE JURISDICTIONAL OFFER TO PURCHASE**

If negotiations do not lead to a purchase of the needed interest by the acquiring authority, a **jurisdictional offer** must be given to the owner and to any mortgagee of record. You will receive the notice by personal service or by certified mail.

This very important document will provide you with vital information on the acquisition of your property. Items that must be included are a statement of the nature of the project, a description of the property to be acquired, and a statement of the proposed date the acquiring authority will occupy the property. Included in the document is the amount of compensation to be paid for your property, including a statement that any additional items payable may be claimed for relocation assistance. An owner has **20 days** from the receipt of this offer to accept or reject it. If you accept the jurisdictional offer, title will be transferred and you will be paid the amount specified in the offer within 60 days. This 60 day period can be extended by mutual written consent of the property owner and the acquiring authority. **Incidental expenses** for which you may be eligible under sec. 31.195 of the statutes relating to transfer of your property to the acquiring authority will also be paid.

If the property owners of record reject the jurisdictional offer in writing, or do not act upon it within the 20 day period, the acquiring authority may petition the court to have the county condemnation commission make a determination of just compensation for the property.

#### **PART FIVE**

### **HEARING BEFORE THE COUNTY CONDEMNATION COMMISSION**

The acquiring authority, after a jurisdictional offer is **not accepted**, may petition the circuit court to initiate a hearing before the condemnation commission. If a determination of necessity has not been made by the agency, the petition may ask the court to make the determination of necessity at this time. You will receive notice of the acquiring authority's petition.

An important event which coincides with the filing of this petition is the filing of a **lis pendens**. The lis pendens is filed with the register of deeds in the county where the property is located. It provides notice to any interested party of the possibility that your property may be acquired for a public use.

The day this lis pendens is filed is the "date of evaluation." The value of your property on this day is just compensation to you for its loss under the law. A different "date of evaluation" may apply when your property is acquired by a public utility. The date depends on when the certificate of public convenience and necessity and the advance plans were filed. For negotiated sales the date of evaluation is the day the conveyance is recorded with the register of deeds.

A hearing on the petition the acquiring authority has filed with the court must be held at **least 20 days** after the date the petition was filed. If the court finds that the authority has a right to

condemn your property, the court will assign the matter to the condemnation commissioners for a hearing.

A county will have six to 12 commissioners, depending on the county population. They are local individuals, residents of the county or adjoining county, and are appointed by the circuit court. They serve staggered three year terms and generally sit in groups of three.

**Within seven days** after the chairperson of the commission is notified of the petition by the judge, three of the commissioners are selected to hear the case. The hearing date, time and place are fixed by the chairperson, and will not be less than 20 days nor more than 30 days from the day the court assigned the petition to the chairperson. At least 10 days prior notice will be given to all parties. The commission proceedings are more informal than court proceedings, and are governed by statute. The amount of the jurisdictional offer or award of compensation cannot, by law, be disclosed to the commission. You have a right to appear and to present evidence. A majority of the members have the power to make all decisions. **Within 10 days** after the end of the hearing, a **written award** is made and filed with the clerk of circuit court. The clerk will notify the parties of the award.

An acquiring authority may elect to abandon proceedings to acquire your property within 30 days after the filing of the condemnation commission's award by petitioning the circuit court where the property is located. You will receive five days notice by certified mail of this petition. The court will set the terms by which the abandonment can take place. If the judge formally discontinues condemnation by making an order, the order removes any title in the acquiring authority and automatically discharges the *lis pendens*.

Should the commission's award exceed the amount paid by the acquiring authority, and if neither party appeals from the award of the commission to the circuit court, interest is paid on the amount of the increase for the period from the date of acquisition until the date of the commission award, if the amount of the increase is paid within 14 days of the commission award. This payment passes title of the property to the acquiring authority.

If you or the acquiring authority are dissatisfied with the award of the condemnation commission, either can appeal to the circuit court of the county where the property is located. This must be done within **60 days** of the filing of the condemnation commission's award. If an appeal is made to the circuit court by either party, the owner will not be entitled to receive the amount of compensation paid to the circuit court unless the owner posts a bond equal to one-half of the award. This bond protects the acquiring authority in case the judgment of the court on appeal is less than the award of the condemnation commission.

## **PART SIX**

### **APPEAL OF JUST COMPENSATION TO CIRCUIT COURT**

The statutes require certain notices and papers to be filed to accomplish an appeal. It would be advisable to secure legal counsel to aid you in your appeal to the circuit court. The procedure may be found in sec. 32.06 (10) of Wisconsin statutes. You have a right to a jury trial on the issue of **just compensation**.

The measure of just compensation is the fair market value of the property acquired from you as of the date of acquisition, as calculated under sec. 32.09, stats. Should a court or jury determine that the amount you were paid for your property exceeded its fair market value as of the date of

acquisition, you will be required to repay to the acquiring authority the amount of the difference. On the other hand, if the jury verdict is greater than the award of the commission, you are entitled to receive legal interest on the excess from the date title vests in the acquiring authority.

If the jury verdict or judgment of the court **exceeds** the amount of the commission's award, the acquiring authority has 40 days after the filing of the judgment to petition for abandonment of the condemnation. (The procedure followed is the same as the procedure for abandonment after the award of the condemnation commission is filed.)

If no appeal is taken to the Wisconsin court of appeals, and no petition for abandonment is filed by the acquiring authority, the judgment must be paid **within 60 days** after it is entered. If the judgment is not paid within 60 days, it will bear interest from the date of entry of the judgment until the date of payment at 10% a year.

## **PART SEVEN ACTION TO CONTEST THE RIGHT OF CONDEMNATION**

Such an action challenges the right of the authority to condemn the property described in the jurisdictional offer. This action must be commenced in circuit court **within 40 days** from the postmark of the certified letter containing notice of the jurisdictional offer.

**If you do not challenge the acquiring authority's right to acquire your property within this 40 day period, you will lose your right to do so.**

In addition, if you accept and retain any money awarded for your property, you may not challenge the acquiring authority's right to acquire.

In this proceeding, you may challenge any defects in the procedure the authority has used and the "public" nature and necessity of the proposed use.

## **PART EIGHT LITIGATION EXPENSES AND COSTS**

The law provides for the payment of litigation expenses by the acquiring authority under **any one** of the following circumstances:

- if the proceeding is abandoned by the acquiring authority;
- if it is determined by a court that the acquiring authority does not have the right to condemn;
- if the award of the condemnation commission is **greater** than the jurisdictional offer, or the highest written offer prior to the jurisdictional offer, by at least \$700 and 15%, **and** the award is not appealed;
- if the property owner appeals an award of the condemnation commission which exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer, by at least \$700 **and** 15%, and the court approved jury verdict **exceeds** the award of the condemnation commission by at least \$700 **and** 15%;
- if the acquiring authority appeals an award of the condemnation commission, and the court-approved jury verdict is \$700 **and** 15% greater than the jurisdictional offer or the highest written offer prior to the jurisdictional offer;

- if the property owner appeals an award of the condemnation commission which **is not** 15% greater than the jurisdictional offer or the highest written offer prior to the jurisdictional offer, and court-approved jury verdict is at least \$700 **and** 15% higher than the jurisdictional offer or highest written offer prior to the jurisdictional offer.

Unless you come under one of these specific categories, you will not be able to recover litigation expenses from the acquiring authority.

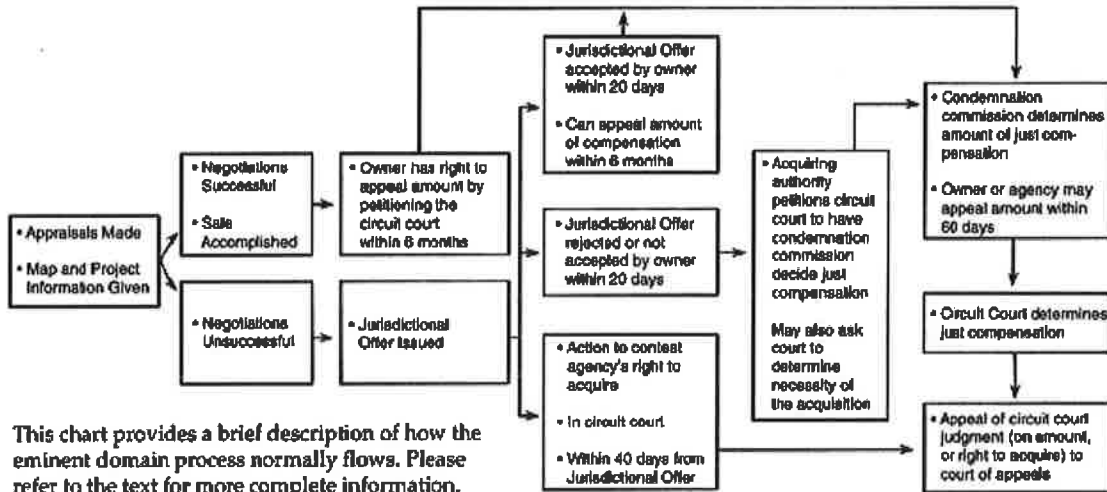
The Legislature has provided "costs" (statutorily determined payments to successful parties in proceedings challenging just compensation) to litigants who are successful but who do not fit into any of the categories mentioned above. If the just compensation awarded by the court or condemnation commission exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer, the property owner will be deemed the "successful" party. You may be required to pay "costs" to the acquiring authority if you are unsuccessful in challenging the compensation you have received or the acquiring authority's right to acquire the property. "Costs" are defined in Ch. 814 of Wisconsin statutes.

## **PART NINE OCCUPANCY**

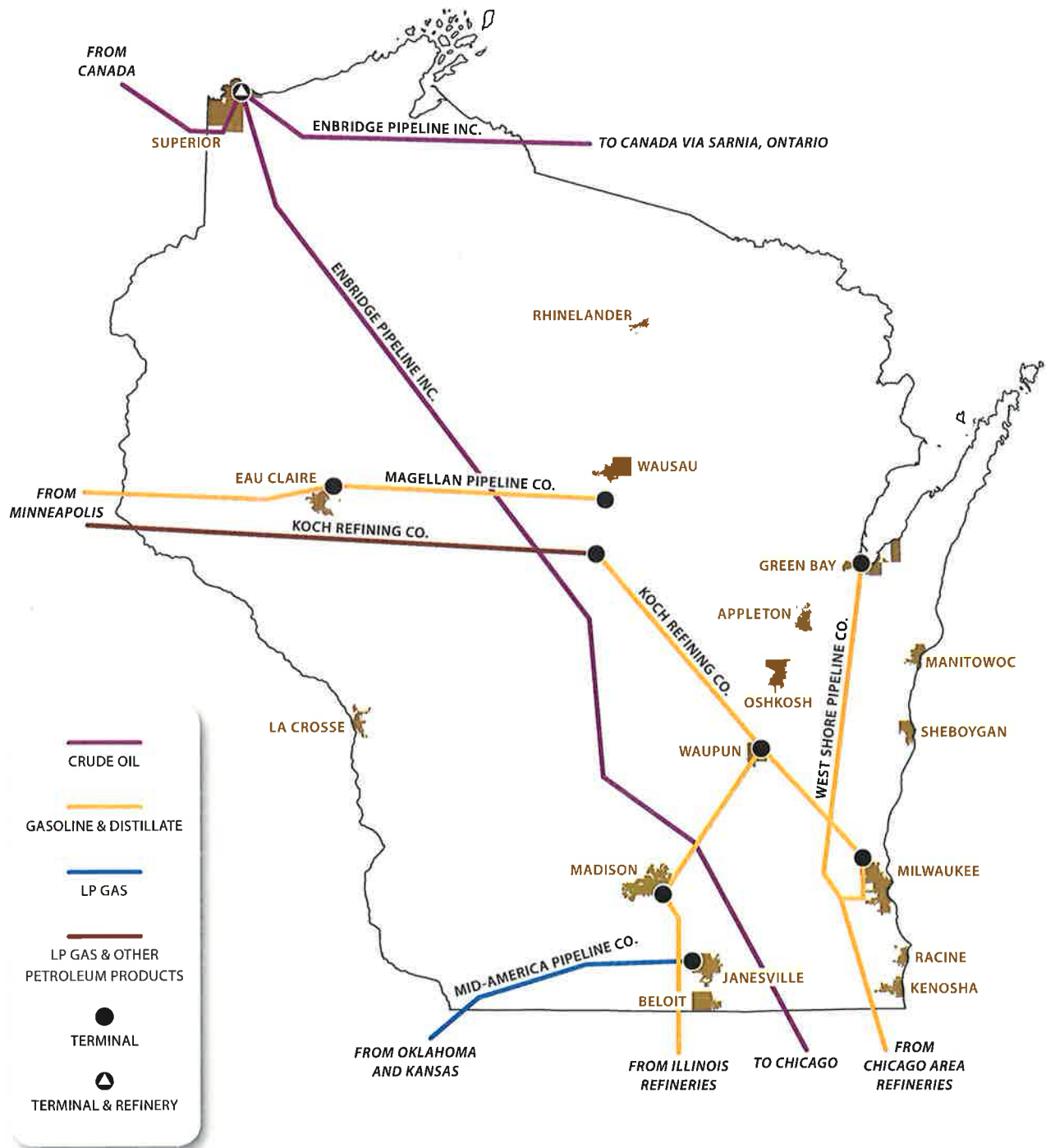
No occupant may be required to move from a dwelling or move a business or farm without at least 90 days' written notice from the acquiring authority. An occupant shall have rent free use of the property for 30 days beginning with the 1st or 15th day of the month after title vests in an agency, whichever is sooner. Rent charged for use of a property between the date of acquisition and the date of displacement may not exceed the economic rent, the rent paid by a tenant to the former owner or the occupant's financial means if a dwelling, whichever is less.

The acquiring authority may not require the persons who occupied the premises on the date title vested in the acquiring authority to vacate until a comparable replacement property is made available. (You may have a different right of occupancy if the property is acquired by a public utility.)

If you damage or destroy any acquired property after the date that title vest in the acquiring authority, you may be liable for the damage.

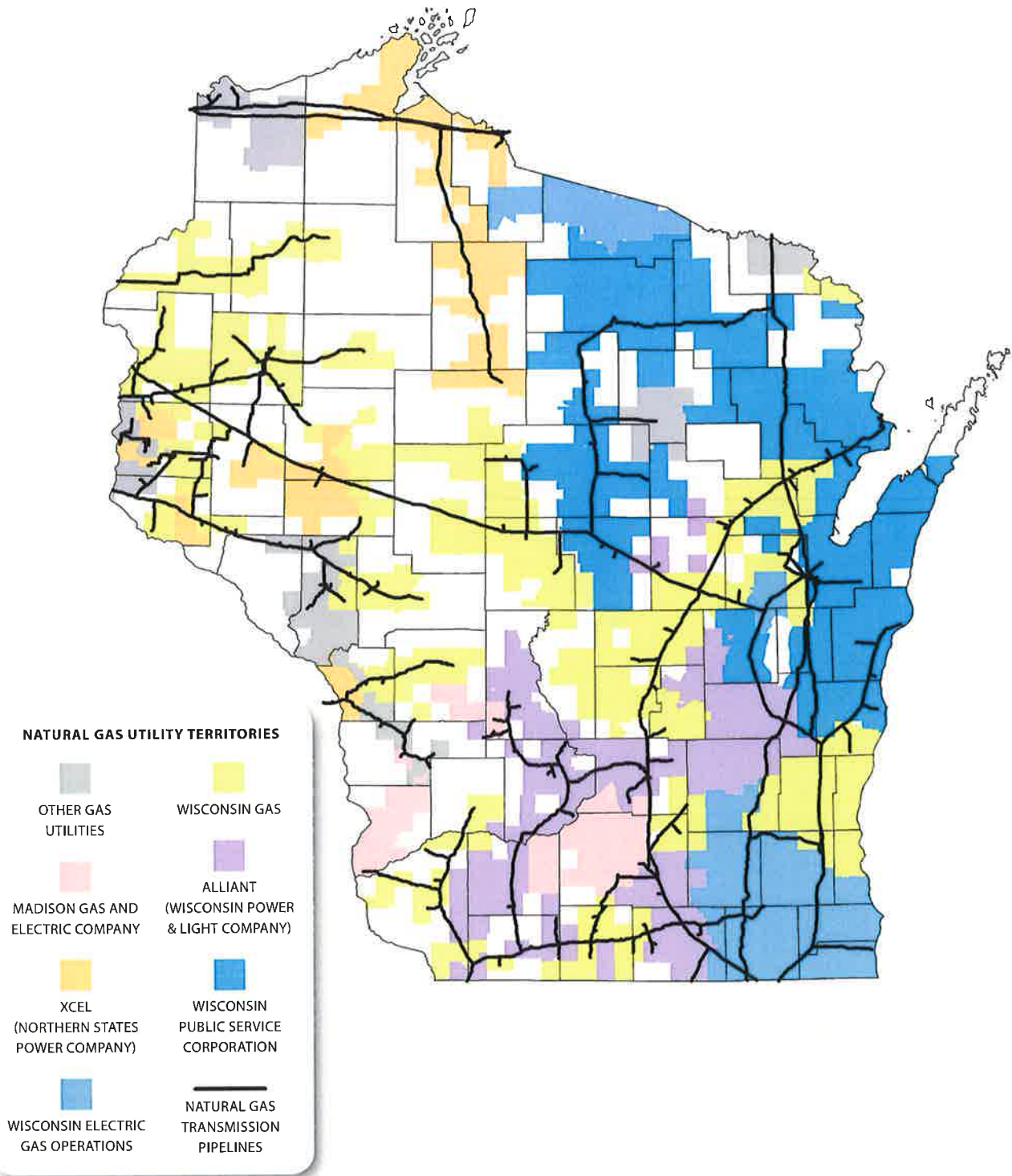


# Wisconsin Petroleum Pipelines



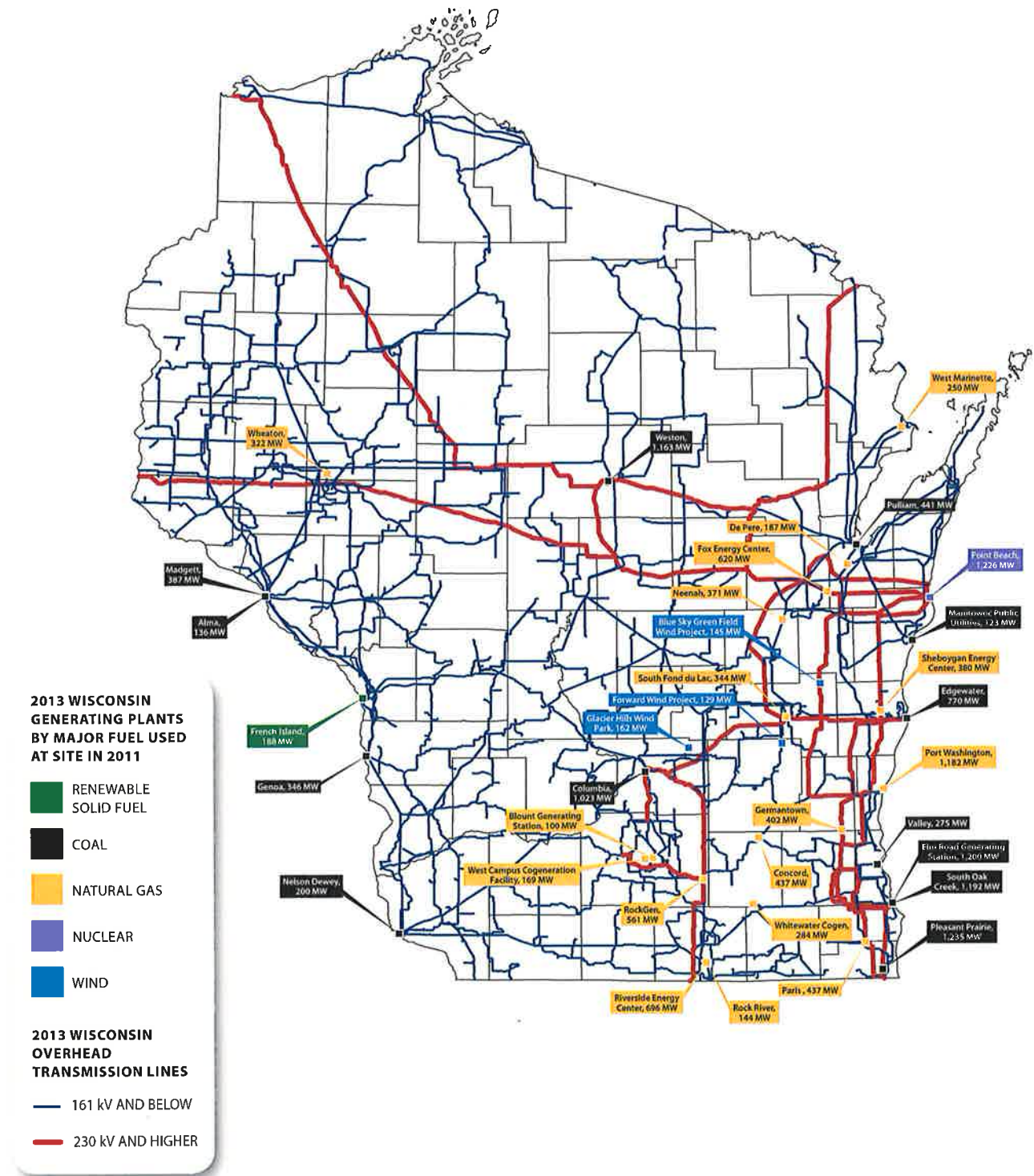
Source: Wisconsin State Energy Office.

# Wisconsin Natural Gas Utility Service Territories and Major Pipelines



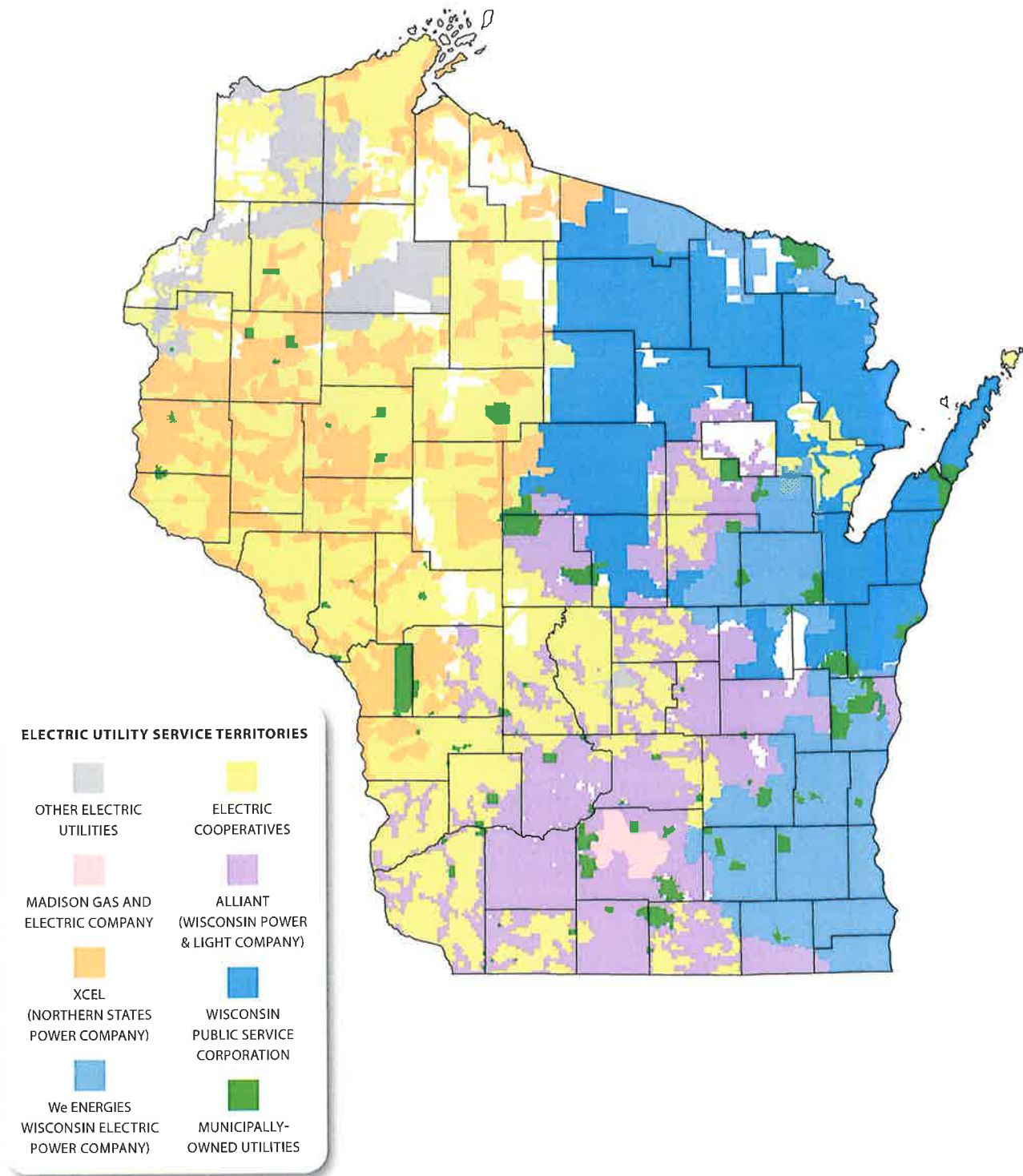
Source: Public Service Commission of Wisconsin.

# Wisconsin Electric Generating Facilities Over 100 Megawatts and Electric Transmission Lines



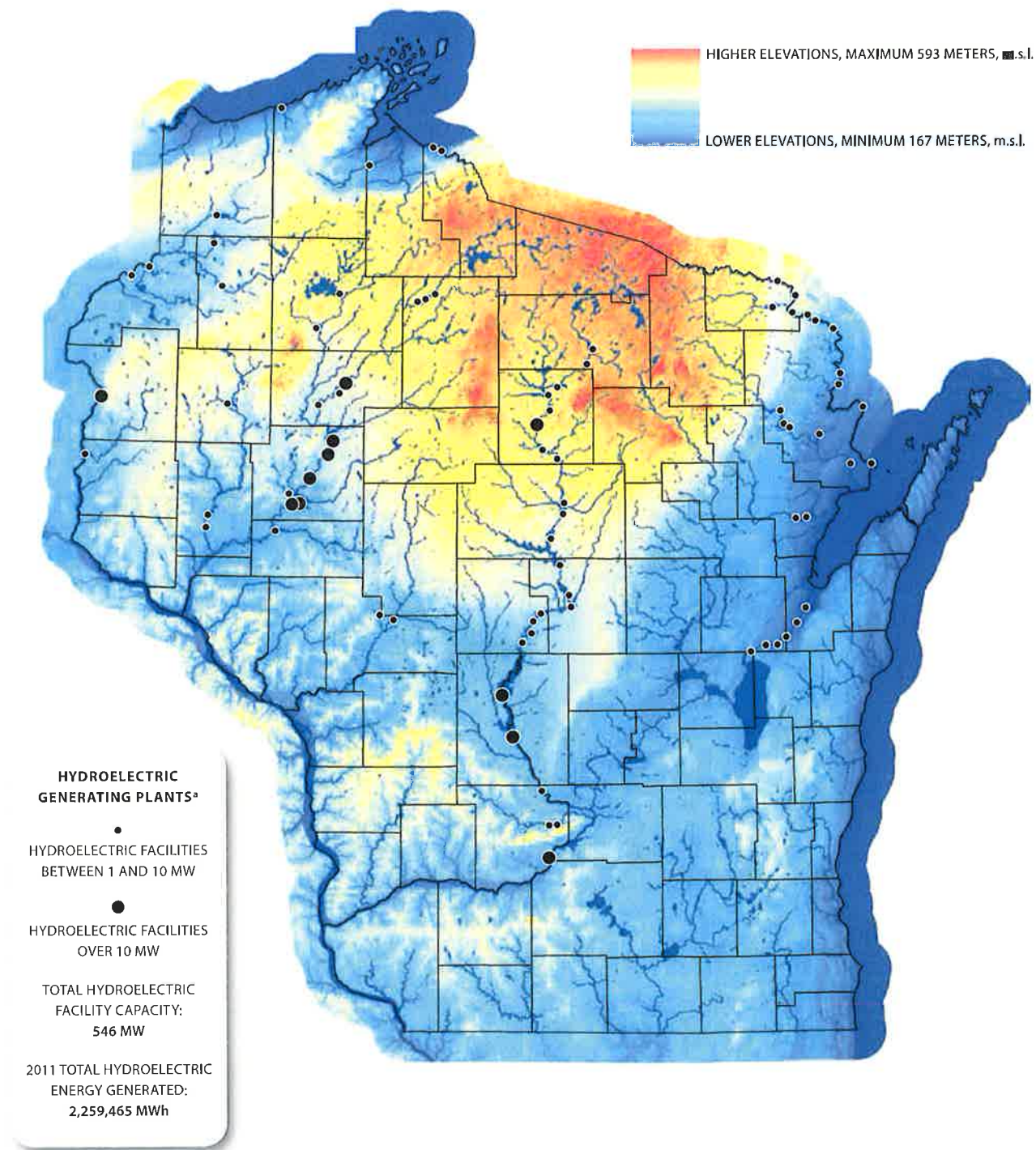
Source: Public Service Commission of Wisconsin.

## Major Electric Service Territories



Source: Public Service Commission of Wisconsin.

# Hydroelectric Generation Sites in Wisconsin, 2013

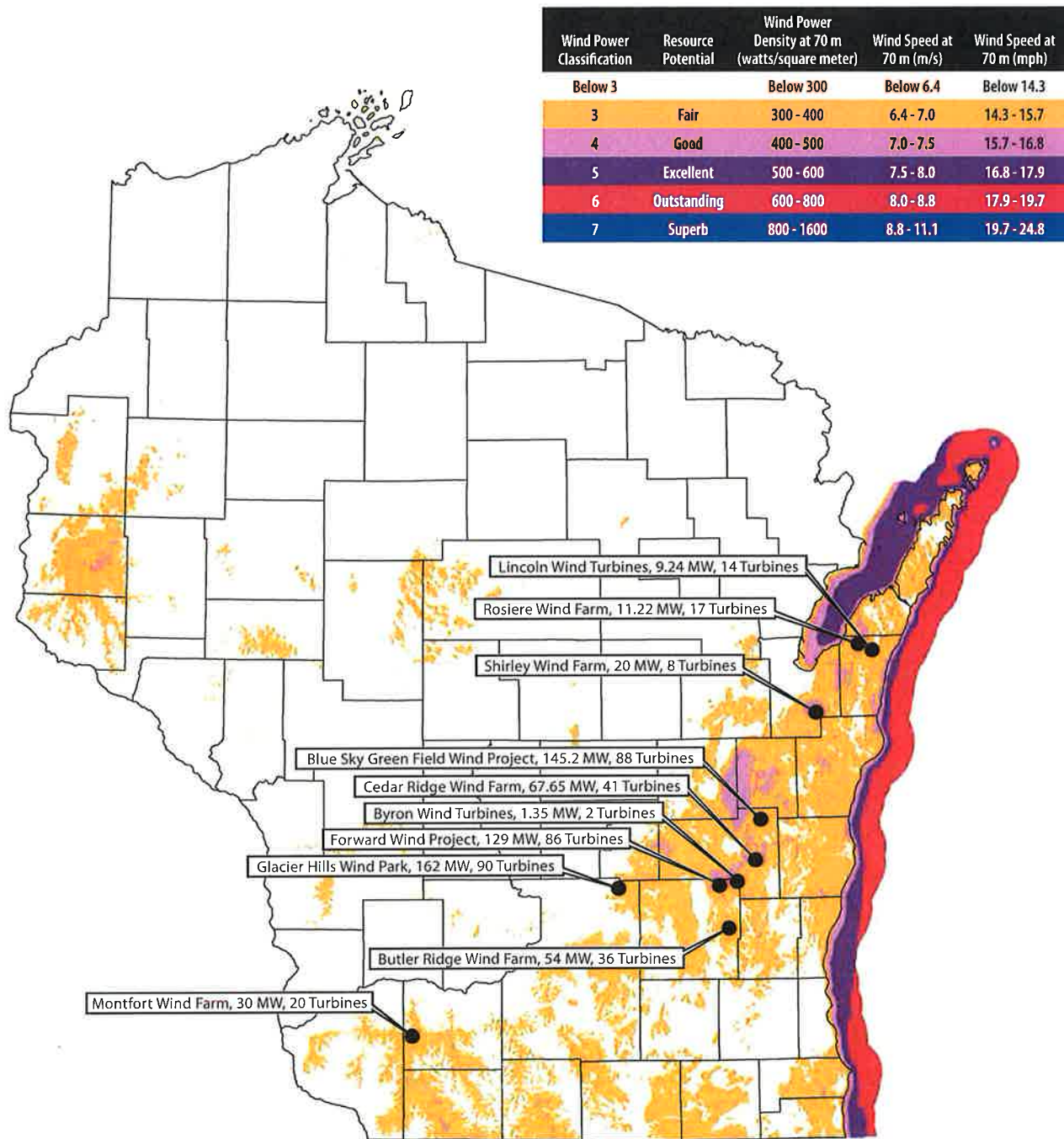


<sup>a</sup> Capacity and energy generated include hydroelectric facilities owned by utilities, merchants, cooperatives, and other nonutilities.

Capacity and Energy Data Source: Public Service Commission of Wisconsin.

Hydroelectric Facility GIS Data Source: Public Service Commission of Wisconsin, Department of Administration.

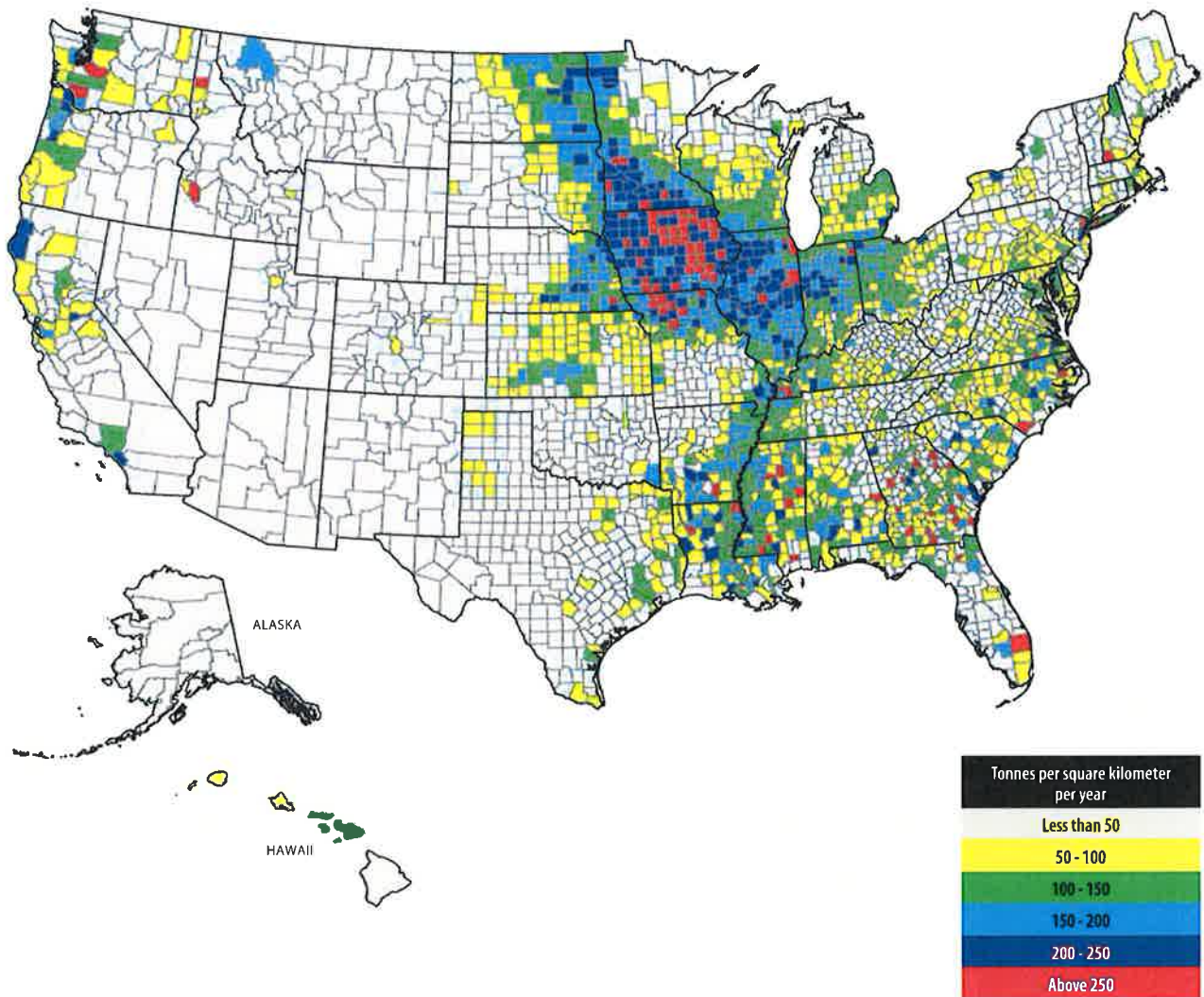
# Estimated Wind Power Energy Potential (at 70 meters) and Existing Wind Development Locations, 2013



Wind Data Source: AWS Truewind, 2008.

Wind Development Data Source: Public Service Commission of Wisconsin.

# Biomass Resources Available in the United States



Based on the map titled "Biomass Resources Available in the United States," distributed by the National Renewable Energy Laboratory (NREL), <http://www.nrel.gov/>.

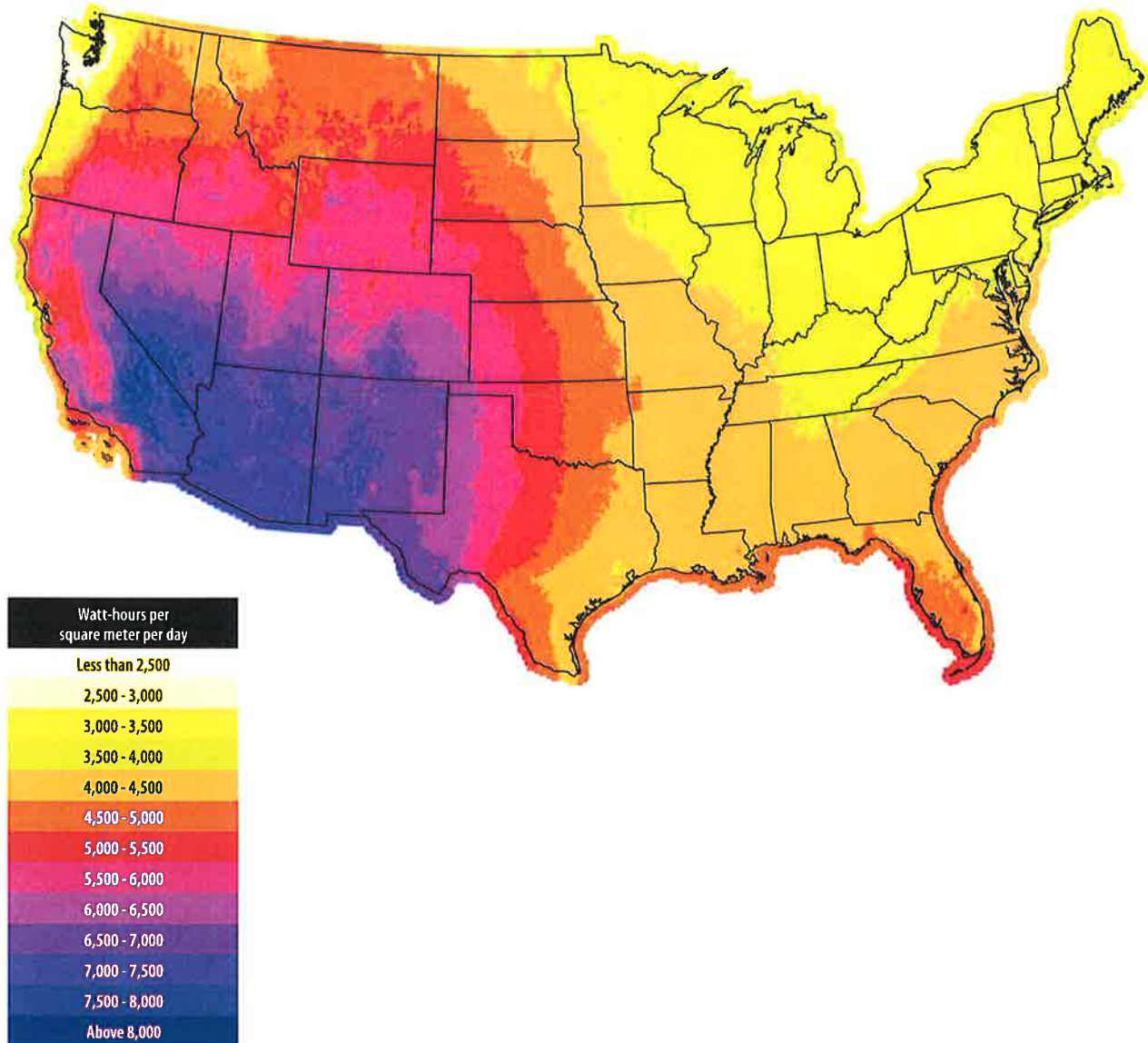
GIS Data Source: <http://www.nrel.gov/>.

GIS Data Metadata: None available.

**Notes from the original NREL map:** This study estimates the technical biomass resources currently available in the United States by county. It includes the following feedstock categories:

- Agricultural residues (crops and animal manure).
- Wood residues (forest, primary mill, secondary mill, and urban wood).
- Municipal discards (methane emissions from landfills and domestic wastewater treatment).
- Dedicated energy crops (on Conservation Reserve Program and Abandoned Mine Lands).

## Estimated Solar Insolation for the United States, Two-Axis Tracker



GIS Data Source: <http://www.nrel.gov/>

**Purpose:** Provide information on the solar resource potential for the 48 contiguous states. The insolation values represent the average solar energy available to a concentrating collector on a 2-axis tracker, such as a dish or a power tower.



# PIPELINE IMPACT TO PROPERTY VALUE AND PROPERTY INSURABILITY

The presence of a natural gas pipeline does not affect the value of the surrounding property. Integra Realty Resources, a leading provider of real estate valuation and counseling services, conducted a rigorous study of properties in four separate areas of the country in 2015. The report, *Pipeline Impact to Property Value and Property Insurability*, prepared on behalf of the INGAA Foundation, **shows that the presence of pipelines does not affect the value of a property, its insurability, its desirability or the ability to obtain a mortgage.**

## FINDINGS

- There is no measurable impact on the sales price of properties located along or in proximity to a natural gas pipeline versus properties which are not located along or in proximity to the same pipeline.
- Neither the size nor the age of a natural gas pipeline affects a property's sale price.
- There is no impact on demand for properties located along natural gas pipeline easements nor is development in areas with natural gas pipelines hindered.
- Natural gas pipelines do not affect the property value of any particular type of residence any more or less than another type of residence.
- The sales frequency of homes "on" the pipeline is consistent with those "off" the pipeline, indicating that the presence of a pipeline does not inhibit sales.
- Buyers purchasing homes along pipeline easements in each area were able to obtain conventional, Federal Housing Administration (FHA), and Veterans Affairs (VA) loans. This indicates that the presence of a natural gas pipeline had no effect on obtaining a mortgage.
- Insurance companies and agents interviewed said there was no indication that the presence of a natural gas pipeline would hinder a buyer's ability to acquire property insurance. They also said there was no indication that premiums paid for insurance policies would increase because of the proximity of a natural gas pipeline.
- Based upon the geographically disparate areas studied, IRR concluded that it was highly likely that the results and conclusions of this report would apply to other markets across the country in which natural gas pipelines were located.

## METHODOLOGY

IRR analyzed data from multiple perspectives to evaluate how the construction and operation of an underground, interstate natural gas pipeline affected home values. Analyses utilized paired sales, descriptive statistics and linear regressions. IRR selected geographically diverse areas – the Midwest, Northeast, the Mid-Atlantic and Southeast – for the case studies. IRR's comparative analysis consisted of two steps. First, the sales price of each home or townhome was adjusted based on size, because the living area of each home or townhome has the greatest effect on sales price. Second, IRR compared the adjusted prices paid for residences located along the natural gas pipeline to the adjusted prices paid for residences located away from the pipeline.

### DIFFERENCE IN HOME VALUES PER SQUARE FOOT FOR HOMES LOCATED NEAR A PIPELINE (compared with similar homes in the same community that are not near a pipeline)

#### STUDY AREA

KYLES STATION  
MEADOWS, OH

VICTORY LAKES, VA

WELLINGTON  
KNOLLS, NJ

BRANDON, MS

SADDLE RIDGE, PA

#### ADJUSTED PRICES

PERCENTAGE  
DIFFERENCE IN  
AVERAGE PRICE/SF

3.74% ↑

13.26% ↑

-1.44% ↓

0.91% ↑

3.11% ↑



## Committee Meeting Sign-In Sheet

**Committee/Board Name:**

Committee/Board Name: Administration + Rules Committee Date of Meeting: 11/29/2017

[illegible]

