Wisconsin Environmental Trust Financing Orders for Prairie River Facilities: How Wall Street Can Takes Advantage of Commissions, Utilities and Ratepayers in Using Securitization

LOSING WHILE WINNING

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EXECUTIVE SUMMARY

In 2003, Wisconsin legislators approved a relatively new financing tool for the state's utilities called "securitization." Utility securitization had been gaining traction around the country driven by efforts to deregulate energy markets, recover stranded costs and finance rate reductions. These securitization financings also became known as "ratepayer-backed bonds" and under the 2003 Wisconsin statute, "environmental trust bonds."

Ratepayer-backed bonds can achieve significantly lower interest rates than traditional utility financings. Once sold, the bond's principal amount would replace an equivalent amount of the utility's more expensive debt and equity. Replacing a utility's cost of debt and equity with the cost of securitization debt lowers the revenue required to be raised from electricity ratepayers in their rates. This means electricity rates can be lower when financing or refinancing approved utility expenses and investments with ratepayer-backed bonds. In 2003, Wisconsin became the first state to authorize securitization/ratepayer-backed bonds to finance "environmental control facilities."

In 2019, as part of a settlement concerning the closing of the Pleasant Prairie coal-fired power plant, WEPCO agreed to use environmental trust bonds to recover the remaining undepreciated costs of certain environmental control facilities costs that otherwise would be in customer rates until 2041.[1] In other words, the dollar amount of unrecovered costs that still were on the utility's balance sheet had already been approved for recovery in rates from WEPCO customers. State regulators unanimously approved the settlement as part of plan to address how WEPCO would recover the remaining costs of the closed Pleasant Prairie coal-fired power plant.

On May 4, 2021, Wisconsin Electric Power Company (WEPCO) sold $118.8 million in ratepayer-backed bonds under this settlement. The $118.8 million financing had the potential to save WEPCO ratepayers approximately $54 million in today's dollars compared to the amounts to be charged to ratepayers under traditional ratemaking.[2]

However, despite low interest rates for all bond maturities at the time, WEPCO "left on the table" (lost) over 16% of that amount or over $9 million in ratepayer savings.

These were savings to which ratepayers were entitled and which they would have received *but for* the critical decisions made in 2020 by the utility and regulators based on a faulty evidentiary record.

Two key issues led to over $9 million in lost ratepayer savings in the 2021 transaction.

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[1] "Undepreciated Cost" is also known as the unamortized amount of an investment in an asset like a power plant that is still on the utility's balance sheet. The total investment amount approved by regulators and owed to WEPCO under traditional utility ratemaking is included in customer current rates over a period of time known as the "amortization period." The unrecovered costs are embedded in the utility's "rate base." This period is stated in the number of years. The utility is also allowed to earn a return for its shareholders based on how much it costs the utility to raise money from shareholders and bond investors. This rate is known as the utility's "cost of capital." The cost of capital is compensation for getting paid over time rather than all at once. These costs are usually much higher than the interest rate on the ratepayer-backed bonds.

[2] This is also known technically as "present value savings" because it discounts future costs by a rate that reflects the alternative cost of money. The principle is that a dollar today is worth more than a dollar tomorrow. Or in other words, dollars to be paid in the future are worth less (and therefore less costly for ratepayers) than dollars paid today or the near future.

1. **The Customer Repayment Period Was Too Short.** The repayment period for the bonds should have matched the repayment period that was already in customer rates. That is the same period over which WEPCO was already allowed to recover its investment for the closed Prairie Point coal plant. This means WEPCO should have sold the new bonds with a structure that had a longer maturity. Structuring the bond issue with a shorter maturity – 12.6 vs 20 years – forfeited at least a $7.5 million gain in potential savings, in today's dollars, when compared to traditional ratemaking.

2. **Transaction Pricing was Poor.** In addition, WEPCO should have sold the bonds at lower interest rates – about 22 basis points- or 0.22% per year – for the bond issue with a final maturity of 12.6 years that it did sell. In this way, $1.2-1.6 million of savings were lost relative to the most recent AAA/Aaa utility securitization bond offering as a benchmark (an offering that was completed for Southern California Edison Company on February 17, 2021, through Barclays Capital, WEPCO's own financial advisor and underwriter).[3]

These conclusions are more than just hindsight though critics might want to dismiss them that way. A prior Public Service Commission of Wisconsin ("Commission") financing order and many other state utility commission precedents since the 2003 Wisconsin statute, have named structuring and pricing as critical issues to ensure the least cost to ratepayers.

In fact, in October 2004 in the first securitization financing order under the statute approved for WEPCO, the Commission developed procedures and precedents to protect ratepayer interests and prevent losses in environmental control facility financings. Both the repayment period and transaction pricing were identified as critical elements in the use of environmental control bonds and safeguards for ratepayers needed to be included in any financing order and next bond offering.

However, in November 2020, when the Wisconsin Commission approved the WEPCO Prairie Point securitization financing order, it effectively (and unknowingly) overturned the Commission's precedents established in October 2004. The 2004 precedents had addressed fundamental issues about environmental trust bond structuring and costs to ratepayers. The 2004 proceeding involved almost identical issues and facts presented in the 2020 financing order proceeding. Yet, the 2020 financing order disregarded the 2004 Commission precedents without reasoning or other explanation.

Through a careful review of the record, this study uncovers the reason for the financial loss of about $9 million in foregone ratepayer savings or 16% of the potential total. The shortfall in ratepayer savings occurred as a result of the provisions of the financing order proposed and drafted by WEPCO and approved by the Commission in 2020. The 2020 Commission was either unaware of industry "best practices" in the structuring, marketing, and pricing of the bonds or simply approved the WEPCO proposed financing order without including requirements for "best practices." Ironically, many of these "best practices" had been included in the Commission's 2004 financing order but were inexplicably absent in the 2020 financing order.

Fundamentally, WEPCO and their financial advisor and underwriter were apparently focused on satisfying the underwriter's customers, the investors. The advisor who proposed the structure of the financing had an inherent conflict of interest with ratepayers since they were to be the underwriters of the bonds as well. They do not have a fiduciary relationship to act in the best

[3] Saber Partners, LLC recently completed an assignment on ratepayer-backed bonds for the North Carolina Utilities Commission Public Staff and is a financial advisor to Southern California Edison Company on an offering of approximately $1 billion in utility securitization bonds. See engagement description.

interests of either the utility or commission or ratepayers. It is an arms-length commercial transaction. In this instance, they did not try to get the greatest present value savings for WEPCO ratepayers. Present value analysis is a fundamental principle of finance, and of traditional utility ratemaking.

This study seeks to inform Wisconsin legislators, regulators, and ratepayer advocates of the critical issues to focus on in any subsequent use of utility securitization as a tool to mitigate customer rates in coal plant retirements or other extraordinary costs.

Some might say, *"Well, it was a small transaction, and it did save money. The shortfall in ratepayer savings is not a lot of money."* This study does not speculate on whether shortfall of $9 million in savings is material to ratepayers. Instead, the study lets the facts speak for themselves.

The following table summarizes the financial analysis of the over $9 million in lost savings for WEPCO ratepayers based on the method consistent with the evidentiary record and as further described in Appendix 2.

$45 Million Savings Achieved and $9 Million Savings Lost

$118,814,000 WEPCO Environmental Trust Finance 1, LLC, Series 2021 Environmental Trust Bonds[4] Priced May 4, 2021

Savings from Repayment Period Extension and Pricing

[4] For WEPCO Environmental Trust LLC offering documents see https://www.sec.gov/Archives/edgar/data/0001840327/000110465921062220/tm213205-13_sf1a.htm

Introduction

In 2019, as part of a settlement concerning the closing of the Pleasant Prairie coal-fired plant, Wisconsin Electric Power Company ("WEPCO") agreed to use "securitization" known in Wisconsin as "environmental trust bonds" to recover the costs of certain undepreciated environmental control facilities at the plant. These costs were to be in customer[5] rates at a high cost until 2041.[6] In other words, WEPCO's undepreciated amount of these costs is the dollar amount that still is on the utility's balance sheet and approved to be recovered from WEPCO in customer rates over time. WEPCO would sell environmental trust bonds allowed under a 2003 Wisconsin statute, keep the proceeds as payment in full and pass the bond's cost onto ratepayers. Customer rates should be lower for bond's costs compared to WEPCO's previous costs. State regulators, the Public Service Commission of Wisconsin, unanimously approved the settlement as part of plan to address how WEPCO would recover the costs from the retired Pleasant Prairie coal-fired plant.[7]

Background on Utility Securitization in Wisconsin

In 2003, the Wisconsin legislature approved legislation - initiated by WEPCO - that allowed the state's utilities to finance environmental control facilities with a special type of bonds.[8] The bonds are known as "ratepayer-backed bonds" and the process for creating them is called "utility securitization."

Generally, the utility securitization process works this way:

1. A utility applies to the regulator for approval of a financing order that meets specific criteria outlined in the authorizing legislation. The financing order supports a bond financing to be issued in the amount approved in the financing order.
2. The regulator reviews and issues a financing order approving the securitization. During the regulatory review process, regulators may place conditions on the utility in the financing order.
3. Through the financing order - and after the costs of the bond sale are known - the regulator puts a special tariff charge on everyone's electric bill.
4. The tariff charge is pledged as collateral for bonds to be sold to investors.
5. The regulator guarantees to adjust the tariff charge to whatever level is necessary to guarantee that the bonds are paid back on time.
6. The state government pledges not to interfere with the bondholders' right to receive the tariff charges and requires the regulator to adjust the tariff charge to whatever level is necessary to pay the bonds on time and in full.

[5] Customers and ratepayers are used interchangeably in this report.
[6] "Undepreciated Cost" is also known as the unamortized amount of an investment in an asset like a power plant that is still on the utility's balance sheet. The total investment amount approved by regulators and owed to WEPCO under traditional utility ratemaking is included in customer rates over a period of time known as the "amortization period." The unrecovered costs are embedded in the utility's "rate base." This period is stated in the number of years. The utility is also allowed to earn a return for its shareholders based on how much it costs the utility to raise money from shareholders and bond investors. This rate is known as the utility's "cost of capital." The cost of capital is compensation for getting paid over time rather than all at once. These costs are usually much higher than the interest rate on the ratepayer-backed bonds.
[7] See Madison.com, November 1, 2019, *PSC approves refinancing of shuttered coal plant but warns strategy not 'a template'*
[8] See 2003, 196.027, Environmental Trust Financing statute at https://docs.legis.wisconsin.gov/statutes/statutes/196/027

7. The utility and its underwriters' structure, market, price, and sell the bonds following the terms of the financing order.

In essence, the state's legislature with the authority over the sale of an essential commodity – electricity – empowered the state's regulatory commission to approve an extremely safe investment opportunity for investors.

In Wisconsin, these securitization bonds would be called "environmental trust bonds" and the charges on customer bills would be called "environmental control charges." The legislature also set conditions in the statute that were designed to protect investors and ratepayers.

Investors consider this type of bond an extraordinarily safe investment. Credit rating agencies give it their top rating, AAA/Aaa. Importantly, this credit rating is always better than the credit rating on the utility's own bonds. Moody's, one of the nation's leading credit rating agencies, describes its top rating as, "to be of the highest quality, subject to the lowest level of credit risk."[9]

Utilities across the country generally support this form of financing in certain circumstances because they receive the full proceeds from the bond sale without having a direct obligation to repay the bonds using their own capital. This type of bond financing allows the utilities to fully recover their authorized costs.

The bill for payment of a bond's principal, interest, and administrative expenses is paid directly by utility ratepayers through the special tariff charge on their electricity bills. This special tariff charge is added to all current and future ratepayer bills in the utility's service territory. The tariff charge is adjusted regularly to guarantee that enough cash is available to pay the bonds in full and on time.

This process is irrevocable and cannot be changed once the bonds are sold.

There is an important difference with this type of financing compared to traditional utility finance. In traditional utility cost recovery and ratemaking, the Commission keeps full regulatory review of all the utility's financing costs on an ongoing basis. These costs are examined in general rate cases. The Commission can disallow any costs considered not prudent or following established policies. Ratepayers are always protected.

To protect ratepayers in the securitization process where regulators must give up ongoing review, the Wisconsin legislature required the Commission to find:

> "That the proposed structuring and expected pricing of the environmental trust bonds **will result in the lowest environmental control charges** that are consistent with market conditions and the terms of the financing order."[10] **[Emphasis added.]**

This condition would ensure that ratepayers would always benefit from securitization to the maximum extent possible and not be overcharged by the utility, its bankers, or the investors.

[9] Moody's "Rating Symbols and Definitions" at https://www.moodys.com/Pages/amr002002.aspx
[10] See https://docs.legis.wisconsin.gov/document/statutes/196.027(2)(b)1.b.

Legislative Standards for the Structuring of Utility Environmental Trust Bonds

A key part of the Wisconsin statute is

> "That the **proposed structuring** and expected pricing of the environmental trust bonds will result in the lowest environmental control charges that are consistent with market conditions and the terms of the financing order."[11],[12] **[Emphasis added.]**

"Structuring" generally refers to the time period, term, or maturity of a bond issue's repayment schedule. A bond is a loan from investors. It needs to be paid back over a specific time. Structuring is also referred to as the "amortization schedule." It includes the timing of the bond's principal and interest payments.

For example, a home mortgage that has a fixed rate and level principal payments for 15 years versus a mortgage with a fixed rate and level principal payments for 30 years would be considered to have different "structures" – one 15 years and one 30 years. The interest rates for the two structures would also be different. The longer maturity would have a higher interest rate. But the monthly payment for the two structures would be very different. The monthly payment for the longer 30-year mortgage would be much lower than the 15-year mortgage.

So, when combining interest and principal payments along with any other administrative fees that would need to be paid, one would get the amount of "charges" that the homeowner would have to pay each month just like an electric bill. This amount would be similar to the Wisconsin statute's reference to the total "environmental control charges" required to repay investors for the chosen environmental trust bond's "structure."

However, unlike other states with statutes that authorized securitization/ratepayer-backed bonds at the time, the Wisconsin's statute did not specify a permissible time period, term, or maturity for securitization bonds. It did not say environmental trust bonds (akin to home mortgages) could only be 15 years and never 30. In addition, the Wisconsin statute did not specify an end date for the environmental trust charges. An end date would have limited the term structure and maturity of the environmental trust bonds since the bonds would have to be paid off before then. These are important and critical distinctions of the Wisconsin statute versus other statutes.

For, example, Michigan and New Jersey enacted laws authorizing utility securitization a few years before Wisconsin. Similar to Wisconsin, both require that the "proposed structure and pricing [of the bonds] will produce the lowest charges consistent with market conditions at the time the bonds are issued and the terms of the financing order."[13] However, unlike Wisconsin, those states restricted the term and maturity of the securitized bonds.

Restricting the term limits the time period of any savings that ratepayers can achieve versus traditional utility ratemaking. In traditional utility ratemaking repayment periods can be very long (30-40 years) or very short (1-5 years), depending on what utility cost or regulatory asset is being financed and how.

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[11] See Wis. Stat. § 196.027(2)(b)1.
[12] See https://docs.legis.wisconsin.gov/document/statutes/196.027(2)(b)1.b..
[13] See Chapter 460. Public Utilities Michigan Public Service Commission, Act 3 of 1939 Section 460.10i (2) (c) and Section 460.10i (3) at and New Jersey Title 48 Chapter 3 Article 7 (New) Energy Rate Competition §§1-14,51, 15-46,57,60,66 C. 48:3-49 To 48:3-98§51 Note To 54:10A-1 & 54A:1-1 §60 Note To Title 27 & Title 13 §§59 & 66 Note To All Sections §63 C. 40A:11-15.2 §65 Repealer

The Michigan and New Jersey statutes say:

> "The financing order shall detail the amount of qualified costs to be recovered and the period over which the securitization charges are to be recovered, **not to exceed 15 years**."[14] **[Emphasis added.]**

This "not to exceed 15 years" was likely chosen because the purpose of the securitization at that time was to pay the costs of associated with deregulation of the electricity market in the state. Deregulation was a controversial issue and limiting the time period that ratepayers had to pay a surcharge for any bond costs associated with it was popular.

In New Jersey and Michigan securitization was not to be used for financing new utility investments that would be in service for long periods of time. "Traditional utility ratemaking" generally requires those regulatory investments/assets to be paid for by ratepayers who benefit from their use over the time period the asset is in service. At that time the New Jersey and Michigan securitization statutes were not to be used to finance the costs associated with plant retirements. There were separate policies and procedures for recovering those costs under traditional regulatory principles.

However, the 2003 Wisconsin statute was not about deregulation or so called "stranded costs" associated with deregulation of the state's energy markets. In Wisconsin, environmental trust bond proceeds could be used to finance a utility's capital costs for plant and equipment needed to comply with state and federal environmental laws. This included generation plant retirement. Generally, plant and equipment are in service for long periods of time often 20-40 years. A utility would recover the costs of these investments in customer rates over the time that the plant and equipment would be in service though traditional utility ratemaking.

Consequently, the Wisconsin legislature allowed the term and maturity of the securitization bonds – the bonds' repayment period – to be decided by the Wisconsin Commission. The statute required the Commission in a financing order to:

> "…specify the amount of environmental control costs and financing costs that may be recovered through environmental control charges **and the period over which such costs may be recovered."**[15] **[Emphasis added.]**

However, and most importantly, this meant the Wisconsin statute was flexible. The Commission had the proper authority in environmental control bonds that it has in traditional financing utility investments or retiring plants and equipment. With this flexibility on structure/repayment periods, the Commission's financing order could apply the same regulatory principles established by the Commission for other utility plant and equipment. They could apply the right recovery periods and consider inter-generational fairness issues and still achieve "the lowest environmental control charges that are consistent with market conditions and the terms of the financing order."

A Bond's Structure is the Largest Component of the Cost to Ratepayers

In setting utility rates, regulators find how much revenue is necessary to pay all of a utility's expenses, taxes, investments, and allow a fair return for the utility's shareholders on an after-tax basis. In traditional utility ratemaking, this is known as the utility's "revenue requirements."

[14] IBID
[15] See https://docs.legis.wisconsin.gov/statutes/statutes/196/027/2/b/2/a

Environmental trust bonds as a securitization bond offering are a AAA/Aaa debt financing that replaces the "revenue requirements" of a utility's combined weighted average cost of capital (corporate debt and equity) along with related taxes and fees that are allowed though traditional ratemaking to be included in customer rates. Because securitization bond costs replace the "revenue requirements"[16] for higher cost corporate debt and equity with Aaa-rated ratepayer-backed bonds, it will always produce customer "savings." The revenue requirements for ratepayer-backed bonds will almost always be lower than the revenue requirements from traditional ratemaking for the same amount.

While the cost will always be lower, the time period or structure will have the largest effect on a customer's bill. Just like a 30-year mortgage has a lower monthly principal payment than a 15-year, the same is true for ratepayer-backed bonds like environmental trust bonds.

Interest costs are only a small percentage of the payment amount. Under current market conditions, 30-year mortgage rates are under 4%. So, the term and maturity of the repayment of the mortgage principal will be much higher than the interest for any principal amount.

As discussed below, both interest and principal costs over time must be converted to a "present value." **Converting what the customer must pay in the future to the present value (also known as "today's dollars") is an established principle of traditional utility ratemaking and a bedrock principle of finance.** In other words, there is a time value to money, a dollar tomorrow is worth less than a dollar today. So, tracking all the cash flows over time and converting them to today's dollars allows a direct "apples to apples" comparison of alternatives.

2020 Use of the 2003 Wisconsin Environmental Trust Statute

On November 17, 2020, the Commission approved a securitization/environmental trust bond financing application from WEPCO by issuing the requested financing order. The Commission approved a financing allowing WEPCO to sell $118.8 million in ratepayer-backed bonds with a final scheduled maturity of 12.6 years.[17]

The Commission approved the application and the maturity by examining WEPCO's customer cost-benefit analysis of only one financing alternative presented to the Commission and consumer groups in the application as an "illustrative"[18] example of 12.6 years. In the approved financing, WEPCO's "illustrative" example of not to exceed 13 years maturity was the only available choice. However, there was no evidence in the record to support that this structure was the *only* alternative available. Nor does there appear to be any evidence in the record that this sole alternative would produce the largest savings ("lowest environmental control charges") to ratepayers following the statutory mandate and Commission's traditional principles of ratemaking.

[16] "Revenue requirements" are all the components of a customer rates for electricity purchases including utility investment costs approved as prudent, corporate borrowing costs, operation and maintenance expenses, income taxes and other fees and expenses and the allowed return for the utility's shareholders.
[17] More specifically it is a special purpose subsidiary of WEPCO established for the financing that is the "issuer" that actually sells the bonds to investors.
[18] See Direct-WEPCO-Reese-23 at 2-3 "Wisconsin Electric's illustrative bond structure, discussed in Mr. Chang's testimony…" and discussed more fully later in this text

So, a key question to consider is whether the legislature intended this when it mandated the financing structure result in the lowest environmental control charges. Was this consistent with Commission policies and precedents to minimize customer rates?

A Wisconsin Commission in 2004 Established Precedents to Protect Ratepayers in Structuring and Pricing Environmental Trust Bonds and Meet the Legislative Mandate

In October 2004, the Commission had a similar application before it with a similar single financing structure and similar evidence in support of an application from the same utility, WEPCO, in Docket 6630-ET-100.[19]

At that time, the Commission took a very different position from the 2020 Commission. The Commission established precedents governing applications with similar sets of facts and evidentiary record for the statutory mandate.

The Commission said in its financing order:

> "Because of the nature of this financing method, the final financing costs for the first year will not be known before the time of closing. Wis. Stat. § 196.027(2)(b)2.a. requires the Commission to specify in the financing order the amount of financing costs that may be recovered. The Commission is also required to find that the proposed structuring, marketing, and pricing of the environmental trust bonds will result in the lowest cost of funds and the lowest environmental control charges. Wis. Stat. § 196.027(2)(b)1.b. **The existing record simply cannot contain sufficient information to permit the Commission to make these determinations at this time."[20] [Emphasis added.]**

It is important to note that the 2004 Commission concluded that by very nature of the financing "cannot contain sufficient information…"

To address this issue, the 2004 Commission created a precedent by setting up a post-financing order / pre-bond issuance review process ("Pre-issuance Review Process") to allow the Commission to make the statutory finding at the time the bonds were actually structured and priced. It also established a precedent that the Commission staff needed outside expertise – a financial advisor - to advise the Commissioners on the structuring, marketing, and pricing of the bonds. [21]

Finally, it required a specific "Issuance Advice Letter" process to complete the evidentiary record of the application and ensure ratepayers were protected as discussed below.

The "Pre-Issuance Review Process" and "Issuance Advice Letter" are generally considered utility securitization "best practices."[22]

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[19] Docket 6630-ET-100 at https://apps.psc.wi.gov/APPS/dockets/content/detail.aspx?id=6630&case=ET&num=100

[20] See Commission Financing Order Docket 6630-ET-100 at page 57 https://apps.psc.wi.gov/APPS/dockets/content/detail.aspx?id=6630&case=ET&num=100

[21] Following the issuance of its 2004 financing order on October 12, 2004, the Commission hired Saber Partners on November 16, 2004, to serve as the Commission's financial advisor on all matters related to the issuance of the environmental trust bond approved in its October 12th financing order.

[22] See the Florida Public Service Commission's discussion in its May 30, 2006, securitization financing order concerning Florida Power & Light available Financing Order PSC-06-0464-FOF-EI; docket to remain open through completion of Commission's review of actual costs of storm-recovery bond issuance. (ED DS AR CT TW) [CCA note: Attachment B available in PDF format only.] Document # 04676-2006 available at http://www.floridapsc.com/ClerkOffice/ShowDocket?orderNum=PSC-2006-0464-FOF-EI

In Finding of Fact #35 on page 10 of the order, the Commission states:

> "In order to ensure that the structuring, marketing, and pricing of the environmental trust bonds results in the lowest cost of funds and the lowest environmental control charges that are consistent with market conditions and the terms of the Financing Order, the Commission finds that it is necessary to continue to oversee the structuring, marketing, and pricing of the environmental trust bonds, the terms and conditions of which are subject to Commission review and approval."

Prior to, and subsequent to, the 2004 Commission financing order, the commissions in Texas, Florida, Ohio, West Virginia, Louisiana, and New Jersey had similar policies. Most recently, this best practice was adopted by the California Public Utilities Commission concerning more than $9 billion in new securitization financing orders. The North Carolina Utilities Commission adopted similar "best practices' for about $1 billion in ratepayer-backed bonds in May 2021.

Each of these other state commissions, even though they were dealing with different utilities and different facts, came to the same conclusion as the 2004 Wisconsin Commission did – ratepayers needed to be represented not only during the regulatory proceeding but also at the negotiating table with underwriters and investors in the structuring, marketing and pricing of the securitization bonds.

WEPCO's 2020 Application and Commission's Decision Compared to 2004 Commission

On July 20, 2020, WEPCO filed its financing order application in Docket 6630-ET-101.[23] On November 17, 2020, the Commission issued only its second financing order under the 2003 statute. In this financing order, the Commission did specify the term of the securities. However, a review of the evidentiary record shows it did not examine any alternatives to the sole term proposed by the utility and its investment bankers.

Without evidence in the record on any alternative maturity or scenario (that the 2004 Commission had said was necessary for them to make such a decision), the 2020 Commission financing order mandated that:

> "The legal final maturity of the bonds shall not exceed 15 years, and the scheduled final maturity of the bonds shall not exceed 13 years."[24]

This "shall not exceed" 13- and 15-year limitation is found solely in WEPCO's 2020 petition and draft financing order. The maximum maturity of the bond was not discussed directly in Commission staff's testimony.

In 2004, WEPCO also requested a bond with a final maturity of 15 years. However, the 2004 Commission specifically requested longer maturities be considered in their post financing order "pre-issuance review process" when the bonds are finally structured.

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[23] Docket -6630-ET-101 at https://apps.psc.wi.gov/APPS/dockets/content/detail.aspx?id=6630&case=ET&num=101

[24] A "scheduled final maturity" is when the bonds are expected to have its final payment. However, if this payment is not made "on schedule," bondholders may force the bond issuer to make the payment through the courts. An ability to access the courts to enforce terms of a bond is known as "creditor rights." A "final maturity" is the time when the payment must be made and if not, the bondholders may exercise their creditor rights.

The 2004 financing order said the WEPCO application did not have enough evidence for them to make a final decision when issuing the financing order. The 2004 Commission only required that some of the bonds have 15-year maturities. In addition, the 2004 Commission did not limit the environmental trust bond's maturity by using technical terms such as "scheduled" and "legal final" maturities.

In the 2004 financing order, the Commission said:

> **"Term of Securities"**
>
> "The Applicant proposed that it issue securities with a term of no more than 15 years. **The Commission staff suggested that it might be appropriate to issue bonds with a maturity in excess of 15 years to better match the collection period for the securities and the expected life of the assets being financed."**
>
> "**The term of the securities is an important consideration, and the expected life of the assets is one of the key factors affecting the determination of the appropriate term**. It is reasonable that environmental trust bonds be issued in one or more series, and each series may be issued in one or more classes or tranches. At least some of the trust bonds should have a term of 15 years."[25] **[Emphasis added.]**

However, in the 2020 Commission financing order proceeding, staff presented no testimony or analysis on the term and maturity. Nor did staff present any information on the Commission's established precedents from the 2004 financing order to the 2020 Commission.

The "shall not exceed" "13-year scheduled," and "15-year final maturity" requirements are found four times in the 2020 financing order. Despite these multiple references, the Commission did not directly conclude that this sole structuring alternative is reasonable, achieves the greatest possible customer savings, or will produce the "lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of the financing order."

In fact, the final adopted financing order was not materially changed in any respect from the draft financing order written and submitted by the utility in its July 2020 application.[26]

At first glance, one might think that it would be disadvantageous to have longer maturities since interest rates generally increase the longer the maturity and further up the yield curve that the bonds are priced. This means more interest is paid with longer maturities instead of shorter maturities.

However, while the interest rate increases costs nominally, the "net present value" of customer revenue requirements decreases when converted to present value or to today's dollars. In addition, while the amount of principal does not change, the timing of the principal payments change. If one keeps level principal payments over the entire term, the longer the maturity, the less principal that needs to be paid in any year, any month.

To convert future costs to present value or today's costs one must discount the revenue needed from ratepayers and discount them at WEPCO's weighted average cost of capital (debt and equity). This is the present value of those revenue requirements embedded in customer rates.

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[25] See Commission Financing Order Docket 6630-ET-100 page 29
[26] See Exhibit to WEPCO Reese-1 Docket No.: 6630-ET-101 Schedule 4.

WEPCO's cost of capital is 7.49% as decided by the Commission in WEPCO's most recent general rate case. As discussed below, this is how WEPCO Reese Exhibit 1 calculates present value benefits to ratepayers from their sole alternative of 12.6 years.

The reason why customer present value savings increase despite higher interest rates for longer maturities is because the 7.49% discount rate is much higher than the carrying cost to the ratepayer, which is the interest rate on the WEPCO environmental trust bonds. Securitization interest rates were in the 1.5-3% range. This financial math is not a question of judgment. It is financial math used in traditional utility ratemaking analyses.

Excerpts from the 2020 Commission Financing Order Concerning the Proposed Structure that Led to Higher Ratepayer Costs and Lost Savings

The Commission concluded the specific statutory requirements were addressed in WEPCO's 2020 application. In the financing order's "Conclusions of Law" (COL) section:[27] the Commission certified:

> COL #3 "This Financing Order will result in lower overall costs to ratepayers than would alternative methods of financing environmental control activities."
>
> COL #4 "Under this Financing Order, the structuring, marketing, and expected pricing of the environmental trust bonds **will result in the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of this Financing Order**." [Emphasis added.]
>
> COL # 5 "This Financing Order is otherwise consistent with the public interest, and is prudent, reasonable, and appropriate. The terms and conditions in this Financing Order are necessary to protect the public interest."

While COL #4 does reference "structuring" it does not describe the specific structure chosen. As discussed below, the "not to exceed 13 years" structure was presented by WEPCO in testimony only as an "illustrative" bond structure[28] and was based on assumptions by Barclays Capital, WEPCO's financial advisor on the financing.

An Apparent Contradiction Leading to a Circular Certification

In the proposed draft financing order, it appears that WEPCO made contradictory statements. It also created a circular certification (when what one has to certify to is already contained in the definition for which the certification is asking).

For example, WEPCO asked for "flexibility" on the structuring, marketing, and pricing of the bonds because of the uncertainty in the capital markets and with rating agencies. In its draft financing order submitted to the Commission, WEPCO stated that,

> "[d]ue to this uncertainty today of future requirements and conditions, the **Applicant has asked for flexibility in designing the structure**, marketing, and pricing of the environmental trust bonds."[29] **[Emphasis added]**

[27] See Commission Financing Order Docket 6630-ET-101 pages 24-25
[28] See Direct-WEPCO-Reese-23 at 2-3 "Wisconsin Electric's illustrative bond structure, discussed in Mr. Chang's testimony…"
[29] Ex.-WEPCO-Reese-9 draft of October 7, 2020, financing order page 26

However, WEPCO also proposed in their draft financing order the strict limitations – the "shall not exceed" requirements - on its flexibility in the scheduled and final maturity of the bonds. No explanation for this restriction was contained in the financing order or in its testimony.

In the 2020 financing order "Opinion" section, the Commission said:

> **"Term of Securities"**
>
> "WEPCO proposed that it issue securities with a legal final maturity of no more than 15 years, and with an expected scheduled final maturity of 13 years or less. **WEPCO proposed that it have flexibility to issue the environmental trust bonds in one series, with one or more tranches.** However, WEPCO indicated that it expects to offer the environmental trust bonds in a single series with one tranche with an average life of approximately 7 years. It is reasonable that environmental trust bonds be issued in one series, with one or more tranches. **The legal final maturity of any environmental trust bonds shall not exceed 15 years, and the expected scheduled final maturity shall not exceed 13 years.**" **[Emphasis added]**

As written, it is clear WEPCO's originally proposed "flexibility" would include "structure" and therefore term and maturity. However, inexplicably, its proposed draft financing order restricts maturity and therefore limits any such "flexibility."

Moreover, the draft financing order's determination of "reasonable" only appears to apply to issuing bonds in "one or more series." The "reasonable" finding is **not included** in the following sentence in the section excerpted below that declares:

> "The legal final maturity of any environmental trust bonds shall not exceed 15 years, and the expected scheduled final maturity shall not exceed 13 years."

Consequently, in its verbatim adoption of WEPCO's draft financing order, the Commission in the financing order offers this "Finding of Fact (FOF):"

> FOF #16[30]
>
> "Since many terms of the financing mechanism have not yet been established, to ensure that ratepayers receive the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of this Financing Order from the proposed securitization and so that the proposed environmental trust bond transaction will be consistent with the standards set forth in Wis. Stat. § 196.027(2)(b)1., **it is necessary** that:
>
> a) The effective duration-adjusted weighted average annual interest rate of the environmental trust bonds, including upfront and ongoing financing costs, does not exceed WEPCO's duration-weighted marginal cost of debt and equity.
> b) **The legal final maturity of the bonds shall not exceed 15 years, and the scheduled final maturity of the bonds shall not exceed 13 years.**
> c) The environmental trust bonds must have a AAA rating from at least two of the nationally recognized rating agencies.

[30] See Commission Financing Order Docket 6630-ET-101 Pages 8-9

d) WEPCO shall follow the marketing and pricing process described in the Application and this Financing Order. **[Emphasis added.]**

There was **no similar** "Finding of Fact" in the 2004 Commission financing order even though the evidentiary records are almost identical.[31]

There was no evidence in the 2020 record that explains how the Commission concluded that

> "**it is necessary that**…The legal final maturity of the bonds shall not exceed 15 years, and the **scheduled final maturity of the bonds shall not exceed 13 years**." **[Emphasis added.]**

The Circular Certification That Creates the Crack Through which $7.5 of $9.1 million in Ratepayer Savings Fell

Conclusion of Law #4 states

> "that the **proposed structuring** and expected pricing of the environmental trust bonds **will result** in the **lowest environmental control charges** that are **consistent with market conditions** at the time the bonds are issued **and the terms of the financing order**." [32] **[Emphasis added.]**

This creates a "circular certification" applying to the statutory "lowest environmental control charges" requirement that cost ratepayers millions of dollars in present value savings.

How?

By creating the condition in the financing order (specifically a condition that is a "term of the financing order") that limits both the maximum scheduled and final maturity, WEPCO could comply with the statute even if "market conditions at the time of pricing" showed greater ratepayer benefits for longer maturities of the environmental trust bonds.

With this limitation as a "term of the financing order" WEPCO had to comply with it. The statute says,

> "That the proposed structuring and expected pricing of the environmental trust bonds will result in the lowest environmental control charges that are **consistent with** market conditions **and the terms of the financing order.**"

WEPCO could say that it had no flexibility to adjust the maturity since it was a "term of the financing order" even though it argued for "flexibility" for changing market conditions.

The 2004 Commission financing order specifically left flexibility on bond maturities in the "terms of the financing order."

This "hard wiring" of the bond's scheduled and final maturity appears to have circumvented the intent of the Wisconsin statute. It created a circular certification concerning how the "lowest environmental control charges" required by the statute could be measured and with which WEPCO could comply. This approach directly exposed ratepayers to higher costs and significant lost savings.

[31] See Appendix 4 for line-by-line comparison between 2004 and 2020 financing orders.
[32] See Commission Financing Order Docket 6630-ET-101 page 24-25

In contrast, the 2004 Commission financing order had no such circularity. Indeed, the Commission at the time specifically found - after reviewing a virtually identical evidentiary record as presented in 2020 - that the Commission needed to modify WEPCO's financing order application to comply with the statute. The final term of the securities was left to the post-financing order and pre-bond issuance review process that would result in certifications delivered to the Commission that the lowest environmental control charges were, in fact, achieved.

The 2020 Evidentiary Record Does Not Address Any Structuring Alternatives – This Failure Cost Ratepayers Millions of Dollars in Lost Savings Compared to Traditional Utility Ratemaking

A thorough review of the record shows that WEPCO presented no evidence on the proper structuring. There is no evidence on how repayment periods other than the proposed "not to exceed" 13 years amortization period of the bonds compared to the traditional utility ratemaking. Traditional ratemaking for Pleasant Prairie environmental facilities had a 20-year repayment period remaining.

As noted, the Commission stated its position on this subject in the 2004 financing order:

> "The term of the securities is an important consideration, and the **expected life of the assets is one of the key factors affecting the determination of the appropriate term**."[33] **[Emphasis added.]**

Instead in 2020, WEPCO ignored the 2004 policy and presented an "illustrative" example and said the final structure would be decided at the time of pricing and market conditions.

WEPCO could correctly assert that the Commission never requested other alternatives to the "shall not exceed 13 years" final scheduled maturity term. Indeed, neither staff nor the intervenors offered evidence of an alternative or contradicted WEPCO's application on this point.

Although WEPCO's submission was initially offered as only an "illustrative" example,[34] it was turned into an inflexible condition. What was presented to the Commission and the parties as only an "example" resulted in a $7.5 million loss for ratepayers.

Where Did the 2020 Maturity and "Term of the Securities" Discussion Originate?

WEPCO's lead witness, Anthony Reese, presented only a financial analysis of a scheduled 12.6-year securitization bond as an exhibit to his testimony.[35] Exhibit 1, with six schedules, showed that a scheduled 12.6-year AAA securitization ("Securitization Scenario") would produce customer savings versus the traditional ratemaking for the Pleasant Prairie undepreciated costs.

However, the original and traditional way the Pleasant Prairie costs would be recovered from ratepayers would be in electricity rates until the year 2041. WEPCO disclosed this appropriately and transparently in Exhibit 1. According to the schedule, WEPCO would earn its full after-tax weighted average cost of capital – 7.49% - on the unamortized amount until 2041.

[33] See Financing Order 6630-ET-100 at page 30
[34] See Direct-WEPCO-Reese at page 23 line 12
[35] See Direct-WEPCO-Reese PSC REF#:393910

WEPCO correctly discounted all revenue requirement differences between the traditional recovery amount versus the "Securitization Scenario" amount at its after-tax cost of capital at 7.49%. This is how ratepayer savings occurred. These discounted amounts are what WEPCO said its "illustrative" example of securitization would achieve.

The mismatch between the costs in rate base **until 2041** and the environmental trust bonds only **to 2034** was disclosed in the Exhibit with multiple pages and schedules. It was not, however, discussed in testimony of either WEPCO or the Commission staff. Thus, the 2020 Commissioners were never presented the alternative of an environmental trust bond matching the repayment period of the regulatory asset it was being used to replaced. This alternative would have been consistent with the policy and precedents Commissioners established in its 2004 financing order on the same subject and which was shown to have materially more ratepayer savings.

In addition, the principles of inter-generational fairness were never brought to the attention of the Commission. By adopting the utility's sole "illustrative" example and shortening the Pleasant Prairie recovery period to 12.6 years from 20 years, ratepayers from 2021-2034 would have higher rates than the ratepayers from 2035-2041. In the language of economics, the later year ratepayers get a what economists call a "free ride" at the expense of current ratepayers. However, all customers benefit for the replacement with cleaner generation alternatives.

In his testimony, Witness Reese was asked whether he wished "to highlight any assumptions in Ex.-WEPCO-Reese-1, Schedule 3?" Mr. Reese responded by saying

> "The assumptions in this schedule are identical to those in Ex.-WEPCO-Reese-1, Schedule 2, except that the term of the environmental trust bonds is assumed to be shorter (approximately 13 years), the capital structure is assumed to be 0.5% equity and 99.5% debt, and the interest rate on the securitization debt is assumed to be 2.50%. **Mr. Chang explains the bases for these assumptions in his direct testimony.**" **[Emphasis added.]**

Reese candidly discloses that the bonds are **"assumed"** to be shorter than what is in rate base and defers to his banker, Eric Chang of Barclays Capital, to explain these assumptions.

Mr. Reese's deference to Barclays was honest and transparent. However, this seems to suggest that WEPCO did not have any responsibility for the structuring assumptions that could affect ratepayers' costs and savings included in Exhibit 1 of his testimony.

Barclays Testimony Is from a Conflicted Party that Has No Duty to Act in the Best Interests of Either WEPCO, the Commission or Ratepayers

Barclays supplied supporting testimony on the bond structuring, marketing, and pricing. However, Barclays is a party to the bond offering that has a direct financial interest in the structure and pricing of the environmental trust bonds. This is because Barclays was WEPCO's financial advisor and intended to be the sole underwriter of the bonds. As both the advisor and underwriter, Barclays specifically had no fiduciary duty – a duty to act in the best interest of the client – either to WEPCO, the Commission or to ratepayers.

This lack of a duty to act in the best interests of either WEPCO, the Commission or ratepayers is clearly disclosed in the WEPCO underwriting agreement with Barclays. The Agreement states that:

> "Absence of Fiduciary Relationship. Each of the Issuer and Wisconsin Electric acknowledges and agrees that the Underwriters [Barclays] are acting solely in the capacity of **an arm's length contractual counterparty** to the Issuer and Wisconsin Electric with respect to the offering of the Bonds contemplated hereby (including in connection with determining the terms of the offering) and not as a financial advisor or a fiduciary to, or an agent of, the Issuer or Wisconsin Electric.... The Issuer and Wisconsin Electric shall consult with their own advisors concerning such matters and shall be responsible for making their own independent investigation and appraisal of the transactions contemplated hereby, and the Underwriters shall have no responsibility or liability to the Issuer or Wisconsin Electric with respect thereto. **Any review by the Underwriters of the Issuer or Wisconsin Electric, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Underwriters and shall not be on behalf of the Issuer or Wisconsin Electric**."[36] **[Emphasis added.]**

It should be noted that in the Underwriting Agreement between WEPCO and Barclays, Barclays says it is not acting as a "financial advisor." However, prior to the underwriting, Barclays *was* acting as a financial advisor to WEPCO.

This relationship of being both a "financial advisor" on a bond issue and then the "underwriter" of the same bond issue would be problematic in the offering of securities by state and local governments. It is specifically prohibited by government laws and regulations.[37] But since environmental trust bonds are corporate securities, those rules do not apply.

Nevertheless, **the principles behind those rules to protect taxpayers are relevant in discussing ways to protect ratepayers.** The reason for this is the Commission must forego future regulatory review of the securitization bond costs after issuance. On the utility's other securities, the Commission keeps full regulatory review.

Mary Schapiro, Chairman of the Securities & Exchange Commission described the reason for prohibiting advisors from also being underwriters as a "classic example of a conflict of interest" in a speech to the Investment Company Institute on May 7, 2010.[38]

> "Financial Advisers should be prohibited from resigning as financial advisor to an issuer, and then underwriting that issuer's bonds, as they are currently allowed to do under MSRB rule G-23. **Right now, a financial professional advising a municipality can guide the municipality towards securities tailored to his firm's advantage, then resign and act as underwriter. This is a classic example of conflict of interest." [Emphasis added]**

In addition to the absence of a fiduciary relationship, there was no questioning of the experience or knowledge of Barclays with this form of financing. WEPCO asserted Barclays' experience and knowledge, but it was never questioned or examined by staff or any intervenor on the record.

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[36] See "Underwriting Agreement" May 4, 2021, paragraph #15 at https://www.sec.gov/Archives/edgar/data/107815/000110465921062216/tm213205d16_ex1-1.htm

[37] See Municipal Services Rulemaking Board Regulation G-23 described and discussed here https://www.munibondadvisor.com/RuleG23.htm

[38] See Speech of Mary Schapiro available at https://www.sec.gov/news/speech/2010/spch050710mls.htm

Barclays Testimony by Mr. Eric Chang Does Not Directly Explain the Basis for the Assumptions and Does Not Include Net Present Value Savings Analysis for Ratepayers

In his direct testimony, Barclays' Mr. Chang is asked "How is "lowest price possible" of the environmental trust bonds defined?" He responds:

> "Achieving the lowest price possible on the environmental trust bonds means "that the proposed structuring and expected pricing of the environmental trust bonds will result in the lowest environmental control charges that are consistent with market conditions and the terms of the financing order," as defined by the Statute at Wis. Stat. § 196.027(2)(b)1.b. From a pricing standpoint**, this means achieving the lowest credit spread possible on the offered bonds (and thus the lowest interest possible paid out to investors)**, while taking into account current market conditions and the terms of the financing order."[39] **[Emphasis added.]**

A "credit spread" is the difference between the interest rate on the ratepayer-backed bonds and the interest rate on a benchmark security such as U.S. Treasury securities for a given maturity. It is often referred to in "basis points." One basis point equals 0.001%.

In essence, Mr. Chang takes the Wisconsin statutory requirement and interprets it simply as the "lowest credit spread" for the bond's maturity that he chooses. He mixes the terminology of price with the interest rate on the bonds.

This might be acceptable except that Barclays does not address the fact that the choice of bond maturities – the structuring – has a direct and more powerful effect on how low the environmental control charges can be in the regulatory revenue requirements to pay off the bonds.

Most importantly, Mr. Chang seems unaware of the regulatory revenue requirements ratemaking process and the calculation of the net present value (NPV) of customer benefits presented by Mr. Reese in Exhibit 1. Mr. Chang's testimony is discussing only "nominal costs" (interest and principal payments) while Mr. Reese is discussing, appropriately, the "present value" of the interest and principal payments and savings to ratepayers versus traditional ratemaking. Mr. Reese is discussing **the time value of those payments** from ratepayers while Mr. Change is ignoring it completely. He appears focused on the investor and his firm ability to sell the security to its customers.

Barclays Testimony Ignores WEPCO's Present Value Analysis for WEPCO Ratepayers

"Present value analysis" puts the total cost of alternatives on an "apples to apples" basis and converts all amounts to today's dollars. It takes into account the time value of money, that a dollar today is worth more than a dollar tomorrow. The disconnect between Mr. Reese and his witness Mr. Chang is perplexing.

Mr. Chang is asked in his testimony to "describe the process by which the lowest ECCs [environmental control charges] will be achieved."[40]

Mr. Chang responds by listing a set of terms and conditions among them is:

> "No legal final maturity of the environmental trust bonds will exceed 15 years from the date of issuance, and the bonds will have an expected scheduled final payment date of 13

[39] Direct WEPCO Chang at page 37, line 17 REF#:393909
[40] See Direct WEPCO Chang-38 at line 16

years or less."[41]

However, Mr. Chang supplies **no explanation for this structuring restriction of "13 years or less" in his answer or directly anywhere in his testimony**. Mr. Chang asserts that this will meet the statutory requirement. It is just asserted and assumed without any questioning by staff or the Commissioners and only raised as an issue by the Citizens Utility Board.

The only other part of Barclay's Mr. Chang's testimony that might give a sign of what motivated Barclays to require this "not to exceed" 13-year final scheduled maturity came earlier in his testimony when he discussed conceptually the "structuring process." He says:

> "**The goal of the structuring process is to design an offering that will appeal to different classes of bond investors.** Achieving that goal will increase the number of investors seeking to invest in that security and, in turn, obtain the lowest debt cost, thus preserving the lowest possible total cost to ratepayers. **The transaction structure is designed to balance certain objectives, including maintaining a large enough offering to promote liquidity, and minimizing the duration of the bond.** Regularly scheduled principal payments returned to investors throughout the life of the transaction results in a shorter average life for the financing and lower overall interest costs for ratepayers. All else equal, investors prefer shorter maturities to reduce the amount of time required to receive back principal."[42] [43] **[Emphasis added.]**

Rather than explain the basis for the assumptions outlined in Mr. Reese's testimony, this testimony mostly omits and essentially is inconsistent with the net present value analysis of customer savings methodology presented by Mr. Reese in Exhibit 1 to his direct testimony.[44]

Reese Exhibit 1 and Schedules 1-6 thereto lay out the traditional ratemaking approach and the securitization model in detail. All costs associated with the unamortized amount of the Pleasant Prairie coal plant investment are identified as well as all costs of the environmental trust bonds (Securitization Model).

Exhibit 1 clearly shows the unamortized Pleasant Prairie investment is in rate base under traditional ratemaking until 2041. However, the securitization bonds are paid off in 2034 – a total of 7 years earlier than the period for recovery of WEPCO's unamortized Pleasant Prairie investment under traditional ratemaking.

No explanation for this assumption is found in the exhibit. The only discussion was included in a Staff data request response but that did not show any alternatives.

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[41] See Direct WEPCO Chang-39 at line 1

[42] Direct WEPCO Chang-17, at line 3

[43] Underwriting firms always have preferred shorter maturities than longer maturities because shorter term securities are easier and quicker to sell. Turnover is an important part of many underwriters' path to profits. The capital markets are broad and deep. Investors buy bonds at all maturities. Generally, investors are driven more by the interest rate and their risk versus other financial reward calculations of the investment. A shorter bond maturity does not mean stronger interest from investors alone or maximum benefits to ratepayers compared to traditional utility finance mechanisms and customer revenue requirements with them.

[44] See Ex.-WEPCO-Reese-1 PSC REF#:393916 Schedule 1 "Comparison of Traditional Ratemaking to the Securitization Model" and Schedules 2 – 6. All cash flows are appropriately discounted to present value to determine customer benefits. This model is where the first $40 million customer savings is calculated. Using the same core inputs, Saber Partners calculated the actual savings and the lost savings from not having a structure with a longer maturity. An explanation of the method is attached in Appendix 2.

WEPCO appropriately shows the differences between the traditional ratemaking and securitization costs to ratepayers as annual revenue requirements. The Securitization Model revenue requirements are subtracted from the unamortized investment revenue requirements. The differences in amounts and timing are then discounted at the utility's cost of capital 7.49%. This is standard and proper in traditional utility ratemaking to find the "net present value" benefit or savings to ratepayers.

Mr. Chang's testimony, however, ignores Mr. Reese's net present value analysis. His focus in solely on lowering the nominal "cost" of the bond - as he defines it - to make it most "attractive to investors." As noted above he says that "The goal of the structuring process is to design an offering that will appeal to different classes of bond investors." He says that is how the statutory requirement will be met. If that were true, WEPCO should have issued much shorter-term bonds – the interest rate would have been lower.

> "The transaction structure is **designed to balance certain objectives**, including maintaining a large enough offering to promote liquidity, and **minimizing the duration of the bond**."[45] **[Emphasis added.]**

However, this standard of "balancing objectives" is not contained in the statute. Nor is it part of traditional ratemaking for bond offerings. His reference to "minimizing the duration of the bond" is also without a basis in Wisconsin law or traditional ratemaking practice. In this case, the plain English of the statute is clear:

> "That the proposed structuring and expected pricing of the environmental trust bonds will result in the lowest environmental control charges that are consistent with market conditions and the terms of the financing order."

The statutory and regulatory goal of the structuring is to result in the lowest charges possible to ratepayers. In doing so, it does not require the Commission to ignore traditional ratemaking principles of inter-generational fairness and other regulatory criteria.

Barclays' Mr. Chang's Testimony Before the Wisconsin Commission in Context with Other Market Events and Available Public Information at the Same Time

It is reasonable to presume Mr. Chang was aware of the controversy about term and maturity and customer present value savings when he gave his testimony in Wisconsin. This is because at the same time of the Wisconsin proceeding, Barclays, and Mr. Chang were serving as the structuring advisor and lead underwriter to another utility on securitization. The proceeding was before the California Public Utilities Commission (CPUC).[46] Barclays's client, the investor-owned utility Southern California Edison Company, was pursuing a similar securitization financing order addressing the same bond structuring issues for a slightly larger $338 million bond offering. The legislative mandates in California and Wisconsin were similar as well.

Barclays' Mr. Chang gave testimony on **July 8, 2020**, when Southern California Edison Company submitted its application. In that testimony, Mr. Chang insisted that an 18-year final

[45] "Duration of the bond" is another way of saying the time it takes for the investor to receive all principal and interest on the bond up to and including the bond's maturity.

[46] See California Public Utilities Commission Application of Southern California Edison Company (U 338-E) for Authority to Securitize Certain Costs and Expenses Pursuant to Public Utilities Code Section 850 *et seq*. Application No. 20-07-008 at https://apps.cpuc.ca.gov/apex/f?p=401:56:0::NO:RP,57,RIR:P5_PROCEEDING_SELECT:A2007008

maturity was the "optimal maturity."[47] An 18-year final maturity was also hard wired into the proposed draft financing order put forward by the utility. This was also upon Barclays' recommendation.

However, in the California case, some ratepayer representatives intervened and actively took issue with this and other aspects of the case.

In particular, the "Wild Tree Foundation" as an intervenor in the SCE case, in both direct testimony and in briefs, raised issues about the conflict-of-interest Barclays had as an advisor and underwriter of the bonds.[48] Wild Tree also questioned whether limiting the bonds in the financing order to a specific "not longer than maturity" (as Barclays was also proposing in Wisconsin simultaneously) would meet California's statutory test and Commission inter-generational fairness policies. The California legislation required the securitization bonds "to reduce rates to the maximum extent possible, that ratepayers would pay on a present value basis compared to traditional utility finance mechanisms."[49]

While Barclays argued in California that the "optimal maturity" for ratepayers was no longer than 18 years, the final structure of the California Southern California Edison securitization bonds was about 23 years. As was shown by the CPUC evidentiary record, 23 years matched the weighted average life of the assets being financed through use of securitization in California. The weighted **average** life is the minimum maturity, since some of the assets have longer economic lives, a longer final scheduled maturity would also be right. As discussed above, matching the securitization bond maturity to the term of the regulatory asset was a principle the 2004 Wisconsin Commission had also articulated. There was a clear precedent established.

Finally, the California Commission adopted a financing order materially different from the one proposed by Barclays on this same term and maturity of the ratepayer-backed bond issue and oversight issues.[50] Ironically, the California Commission instituted a post financing order and pre-issuance review process along the lines of the 2004 Wisconsin Commission financing order.

Mr. Chang was aware of the controversy and the final financing order well before the Wisconsin Commission adopted its order. Yet, Mr. Chang did not mention any of it.

Specifically, in California Commission's financing order adopted on November 5, 2020, they set up a "Finance Team" with a similar rationale and function as the 2004 Wisconsin Commission did. The California Commission financing order said:

> "The task of ensuring the sale of a Recovery Bond[51] issued pursuant to this Financing Order so as to reduce rates on a present value basis to the maximum extent possible compared to the use of traditional utility financing mechanisms therefore entails a **process that is optimized <u>for transparency and in line with best practices.</u>**

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[47] See SCE Application Exhibit SCE-02, page 26 line 22 and SCE brief http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=347810162 and reply brief http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=348580111

[48] See Wild Tree brief https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=348580112 and reply brief http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=348580112

[49] See California Article 5.8. Catastrophic Wildfire and Ratepayer Protection Financing [850 - 850.8] at https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PUC&division=1.&title=&part=1.&chapter=4.&article=5.8

[50] See CPUC Southern California Edison Company Financing Order at https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=350707656

[51] "Recovery Bond" in California is the equivalent of an "environmental trust bond" in Wisconsin

Wild Tree [Foundation][52] provides a process solution, which most parties support. **[Emphasis Added.]**

We acknowledge party criticisms that SCE's underwriter does not have a vested interest in maximally reducing the Recovery Bond's interest rate, that the Commission would only be provided notice of the details of the process but not engaged in the process, and that SCE is proposing a process that would not be in keeping with Commission past practice (here, we expressly note D.04-11-015, our past Financing Order decision for a similar utility bond securitization). Also, we are mindful of the requirement for a solution that does not offend the underlying purpose of the legislature's intentions of AB 1054 and is in line with the statutory mandate to reduce Consumer rates on a present value basis to the maximum extent possible.

For these reasons, we will adopt Wild Tree's proposal for the creation of a Finance Team. Wild Tree writes as follows:

> "This can be accomplished by including language in the financing order that sets-up a financing team composed of the utility, **Commission and its staff, and any necessary outside financial and legal experts that will provide approvals of the material terms of the bond in a pre-issuance review process** to create a bond with material terms that can **meet the statutory requirements**, in particular, minimization of ratepayer cost.[53]" [54] **[Emphasis Added.]**

This requirement is remarkably similar to the 2004 Wisconsin Commission financing order requirements.

Finding of Fact #34 "It is reasonable for the Commission to actively oversee the environmental trust bond issuance and to make a final determination prior to issuance as to whether the specific terms are acceptable, including of the affiliated interest orders, conditioning this Financing Order and affiliated interest order(s) as appropriate.

"Finding of Fact #21 - …In addition, the Applicant provided testimony regarding the security structure and expected ratings on the bonds, as well as aspects of the transaction relating to pricing such as tranches, amortization windows, and the advisability of call options. However, some of the structuring and pricing information required to make this determination pursuant to clause (b) will of necessity not be known until closer to the time of issuance. For that reason, the Commission finds that it is reasonable for it to retain a financial advisor to assist in overseeing this transaction and evaluating the structure, marketing and pricing of the bonds."

Finding of Fact #35 "In order to ensure that the structuring, marketing, and pricing of the environmental trust bonds results in the lowest cost of funds and the lowest

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[52] As noted above, Wild Tree Foundation was an intervenor in the Southern California Edison Company proceeding. They advocated in briefs and expert testimony for utility securitization "best practices" to be applied. In particular they challenged the 18-year maturity restriction in the utility's proposed financing order which was similar to WEPCO's proposal. Both were based on Barclays Capital's advice to the utilities.
[53] See CPUC Application No. 20-07-008 Wild Tree Opening Brief at 27 and drafted in its proposed Financing Order https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=348580112
[54] See CPUC Financing Order Application No. 20-07-008 November 5, 2020, at https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=350707656
[54] IBID

environmental control charges that are consistent with market conditions and the terms of the Financing Order, **the Commission finds that it is necessary to continue to oversee the structuring, marketing, and pricing of the environmental trust bonds, the terms and conditions of which are subject to Commission review and approval**."[55]

Wisconsin Bonds Price Higher Credit Spreads than Comparable AAA/Aaa Bonds Indicating an Inefficient Result

On February 17, 2021, Southern California Edison's special purpose subsidiary set up by for the financing, "SCE Recovery Funding LLC," sold about $338 million in AAA/Aaa/AAA ratepayer-backed bonds through underwriters Barclays and RBC. The bonds had a much longer maturity.[56] One part of the bond offering had a 23-year final scheduled maturity and was only $100 million in size i.e., less than the size of the WEPCO offering.[57]

The newly established California Commission's "Finance Team" pushed for a longer maturity than originally proposed by Barclays and the utility. As noted above, in creating the Finance Team, the California Commission's Administrative Law Judge (ALJ) said he was following "best practices."

As a result of extending the maturity, the Southern California Edison's ratepayers gained an additional $27 million in present value savings from the $338 million offering. This $27 million would have been lost if the financing order restricted the maturity to 18 years as recommended by Barclays, akin to WEPCO and Barclays's proposal for 12.6 years.[58]

The California bond's credit spreads were much lower that the credit spreads achieved on the Wisconsin bonds on May 2021.[59] While there is difference in time, they do not account for the differences in credit spreads based on comparable benchmarks examined at both times. This data is the basis of the "efficient pricing analysis" described in Appendix 2. The analysis proves that an additional loss of $1.6 million in ratepayer savings was a result of poor or inefficient pricing independent of the bond's term structure.

Given that Barclays Capital was the both the utility's advisor and a lead underwriter in both bond offerings, the result for Wisconsin ratepayers versus California's is perplexing… and more than disappointing. Had there been proactive Commission-oversight with access to independent expertise and sources of information, questions could have been raised before ratepayer savings were foregone. This is what the 2004 Commission identified as a key ratepayer protection. Yet, it too was not included in the 2020 financing order.

[55] See Financing Order 6630-ET-100 at pages 5-6, 10
[56] See SCE Recovery Funding LLC public offering documents at https://www.sec.gov/edgar/browse/?CIK=1826571
[57] See Appendix 3 for other similar small issue size utility ratepayer-backed bond issues.
[58] In a recent application filing with the CPUC for a second financing order, SCE said "Whereas SCE's Application estimated NPV savings compared to traditional utility financing mechanisms of $173.5 million under market conditions in June 2020 and an 18-year final scheduled maturity, the final offering used a 23 year final scheduled maturity and achieved NPV savings of $200.4 million under market conditions in February 2021 compared to traditional utility financing mechanisms, creating a 15.5% increase in customer benefits." This is similar to the 16% increase WEPCO's ratepayers could have achieved with an extension.
[59] See Appendix 2

WEPCO Intervenor Testimony 2020 Does Raise the Maturity and "Term of the Securities" Issue

The Consumer Utility Board (CUB) acknowledged that it did not have in house technical expertise to analyze the maturity and savings issue. CUB specifically defers to the Commission's staff to make this analysis while raising the important issue of the bond's term. Nevertheless, CUB raised the critical issue of term and maturity in their direct testimony.

> "**While CUB would have preferred a longer term, thus lowering the rate impact in each year**, based on conversations with the utility and a review of the information in the record to date, CUB believes that the terms of WEPCO's proposal may reasonably balance rate impacts/savings in any individual year against overall ratepayer cost, including interest costs that may be affected by a longer term. **I would caveat this statement by noting that CUB does not possess at this time the in-house capacity needed to perform a thorough analysis of securitization financing, and so I reserve the right to revise its position based on review of additional information that may be presented, particularly the testimony of Commission staff.**"[60] **[Emphasis added.]**

In other words, CUB was admitting what it doesn't know and believes that Commission staff, as noted above, would perform a "thorough analysis of the securitization financing."

Staff Data Requests About Amortization Period Were Not Responsive to Staff's Request

On August 14, 2020, Commission staff correctly identified the term issue and sent a data request to WEPCO with the following two questions among others:

> "Schedule 5 of Ex.-WEPCO-Reese-1 indicates the remaining amortization period of 21 years for the P4 Regulatory Asset (Unrecovered Environmental Controls Plant). The same schedule indicates a proposed securitization bond term of 12.5 years. Explain the rationale and process used to propose a bond term different than the P4 Regulatory Asset amortization schedule."[61]

In response, Reese suggests flexibility and says:

> "The bonds to be issued will reflect the term and conditions that will garner the best pricing for customers (and from willing investors) at the time of issuance…. [and] **optimizes the savings for customers**. While longer-term bonds could theoretically be issued, doing so would be **more expensive to customers; less attractive to lenders and will raise the interest costs,** and would thus decrease the benefits of securitization for ratepayers**."[62] [Emphasis added.]**

Mr. Reese responds to staff's pointed question only with reference to nominal interest costs rising and not with any analysis of the present value that would have had to include the timing of the principal repayment schedule of a longer maturity bond. There is no sensitivity analysis on net present value savings to customer as calculated in Exhibits 1-6 of Reese. Mr. Reese's reference to "willing buyers" suggests this is based on Barclays' Chang's testimony about "balancing investor

[60] See Direct Testimony of Corey S.J. Singletary on Behalf of Citizens Utility Board (PSC REF#:397754) page 3, line 15 Note: Mr. Singletary states that the purpose of testimony his testimony is at "high level" page 3 line 7

[61] See correspondence Bates to Richard Stasik, Director–State Regulatory Affairs (PSC REF#:395405)

[62] See Anthony Reese to Bates (PSC REF# 395794).

interests with customers as opposed to a strict NPV analysis noted above. Nor is there any mention of inter-generational fairness principle either. Essentially Mr. Reese side steps in answering staff's direct question without any customer impact data.

The final sentence of his response is also misleading. Of course, customer rates are lower at the AAA securitization bond rate with a 12.6 scheduled maturity than the combined cost of WEPCO cost of debt and equity. This would always be true until the AAA bond environmental trust bond rate exceeds the utility's cost of capital of 7.49%. That was not even a remote possibility in August 2020 or August 2019 or even today.

Mr. Reese, therefore, completely avoids answering whether present value savings - the core principle in finance of comparing two financing alternatives - would be increased by having a maturity equal to the regulatory asset amortization period of 21 years. Barclays Chang's answer to 1.2 shows a focus on asset-backed securities for which environmental trust bonds is an inappropriate comparison. It suggests his motivation is driven by his customer base the ABS customer who usually invests in credit card, auto loan and other assets with maturities of up to 5 years. As was discussed above, this same approach was seen in a concurrent California securitization case and rejected.

Because staff was without any independent expertise in securitization to evaluate the testimony and response from a market and customer's response perspective what follows is understandable.

Staff Testimony Does Not Address WEPCO's Term of Securities nor Barclays Claim of Balancing Customer Financial Interests with Those of Barclays Customers, the Investors

Commission staff did not supply additional financial analysis in the evidentiary record for the Commissioners to consider. The Commission staff, including lead analyst Michael Bates,[63] did not have in-house technical expertise on securitization[64] and did not pursue outside expertise to analyze and complement staff's testimony. In testimony, Commission staff' appropriately identified the need for a sensitivity analysis also known at times as "stress testing" of the utility's modeling of ratepayer costs and benefits.

> "I determined that it is appropriate to stress test WEPCO's modeling assumptions related to these factors, including lower/higher carrying cost levels and **shorter/longer amortization periods under traditional ratemaking**, as well as lower/higher interest rates and **shorter/longer maturities in a securitization transaction." [Emphasis added]**

The highlighted testimony above would suggest that alternatives maturities would be included in an analysis. However, in the same paragraph staff's testimony continues and then concludes:

> "In my analysis I did not identify material **deficiencies in the reasonableness** of **WEPCO's assumptions** or the overall quality of its model and concluded that the

[63] See Direct Testimony of Michael Bates, Commission Staff Analyst (Direct-PSC-Bates)
[64] Saber Partners, LLC was previously under contract with the Commission on environmental trust securitization matters from 2004-2006. The Commission engaged Saber Partners in November 2004 after issuance of its financing order. See engagement description here. In a November 7, 2019, email from Michael Bates to Saber Partners, LLC he indicated that Commission staff would decline an offer from Saber Partners to help staff under the terms of its previous contract with the Commission concerning WEPCO environmental trust bonds. Staff said that they had decided that they did not need external specialized expertise. Staff decided not to issue either a "Request for Qualifications" or a "Request for Proposals" from other experts in utility securitization.

> **analysis was sufficiently robust and can reasonably be expected to drive cost savings to WEPCO's ratepayers within the NPV range** estimated by the settling parties in docket 5-UR-109."[65] **[Emphasis added.]**

The critical WEPCO assumption was the term and maturity of the environmental trust bond's structure. The "NPV range" in the settlement did not have the benefit of any financial analysis or modeling.

Commission staff's direct testimony alluded to a stress test and consideration of a range of structuring alternatives, However, staff's testimony did not present the stress case analysis of scheduled amortization terms of the securities for purposes of evaluating:

1. Compliance with statute requirement of "lowest environmental control charges;"
2. Maximizing net present value savings to ratepayers pursuant to established Commission ratemaking precedents and principles; or,
3. Inter-generational equity concerns about the recovery of unamortized amounts associated with a closed coal-fired plant.

In 2020, Commission staff testimony addressed only the "reasonableness" of WEPCO's modeling. As to the structure and term assumed and hard wired into the financing order, staff only observes and defers to WEPCO and Barclays saying:

> "WEPCO and its financial advisor have indicated that current market conditions suggest **that a transaction structured for a bond term of 12.5 years would achieve the most competitive interest rate**, estimated at 2.501 percent at the time the application was filed."[66] **[Emphasis added.]**

There was no discussion of industry "best practices" nor comparisons of any terms proposed by WEPCO to those of other utility securitizations in other states.

Finally, Commission staff did not inform Commissioners in their testimony of the previous 2004 financing order. Staff did not present to the Commissioners how WEPCO's proposed financing order in the 2020 docket was virtually identical to the 2004 docket but differed from the precedents and positions of the Commission's previously issued financing order to WEPCO in 2004.

The 2020 Evidentiary Hearing is Pro Forma

A hearing was held on October 2, 2020. There was no discussion of the structure or term of the bonds or other alternatives.

Final Staff Decision Matrix Memorandum for Commissioners Excludes Any Mention of Precedent Commission Policies on Financing Orders or Any Alternative Structuring of the Bonds[67]

Standard procedure in proceedings before the Commission is for staff to summarize the issues and specify the decisions that the Commissioners should vote on. This is called a "Final Decision Matrix."

[65] Direct-PSC-Bates-4 line 23 - Direct-PSC-Bates-5 lines 1-8
[66] Direct-PSC-Bates-6 line 11
[67] See PSC REF#:399039 October 28, 2020

Of the six issues in the Commission Staff Decision Making Matrix Memorandum none identified any alternative bond structure for the Commission to consider or discuss the appropriate methodology.

In the Final Decision Matrix, "Issue 1b states" "Would WEPCO's proposed structuring and expected pricing of the environmental trust bonds result in the lowest ECCs that are consistent with market conditions and the terms of the financing order?" Staff's position:

> "Commission staff's analysis of WEPCO's proposal concluded that the proposed terms **and structure** of the anticipated ratepayer backed bonds can reasonably be expected **to achieve a favorable interest rate** on the debt securities, as supported by market conditions at the time of issuance." **[Emphasis added.]**

A "favorable interest rate" does not take into account the impact of the structure on a ratepayer's monthly bill and schedule of principal payments on a net present value basis as in traditional ratemaking. The comparison of the timing of total principal and interest payments to traditional ratemaking is the basis for the calculation of net present value savings to ratepayers claimed by WEPCO.

Most notably, staff's position did not address the statutory requirement posed in "Issue 1b "that the environmental trust charges that pay the interest rate be the "lowest environmental control charges consistent with market conditions." There is nothing in the record with staff supplying comments on any of the specific findings of facts, conclusions of law and ordering paragraphs of the draft financing order presented in WEPCO's testimony.

Staff presented the Commission with only two up or down choices:

> "Alternative One: WEPCO's proposal would produce the lowest achievable environmental control charges.
>
> Alternative Two: WEPCO's proposal would not produce the lowest achievable environmental control charges"[68]

There were no choices of **alternative bond structures** for the Commissioners to consider so as to decide whether the "lowest achievable environmental control charges" standard could be met. Staff's direct testimony concerning stress testing "shorter/longer maturities in a securitization transaction**"** noted above did not appear in the Commissioner's Final Decision Matrix.

The Final Decision Matrix did not present any of the alternatives that the 2004 Commission order had to address the same issues as presented in this case.

The 2004 Commission's Finding of Fact that:

> "The existing record simply cannot contain sufficient information to permit the Commission to make these determinations at this time,"

and other Commission precedents that, if adopted, the proposed financing order would not be following was not brought to the attention of the 2020 Commission in the proceeding.

It is also important to note that the developments in California on similar issues concerning bond structure also involving Barclays were public information. A proposed decision in the Southern

[68] See Bates "Final Decision Matrix" of October 28, 2020, at page 5

California Edison securitization proceeding was issued by the Administrative Law Judge on October 16, 2020, discussing similar maturity issues as in Wisconsin.[69] This was about 30 days before the Wisconsin decision. California issued its decision on November 5, 2020, 15 days prior to the Wisconsin Commission.

Issuance Advice Letter Requirement and Final Commission Oversight and Approval Not Included in 2020 Financing Order

A standard practice in many utility securitization financing orders in other states is to require the utility to file an "Issuance Advice Letter" upon pricing the bonds. The Issuance Advice Letter documents the final terms and conditions and costs of the bond offering. It also compares the initial estimated up-front and ongoing financing costs with the actual costs. Many other commissions' issuance advice letters for ratepayer-backed bonds require unqualified certifications from the underwriters, independent Commission advisors and the utility. The certifications are written evidence that the structure, marketing and pricing met, in fact, the statutory standards and terms of the financing order.

The other critical reason for an Issuance Advice Letter is to empower the Commission to stop the transaction if a review of the information provided in the letter, the Commission finds the final structuring and pricing did not achieve the lowest environmental control charges under market conditions and the terms of the financing order.

The 2004 Commission financing order had such a letter as a requirement.[70]

> Finding of Fact #21 "…The completion and filing of an issuance advice letter in the form required by the Commission, including required certifications from the Applicant, is necessary to ensure that any securitization actually undertaken by the Applicant complies with Wis. Stat. § 196.027 and this Financing Order."

The 2020 Commission financing order for Docket 6630-ET-100 did not have a required Issuance Advice Letter. It was replaced by a less detailed "compliance filing." No reasoning or explanation is in the record for this change.

Appendix 4 for shows a line-by-line comparison of the two financing orders on this and all other points.

[69] See Proposed Decision filed by ALJ/JUNGREIS/CPUC on 10/16/2020 https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M348/K814/348814659.PDF

[70] See Docket 6630-ET-100 Financing Order Finding of Fact 26 at page 7

Conclusions

1. The past is prologue. Wisconsin's 2004 financing order was prescient in identifying key issues concerning ratepayer costs and benefits as well as for creating a process for protecting ratepayers in the securitization process. The financing order record must have enough information at the time of the approval of the financing order for the Commission to meet its statutory and regulatory obligations. As the 2004 Commission concluded so many variables are unknown at that time that a post financing order and pre-bond issuance review process is needed. This means ongoing Commission oversight up to and through the issuance of the bonds is necessary to ensure legislative and commission standards are met.

2. There is an important and substantive difference between "nominal costs" to ratepayers and "present value" costs. Adjusting nominal costs (and any calculated savings compared to traditional utility ratemaking) to present value dollars must be done. This is for staff and commissioners to have a consistent basis for comparing alternatives and deciding what is in the best interests of ratepayers when using ratepayer-backed bonds to replace traditional utility financing mechanisms.

3. Intergenerational fairness issues still should be considered when using ratepayer-backed bonds. The repayment period of any ratepayer-back bonds should at least match the repayment period of the utility asset it is financing or refinancing and is currently in rates. This practice would meet established principles of intergenerational fairness.

4. Issues raised by ratepayer-backed bonds are complex and need careful analysis. Most Commission staffs do not have the capacity to analyze or question sufficiently WEPCO's outside experts such as investment bankers (either advisors or underwriters) on the assertions or assumptions made about the capital markets securities offerings.

5. A range of alternatives need to be examined and presented so that the Wisconsin Commission can make an informed conclusion in how to meet statutory objectives and Commission principles concerning ratemaking and inter-generational fairness.

6. Established precedents, principles and policies of the Commission should be examined before being overturned. If any precedent, principle, or policy needs to be changed, it should be done in a transparent manner.

7. In securitization/ratepayer-backed bond offerings like the environmental trust bonds, the active involvement and oversight of a Commission with access to independent information and expertise can prevent less favorable outcomes for ratepayers and ensure ratepayers achieve maximum savings.

8. The Commission should use independent expertise and independent certifications as to the structure marketing and pricing of securitization bonds. This should be treated as the costs of the utility's counsel and advisors and included as a financing cost for the bond issue

9. The principles regulating financial advisors and underwriters in taxpayer -backed bonds should apply to ratepayer-backed bonds. An advisor to utility or commission cannot also be an underwriter of the same bond issue.

10. Other established industry "best practices" should be presented to the Commission as part of the evidentiary record so that the Commission can decide which if any should be applied to the securitization financing order applications before them.

Appendix 1: Key Excerpts from Commission Financing Order November 17, 2020 That Led to Higher WEPCO Customer Costs

Finding of Fact (FOF) #15

> "… to ensure that the structuring, marketing, and pricing of the environmental trust bonds will result in the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of this Financing Order.

FOF #9

> "**Based on the evidence provided by WEPCO**, the Commission finds that this Financing Order will result in lower overall costs to customers than would alternative methods of financing environmental control activities." **[Emphasis added.]**

FOF #13[71]

> "The right to impose and collect environmental control charges that are non-bypassable and which must be trued-up at least annually, **but may be trued-up more frequently under certain circumstances,** in order to ensure the timely recovery of the environmental control costs and payment of the debt service and other ongoing financing costs." **[Emphasis added.]**

FOF #30

> "As compensation for its duties under the Servicing Agreement, it is reasonable that WEPCO receive from the SPE a servicing fee equal to 0.05 percent per annum of the initial aggregate principal amount of the environmental trust bonds, plus reimbursement of out-of-pocket expenses. As described in the Application, this fee is based on current market rates in similar utility securitization transactions. As described in the Application, payment of a servicing fee that is consistent with market rates is necessary to obtain the essential bankruptcy remote nature of the SPE."

FOF #31

> "It is reasonable for the SPE to have the flexibility to issue and sell environmental trust bonds in one series, with one or more tranches. **The legal final maturity of the bonds shall not exceed 15 years and the scheduled final maturity of the bonds shall not exceed 13 years." [Emphasis added.]**

[71] This allows for more frequent true ups which necessary for the one-year difference between scheduled and final.

OPINION

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> "In view of these obligations, the Commission **has established certain criteria in this Financing Order that must be met in order for the approvals and authorizations granted in this Financing Order to become effective**. This Financing Order grants authority to issue environmental trust bonds and to impose and collect environmental control charges only if the final structure, marketing, and pricing of the securitization transactions complies in all material respects with these criteria. The combination of these limiting criteria together with the ability of the Commission to monitor compliance with the terms of this Financing Order and the progress of the issuance of the environmental trust bonds will ensure that the structuring, marketing, and pricing of the environmental trust bonds will result in the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of this Financing Order. **[Emphasis added.]**
>
> As a result, the securitization will result in lower overall costs to customers than would alternative methods of financing the environmental control activities. WEPCO estimates that issuing environmental trust bonds to finance the Pleasant Prairie environmental control costs, as anticipated by the Settlement Agreement, will save WEPCO's customers approximately $40 million on a net present value basis (or 31 percent) as compared to traditional utility ratemaking.
>
> As described in the supporting testimony**, Barclays has wide experience in the structuring, marketing, and pricing of asset-backed securities generally and utility securitizations specifically.** Through supporting testimony, WEPCO has described the process that will be used in the structuring, marketing, and pricing of the environmental trust bonds, **based on the recommendations of its experienced financial advisor.** In particular, the environmental trust bonds will be issued and result in the lowest environmental control charges consistent with the terms of this Financing Order and market conditions at the time of issuance by using the following process:
>
> "No legal final maturity of any environmental trust bonds will exceed 15 years from the date of issuance, and all environmental trust bonds will have expected scheduled final maturity dates of 13 years or less."
>
> "Although retaining flexibility to issue the bonds in multiple tranches is important, WEPCO anticipates that the proposed offering will have one tranche with an average life of approximately 7 years. **The final structure will be selected to produce the lowest securitization interest rate based on actual investor demand and existing market conditions**." **[Emphasis added.]**

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> "The price guidance and testing process described in the testimony of WEPCO's financial advisor will enable WEPCO and the underwriters to assess investor demand for the amount of securitization bonds they are willing to purchase, at certain prices and coupon rates. This will allow WEPCO and the underwriters to adjust the prices and coupon rates to ensure maximum distribution of the environmental trust bonds at the lowest bond yields consistent with a fixed price offering."

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> "Subsequent to the issuance of this Financing Order, the Commission shall monitor compliance with this Financing Order and the progress of the issuance of the environmental trust bonds. WEPCO shall provide to the Commission a copy of each filing made with the Securities and Exchange Commission in connection with the proposed issuance of the environmental trust bonds. Prior to the issuance of the environmental trust bonds, WEPCO also shall provide such regular updates and progress reports as may be requested by the Commission."

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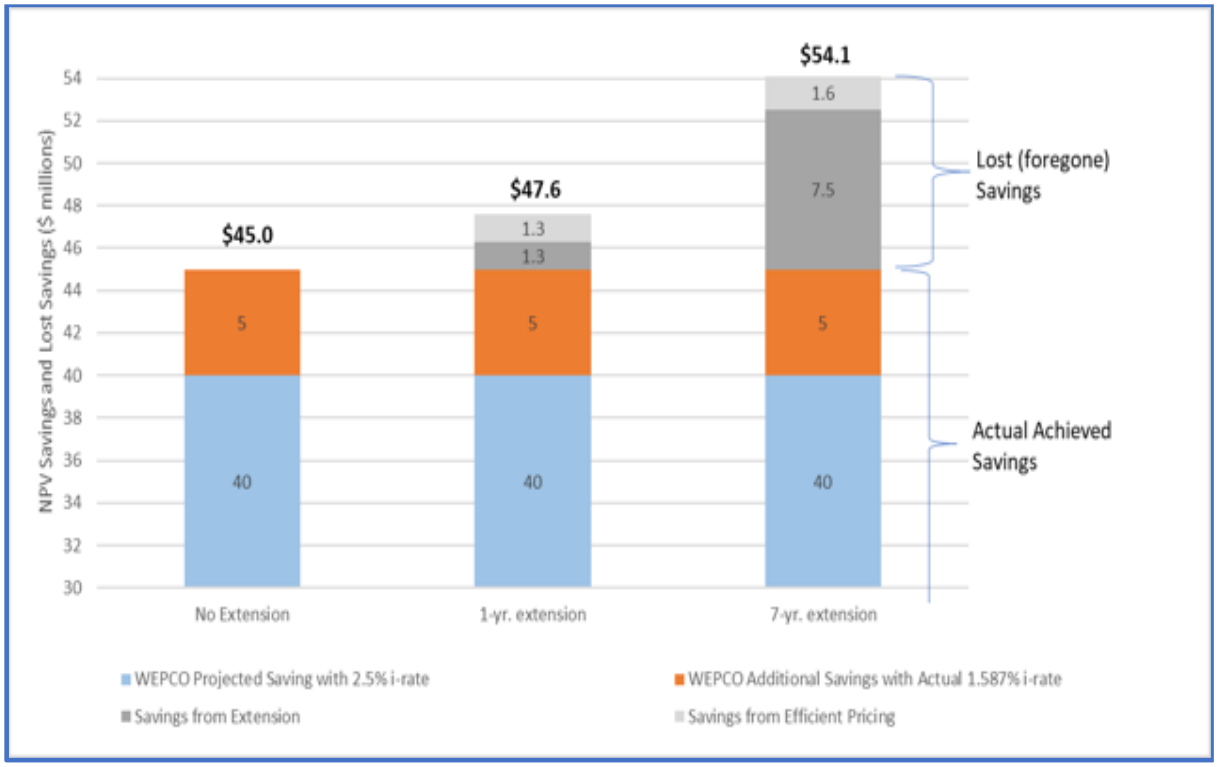
Ordering Paragraph (OP) 35.

> "The legal final maturity of the environmental trust bonds authorized by this Financing Order shall not exceed 15 years, and the scheduled final maturity of the bonds shall not exceed 13 years."

Appendix 2 Methodology for Calculating up to $9.1 million in Lost WEPCO Ratepayer Savings



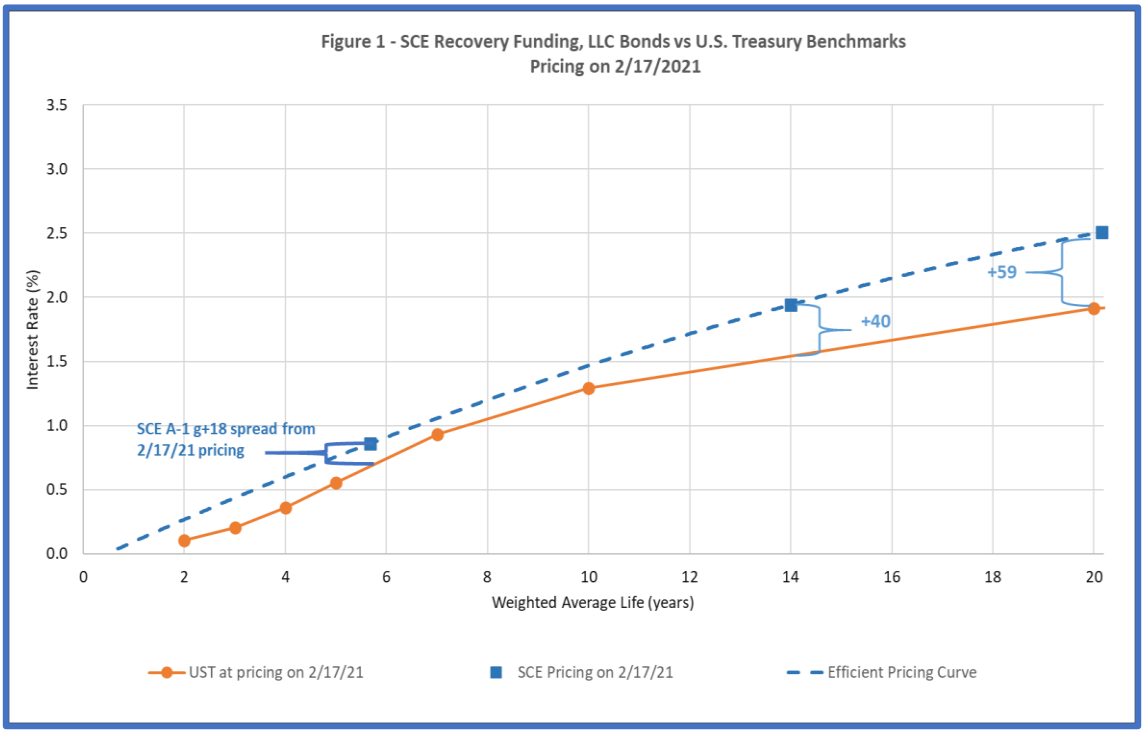
In this case study, three specific improvements are suggested that would have resulted in better net present value savings for WEPCO ratepayers and meet the statutory requirement.

> "That the proposed structuring and expected pricing of the environmental trust bonds will result in the lowest environmental control charges that are consistent with market conditions and the terms of the financing order."

There are three decisions that could have met the legislative mandate and prevented the losses identified. These improvements are as follows:

1. **1 year Extension.** Increase the final scheduled maturity by 1 year, from 12.6 years to 13.6 years Doing so would have reduced the period between the Final Scheduled Maturity and Final Legal Maturity to one-year rather than two and has been done in other recent utility transactions. This alternative assumes that the Final Legal Maturity is kept constant at 15 years and WEPCO and Barclays simply took advantage of the ability to have the time between the Final Scheduled Maturity and Final Legal Maturity in the last year of a utility securitization as has been done by many other utilities.
2. **7-year Extension**. Increase the Final Scheduled Maturity and Final Legal Maturity so that the Final Scheduled Maturity more closely reflects the term of the asset being financed as stated as a policy in the Commission 2004 financing order and in keeping with the traditional utility financing ratemaking that it is replacing, i.e., twenty years or 2041, since 2041 was the term of Pleasant Prairie investment that WEPC was replacing with environmental trust bonds –.

3. **Efficient Pricing.** Improve the pricing of the bonds so as to achieve at least the interest rate spreads to benchmark securities achieved in the most recently priced utility securitization that Barclays was also involved in – Southern California Edison Funding LLC (SCE) in February 2021. Pricing that is consistent with the spreads to benchmark achieved by SCE is referred to in the quantitative analysis below as "efficient pricing."



To estimate the savings that might have been achieved, had these changes been implemented, we constructed a semi-annual securitization model that calculates estimated annual revenue requirements from the financing and discounts them at an assumed utility weighted average cost of capital equal to 7.49%. **This model used the same cost inputs as the Securitization Scenario contained in Reese Exhibit 1, updated for market conditions at pricing on May 4, 2021, except for the changes in Final Scheduled Maturities and pricing as discussed above.**

To estimate what would constitute Efficient Pricing, one can refer to the securitization offering by SCE, which was priced on February 17, 2021. These bonds were sold in three tranches with weighted average lives (WALs) of 5.68, 14.0 and 20.16 years, respectively. These bonds were priced using U.S. Treasury bonds as the pricing benchmark.

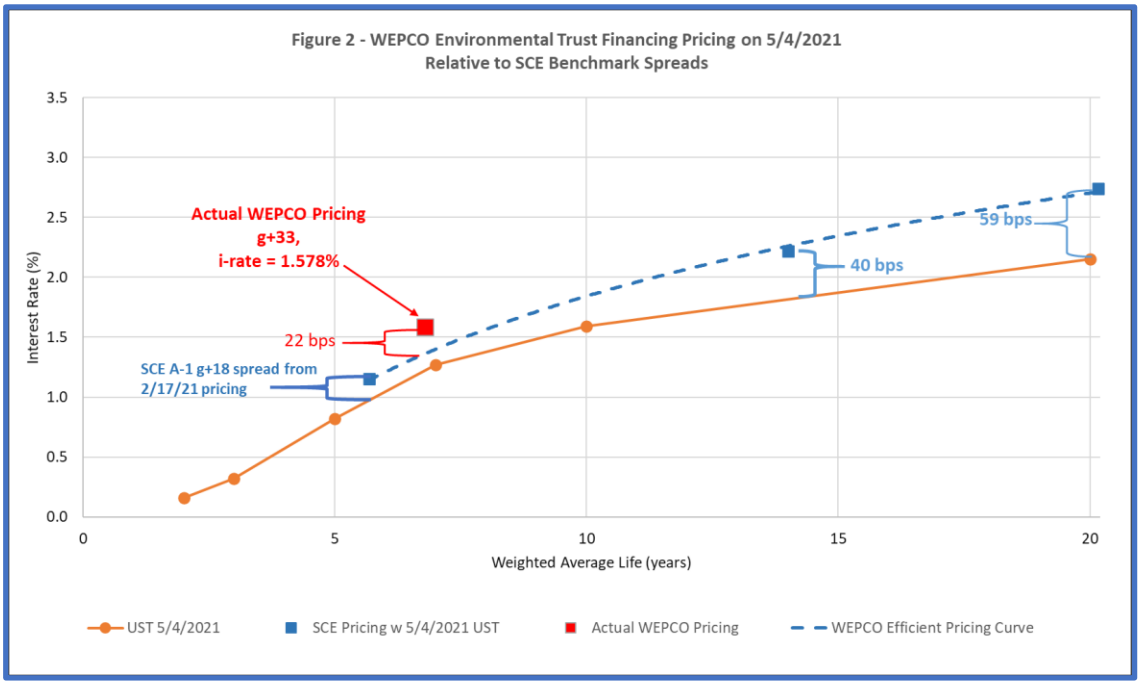
The Figure 1 shows the relationship between U.S. Treasury bond yields and the SCE bonds on the day they were priced (2/17/21). The spread between the two, using linear interpolation to match the weighted average lives, is called the "g-spread," which specifically refers to the interpolated yield on US Treasury Securities for published yields for US Treasury security "on the run" securities. On the run are the most actively traded maturities and therefor reflect correct market prices for US treasuries.) The g-spreads for the A-1, A-2 and A-3 tranches were 18, 40 and 59 basis points, respectively.

The dashed line on the aforementioned chart is a "best-fit" trendline that may be used to estimated how SCE bonds might have been priced for different weighted average lives than those actually chosen.

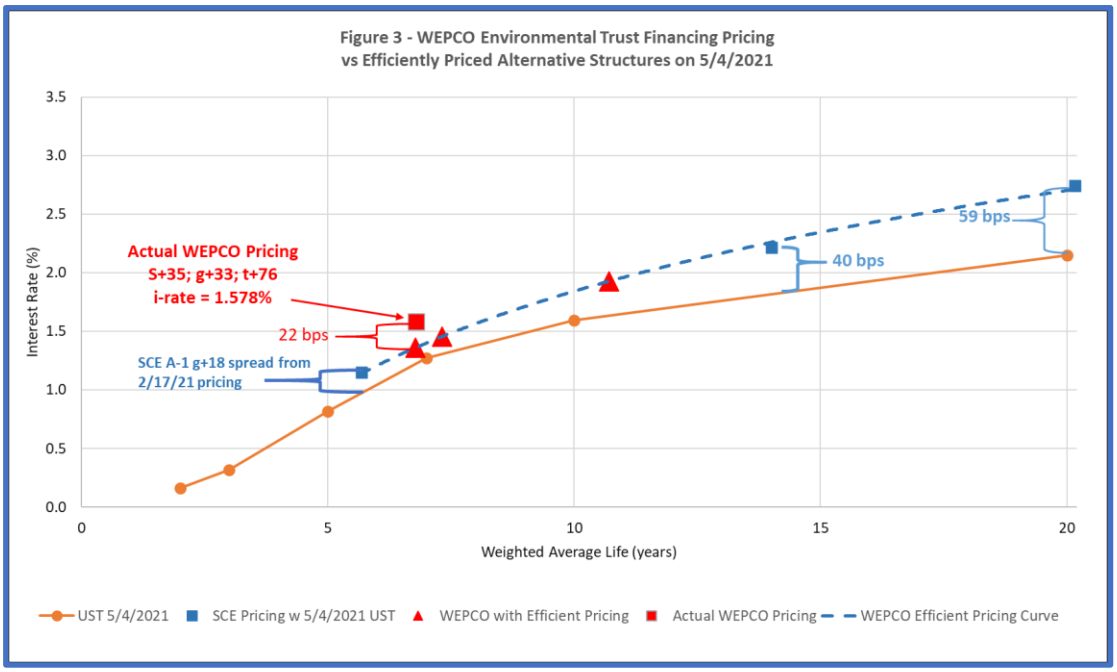
Between the SCE pricing on 2/17/21 and the WEPCO pricing on 5/4/21, interest rates increased slightly.

The 10-year U.S. Treasury bond yield increased by about 30 basis points (bps) or 0.30%. However, the credit spread, that is to say, the spread between U.S. Treasuries and bonds of slightly lower credit quality, did not change appreciably. For example, the 15-year JNJ 3.55% AAA-rated corporate bonds traded with a g-spread of 50 bps on 2/17/21 and recently, on 6/7/21, they traded at a spread of 52 bps, an increase of just 2 bps or .02%.

This means that it is reasonable to apply the SCE g-spreads from 2/17/21 to the U.S. Treasury yield curve at the time WEPCO priced on 5/4/21 to see how WEPCO priced in comparison to SCE. The graph below shows how that would look. It appears that WEPCO priced about 22 bps above where they should have, based on the spreads to the UST benchmarks achieved by SCE in February.



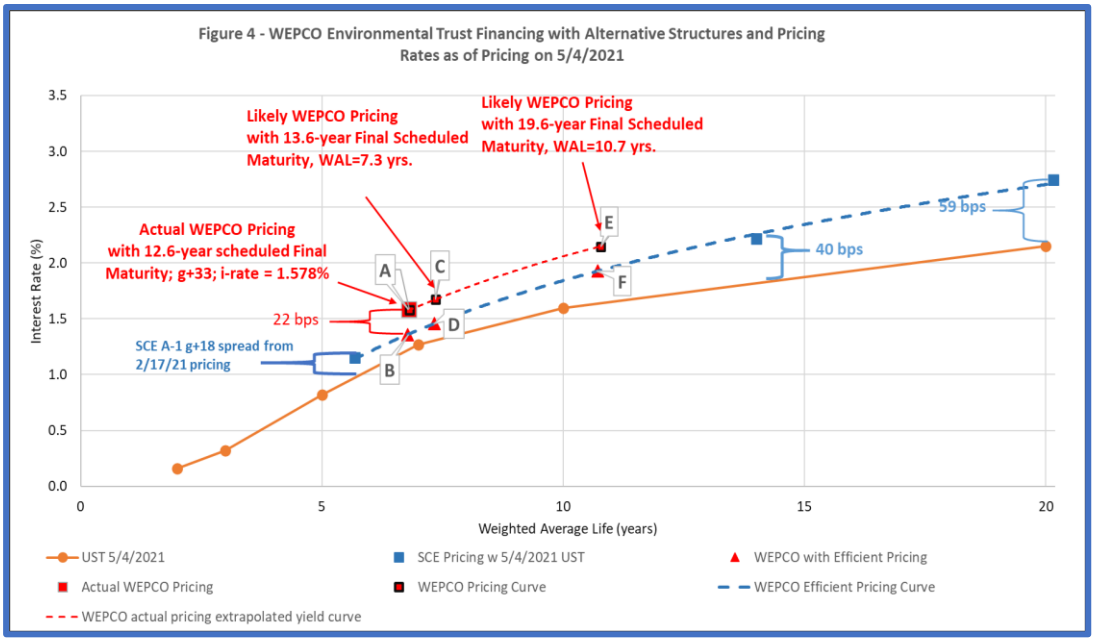
With the efficient pricing curve established, it is now possible to determine where WEPCO could have priced, if the bonds had been well marketed and priced, for any WAL along the curve. Figure 3 shows where the bonds could have been efficiently priced with 12.6, 13.6 and 19.6-year final scheduled maturities corresponding to WALs of 6.81, 7.36, and 10.78 years, respectively.



From this market data, it is also possible to estimate how WEPCO might have priced if they kept the same 22 bps pricing disadvantage to SCE but extended the Final Scheduled Maturity by either 1 or 7 years.

It is possible that the spread penalty might have changed with longer maturities, but, if anything, it likely would have increased with longer maturities. Thus, by assuming a constant 22 bp premium across the yield curve, the analysis is being conservative.

We have now defined 6 different possible outcomes, including the actual WEPCO pricing and structure, which are labeled A through F in Figure 4, below.



At first glance, one might think that it would be disadvantageous to extend maturities as shown on the chart, since interest rates will increase the further up the yield curve that the bonds are priced.

However, while the interest rate increases nominally, the net present value of customer revenue requirements decreases when discounted at WEPCO's weighted average cost of capital of 7.49%. This is how WEPCO Reese Exhibit 1 calculates present value benefits to ratepayers from their sole alternative of 12.6 years.

The reason why the NPVRR savings increases despite higher interest rates for longer maturities is because the 7.49% discount rate is much higher than the carrying cost to the ratepayer, which is the interest rate on the WEPCO environmental trust bonds. This financial math is not a question of judgment. It is financial math used in traditional utility ratemaking analyses.

The following table shows the results for all six cases that were examined in this analysis. Compared to the results of the actual WEPCO pricing, the lost savings range from about just over $1 million if the Final Scheduled Maturity had been extended by just a year or if the bonds had been marketed and priced more efficiently, to a just over $9 million of lost savings from extending the Final Scheduled Maturity by 7 years and marketing and pricing the bonds more efficiently.

WEPCO Possible Alternative Outcomes

		Actual Scheduled Maturity		1-Year Extension		7-Year Extension	
		Actual Pricing	Efficient Pricing	Extrapolatd Actual Pricing	Efficient Pricing	Extrapolatd Actual Pricing	Efficient Pricing
Case		**A**	**B**	**C**	**D**	**E**	**F**
Term based on final scheduled maturity (yrs.)		**12.6**	**12.6**	**13.6**	**13.6**	**19.6**	**19.6**
WAL (yrs.)		**6.81**	**6.78**	**7.36**	**7.32**	**10.78**	**10.74**
i-rate (%)		**1.587**	**1.360**	**1.674**	**1.456**	**2.148**	**1.928**
NPVRR [1] ($ millions)		**86.0**	**84.8**	**84.7**	**83.4**	**78.5**	**76.9**
Foregone NPV Savings (Change in NPVRR from Actual)	**$ millions**	**0.0**	**1.2**	**1.3**	**2.6**	**7.5**	**9.1**
	% of Traditional NPVRR [2]	0%	1%	1%	2%	6%	7%

(1) Net present value revenue requirements (NPVRR) discounted at a weighted average cost of capital of 7.49%
(2) Traditional NPVRR per WEPCO Reese Exhibit 1: $132,022,000

Appendix 3 – Market Precedents Proving Utility Ratepayer-Backed Bond Issues Could Have Had Only One-Year Between Scheduled Maturity and Final Maturity to Meet Rating Agency Standards as Well as Final Scheduled Maturities of 20 Years

We address three questions in this Appendix based on market precedents that were public at the time of the WEPCO proceeding:

1. Could WEPCO/Barclays have extended the environmental trust bond's "final scheduled maturity" just one year and still have a "final legal maturity" of less than 15 years as required by the November 2020 financing order and still meet rating agency standards for a AAA/Aaa rating?

2. Because WEPCO was offering only $118,800, 000 was it impossible (or only theoretical) to offer longer final scheduled maturities? Isn't this too small of an issue to have a long maturity?

3. Were other structures possible that could have been examined by WEPCO and Barclays to decide whether greater ratepayer savings were possible per WEPCO's Reese methodology in Exhibit 1 to his direct testimony?

Q. ***Could WEPCO/Barclays have extended the environmental trust bond's final scheduled maturity one year and still have a final legal maturity of less than 15 years as required by the November 2020 financing order and still meet rating agency standards for a AAA/Aaa rating?***

A. Yes. Rating agencies have approved many utility ratepayer-backed bond issues with a final maturity 12 months or less year after final scheduled maturity. **This one small change could have saved WEPCO ratepayers net present value $1.2 million.** It was a matter of effort not cost. Is that a lot of money?

Tranche	Utility Deal Name	Initial Tranche Amount	Initial Sale Date	Initial Tranche WAL (yrs.)	Scheduled Final Maturity	Final Maturity
A-3	PECO 2000-A	$398,838,452	4/27/2000	8.7	3/1/2009	3/1/2010
A-4	PECO 2000-A	$351,161,548	4/27/2000	9.3	9/1/2009	9/1/2010
A-6	Detroit Edison 2001	$390,671,263	3/2/2001	13.3	3/1/2015	3/1/2016
A-5	CL&P Funding LLC	$378,195,343	3/27/2001	8.9	12/30/2010	12/30/2011
A-6	Consumers Funding LLC	$115,592,000	10/31/2001	12.8	10/20/2015	10/20/2016
A-5	CPL Transition Funding LLC	$191,856,858	1/31/2002	13.0	1/15/2016	1/15/2017
A-5	CenterPoint Energy Series A	$462,000,000	12/9/2005	12.7	8/1/2019	8/1/2020

Tranche	Utility Deal Name	Initial Tranche Amount	Initial Sale Date	Initial Tranche WAL (yrs.)	Scheduled Final Maturity	Final Maturity
A-5	AEP Texas Central Transition Funding II	$494,700,000	10/4/2006	12.7	7/1/2020	7/1/2021
A-4	PE Environmental Funding, LLC	$9,975,000	4/3/2007	19.9	7/15/2027	7/15/2028
A-4	MP Environmental Funding LLC	$29,025,000	4/3/2007	20.0	7/15/2027	7/15/2028
A-1	Entergy Gulf States Reconstruction Funding I, LLC	$93,500,000	6/22/2007	3.0	10/1/2012	10/1/2013
A-2	Entergy Gulf States Reconstruction Funding I, LLC	$121,600,000	6/22/2007	8.0	10/1/2017	10/1/2018
A-1	Entergy Texas Restoration Funding	$182,500,000	10/29/2009	3.0	2/1/2015	2/1/2016
A-2	Entergy Texas Restoration Funding	$144,800,000	10/29/2009	7.0	8/1/2018	8/1/2019
A-1	CenterPoint Energy Restoration Bond	$224,788,000	11/18/2009	3.0	2/15/2015	2/15/2016
A-2	CenterPoint Energy Restoration Bond	$160,152,000	11/18/2009	7.0	8/15/2018	8/15/2019
A-3	CenterPoint Energy Restoration Bond	$279,919,000	11/18/2009	10.8	8/15/2022	8/15/2023
A-1	PE Environmental Funding LLC	$21,510,000	12/16/2009	19.0	1/15/2030	1/15/2031
A-1	MP Environmental Funding LLC	$64,380,000	12/16/2009	19.0	1/15/2030	1/15/2031
A-1	CenterPoint Energy Transmission Bond Co. IV	$606,222,000	1/11/2012	3.0	4/15/2017	4/15/2018
A-2	CenterPoint Energy Transmission Bond Co. IV	$407,516,000	1/11/2012	7.0	10/15/2020	10/15/2021

Tranche	Utility Deal Name	Initial Tranche Amount	Initial Sale Date	Initial Tranche WAL (yrs.)	Scheduled Final Maturity	Final Maturity
A-3	CenterPoint Energy Transmission Bond Co. IV	$681,262,000	1/11/2012	10.8	10/15/2024	10/15/2025
A-1	AEP Texas Central Funding III	$307,900,000	3/7/2012	3.0	12/1/2017	12/1/2018
A-2	AEP Texas Central Funding III	$180,200,000	3/7/2012	7.0	6/1/2020	6/1/2021
A-1	Ohio Phase-In-Recovery Funding LLC	$164,900,000	7/23/2013	2.3	7/1/2017	7/1/2018
A-2	Ohio Phase-In-Recovery Funding LLC	$102,508,000	7/23/2013	5.1	7/1/2019	7/1/2020
A-1	Appalachian Consumer Rate Relief Funding LLC	$215,800,000	11/6/2013	5.0	2/1/2023	2/1/2024
A-1	Consumers 2014 Securitization Funding LLC	$124,500,000	7/14/2014	3.0	11/1/2019	11/1/2020
A-2	Consumers 2014 Securitization Funding LLC	$139,000,000	7/14/2014	8.0	11/1/2024	11/1/2025
A-3	Consumers 2014 Securitization Funding LLC	$114,500,000	7/14/2014	12.3	5/1/2028	5/1/2029

Q. ***Because WEPCO was offering only $118,800, 000 was it impossible (or only theoretical) to offer longer scheduled maturities? Isn't this too small of an issue to have a long maturity?***

A. No. Many other utility securitizations were small in size and had longer scheduled maturities than WEPCO.

State	Date	Initial Deal Amount	Utility Beneficiary
WV	2009	$21,510,000	Potomac Edison
CA	1999	$24,000,000	Sierra Pacific Power
NJ	2004	$46,300,000	Rockland Electric
NH	2002	$50,000,000	Public Service Company of New Hampshire
MT	1998	$62,700,000	Montana Power
WV	2009	$64,380,000	Monongahela Power
LA	2014	$71,000,000	Entergy Gulf States Louisiana LLC
LA	2015	$98,730,000	Entergy New Orleans
NJ	2005	$102,700,000	Public Service Electric & Gas
WV	2007	$114,825,000	Potomac Edison

State	Date	Initial Deal Amount	Utility Beneficiary
PA	2005	$115,000,000	West Penn Power
WI	2021	$118,400,000	Wisconsin Electric Power
AR	2010	$124,100,000	Entergy Arkansas, Inc.
NJ	2003	$152,000,000	Atlantic City Electric
MA	2001	$155,000,000	Western Massachusetts Electric
LA	2008	$180,600,000	Cleco Power LLC
NJ	2006	$182,400,000	Jersey Central Power & Light
LA	2011	$207,156,000	Entergy Louisiana, LLC
TX	2019	$235,282,000	AEP Texas Restoration Funding LLC
LA	2014	$243,850,000	Entergy Louisiana LLC
LA	2010	$244,100,000	Entergy Gulf States Louisiana LLC
OH	2013	$267,408,000	Ohio Power Company
LA	2008	$278,400,000	Entergy Gulf States Louisiana LLC
NJ	2002	$320,000,000	Jersey Central Power & Light
TX	2007	$329,500,000	Entergy Gulf States, Inc.
CA	2021	$337,000,000	Southern California Edison
WV	2007	$344,475,000	Monongahela Power
	TOTAL	**$4,490,816,000**	

Q. ***Were other structures possible that could have been examined by WEPCO and Barclays to decide whether greater ratepayer savings were possible per WEPCO's Reese methodology in Exhibit 1 to his direct testimony?***

A. Yes.

There are many examples of other utility ratepayer backed bonds about the size of the WEPCO Financing with both longer and shorter scheduled maturities and weighted average lives. There is no evidence of any market constraint.

Tranche	Issuer	Initial Tranche Amount	Initial Tranche WAL (yrs.)	Amortization Period (Months)	Initial Sale Date
A-1	Entergy Arkansas Energy Restoration Funding, LLC	$124,100,000	5.4	108	8/11/2010
A-1	Cleco Katrina/Rita Hurricane Recovery Funding LLC	$113,000,000	5.0	96	2/28/2008
A-2	SCE Recovery Funding LLC	$100,000,000	14.0	78	2/17/2021
A-3	SCE Recovery Funding LLC	$100,000,000	20.2	66	2/17/2021
A-2	Entergy Gulf States Reconstruction Funding I, LLC	$121,600,000	8.0	60	6/22/2007
A-1	AEP Texas Restoration Funding LLC	$117,641,000	3.1	60	9/11/2019
A-1	Atlantic City Electric Transition Funding LLC	$109,000,000	3.0	57	12/11/2002
A-1	Consumers 2014 Securitization Funding, LLC	$124,500,000	3.0	54	7/14/2014

Tranche	Issuer	Initial Tranche Amount	Initial Tranche WAL (yrs.)	Amortization Period (Months)	Initial Sale Date
A-2	AEP Texas Restoration Funding LLC	$117,641,000	7.9	54	9/11/2019
A-3	Atlantic City Electric Transition Funding LLC	$118,000,000	10.5	51	12/11/2002
A-3	Entergy Gulf States Reconstruction Funding I, LLC	$114,400,000	12.2	42	6/22/2007
A-1	Louisiana Public Facilities Authority	$103,000,000	2.7	42	8/20/2008
A-3	Consumers 2014 Securitization Funding, LLC	$114,500,000	12.3	42	7/14/2014
A-1	Reliant Energy Transition Bond Company I, LLC	$115,000,000	2.7	36	10/17/2001
A-5	Consumers Funding LLC	$117,000,000	10.0	36	10/31/2001
A-1	Oncor Electric Delivery Transition Bond Company LLC	$103,000,000	2.0	36	8/14/2003
A-2	Oncor Electric Delivery Transition Bond Company LLC	$122,000,000	5.0	36	8/14/2003
A-1	FPL Recovery Funding LLC	$124,000,000	2.0	36	5/17/2007
A-2	Louisiana Local Government Environmental Facilities and Community Development Authority	$111,000,000	5.0	36	7/15/2010
A-3	Louisiana Local Government Environmental Facilities and Community Development Authority	$121,000,000	8.0	36	7/15/2010
A-1	FirstEnergy Ohio PIRB Special Purpose Trust 2013	$111,971,000	1.6	36	6/12/2013
A-6	Consumers Funding LLC	$115,592,000	12.8	30	10/31/2001
A-1	Louisiana Local Government Environmental Facilities and Community Development Authority	$112,000,000	2.0	30	7/15/2010
A-4	Louisiana Local Government Environmental Facilities and Community Development Authority	$124,900,000	10.9	30	7/15/2010
A-2	PSNH Funding LLC 3	$111,600,000	7.0	30	5/1/2018
A-2	Reliant Energy Transition Bond Company I, LLC	$118,000,000	5.2	24	10/17/2001
A-3	FPL Recovery Funding LLC	$100,000,000	7.3	24	5/17/2007
A-2	Ohio Phase-In-Recovery Funding, LLC	$102,508,000	5.1	24	7/23/2013
A-1	WPP Funding LLC	$115,000,000	4.2	21	9/22/2005
A-3	CPL Transition Funding LLC	$107,094,258	7.2	18	1/31/2002
A-1	The Detroit Edison Securitization Funding LLC	$124,540,305	1.5	18	3/2/2001
A-1	Illinois Power Special Purpose Trust	$110,000,000	0.8	12	12/10/1998
A-2	Illinois Power Special Purpose Trust	$100,000,000	1.8	12	12/10/1998

Tranche	Issuer	Initial Tranche Amount	Initial Tranche WAL (yrs.)	Amortization Period (Months)	Initial Sale Date
A-1	Massachusetts RRB Special Purpose Trust BEC-1	$108,500,000	1.1	12	7/26/1999
A-3	Massachusetts RRB Special Purpose Trust BEC-1	$103,390,163	5.1	12	7/26/1999
A-1	Massachusetts RRB Special Purpose Trust 2005-1	$109,234,000	1.0	12	2/15/2005
A-3	RSB BondCo LLC	$119,200,000	9.3	12	6/22/2007
A-1	PSE&G Transition Funding LLC	$105,249,914	1.0	9	1/25/2001
A-3	PG&E Energy Recovery Funding LLC	$121,461,000	6.8	9	11/3/2005
A-1	PG&E Funding LLC	$125,000,000	0.6	6	11/25/1997
A-1	PECO Energy Transition Trust	$110,000,000	1.1	6	4/27/2000

Summary:

	Average	***$113,307,869***	***5.7***	***35***
	Median	**$114,400,000**	**5.0**	**36**
	Count	**41**		
	WEPCO	**$118,814,000**	**6.87**	**144**

Appendix 4: Line-by-Line Comparison and Commentary on the Commission Financing Order Docket No. 6630-ET-100 October 12, 2004, with No. 6630-ET-101 November 17, 2020, Commission Financing Order – The 2004 Commission Precedents Overturned in 2020

The Commission had previously considered a WEPCO environmental trust bond financing order application soon after the law was passed in 2003 in Docket No. 6630-ET-100.

> "On July 6, 2004, a prehearing conference was held at the Commission. On September 1, 2004, technical hearings were held. On September 7, 2004, hearings for public comment were held in the Applicant's service territory. Simultaneous briefs and reply briefs were filed with the Commission on September 10, and September 17, 2004, respectively. The Commission conducted its discussion of record on October 7, 2004. Pursuant to Wis. Stat. § 196.027(2)(b)1, issuance of a financing order is required on or before October 12, 2004."

The application and evidentiary record are remarkably similar to the WEPCO 2020 application.

WEPCO's financial advisor in 2004 was Lehman Brothers. Barclays, WEPCO's 2020 advisor and underwriter bought Lehman Brothers out of bankruptcy in 2009.

Attached is a comparison of the 2004 and 2020 Commission financing orders on the critical Findings of Facts, Conclusions of Law and Ordering Paragraphs.

When a specific change is unusual or important to the analysis, it is highlighted in yellow and/or a comment is provided.

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SERVICE DATE
Nov 17, 2020

Public Service Commission of Wisconsin
RECEIVED: 11/17/2020 10:25:00 AM

PSC REF#:400098

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Wisconsin Electric Power Company for a Financing Order Authorizing the Issuance of Environmental Trust Bonds — 6630-ET-101

FINANCING ORDER

This Financing Order arises out of the application of Wisconsin Electric Power Company (WEPCO) for authority to finance the costs of certain environmental control activities[1] with the proceeds of environmental trust bonds and for approval of related affiliated interest agreements. The affiliated interest agreements will be considered in a separate proceeding. The other portions of the application are APPROVED and a Financing Order is issued, subject to conditions.

Introduction

On July 20, 2020, WEPCO filed an application (including the supporting testimony filedtherewith, the Application) requesting a financing order pursuant to Wis. Stat. § 196.027 to finance environmental control costs relating to the retired Pleasant Prarie Power Plant (Pleasant Prairie), as well as approval of related affiliated interest agreements pursuant to Wis. Stat. § 196.52. (PSC REF#: 393907.) In particular, WEPCO proposes to finance: (1) $100 million of the undepreciated cost of certain environmental control activities undertaken at Pleasant Prarie;

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Financing Order Authorizing the Issuance of 6630-ET-100 Environmental Trust Bonds and for Approval of Related¶
Affiliated Interest Agreements¶
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(2) capitalized costs being recorded as a regulatory asset equal to WEPCO's return, at its currentauthorized weighted average cost of capital (WACC), on such $100 million of undepreciated costs from January 1, 2020 through the date of issuance of the environmental trust bonds; and

[1] Terms defined by Wis. Stat. § 196.027 are used herein with the same meaning.

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(3) the upfront financing costs incurred in connection with issuing the environmental trust bonds. Assuming an issuance of the environmental trust bonds by April 1, 2021, with the $100 million of undepreciated costs, estimated capitalized carrying costs of approximately $12.6 million and estimated upfront financing costs of approximately $5.3, WEPCO estimates that the aggregate principal amount of the bonds to be issued will be approximately $117.9 million. WEPCO proposes to recover the amount financed plus ongoing financing costs through electric environmental control surcharges over approximately a 13-year period.

WEPCO filed the Application to fulfill an obligation arising out of the Commission's Final Decision in docket 5-UR-109 issued on December 19, 2019 (the 2019 Order). Docket 5-UR-109 related to the joint application of WEPCO and Wisconsin Gas LLC (WG) for authority to adjust retail electric, natural gas and steam rates on January 1, 2020. In the 2019 Order, the Commission approved the August 2019 settlement agreement among WEPCO, WG, Wisconsin Industrial Energy Group (WIEG), and Citizens Utility Board of Wisconsin (CUB) (Settlement Agreement) with respect to base rate revenue requirements for test years 2020 and 2021. As part of the Settlement Agreement, WEPCO agreed to seek a financing order from the Commission to securitize the environmental control costs and financing costs described above. (PSC REF#: 381305.)

Pursuant to Wis. Stat. § 196.027(2)(b)1., issuance of a financing order is required no later than 120 days after the July 20, 2020 filing (on or before November 17, 2020). Wisconsin Stat. § 196.027(2)(b)1. provides that the Commission may issue a financing order if it finds (a) that the order will result in lower overall costs to customers than would alternative methods of financing environmental control activities; (b) that the proposed structuring and expected pricing

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of the environmental trust bonds will result in the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of the financing order; and (c) that the financing order is otherwise consistent with the public interest, and is prudent, reasonable and appropriate.

To facilitate compliance and consistency with applicable statutory provisions, this Financing Order adopts the definitions in Wis. Stat. § 196.027(1).

On August 6, 2020, the Commission issued a Notice of Proceeding in this matter. (PSC REF#: 394923.) CUB, WIEG, and Sierra Club requested and were granted intervention in this proceeding. (PSC REF#: 394187, PSC REF#: 394512, and PSC REF#: 395203, respectively.)

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Pursuant to due notice, the Commission held a telephonic hearing in Madison, Wisconsin on October 2, 2020 for members of the general public. A technical hearing was also held via telephone on October 2, 2020 in Madison, Wisconsin, to receive technical information and public comments. The Commission's public hearing process included the opportunity to submit written comments through the Commission's web site or at the public hearing, or to testify at the public hearing.

The parties, for purposes of review under Wis. Stat. §§ 227.47 and 227.53, are listed in Appendix A.

Deleted: Others who appeared are listed in the Commission's files.

The Commission considered this matter at its open meeting of November 5, 2020.

Findings of Fact

1. WEPCO is an energy utility as defined in Wis. Stat. § 196.027(1)(c).

2. WEPCO proposes to finance $100 million of the undepreciated cost of the environmental control activities at the retired Pleasant Prairie Power Plant (Undepreciated Costs)

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Docket 6630-ET-100

by means of issuing environmental trust bonds, a financing mechanism enacted into Wisconsin law in 2003 Wisconsin Act 152, codified as Wis. Stat. § 196.027. The Undepreciated Costs relate to the installation of environmental controls at the retired Pleasant Prairie Power Plant, including wet flue gas desulfurization and selective catalytic reduction.

3. WEPCO proposes to finance additional environmental control costs consisting of the capitalized costs being recorded as a regulatory asset equal to WEPCO's return, at its current authorized WACC, on such $100 million of undepreciated cost from January 1, 2020 through the date of issuance of the environmental trust bonds (Capitalized Carrying Costs). WEPCO estimates that the Capitalized Carrying Costs will accrue at a rate of approximately $841,000 per month, with total estimated Capitalized Carrying Costs of approximately $12.6 million through March 31, 2021.

4. WEPCO estimates the upfront financing costs for the issuance of the environmental trust bonds to be approximately $5.3 million.

5. Assuming an issuance of the environmental trust bonds by April 1, 2021, with the $100 million in Undepreciated Costs, estimated Capitalized Carrying Costs of approximately $12.6 million and estimated upfront financing costs of approximately $5.3 million, WEPCO estimates that the aggregate principal amount of the bonds to be issued will be approximately $117.9 million. The actual amount financed will depend on when the bonds are issued and the actual up-front financing costs.

6. In addition to the environmental control costs and upfront financing costs financed through the issuance of the environmental trust bonds, ongoing financing costs will be

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¶
Manufactured gas plant clean up.¶
¶
Pleasant Prairie Power Plant environmental work.¶
¶
Presque Isle Power Plant Units 7, 8 & 9 TOXECON™ project.¶
¶
Retirements at Port Washington Generating Station.¶
¶
Continuous emission monitoring system for particulate matter.¶
¶
Installation of particulate control baghouse at Presque Isle Power Plant Units 5 and 6.¶
¶
Under the Application, the Wisconsin jurisdictional portion of the

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incurred with respect to interest payments on the environmental trust bonds, as well as other estimated ongoing financing costs of approximately $530,000 annually and applicable tax costs.

7. A portion of the proceeds from the authorized environmental trust bonds shall be used by the special purpose entity (SPE) to pay for the upfront financing costs incurred in connection with the issuance of the bonds and to reimburse WEPCO for any issuance costs that were paid directly by WEPCO in advance of the bond issuance. The remaining proceeds will be used to reimburse WEPCO for such environmental control costs, all of which shall have been incurred by WEPCO at the time of issuance of the environmental trust bonds. As a result, no funds will remain in a segregated account for environmental control costs to be incurred in the future.

8. Other financing costs include the ongoing costs relating to issuing and servicing environmental trust bonds in connection with the issuance of the environmental trust bonds in accordance with this Financing Order.

9. Wisconsin Stat. § 196.027(2)(b)1. provides that the Commission may issue a financing order if it finds (a) that the order will result in lower overall costs to customers than would alternative methods of financing environmental control activities; (b) that the proposed structuring and expected pricing of the environmental trust bonds will result in the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of the financing order; and (c) that the financing order is otherwise consistent with the public interest, and is prudent, reasonable and appropriate. WEPCO provided testimony regarding the security structure (including proposed tranche structure and amortization period) and expected ratings on the bonds, as well as aspects of the transaction relating to the

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It is appropriate

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It is not appropriate to make changes to the Commission's policy on recovery of MGP clean-up costs in this proceeding.¶
It is appropriate to condition the inclusion of certain Nitrogen Oxide (NO_X) abatement costs

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It is appropriate to include incurred and proposed NO_X abatement costs of¶
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$113,230,000 on

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It is appropriate for the Commission to review the NO_X escrow balances in the current WEPCO carve-out docket 05-UR-101.¶
It is appropriate to exclude Manufactured Gas Plant ... [1]

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marketing and pricing of the environmental trust bonds. Based on the evidence provided by WEPCO, the Commission finds that this Financing Order will result in lower overall costs to customers than would alternative methods of financing environmental control activities.

10. The actual costs related to issuing and servicing the environmental trust bonds will not be known until the environmental trust bonds are issued, and certain ongoing costs relating to the environmental trust bonds may not be known until such costs are incurred. The initial costs of additional credit enhancements, if any, and servicing the bonds, and initial third party fees and expenses, also will not be known until the time the environmental trust bonds are issued.

11. It is reasonable that WEPCO update, prior to issuance, its estimates of the Capitalized Carrying Costs and upfront financing costs. It is reasonable to require WEPCO to provide notice to the Commission if its updated estimated Capitalized Carrying Costs or upfront financing costs are in excess of the estimates set forth in this Financing Order. Further, if WEPCO's estimate of the Capitalized Carrying Costs or the upfront financing costs has decreased at the time of issuance of the bonds, WEPCO shall make a corresponding reduction in the principal amount of the bonds. Such financing costs should result in the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of this Financing Order.

12. To allow the Commission to monitor compliance and the progress of the issuance of the environmental trust bonds, it is reasonable to require WEPCO to provide to the Commission a copy of each filing made with the Securities and Exchange Commission in connection with the proposed issuance of the environmental trust bonds. It is reasonable to

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As limited by this Financing Order

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There is

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require WEPCO, prior to the issuance of the environmental trust bonds, to provide such regular updates and progress reports as may be requested by the Commission.

13. WEPCO has proposed a transaction structure that includes all of the following:

a. The use of an SPE as issuer of environmental trust bonds, limiting the risks to bondholders of any adverse impact resulting from a bankruptcy proceeding of itsparent or any affiliate.

b. The right to impose and collect environmental control charges that are non-bypassable and which must be trued-up at least annually, but may be trued-up more frequently under certain circumstances, in order to ensure the timely recovery of the environmental control costs and payment of the debt service and other ongoing financingcosts.

c. Additional collateral in the form of a collection account which includes a capital subaccount of not less than 0.5 percent of the initial principal amount of the environmental trust bonds, and other subaccounts, resulting in greater certainty of payment of interest and principal to investors consistent with the requirements of the rating agencies that will rate the environmental trust bonds. In addition, a capital contribution of not less than 0.5 percent of the initial principal amount of the bonds is necessary to satisfy the requirements of Internal Revenue Service Revenue Procedure 2005-62 to ensure that WEPCO will not recognize in its taxable income the cash proceeds received from the issuance of the environmental trust bonds.

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Commented [CDE8]: Almost universal market precedent is to require the sponsoring utility to deliver an Issuance Advice Letter to the Commission after pricing but before issuance of securitized bonds. This compliance filing is even more important if the Commission does not retain a financial advisor to monitor and participate in post-Financing Order decisions about structuring, marketing and pricing the securitized bonds.

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d. Protection of bondholders against potential defaults by a servicer that is responsible for billing and collecting the environmental control charges from existing orfuture retail customers.

14. It is reasonable to require that the environmental trust bonds (or, if there is more than one tranche, each tranche of the environmental trust bonds) bear interest at a fixed rate and that the amortization schedule be designed to generally provide for level annualized debt service requirements.

15. WEPCO's proposed transaction structure is reasonable and necessary to enable the environmental trust bonds to obtain a AAA bond credit rating, to ensure that the structuring, marketing, and pricing of the environmental trust bonds will result in the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of this Financing Order.

16. The financing requested in the Application will produce a lower cost of capital than would other alternatives examined. Since many terms of the financing mechanism have not yet been established, to ensure that ratepayers receive the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of this Financing Order from the proposed securitization and so that the proposed environmental trust bond transaction will be consistent with the standards set forth in Wis. Stat. § 196.027(2)(b)1., it is necessary that:

a. The effective duration-adjusted weighted average annual interest rate of the environmental trust bonds, including upfront and ongoing financing costs, does not exceed WEPCO's duration-weighted marginal cost of debt and equity;

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Anticipated benefits for federal income tax purposes.¶
¶
Hedging and swap agreements that might be used to mitigate risk.¶
¶
It is reasonable to require that the environmental trust bonds be marketed using underwriting and marketing processes, through which market conditions, rating agency considerations, and investors' preferences, with regard to the timing of the issuance, the terms and conditions, related maturities, type of interest (fixed or variable) and other aspects of the structuring, marketing, and pricing will be determined, evaluated and factored into the structuring, marketing, and pricing of the environmental trust bonds to result in the lowest cost of funds and the lowest environmental control charges that are consistent with market conditions and the terms of the Financing Order, and will result in environmental control charges that are amortized based on levelized per unit charges on a forecasted basis.¶
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To ensure that ratepayers receive the lowest cost of funds and the lowest environmental control charges that are consistent with market conditions and the terms of the

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b. The legal final maturity of the bonds shall not exceed 15 years, and the scheduled final maturity of the bonds shall not exceed 13 years.

c. The environmental trust bonds must have a AAA rating from at least two of the nationally recognized rating agencies.

d. WEPCO shall follow the marketing and pricing process described in the Application and this Financing Order.

e. Subsequent to the issuance of this Financing Order, the Commission shall monitor compliance with this Financing Order and the progress of the issuance of the environmental trust bonds. WEPCO shall provide the Commission with the reports and updates required in this Financing Order.

f. The Commission shall retain authority to review and determine whether to approve the Affiliated Interest Agreements (as defined herein), in a separte proceeding, when such agreements are finalized closer to the time of the bond issuance, in order to ensure the terms of such agreements result in the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of this Financing Order.

17. The structuring, marketing and pricing of the environmental trust bonds will result in the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of this Financing Order.

18. This Financing Order satisfies the requirements of Wis. Stat. § 196.027(2)(b)1.c, is consistent with the public interest, and is otherwise prudent, reasonable, and appropriate.

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If WEPCO needs a financial advisor with "wide experience in the structuring, marketing and pricing of asset-backed securities generally and utility securitizations specifically", is it reasonable to expect the Commission to be effective in monitoring compliance with this Financing Order in connection with this highly specialized financing without similar assistance from a financial advisor with experience in prior securitized utility bond transactions?

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The Commission shall review the proposed transaction and make a final determination as to whether the ... [7]

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19. It is reasonable for WEPCO to create an SPE, which will be a Delaware limited liability company with WEPCO as its sole member, for the exclusive purpose of acquiring environmental control property, issuing environmental trust bonds, and performing other activities relating thereto or otherwise authorized by this Financing Order. The SPE may not engage in any other activities and will have no assets other than environmental control property and related assets to support its obligations under the environmental trust bonds. Obligations relating to the environmental trust bonds will be the SPE's only significant liabilities.

20. The capital of the SPE will not be not less than 0.5 percent of the original principal amount of the environmental trust bonds issued by the SPE. A sufficient level of capital is necessary to minimize the risk of any shortfalls in the SPE's collection of the environmental control charges and, therefore, assist in achieving the lowest environmental control charges possible. In addition, a minimum capital contribution of 0.5 percent of the original principal amount of the environmental trust bonds is necessary to satisfy the requirements of Internal Revenue Service Revenue Procedure 2005-62 to ensure that WEPCO will not recognize in its taxable income the cash proceeds received from the issuance of the environmental trust bonds.

21. It is reasonable that the interest rate for the environmental trust bonds be determined at the time of pricing, subject to the terms and conditions of this Financing Order.

22. The Commission finds it reasonable to provide for a rate of return on WEPCO's capital contribution to the SPE that is equal to the interest rate on the environmental trust bonds (or, if there is more than one tranche, the interest rate on the longest maturing tranche of the environmental trust bonds).

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Commented [CDE14]: Page 34 below states: "WEPCO retained Barclays Capital Inc. (Barclays) as its financial advisor to advise WEPCO with respect to the structuring, marketing and pricing of the environmental trust bonds. As described in the supporting testimony, Barclays has wide experience in the structuring, marketing and pricing of asset-backed securities generally and utility securitizations specifically."

If WEPCO needs a financial advisor with "wide experience in the structuring, marketing and pricing of asset-backed securities generally and utility securitizations specifically", is it reasonable to expect the Commission to be effective in monitoring compliance with this Financing Order in connection with this highly specialized financing without similar assistance from a financial advisor with experience in prior securitized utility bond transactions?

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In order to ensure that the structuring, marketing, and pricing of the environmental trust bonds results in the lowest cost of funds and the lowest environmental control charges that are consistent with market conditions and the terms of the Financing Order, the Commission finds that it is necessary to continue to oversee the structuring, marketing, and pricing of the environmental trust bonds, the terms and conditions of which are subject to ... [9]

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It is reasonable for the Applicant

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23. The use and proposed structure of the SPE and the limitations related to its organization and management are necessary to minimize risks related to the proposed securitization transaction and to ensure the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of this Financing Order. It is reasonable to approve the proposed structure of the SPE.

24. Credit enhancement for the environmental trust bonds will include the true-up adjustment process described in this Financing Order and the capital subaccount funded by WEPCO. WEPCO indicated that it does not anticipate the need for additional forms of credit enhancement, such as letters of credit, over-collateralization or reserve accounts, surety bonds, swap arrangements, hedging arrangements, and other mechanisms designed to promote the creditquality of the environmental trust bonds. WEPCO will have the flexibility to make use of other forms of credit enhancement if the costs of such enhancements would be exceeded by the benefits of such enhancements and would result in the lowest environmental control charges thatare consistent with market conditions at the time the bonds are issued and the terms of this Financing Order.

25. Since WEPCO does not anticipate the use of any such additional credit enhancements, and the costs and benefits of any such other credit enhancements cannot be determined at this time, utilization of any such additional credit enhancement methods shall be subject to review and approval by the Commission prior to the issuance of the environmental trust bonds.

26. In accordance with Wis. Stat. § 196.027(2)(b)3., no environmental control property shall be created under this Financing Order, and WEPCO shall not be authorized to

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impose, collect, and receive environmental control charges, until the transfer of WEPCO's rights hereunder to the SPE occurs in conjunction with the issuance of the environmental trust bonds.

27. As security for the environmental trust bonds, the SPE will pledge the environmental control property and other collateral to be held and administered by the indenture trustee pursuant to the indenture, as described in the Application.

28. Under Wis. Stat. § 196.027(5)(a)1., environmental control property constitutes a present property right, even though the imposition and collection of environmental control charges depends on further acts of WEPCO or others that have not yet occurred.

29. It is reasonable for WEPCO to submit to the Commission a proposed environmental control property servicing agreement with the SPE (the Servicing Agreement); the terms of this agreement will be reviewed by the Commission in a separate proceeding; if the Commission approves an agreement, the final terms of the agreement will be determined by the Commission in an Affiliated Interest Agreement Final Decision (as defined herein). The Servicing Agreement submitted to the Commission for consideration shall, among other things, include the following provisions:

(a) WEPCO will be responsible for metering, calculating, billing, collecting and remitting the collected environmental control charges from electric utility customers arising from the environmental control property owned by the SPE. As servicer, WEPCO will be obligated to make remittances of the environmental control charge collections (or estimates of such collections) to the indenture trustee not later than two servicer business days following deemed receipt thereof.

(b) WEPCO will be responsible for making all true-up adjustment filings with

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the Commission to make periodic adjustments to the environmental control charges, and for preparing and filing any other reports with the Commission, the indenture trustee, the rating agencies and other financing parties; and

(c) WEPCO will not be permitted to resign voluntarily from its duties as servicer unless (i) WEPCO determines that its continued performance of the duties as servicer would no longer be permitted under applicable law or (ii) WEPCO receives the consent of the Commission and confirmation that such action will not result in a suspension, reduction or withdrawal of the then current ratings on any of the environmental trust bonds.

30. As compensation for its duties under the Servicing Agreement, it is reasonable that WEPCO receive from the SPE a servicing fee equal to 0.05 percent per annum of the intial aggregate principal amount of the environmental trust bonds, plus reimbursement of out-of-pocket expenses. As described in the Application, this fee is based on current market rates in similar utility securitization transactions. As described in the Application, payment of a servicing fee that is consistent with market rates is necessary to obtain the essential bankruptcy-remote nature of the SPE.

31. If WEPCO defaults in its duties as servicer or is required for any reason to discontinue those functions, then an independent successor servicer acceptable to the indenture trustee and, if required, the rating agencies, may be named to replace WEPCO. In this event, the servicing fee paid to a successor servicer would likely need to be higher than the servicing fee paid to WEPCO. It is reasonable that, in the event a successor servicer is appointed, the servicing fee be allowed to increase; provided that the Commission's consent would be needed

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for any servicing fee in excess of 0.60 percent per annum on the initial aggregate principal amount of the environmental trust bonds, plus reimbursement of out-of-pocket expenses, as described in this Financing Order.

32. It is reasonable that the obligations to continue to provide service and to collect and account for environmental control charges will be binding upon WEPCO and its successors.

33. It is reasonable for WEPCO to submit to the Commission an administration agreement with the SPE (the Administration Agreement); the terms of this agreement will be reviewed by the Commission in a separate proceeding, and if the agreement is approved, the terms of the agreement will be determined by the Commission in its Affiliated Interest Agreement Final Decision. Under the Administration Agreement, WEPCO will establish the SPE and perform the administrative duties necessary to maintain the SPE. WEPCO has proposed that it receive an annual fee of $75,000, plus reimbursement of out-of-pocket expenses, for performing the services required by the Administration Agreement.

34. It is reasonable for WEPCO to submit to the Commission for its consideration an environmental control property purchase and sale agreement with the SPE (the Sale Agreement); the Commission will review the agreement in a separate proceeding, and if the Commission approves the agreement, the terms of the agreement will be determined by the Commission in its Affiliated Interest Agreement Final Decision. The Sale Agreement shall provide for WEPCO's sale of the environmental control property to the SPE in a transaction that is a sale or other absolute transfer in accordance with the "absolute transfer" provisions of Wis. Stat. § 196.027(5)(c).

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35. It is reasonable to conduct a separate proceeding to consider the proposed Affiliated Interest Agreements. The Affiliated Interest Agreements include the Servicing Agreement, the Administration Agreement and the Sale Agreement. The proposed Affiliated Interest Agreements contain blanks and terms and conditions that will not be finalized until they are reviewed by the rating agencies, issuer's counsel, and other parties to the transaction. The final versions will not be available until shortly before the issuance of the environmental trust bonds. It is reasonable that in the course of finalization of the bond issuance, the Commission may review and determine whether to approve the Affiliated Interest Agreements to ensure they result in the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of this Financing Order.

36. It is reasonable that the Commission require that the issuance of the environmental trust bonds be structured by WEPCO in accordance with the provisions of Internal Revenue Service Revenue Procedure 2005-62.

37. It is reasonable for the SPE to have the flexibility to issue and sell environmentaltrust bonds in one series, with one or more tranches. The legal final maturity of the bonds shallnot exceed 15 years and the scheduled final maturity of the bonds shall not exceed 13 years.

38. It is reasonable that the environmental trust bonds contain no redemption right.

39. It is reasonable that WEPCO will retain sole discretion regarding whether or when to assign, sell, or otherwise transfer any rights concerning environmental control property arising under this Financing Order, or to cause the issuance of any environmental trust bonds authorized in this Financing Order, subject to the terms of this Financing Order.

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40. It is reasonable for the environmental trust bonds authorized by this Financing Order to be secured by the environmental control property created by this Financing Order, as well as certain other collateral described in this Financing Order.

41. It is reasonable for the indenture trustee to deposit the environmental control charge remittances that the servicer remits for the account of the SPE into one or more segregated trust accounts. Pursuant to the indenture, the SPE will establish a collection account (the Collection Account) to be held by the indenture trustee as collateral to faciliate the payment of principal and interest on the environmental trust bonds and the other ongoing financing costs related to the environmental trust bonds. The Collection Account will include a general subaccount (the General Subaccount), a capital subaccount (the Capital Subaccount), an excess funds subaccount (the Excess Funds Subaccount), and may include additional subaccounts (such as an over-collateralization or reserve account). The indenture trustee will deposit in the General Subaccount the remittances that the servicer remits to the indenture trustee. The indenture trustee will on a periodic basis apply moneys in the General Subaccount to pay expenses of the SPE, to pay principal and interest on the environmental trust bonds, and to meet the funding requirements of the other subaccounts. The moneys in the Collection Account and all subaccounts will be invested by the indenture trustee in short-term high-quality investments, and investment earnings shall be applied by the indenture trustee to pay principal and interest on the environmental trust bonds and the other ongoing financing costs related to the environmental trust bonds.

42. It is reasonable that WEPCO make a capital contribution to the SPE, which the SPE will deposit into a Capital Subaccount. The amount of the capital contribution is expected

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It is reasonable that the Applicant

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to be not less than 0.5 percent of the original principal amount of the environmental trust bonds, although the actual amount will depend on rating agency requirements. If WEPCO determines the contribution must be in excess of 0.5 percent of the original principal amount of the environmental trust bonds, such higher capital contribution amount is subject to review and approval by the Commission. The Capital Subaccount will serve as collateral to facilitate the timely payment of principal and interest on the environmental trust bonds and the other ongoing financing costs related to the environmental trust bonds. Any funds drawn from the Capital Subaccount to pay these amounts due to a shortfall in environmental control charge remittances will be replenished to its original level through future environmental control charges as adjusted through the true-up adjustment mechanism described below.

43. It is reasonable that the capital contribution to the SPE should be funded by WEPCO.

44. It is reasonable for the Excess Funds Subaccount authorized in this proceeding to hold any environmental control charge collections and investment earnings on the Collection Account in excess of the amounts needed to pay current principal and interest on the environmental trust bonds and the other ongoing financing costs related to the environmental trust bonds. Any balance in the Excess Funds Subaccount on a true-up adjustment date will be subtracted from the revenue requirement for purposes of the true-up adjustment.

45. It is reasonable that in the event the amount of environmental control charges collected by the indenture trustee is insufficient to make, on a timely basis, all scheduled payments of principal and interest on the environmental trust bonds and to make payment of all other ongoing financing costs related to the environmental trust bonds, the Excess Funds

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Subaccount and the Capital Subaccount will be drawn down, in that order, to make those payments. Any deficiency in the Capital Subaccount due to such withdrawals must be replenished on a periodic basis through the true-up adjustment process. It is reasonable that upon the maturity of the environmental trust bonds and the discharge of all obligations in respect thereof, remaining amounts in the Collection Account will be released by the SPE to WEPCO and, other than amounts that were in the Capital Subaccount and any unpaid return thereon, be credited to customers.

46. It is reasonable that the refinancing of any securities issued under this Financing Order not be authorized by this Financing Order.

47. It is reasonable that WEPCO impose on, and collect from, ratepayers environmental control charges in an amount sufficient to provide for the timely recovery of the costs approved in this Financing Order. It is reasonable that the environmental control charges be recovered until all principal and all financing costs, including interest and other costs related to the environmental control costs, have been paid in full.

48. It is reasonable that environmental control charges be presented as a separate line item on customers' bills as provided for in the Application.

49. It is reasonable to approve WEPCO's proposal to use its existing method of customer payment allocation. In particular, customer payments will be applied first to past due balances, including late fees. Once those balances are paid in full, if cash collections are not sufficient to pay a customer's current bill then the cash shall be prorated between the different components of the bill. If WEPCO's proposal in this regard limits its ability to obtain the lowest

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environmental control charges, the allocation methodology may be changed to remedy that concern, subject to Commission approval.

50. It is reasonable that environmental control charges will be collected from all retail electric utility customers of WEPCO and its successors. For the period during which environmental control costs and financing costs may be recovered through environmental control charges, so long as any retail electric customer obtains distribution service from WEPCO or its successors (including successors by merger or other combination, as well as successors through asset acquisitions), the customer shall pay non-bypassable environmental control charges to WEPCO or its successors or assignees regardless of whether the customer obtains other service from a different energy utility or other energy supplier. For purposes of this paragraph, "distribution service" means service from the energy utility, regardless of voltage and the source of that energy, if the energy supplied is not for resale.

51. It is reasonable to approve the formula-based mechanism for making adjustments in the environmental control charges proposed by WEPCO.

52. It is reasonable to require the servicer to file each year with the Commission, a routine annual true-up adjustment to the environmental control charges to correct for any over-collections or under-collections. Such routine annual true-up adjustment to the environmental control charges shall be effective not later than 45 days after the anniversary date of the issuance of the environmental trust bonds (with the precise timing to be determined at the time of the bond issuance), and such filing shall be made not later than 45 days prior to the effective date of such true-up adjustment. In addition, if determined to be necessary as described below, a routine mid-year true-up adjustment to the environmental control charges will be

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Overcollateralization Subaccount will be fully depleted on any interest payment date for a series of environmental trust bonds.

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effective on the date that is 6 months from the date of the routine annual true-up adjustment. Each year not later than 45 days before the effective date of the routine mid-year true-up adjustment, the servicer shall determine whether estimated environmental control charge collections over the upcoming collection period (a period including the two upcoming debt service payments) will be sufficient (i) to make on a timely basis all scheduled payments of interest, principal and other amounts payable in respect of the environmental trust bonds during such period and (ii) to maintain the Capital Subaccount at the required level. If the servicer determines that estimated environmental control charge collections will not be sufficient for such purposes, the servicer shall file with the Commission a routine mid-year true-up adjustment at least 45 days prior to the effective date of the routine mid-year true-up adjustment.

53. If any environmental trust bonds remain outstanding after the final scheduled payment date for such bonds, it is reasonable to require the servicer to file for additional routine quarterly true-up adjustments until such bonds are paid in full, with such additional routine quarterly filings to become effective on the dates that are 3 months and 9 months from the routine annual true-up adjustment date, and to be filed with the Commission not later than 45 days prior to the effective date of such routine quarterly true-up adjustments.

54. In connection with each true-up adjustment filing described above, it is reasonable to require WEPCO to update the assumptions underlying the calculation of the environmental control charges, including use of current sales and demand forecasts and current estimates of uncollectible amounts, weighted average days sales outstanding and ongoing financing costs.

55. In addition to the routine annual (and, if necessary, mid-year and quarterly) true-up adjustments, it is reasonable to authorize the servicer to make a routine optional true-up

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filing with the Commission at any time the servicer forecasts environmental control charge collections during the collection period will be insufficient to make all scheduled payments of principal and interest and payment of other ongoing financing costs in a timely manner, to replenish any draws on the Capital Subaccount or generally to correct for any undercollection or over-collection in order to assure timely payment of the bonds.

56. In addition to the routine annual (and, if necessary, mid-year and quarterly) true-up adjustments and the routine optional true-up adjustments described above, it is reasonable to authorize the servicer to file for a non-routine true-up adjustment if the servicer determines that the existing model for calculating the environmental control charges should be amended or revised. To implement a non-routine true-up adjustment, the servicer shall file a non-routine true-up letter with the Commission designating the adjustments to be made to such model and any corresponding adjustments to the environmental control charges. Any non-routine true-up adjustment shall be subject to the review and approval of the Commission that such adjustment is necessary to ensure the timely recovery of environmental control costs and financing costs with such review and determination to occur within 45 days of such filing. To the extent possible, WEPCO will work with Commission staff prior to the filing of a non-routine true-up adjustment and to use agreed-upon templates in order to streamline the review process for the request.

57. It is reasonable to allocate to customer classes electric environmental control costs and financing costs on the basis of 75 percent on demand and 25 percent on energy for the purposes of determining revenue responsibility and setting electric environmental control charges.

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It is reasonable to allocate

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58. It is reasonable to authorize WEPCO to calculate the environmental control charges as a flat energy charge per kilowatt hour (kWh), except for the General Primary class. Since street lighting customers do not have an energy charge, it is reasonable for their share of the environmental control charges to be calculated using imputed consumption, which will then be charged as a fixed amount per kWh. Since all customers in the General Primary class have demand meters, it is reasonable to calculate the environmental control charges for customers in the General Primary class on the basis of customer demand. In particular, environmental control charges for the General Primary class will be calculated as a $/kW-month demand charge.

59. In establishing the environmental control charges (initial and on each true-up adjustment), WEPCO will determine the periodic revenue requirement for the upcoming collection period (a period including the two upcoming debt service payments). The periodic revenue requirement for a collection period includes scheduled payments of principal in accordance with the expected amortization schedule, interest payments and other ongoing financing costs. After the initial collection period, the periodic revenue requirement will also be adjusted for any amounts needed to replenish the Capital Subaccount (in the event of draws due to undercollections) and any amounts in the Excess Funds Subaccount (in the event of over-collections). In addition, the collection period revenue requirement will be adjusted for any projected over- or under-recovery of costs in the collection period that will be completed at the time of the true-up adjustment. WEPCO will determine the periodic billing requirement for each customer class, which represents the aggregate amount of environmental control charges that must be billed during a given collection period so that the collections will be sufficient to meet the periodic revenue requirement for that collection period. The periodic billing requirement will

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Commented [CDE24]: Is this reasonable even though the revenue requirement is allocated among customer classes based on a blend of usage and demand? Does this mean that true-up adjustments are "silo'd" so that if it is necessary to avoid a payment default on the bonds, a shortfall in actual collections from one customer class cannot be cured b yexcess collections from another customer class?

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take into account projected kWh usage by customer class (or demand with respect to the General Primary class), expected uncollectible amounts and expected lags in collection of billed environmental control charges (based on estimated weighted average days of sales outstanding). As a result of collection lag, amounts collected during each collection period (other than the initial collection period) will include not only amounts billed during that collection period, but also amounts billed during the prior collection period. As a result of these factors, the periodic billing requirement for a customer class will differ from the periodic revenue requirement allocated to that customer class.

60. It is reasonable to authorize WEPCO to calculate the environmental control charges in the manner described in this Financing Order, including use of the formulas shown in Attachment 1 to Appendix B.

61. It is reasonable to require WEPCO to submit final financing costs along with updated initial environmental control charges in a report filed following the issuance of the environmental trust bonds, and such environmental control charges shall become effective the first day of the first full month following the issuance of the environmental trust bonds.

62. It is reasonable to have environmental control charges be presented as a separate line item on customer bills, and to require that WEPCO include a note to customers explaining the environmental control charges in detail with its bills, along with periodic informational updates.

63. It is reasonable for this Financing Order to be effective one day after the date of mailing or the day of personal service on WEPCO, whichever is earlier.

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64. WEPCO's proposal related to imposition and collection of environmental control charges is reasonable and necessary to ensure collection of environmental control charges sufficient to support recovery of the costs approved in this Financing Order.

65. It is reasonable to require WEPCO to record all environmental control costs that are financed with environmental trust bonds in separate accounts so that those costs can be excluded from traditional rate recovery in future proceedings to avoid double recovery of any costs.

Conclusions of Law

1. The Commission has jurisdiction pursuant to Wis. Stat. § 196.027.

2. The Commission has authority to approve the application requesting a financing order pursuant to Wis. Stat. § 196.027 and the authority to condition its approval under Wis. Stat. §§ 196.027(2)(b)2.f and 196.395.

3. This Financing Order will result in lower overall costs to customers than would alternative methods of financing environmental control activities.

4. Under this Financing Order, the structuring, marketing, and expected pricing of the environmental trust bonds will result in the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of this Financing Order.

5. This Financing Order is otherwise consistent with the public interest, and is prudent, reasonable, and appropriate. The terms and conditions in this Financing Order are necessary to protect the public interest.

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The structuring, marketing and pricing of the environmental trust bonds will result in the lowest cost of funds and the lowest environmental control charges that are consistent with market conditions and the terms of this Financing Order.

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This Financing Order is otherwise consistent with the public interest, and is prudent, reasonable, and appropriate. The terms and conditions in this Financing Order are necessary to protect the public interest.

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Docket 6630-ET-100

6. The Commission has authority under Wis. Stat. § 15.02(4) to delegate to the Administrator of the Division of Energy Regulation and Analysis those functions vested by law. The Commission finds it reasonable to delegate to the Administrator of the Division of Energy Regulation and Analysis the authority to review and approve true-up adjustments under Wis. Stat. § 196.027(2)(b)4.a.

Opinion

Background

The Wisconsin Legislature enacted 2003 Wisconsin Act 152, which created a financing mechanism, referred to as enviromental trust financing, to finance the cost of certain investments intended to reduce environmental pollution from existing energy utility facilities, and has been codified in relevant part as Section 196.027 of the Wisconsin Statutes. The statute allows an energy utility to request, with the approval of the Commission, to finance the cost of environmental control activities with the proceeds of environmental trust bonds that are secured by charges paid by the energy utility's customers. Such financing results in lower carrying costs for environmental control activities relative to the costs that would be incurred using conventional utility financing methods, thus resulting in benefits to ratepayers.

To ensure such benefits and as a precondition for the use of securitization, the Legislature required that a utility demonstrate the securitization will produce ratepayer benefits and that this Commission make a specific finding that such benefits will be produced before issuing a financing order.

With the Commission's authorization, an energy utility's environmental control activities may be securitized through the issuance of environmental trust bonds. Environmental trust

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bonds are generally defined as evidences of indebtedness or ownership that are issued under a financing order and are secured by or payable from environmental control property.[2] The net proceeds from the sale of the environmental trust bonds must be used for one or more qualified environmental control activities approved by the Commission. If environmental trust bonds are approved and issued, retail electric customers must pay the principal, interest, and related financing costs of the environmental trust bonds through environmental control charges. Environmental control charges are non-bypassable charges that will be paid by end-use customers as part of the monthly charges for electric service and must be approved by the Commission pursuant to a financing order.

The Application filed by WEPCO in this case also fulfills an obligation of WEPCO arising out of the Settlement Agreement approved by the Commission in the 2019 Order. Among other provisions establishing WEPCO's 2020-2021 electric base rates, the Settlement Agreement required WEPCO to file the Application to recover $100 million of the remaining book balance of the retired Pleasant Prairie Power Plant through the issuance of environmental trust bonds. That amount represented approximately 100 percent of the remaining book balance of Pleasant Prarie that is eligible for environmental trust financing. As described in the 2019 Order, the settling parties expect the securitization to result in reduced costs for WEPCO's customers as compared to traditional utility financing through the remaining book life of Pleasant Prairie.

[2] Wis. Stat. § 196.027(1)(j).

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Statutory Findings

The Commission may adopt a financing order to fund environmental control costs only if it finds: (1) the order will result in lower overall costs to customers than would alternative methods of financing environmental control activities; (2) the proposed structuring, marketing, and pricing of the environmental trust bonds will result in the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of the financing order; and (3) the financing order is in the public interest, and is prudent, reasonable, and appropriate.[3] All of these statutory requirements ensure that the use of securitization by eligible public utilities to fund qualified environmental activities will provide benefits to a utility's customers.

Lowest Environmental Control Charges

To issue a financing order, the Commission must ensure that the structuring, marketing, and pricing of the environmental trust bonds result in the lowest environmental control charges consistent with market conditions at the time the bonds are issued and the terms of the financing order. Because the actual structuring, marketing, and pricing of the environmental trust bonds cannot be known at this time, WEPCO has provided a general description of the proposed structuring, marketing, and pricing. This description does not contain every relevant detail and, in certain places, uses only approximations of certain costs and requirements. The final structuring, marketing, and pricing will depend, in part, upon the requirements of the nationally-recognized credit rating agencies which will rate the environmental trust bonds, and in part, upon the market conditions that exist at the time the environmental trust bonds are taken to

[3] Wis. Stat. § 196.027(2)(b)1.a. through c.

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the market. Due to this uncertainty today of future requirements and conditions, WEPCO has asked for flexibility in designing the structure, marketing, and pricing of the environmental trust bonds.

While the Commission recognizes the need for some degree of flexibility with regard to the final details of the securitization transactions approved in this Financing Order, its primary focus is upon the statutory requirements—to achieve lower overall costs to customers than alternative methods of financing and the lowest environmental control charges consistent with market conditions and the terms of the financing order—which must be met to issue this Financing Order. The environmental trust mechanism allows WEPCO to raise funds less expensively than other financing approaches. A finding that environmental trust bond financing produces a lower cost of capital than other financing alternatives is necessary, but not sufficient to satisfy all the requirements of the statute. To approve the financing proposal the Commission must find that the specific environmental trust financing proposal provides the lowest environmental control charges.[4]

In view of these obligations, the Commission has established certain criteria in this Financing Order that must be met in order for the approvals and authorizations granted in this Financing Order to become effective. This Financing Order grants authority to issue environmental trust bonds and to impose and collect environmental control charges only if the final structure, marketing and pricing of the securitization transactions complies in all material respects with these criteria. The combination of these limiting criteria together with the ability of the Commission to monitor compliance with the terms of this Financing Order and the progress

[4] Wis. Stat. § 196.027(2)(b)1.b.

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cost and lowest environmental control charges. Thus the proposal must not only be reasonable, as would be the standard for a conventional securities issuance, but rather must satisfy a more absolute standard.

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of the issuance of the environmental trust bonds will ensure that the structuring, marketing, and pricing of the environmental trust bonds will result in the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of this Financing Order.

Ratepayer Benefits

In order to approve a financing order, the Commission must determine that the securitization is prudent, reasonable, and appropriate and is in the public interest. This standard will only be met if the securitization results in benefits to ratepayers when compared to the alternative of traditional utility financing.

As described in WEPCO's financing application, the Settlement Agreement assumed the securitization of $100 million of the Pleasant Prairie regulatory asset would result in a more than $14 million reduction to WEPCO's approved 2020 electric revenue requirement. WEPCO estimates that its 2020 revenue requirement is $14.5 million lower because it did not include recovery for the costs associated with issuing the environmental trust financing (the $100 million of Pleasant Prairie's environmental controls at issue in this Financing Order). In 2021, WEPCO's estimated revenue requirement will be $9.7 million lower after factoring in the costs associated with the proposed securitization. As a result, the securitization will result in lower overall costs to customers than would alternative methods of financing the environmental control activities. WEPCO estimates that issuing environmental trust bonds to finance the Pleasant Prairie environmental control costs, as anticipated by the Settlement Agreement, will save WEPCO's customers approximately $40 million on a net present value basis (or 31 percent) as compared to traditional utility ratemaking.

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affect the determination as to whether environmental trust bond

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The Commission recognizes the economic benefits of the environmental trust bonds in lowering the cost of capital for ratepayers. However, environmental trust bond financing is a complex mechanism that involves not only directly observable costs, but also substantial implicit costs that are critically important, although difficult to measure. In order to ensure that the Financing Order produces ratepayer benefits and is in the public interest, the Commission sees the need for greater specificity in this Financing Order, and on-going review until the bonds are issued.¶
The Commission also has concerns about allowing the Applicant to make changes to a ratemaking charge after the fact. This concern is heightened by the fact that once this Financing¶
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[4] To achieve a favorable tax treatment, the SPE must contain a minimum amount of equity. The Applicant proposes that the capitalization of the SPE be perhaps as low as (but no lower than) 0.5 percent equity.¶
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Cost of Capital Benchmark: The Marginal Cost of Capital

WEPCO compared the cost of environmental trust bond financing to the marginal cost of capital under conventional financing, which is an appropriate benchmark. For purposes of assuming a cost of capital under conventional financing, and without prejudice to future WEPCO rate proceedings, WEPCO used a mix of debt and equity financing based on WEPCO's current authorized capital structure and cost of capital approved in the 2019 Order (including a cost of debt of 4.49 percent and cost of equity of 10.00 percent).

Using these assumptions, the overall pre-tax cost of capital under conventional financing methods is 9.54 percent. In comparison, the cost of environmental trust bonds today is expected to be approximately 2.50 percent.

Cost of Debt

As is the case with most debt issuances, the cost of the debt—*the* effective interest rate—will not be known until the bonds are priced. It is reasonable therefore that the cost of debt be established at the time the bonds are priced.

WEPCO retained Barclays Capital Inc. (Barclays) as its financial advisor to advise WEPCO with respect to the structuring, marketing and pricing of the environmental trust bonds. As described in the supporting testimony, Barclays has wide experience in the structuring, marketing and pricing of asset-backed securities generally and utility securitizations specifically. Through supporting testimony, WEPCO has described the process that will be used in the structuring, marketing and pricing of the environmental trust bonds, based on the recommendations of its experienced financial advisor. In particular, the environmental trust bonds will be issued and result in the lowest environmental control charges consistent with the

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to day based on market conditions. The cost of equity should be grossed up for

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If

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20.3 percent, an equal mix of debt and equity yields an effective marginal cost of capital of¶
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13.4 percent, including taxes. The cost of

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terms of this Financing Order and market conditions at the time of issuance by using the following process:

- WEPCO has proposed that the environmental trust bonds be sold through a public offering registered with the Securities and Exchange Commission. As described in the supporting testimony of WEPCO's financial advisor, althought it will depend on prevailing market conditions at the time of issuance, substantially all of the prior utility securitization bond offerings have been conducted as public offerings. Public offerings of securitization bonds are considered to be more liquid than private placements, and therefore generally are more attractive to investors in these transactions, which would be expected to lead to lower overall costs for utility customers. WEPCO will retain some flexibility to issue a Rule 144A private placement transaction,[5] to address possible market or other disruptions that may arise, such as the recent pandemic.
- It is expected that the environmental trust bonds will be rated by at least two nationally recognized rating agencies, with a requirement that the bonds receive at least two AAA ratings.
- No legal final maturity of any environmental trust bonds will exceed 15 years from the date of issuance, and all environmental trust bonds will have expected scheduled final maturity dates of 13 years or less.
- The environmental trust bonds will be offered for sale to investors through one or more lead underwriters, each of which will have wide experience in the marketing

[5] A Rule 144A private placement is an offering that would be limited to large institutional investors and could be used if there were disruptions in the broader public markets.

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of asset-backed securities and specific experience in the marketing of utility securitizations.

- Although retaining flexibility to issue the bonds in multiple tranches is important, WEPCO anticipates that the proposed offering will have one tranche with an average life of approximately 7 years. The final structure will be selected to produce the lowest securitization interest rate based on actual investor demand and existing market conditions.
- Extensive education will be provided to investors regarding the environmental trust bonds. Following delivery of a preliminary prospectus to potential investors, WEPCO and its underwriters will work together to bring the proposed issuance to the attention of investors, to inform them of its structure and terms, and to directly answer any questions they may have. The process will include an electronic roadshow presentation geared towards highlighting important aspects of the proposed transaction from the investors' point of view. This overall process serves to stimulate the broadest investor demand possible for the issuance, so as to achieve the lowest environmental control charges for customers.
- The price guidance and testing process described in the testimony of WEPCO's financial advisor will enable WEPCO and the underwriters to assess investor demand for the amount of securitization bonds they are willing to purchase, at certain prices and coupon rates. This will allow WEPCO and the underwriters to adjust the prices and coupon rates to ensure maximum distribution of the

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environmental trust bonds at the lowest bond yields consistent with a fixed price offering.

In order to ensure the statutory requirements are satisfied, it is reasonable to impose a number of conditions on the issuance of the environmental trust bonds. It is reasonable to condition the issuance of the environmental trust bonds on receipt of a AAA-rating by at least two of the major rating agencies. It also is reasonable to require WEPCO to offer the environmental trust bonds through the process described above. Further, it is reasonable that the Commission retain authority to approve the Affiliated Interest Agreements in a separate proceeding, in order to ensure the terms of such agreements result in the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of this Financing Order.

Subsequent to the issuance of this Financing Order, the Commission shall monitor compliance with this Financing Order and the progress of the issuance of the environmental trust bonds. WEPCO shall provide to the Commission a copy of each filing made with the Securities and Exchange Commission in connection with the proposed issuance of the environmental trust bonds. Prior to the issuance of the environmental trust bonds, WEPCO also shall provide such regular updates and progress reports as may be requested by the Commission.

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Cost of SPE Capital Contribution

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WEPCO proposed that the return on WEPCO's required capital contribution to the SPE be set at the interest rate on the environmental trust bonds (or, if there is more than one tranche, the interest rate on the longest maturing tranche of the environmental trust bonds). WEPCO provided testimony supporting that this fee level is consistent with other recent utility

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securitization transactions. While lower than a typical equity level return, the return on WEPCO's capital contribution to the SPE will be recovered through the environmental control charges making it much less risky than conventional utility equity. WEPCO's proposed return on its capital contribution is appropriate for this very small SPE equity component.

Use of Proceeds

Proceeds generated from environmental trust bonds may, per the statute, be used only to provide capital for environmental control activities or to pay for transaction-related financing costs. In this case, WEPCO already has paid the environmental control costs that are being financed with the environmental trust bonds. As a result, the proceeds of the environmental trust bonds will be used to reimburse WEPCO for the previously incurred environmental control costs and pay for transaction-related financing costs. As a result, no funds will remain in a segregated account for environmental control costs to be incurred in the future.

Any failure to use the proceeds of the environmental trust bonds in accordance with the terms of this Financing Order shall not invalidate, impair, or affect this Financing Order, the environmental control property, the environmental control charges or the environmental trust bonds contemplated by this Financing Order, and the Commission shall not take any action to impair the assessment, collection and/or true-up of environmental control charges in the manner provided pursuant to this Financing Order.

Call Provisions

WEPCO has proposed that there would be no call option included in the environmental trust bonds. WEPCO provided supporting testimony indicating that redemption rights generally are not included in utility securitization bonds and would be expected to increase the cost of the

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Given the proposed small size of the equity investment in the SPE (as little as 0.5 percent of principal amount of the environmental trust bonds), analyzing the cost of equity in great detail¶
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in this proceeding is not necessary. The Applicant's proposed 12.2 percent

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This provision does not in any way impair the right of environmental trust bond holders to receive the requi ... [13]

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There was no opposition to the inclusion of a clean-up call provision. A clean-up call is therefore reasonable.¶ ... [14]

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debt. Therefore, WEPCO's proposal to not include a call option in the debt issuance is reasonable.

Term of Securities

WEPCO proposed that it issue securities with a legal final maturity of no more than 15 years, and with an expected scheduled final maturity of 13 years or less. WEPCO proposed that it have flexibility to issue the environmental trust bonds in one series, with one or more tranches. However, WEPCO indicated that it expects to offer the environmental trust bonds in a single series with one tranche with an average life of appoximately 7 years.

It is reasonable that environmental trust bonds be issued in one series, with one or more tranches. The legal final maturity of any environmental trust bonds shall not exceed 15 years, and the expected scheduled final maturity shall not exceed 13 years.

True-Up of Environmental Control Charges

Pursuant to Wis. Stat. § 196.027(2)(b)2.c, the Commission is required to include in any financing order a formula-based mechanism for making adjustments to the environmental control charges that customers are required to pay to make any adjustments that are necessary to correct for any over-collection or under-collection of the charges or to otherwise ensure the energy utility's or assignee's timely recovery of environmental control costs and financing costs. Pursuant to Wis. Stat. § 196.027(2)(b)4., the Commission must apply these true-up adjustments at least annually. WEPCO has provided supporting testimony indicating that in order to obtain the lowest interest rates on the environmental trust bonds, mandatory routine true-up adjustments should be required at least annually, and more frequently if necessary. Accordingly, it is reasonable to require the servicer: (1) to make filings for routine true-up adjustments at least

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annually; (2) to make an additional mid-year routine true-up adjustment if the servicer determines estimated environmental control charge collections over the upcoming collection period will not be sufficient to make on a timely basis all scheduled payments of interest, principal and other amounts payable in respect of the environmental trust bonds during such period and to maintain the Capital Subaccount at the required level; and (3) to make additional quarterly routine true-up adjustment filings if any environmental trust bonds remain outstanding after the scheduled final maturity date for such bonds.

The routine annual true-up adjustment to the environmental control charges shall be effective not later than 45 days after the anniversary date of the issuance of the environmental trust bonds (with the precise timing to be determined at the time of bond issuance). If necessary, a routine mid-year true-up adjustment shall become effective on the date that is 6 months from the date of the routine annual true-up adjustment. The servicer of the environmental control property will file for a routine annual true-up adjustment each year not later than 45 days before the effective date of the routine annual true-up adjustment. If a routine mid-year true-up adjustment is necessary in any year, the servicer will file for a mid-year true-up adjustment not later than 45 days prior to the effective date of the mid-year true-up adjustment. If any environmental trust bonds remain outstanding after the final scheduled payment date for such bonds, the servicer shall file for additional routine quarterly true-up adjustments until such bonds are paid in full. The routine quarterly true-up adjustments shall become effective on the dates that are 3 months and 9 months from the date of the routine annual true-up adjustment, and shall be filed not later than 45 days prior to the effective date of such true-up adjustment.

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Guarantee the billing of environmental control charges necessary to generate the collection of amounts sufficient to timely provide all scheduled payments of principal and interest (or deposits to sinking funds in respect of principal and interest) and any other amounts due in connection with the environmental trust bonds (including on-going fees and expenses and amounts required to be deposited in or allocated to any collection account or subaccount) during the period for which such adjusted environmental control charges are to be in effect.¶
The servicer will make true-up adjustment filings with the Commission at least annually in a manner and form as determined by the Commission in accordance with this Financing Order, and under the time frame established in this Financing Order.¶

True-up procedures are necessary to provide for full and timely recovery of required amounts over the expected life of the environmental trust bonds. In order to collect adequate environmental control charge revenues and to avoid large over-collections or under-collections over time, the servicer will reconcile the environmental control charges using WEPCO's current forecast of electricity deliveries (or demand with respect to the General Primary class) *(i.e.,* forecasted billing units), uncollectible amounts and weighted average days sales outstanding and estimates of ongoing financing costs.

In addition to annual (and, if necessary, mid-year and quarterly) routine true-up adjustments, more frequent routine true-up adjustments may be made by the servicer at any time during the term of the environmental trust bonds. In particular, the servicer may file for a routine optional true-up adjustment at any time the servicer forecasts environmental control charge collections during the collection period will be insufficient to make all scheduled payments of principal and interest and payment of other ongoing financing costs in a timely manner, to replenish any draws on the Capital Subaccount or generally to correct for any undercollection or over-collection in order to assure timely payment of the bonds.

The servicer will make routine true-up adjustments in the manner described in Appendix B to this Financing Order. Two true-up mechanisms are approved, one for routine true-up adjustments (which include the mandatory annual (and, if necessary, mid-year and quarterly) true-up adjustments and the optional interim true-up adjustments identified above) and one for non-routine true-up adjustments (which are discussed below). The form and methodology for the routine true-ups shall be substantially similar to Appendix B to this Financing Order.

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By statute, the scope of Commission review of routine true-up adjustment filings will be limited to determining whether the proposed adjustment is calculated correctly.

Commission Review of Affiliated Interest Agreements

The Commission retains jurisdiction as to approval of the Affiliated Interest Agreements. It is reasonable for the Commission to conduct a separate proceeding to review and consider whether to approve the Affiliated Interest Agreements to ensure they result in the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of this Financing Order.

Credit Enhancements Provided by Statute

This Financing Order contains terms, as it must, ensuring that the imposition and collection of environmental control charges authorized in the order shall be non-bypassable. It also includes a mechanism requiring that environmental control charges be reviewed and adjusted at least annually to correct any over-collections or under-collections and to ensure the expected recovery of amounts sufficient to timely provide all payments of debt service and other required amounts and charges in connection with the environmental trust bonds. In addition to the required annual adjustments, more frequent adjustments are allowed to ensure that the amount of the environmental control charges matches the funding requirements approved in this Financing Order. These provisions will help to ensure that the amount of environmental control charges paid by retail customers does not exceed the amounts necessary to cover the costs of this securitization.

The state of Wisconsin has pledged, for the benefit and protection of bondholders, that it will not take or permit any action that would impair the value of environmental control property,

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that the transaction results in the lowest environmental control charges consistent with market conditions. To obtain the most favorable issuance of environmental trust bonds—and the greatest benefits to ratepayers—the Commission will oversee the structuring, marketing, and pricing of the bonds. Such participation may include a review of whether some or all of the environmental trust bonds may be offered on a tax-exempt basis, and, if so, whether ratepayer benefits would be derived from a tax-exempt structure. This participation may provide assurances that the minimum cost of securitization and the maximum benefits for customers are obtained. In addition, before the environmental trust bonds may be issued, the Applicant must submit to the Commission an issuance advice letter in which it demonstrates, based upon the actual market conditions at the time of pricing, tha ... [16]

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The Commission retains jurisdiction as to

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or, except for the true-up expressly allowed by law, reduce, alter, or impair the environmental control charges to be imposed, collected and remitted to bondholders, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related environmental trust bonds have been paid and performed in full.

Environmental Control Property

Upon its creation, the environmental control property will constitute a present property right for purposes of contracts concerning the sale or pledge of property, and the state pledge will continue to exist until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the environmental trust bonds are paid and performed in full. In addition, the interest of an assignee or pledgee in environmental control property (as well as the revenues and collections arising from the property) are not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person or in connection with the bankruptcy of the electric utility or any other entity. The creation, granting, perfection, and enforcement of liens and security interests in environmental control property are governed by Wis. Stat. ch. 409.[6]

Refinancing Environmental Trust Bonds

The Commission may adopt a financing order providing for the retiring and refunding of environmental trust bonds only upon making a finding that the future environmental control charges required to service the new environmental trust bonds, including transaction costs, will be less than the future environmental control charges required to service the bonds being retired

[6] See Wis. Stat. § 196.027(5)(b).

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or refunded. This Financing Order does not grant any authority to refinance environmental trust bonds authorized by this Financing Order.

The Special Purpose Entity (SPE)

WEPCO will create an SPE, which will be a Delaware limited liability company with WEPCO as its sole member. The SPE will be formed for the exclusive purpose of acquiring environmental control property, issuing environmental trust bonds, and performing other activities relating thereto or otherwise authorized by this Financing Order. The SPE will not be permitted to engage in any other activities and will have no assets other than environmental control property and related assets to support its obligations under the environmental trust bonds. Obligations relating to the environmental trust bonds will be the SPE's only significant liabilities. These restrictions on the activities of the SPE and restrictions on the ability of WEPCO to take action on the SPE's behalf are imposed to ensure that the SPE will not be affected by a bankruptcy of WEPCO, and therefore will be "bankruptcy remote".

The SPE will be managed by a board of managers with rights similar to those of boards of directors of corporations. As long as the environmental trust bonds remain outstanding, the SPE will have at least one independent manager, *i.e.*, with no organizational affiliation with WEPCO, or its holding company or affiliates (other than serving as an independent manager of another bankruptcy remote affiliate). The SPE will not be permitted to amend the provisions of the organizational documents that ensure bankruptcy-remoteness of the SPE without the consent of the independent manager. Similarly, the SPE will not be permitted to institute bankruptcy or insolvency proceedings or to consent to the institution of bankruptcy or insolvency proceedings against it, or to dissolve, liquidate, consolidate, convert or merge without the consent of the

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independent manager. Other restrictions to ensure bankruptcy remoteness may also be included in the organizational documents of the SPE as indicated by the rating agencies.

The initial capital of the SPE will not be less than 0.5 percent of the original principal amount of the environmental trust bonds issued by the SPE. The initial capitalization of the SPE must be sufficient to allow the SPE to meet any reasonably expected expenses that might arise, including those that are related to the environmental trust bonds (including any shortfalls in payment of the environmental control charges) and the issuance of the environmental trust bonds. The Commission recognizes that a minimum captial contribution of 0.5 percent of the original principal amount of the environmental trust bonds issued by the SPE also is needed to receive the desired federal income tax treatment for the environmental trust-bond transaction. The actual level of initial capital shall be determined closer to the date the bonds are issued, taking into account rating agency considerations. If WEPCO determines the contribution must be in excess of 0.5 percent of the original principal amount of the environmental trust bonds, such higher capital contribution amount is subject to review and approval by the Commission.

The SPE may issue environmental trust bonds in an aggregate amount not to exceed the principal amount approved by this Financing Order and will pledge to the indenture trustee, as collateral for payment of the environmental trust bonds, the environmental control property, including the SPE's right to receive the environmental control charges as and when collected, and certain other collateral described in the indenture.

Servicer and the Servicing Agreement

The Commission will review and determine whether to approve the proposed Servicing Agreement in a separate proceeding. Upon receiving the Commission's approval of the

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Servicing Agreement in a separate proceeding, WEPCO will execute a Servicing Agreement with the SPE; this agreement may be amended, renewed or replaced by another servicing agreement.[7] The entity responsible for carrying out the servicing obligations under any servicing agreement is the servicer. WEPCO will be the initial servicer but may be succeeded as servicer by another entity under certain circumstances detailed in the Servicing Agreement. Although the specific provisions of the Servicing Agreement will be determined by the Commission in a separate proceding, the general functions of the servicer will include among other things, the dutyto impose and collect the applicable environmental control charges for the benefit and account ofthe SPE, to make the periodic true-up adjustments of environmental control charges required or allowed by this Financing Order, and to account for and remit the applicable environmental control charge collections (or estimates of such collections) to or for the account of the SPE not later than two servicer business days after deemed receipt in accordance with the remittance procedures contained in the Servicing Agreement without any charge, deduction or surcharge of any kind. As compensation for its duties under the Servicing Agreement, WEPCO shall receive from the SPE a servicing fee to be determined by the Commission, that is based on current market rates in similar utility securitization transactions. The anticipated fee amount used for purposes of the determinations made in this Financing Order is 0.05 percent per annum of the innitial aggregate principal amount of the environmental trust bonds, plus reimbursement of out-of-pocket expenses. As described in the Application, payment of a servicing fee that is consistent with market rates is necessary to obtain the essential bankruptcy-remote nature of the SPE.

[7] If the amended, revised or replaced servicing agreement is with WEPCO or any of its affiliates, Commission approval is required under Wis. Stat. § 196.52.

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[7] If the amended, revised or replaced servicing agreement is with WEPCO or any of its affiliates Commission approval is required under Wis.

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WEPCO will not be permitted to resign voluntarily from its duties as servicer unless (i) WEPCO determines that its continued performance of the duties as servicer would no longer be permitted under applicable law or (ii) WEPCO receives the consent of the Commission and confirmation that such action will not result in a suspension, reduction or withdrawal of the then current ratings on any of the environmental trust bonds.

Under the terms of the Servicing Agreement, if any servicer fails to fully perform its servicing obligations, the indenture trustee acting under the indenture to be entered into in connection with the issuance of the environmental trust bonds, or the indenture trustee's designee, may, or, upon the instruction of the requisite percentage of holders of the outstanding amount of environmental trust bonds, shall appoint an alternate party to replace the defaulting servicer, in which case the replacement servicer will perform the obligations of the servicer under the Servicing Agreement. No entity may replace WEPCO as the servicer in any of its servicing functions with respect to the environmental control charges and the environmental control property authorized by this Financing Order, if the replacement would cause any of the then current credit ratings of the environmental trust bonds to be suspended, withdrawn, or downgraded. The obligations of the servicer under the Servicing Agreement will be more fully described in the Servicing Agreement.

In the event a successor servicer is appointed, the servicing fee paid to a successor servicer would likely need to be higher than the servicing fee paid to WEPCO. In the event a successor servicer is appointed, the servicing fee will be allowed to increase; provided that the Commission's consent will be needed for any servicing fee in excess of 0.60 percent per annum

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on the initial aggregate principal amount of the environmental trust bonds, plus reimbursement of out-of-pocket expenses, as described in this Financing Order.

The rights of the SPE under the Servicing Agreement will be included in the collateral pledged to the indenture trustee under the indenture for the benefit of holders of the environmental trust bonds.

Trust Accounts

The SPE will establish the Collection Account as a trust account to be held by the indenture trustee as collateral to ensure the payment of the principal, interest, and the other ongoing financing costs related to the environmental trust bonds, in full and on a timely basis. The Collection Account will include the General Subaccount, the Excess Funds Subaccount and the Capital Subaccount, and may include other subaccounts (such as over-collateralization or reserve accounts).

The environmental control charge remittances that the servicer remits to the indenture trustee for the account of the SPE will be deposited into one or more segregated trust accounts and allocated to the General Subaccount. On a periodic basis the moneys in this subaccount will be allocated to pay expenses of the SPE, to pay principal and interest on the environmental trust bonds, and to meet the funding requirements of the other subaccounts. The moneys in the General Subaccount will be invested by the indenture trustee in short-term high-quality investments, and such moneys (including investment earnings) will be applied to pay principal and interest on the environmental trust bonds and the other ongoing financing costs related to the environmental trust bonds.

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When environmental trust bonds are issued, WEPCO will make a capital contribution to the SPE, which the SPE will deposit into the Capital Subaccount. The amount of the capital contribution will be not less than 0.5 percent of the original principal amount of environmental trust bonds, although the actual amount will depend on rating agency requirements. The Capital Subaccount will serve as collateral to ensure timely payment of principal and interest on the environmental trust bonds and the other ongoing financing costs related to the environmental trust bonds. To the extent that the Capital Subaccount must be drawn upon to pay these amounts due to a shortfall in the environmental control charge remittances, it will be replenished through future environmental control charge remittances to its original level through the true-up process. The moneys in this subaccount will be invested in short-term high-quality investments, and such moneys (including investment earnings) will be used to pay principal and interest on the environmental trust bonds and the other ongoing financing costs related to the environmental trust bonds.

The capital contribution to the SPE is to be funded by WEPCO. The environmental trust bond proceeds cannot be used to fund this capital contribution.

The Excess Funds Subaccount will hold any environmental control charge remittances and investment earnings on the Collection Account in excess of the amounts needed to pay current principal and interest on the environmental trust bonds and to pay the other ongoing financing costs related to the environmental trust bonds including, but not limited to, replenishing the Capital Subaccount. Any balance in the Excess Funds Subaccount on a true-up adjustment date will be subtracted for purposes of the true-up adjustment. The moneys in this subaccount will be invested in short-term high-quality investments, and such moneys (including

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environmental control charge remittances to its required level through the true-up process. The moneys in this subaccount will be invested in short-term high-quality investments, and such moneys (including investment earnings) will be used to pay principal and interest on

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investment earnings thereon) will be used to pay principal and interest on the environmental trust bonds and the other ongoing financing costs related to the environmental trust bonds.

The Collection Account and the subaccounts described above are intended to provide for full and timely payment of scheduled principal and interest on the environmental trust bonds and all the other ongoing financing costs related to the environmental trust bonds. If the amount of environmental control charges remitted to the General Subaccount is insufficient to make all scheduled payments of principal and interest on the environmental trust bonds and to make payment on all of the other ongoing financing costs related to the environmental trust bonds, the Excess Funds Subaccount and the Capital Subaccount will be drawn down, in that order, to make those payments. Any deficiency in the Capital Subaccount due to such withdrawals must be replenished on a periodic basis through the true-up process. In addition to the foregoing, there may be such additional accounts and subaccounts as are necessary to segregate amounts received from various sources, or to be used for specified purposes. Such accounts will be administered and utilized as set forth in the Servicing Agreement and the indenture. Upon the maturity of the environmental trust bonds and the discharge of all obligations with respect to them, remaining amounts in the Collection Account will be released to the SPE and will be available for distribution by the SPE to WEPCO. Other than amounts that were in the Capital Subaccount or any accrued but unpaid return on WEPCO's capital contribution, customers shall be credited an amount equal to the amount released to the SPE from the Collection Account.

Affiliated Interest Agreements

WEPCO's application contained three proposed Affiliated Interest Agreements which cover certain structural aspects of the environmental trust bond securitization and define the

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inter-relationships and responsibilities of the various parties. The proposed Sale Agreement allows the SPE to purchase environmental control property from WEPCO. The Servicing Agreement facilitates the relationships and transactions necessary after the sale and allows WEPCO to act as servicer for the environmental control property. The Administration Agreement, allows WEPCO to act as administrator for the SPE.

The Commission will review and consider whethe to approve the Affiliated Interest Agreements in a separate proceeding.

Environmental Trust Bond Financing of Penalties or Forfeitures

Wisconsin Stat. § 196.027(1)(f) prohibits WEPCO from financing any penalty or forfeiture as an environmental control cost. The authorized environmental control costs do not include any penalty or forfeiture.

What May Be Included in the Environmental Trust Bond Issuance

Projects must meet the criteria established in Wis. Stat. § 196.027 to be eligible for environmental trust bond financing. As described in the 2019 Order, the $100 million of remaining undepreciated investment to be financed with environmental trust bonds represented approximately 100 percent of the remaining book balance of Pleasant Prairie eligible for environmental trust financing.

Allowable Environmental Control Costs

The environmental control costs relate to the installation of environmental controls at the retired Pleasant Prairie Power Plant, including wet flue gas desulfurization and selective catalyticreduction

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and agreements will be amended to reflect these changes. The affiliated interest order will place limited conditions on the affiliated interest agreements. However, none of those conditions will in any way impact the integrity of this Financing Order. Where there is a potential conflict this Financing Order will take precedence.¶
¶
Effect of Wisconsin Electric Power Company's Rate Restriction on the Use of Environmental Trust Bond Financing at This Time¶
¶
The Commission ordered a Five-Year Rate Restriction Period beginning January 1, 2001, and ending December 31, 2005, covering WEPCO's electric, natural gas, and steam service rates in its order authorized Wisconsin Energy Corporation (WEC) to acquire WICOR, Inc. (the Merger Order). During this restriction period, rate re ... [26]

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Project costs incurred prior to the effective date of the Act or the application¶ ... [28]

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Environmental control cost" means capital cost, including capitalized cost relating to regulatory assets, ***incurred or expected to be incurred*** by an energy utility in undert ... [29]

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The 2019 Order, and the underlying Settlement Agreement, also authorize WEPCO to finance additional environmental control costs consisting of the capitalized costs being recorded as a regulatory asset equal to a return at WEPCO's authorized WACC on such $100 million of undepreciated cost from January 1, 2020 through the date of issuance of the environmental trust bonds. From January 1, 2020 until the date of issuance of the environmental trust bonds, the Capitalized Carrying Costs are being recorded as a regulatory asset by WEPCO. The definition of environmental control cost in Wis. Stat. § 196.027(1)(f) includes capitalized cost relating to regulatory assets. As a result, the Capitalized Carrying Costs are eligible for inclusion as environmental control costs.

Periodic Routine True-up Information Filing

According to Wis. Stat. § 196.027(2)(b)2.c. and (4), the Commission is required to make annual adjustments to correct for any over-collection or under-collection based on estimates of demand and other mathematical factors within 45 days of the anniversary date of any environmental trust bond issuance. The statutory requirement as stated above requires the routine annual true-up adjustments to take effect within 45 days of the anniversary date of any environmental trust bond issuance. Consistent with the statute, WEPCO has proposed that the routine annual true-up adjustment become effective not later than 45 days after the anniversary date of the issuance of the bonds (with the precise timing to be determined at the time the bonds are issued). WEPCO has provided supporting testimony indicating that it would be advisable to require more frequent routine true-ups if necessary, with an additional routine mid-year true-up adjustment to occur 6 months from the date of the routine annual true-up adjustment if necessary and, if any environmental trust bonds remain outstanding after the scheduled final maturity date,

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[12] That is, no one questions that NO_X abatement equipment is "environmental control equipment" as defined in Wis.
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additional routine quarterly true-up adjustments to occur 3 months and 9 months from the date of the routine annual true-up adjustment. It is reasonable that the environmental control charges be subject to these routine annual (and, if necesssary, mid-year and quarterly) true-up adjustments.

WEPCO proposes these routine true-up adjustment requests to take the form identified in Appendix B to this Financing Order and to take effect automatically on the 45th day after a request is filed with the Commission. This will provide time for review of these true-up adjustment filings during the 30-day comment period provided for in the Act and for the correction of any error in the application of the formula-based true-up mechanism.

In connection with each routine true-up adjustment filing, WEPCO shall update the assumptions underlying the calculation of the environmental control charges, including use of current sales and demand forecasts and current estimates of weighted average days sales outstanding, uncollectible amounts and ongoing financing costs.

Upfront and Ongoing Financing Costs

WEPCO has identified estimated upfront financing costs of approximately $5.3 million. These estimated upfront financing costs include: underwriting discounts; WEPCO's financial advisor structuring fee; the fees of legal counsel; rating agency fees; trustee fees and expenses; accounting and auditing fees; Securities and Exchange Commission registration fees; printing and filing expenses; SPE organizational costs; servicer set-up costs; original issue discount and marketing and other miscellaneous expenses. WEPCO shall provide notice to the Commission if WEPCO's estimated upfront financing costs at the time of issuance of the bonds are in excess of the estimates set forth in this Financing Order. Further, if WEPCO's estimate of the upfront

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WEPCO is required to file an initial report no later than 30 days after the receipt of environmental trust bond proceeds, specifying the principal amount of the bonds, the amounts¶
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expended for up-front financing costs with a detailed listing and descriptions of all the up-front financing costs, specifics regarding the retirement or refinancing of equity and debt related

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Deleted: thereafter, WEPCO shall file a report substantially in the form of Exhibit 5 including detailed listings and descriptions of the environmental control costs incurred each year and on-going financing costs incurred each year. These annual reports should also include descriptions and amounts of forecasted environmental control costs for which the remaining bond proceeds are to be used

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financing costs has decreased at the time of issuance of the bonds, WEPCO shall make a corresponding reduction in the principal amount of the bonds.

The ongoing financing costs will include interest on the environmental trust bonds as well as other ongoing financing costs. WEPCO has estimated the other ongoing financing costs (other than any taxes on the environmental control charges) will be approximately $530,000 per year, and will include servicing fees, the return on WEPCO's capital contribution to the SPE, administration fees, accounting and auditing fees, legal fees, rating agency surveillance fees, trustee fees and expenses, independent manager fees and other miscellaneous costs. The servicing fee, administration fee and return on capital contribution will be based upon fixed amounts upon issuance of the bonds. Other components of the ongoing financing costs will be subject to variation over the life of the environmental trust bonds.

Through the supporting testimony, WEPCO has presented an illustrative preliminary structure for the environmental trust bond issuance that includes estimated payments of principal and interest. The estimated interest expense in the illustrative preliminary structure for the bonds is based on the issuance of the bonds in a single series with one tranche with a weighted average life of approximately 7 years and an estimated interest rate of 2.50 percent per annum. The actual bond structure and interest rate on the environmental trust bonds will be determined at the time of issuance and will be based upon market conditions at such time.

The Commission is also required to find that the proposed structuring, marketing, and pricing of the environmental trust bonds will result in the lowest environmental control charges consistent with market conditions at the time the bonds are issued and the terms of this Financing Order. Wis. Stat. § 196.027(2)(b)1.b. In order to ensure this standard is satisfied, the

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Commented [CDE45]: If the evidentiary record is insufficient to make the lowest environmental control charges determination, doesn't that underscore the need for (a) WEPCO to deliver an IAL, including WEPCO's certification that the lowest environmental charges in fact were achieved, and (b) the Commission to hire an expert FA to (i) participate actively in all post-Financing Order aspects of structuring, marketing and pricing the bonds, and based on that active participation, and (ii) certify that the lowest environmental charges in fact were achieved?

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¶
As discussed earlier, in order to ensure the lowest cost financing as required by statute, the Commission will oversee the bond issuance and have a final say in whether actual financing costs are the lowest achievable costs. As a consequence, the Commission will be able to weigh the cost and benefits of various possible fees and ensure that the structuring, marketing, and pricing of the environmental trust bonds will result in the lowest environmental control charges as required under Wis.

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Internal Labor Costs¶
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The amount authorized for financing under the Financing Order shall exclude any internal labor costs incurred or estimated to be incurred by WEPCO for up-front or on-going financing costs from

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Commission has imposed a number of conditions on the issuance as described in this Financing Order and will continue to monitor compliance with the terms of this Financing Order and the progress of the bond issuance.

Treatment of Servicing Costs and Administration Costs Incurred by WEPCO in Future Rate Proceedings

Servicing costs and administration costs incurred by WEPCO shall be excluded in determining WEPCO's cost of service in future rate proceedings. Servicing fees and administration fees received by WEPCO under the Servicing Agreement and the Administration Agreement, respectively, shall not be considered revenues of WEPCO in future rate proceedings.

Initial Environmental Control Charges

The environmental control charges initially authorized shall be those submitted to the Commission in a report filed following the issuance of the environmental trust bonds, and such environmental control charges shall become effective the first day of the first full month following the issuance of the environmental trust bonds. The initial environmental control charges shall be calculated using the formula shown in Attachment 1 to Appendix B adjusted for the final environmental control costs and financing costs. The environmental control charges incorporated in these rates shall be in effect until such rates are adjusted pursuant to the true-up adjustments approved in this Financing Order.

Non-Routine True-up Adjustments

In addition to the routine mandatory annual (and, if necessary, mid-year and quarterly) true-up adjustments and routine optional true-up adjustment described above, the servicer is authorized to file for a non-routine true-up adjustment if the servicer determines that the existing

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Periodic Non-routine True-up¶
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model for calculating the environmental control charges should be amended or revised. To implement a non-routine true-up adjustment, the servicer shall file a non-routine true-up letter with the Commission designating the adjustments to be made to such model and any corresponding adjustments to the environmental control charges. Any non-routine true-up adjustment shall be subject to the review and approval of the Commission that such adjustment is necessary to ensure the timely recovery of environmental control costs and financing costs with such review and determination to occur within 45 days of such filing. In response to concerns identified by Commission staff regarding potential timing difficulty for the Commission to complete its review of non-routine true-up requests within 45 days, the Commission finds that it is reasonable to delegate to the Administrator of the Division of Energy Regulation and Analysis the authority to approve adjustments under Wis. Stat. § 196.027(2)(b)4.a. to facilitate timely completion. To the extent possible, WEPCO will work with Commission staff prior to the filing of a non-routine true-up adjustment and to use agreed-upon templates in order to streamline the review process for the request.

Tracking of Costs

WEPCO is required to record all environmental control costs that are financed with environmental trust bonds in separate accounts so that those costs can be excluded from traditional rate recovery in future proceedings to avoid double recovery of any costs.

Environmental Control Charges and All Retail Electric Utility Customers

For the period during which environmental control costs and financing costs may be recovered through environmental control charges, so long as any retail electric customer obtains distribution service from WEPCO or its successors (including successors by merger or other

Deleted: every three months if: 1) the servicer expects the Overcollateralization Subaccount to be fully depleted at the next interest payment date; or 2)

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In addition, for authorized costs that have already been incurred prior to bond issuance under the Financing Order, environmental control charges should be net of any depreciation and amortization. Any depreciation expense that would be recorded on any capitalized projects prior to the time that any environmental trust bonds are issued should be recorded as such and the resulting accumulated depreciation should be excluded from environmental trust financing.¶
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WEPCO is required to record all environmental control costs that receive environmental trust financing in separate accounts so that those costs can be excluded from traditional rate recovery in future proceedings to avoid double recovery of any costs.¶

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Intervenor E4 suggests that the Commission should support the inclusion of energy efficiency investments in environmental control costs; but concedes that the Commission does not have the authority to order an energy utility to finance projects that are not included in the utility's application for environmental trust financing. E4 also suggested that the Commission and the Applicant should conduct an inquiry to review the details of the Port Washington retirements for existing and potential enhancement that energy efficiency technology provides.¶
The record is not sufficient to make any policy statement regarding whether energy efficiency investments tha ... [44]

combination, as well as successors through asset acquisitions), the customer shall pay non-bypassable environmental control charges to WEPCO or its successors or assignees regardless of whether the customer obtains other service from a different energy utility or other energy supplier. For purposes of this paragraph, "distribution service" means service from the energy utility, regardless of voltage and the source of energy, if the energy supplied is not for resale.

Environmental Trust Bond Financing Cost Allocation

WEPCO provided testimony as to the appropriate mix of demand and energy allocation to use for assigning Environmental Trust Financing costs to customer classes. The environmental control charge revenue requirements are all plant-related and WEPCO proposes an allocation to customer classes and rate schedules based on 75 percent demand (12CP) and 25 percent transmission-level LMP-weighted energy. This is consistent with the allocation of plant-related costs approved by the Commission in WEPCO's most recent rate case filing in docket 5-UR-109. It is reasonable to require that an allocation mix of 75 percent on demand and 25 percent on energy be used to allocate environmental trust bond revenue requirements.

Environmental Control Charge

WEPCO proposed that the environmental control charge be calculated as a flat energy charge per kWh, except for the General Primary class. Street lighting customers do not have an energy charge, so their share of the environmental control charges will be calculated using imputed consumption, which will then be charged as a fixed amount per kWh. Since all customers in the General Primary class have demand meters, it is reasonable to calculate the environmental control charges for customers in the General Primary class on the basis of

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50 percent on demand and 50 percent on energy were considered by the Commission. The use of an allocator mix of 75 percent on demand and 25 percent on energy in Michigan for a combination of all three types of electric generation plants was noted. Because of the dual nature of base-load electric generation plants to provide low cost energy and meet capacity needs, it is reasonable to require that an allocation mix of 60 percent on demand and 40 percent on energy be used to allocate Environmental Trust Financing costs.¶

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[20] Commissioner Garvin supported an allocation mix of 75 percent on demand and 25 percent on energy.¶
¶
an Environmental Control Charges that is energy based when demand information is not available to establish Environmental Control Charges that are based on the demand and energy when both demand and energy information is known.¶

customer demand. In particular, environmental control charges for the General Primary class will be calculated as a $/KW-month demand charge.

A formula to calculate the environmental control charges for each customer class was submitted by WEPCO. It is reasonable to authorize the use of that formula. This formula is shown in Attachment 1 to Appendix B. WEPCO provided supporting testimony that included estimated initial environmental control charges based on its current cost estimates and preliminary illustrative bond structure. Since final costs may vary from these estimates, and assumptions with respect to forecasted sales and demand, uncollectible amounts and weighted average days sales outstanding may change, it is reasonable to require WEPCO to submit to the Commission a report following the issuance of the bonds that reflects the updated initial environmental control charges. Such initial environmental control charges shall become effective the first day of the first full month following the issuance of the environmental trust bonds.

Treatment of Environmental Control Charge on Customer Bills

It is reasonable for WEPCO to present the environmental control charges as a separate line item on customer bills. It is also reasonable for WEPCO to include a note to customers explaining the environmental control charges in detail with its bills, as well as annual informational updates about the environmental trust bonds.

Allocation of Customer Payments

WEPCO proposed that environmental control charges collections be allocated based on the existing WEPCO methodology. WEPCO would allocate cash collections on a customer-by-customer basis. The first dollars collected would be attributed to past due balances,

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including late charges, if any. Once those balances are paid in full, if cash collections are not sufficient to pay a customer's current bill then the cash would be prorated between the different components of the bill.

The allocation of payments, first to past due amounts and then to current charges, should not prejudice either WEPCO or the SPE, so long as the application is consistently applied, and is consistent with the desired bankruptcy treatment.

It is reasonable to approve WEPCO's proposal to use its existing method of customer payment allocation as described above. If WEPCO's proposal in this regard limits its ability to obtain the lowest environmental control charges, the allocation methodology may be changed to remedy that concern, subject to Commission approval.

Order

Based upon the record, the Findings of Fact and Conclusions of Law set forth in this Financing Order, and for the reasons stated above, IT IS ORDERED:

1. The application of WEPCO is approved as provided in this Financing Order.

2. WEPCO is authorized: (a) to recover the amount of environmental control costs and financing costs provided for and described in this Financing Order over the period of time described in this Financing Order; (b) to assess, collect and provide for the periodic true-up of environmental control charges as described and provided for in this Financing Order; (c) to form or cause the formation of a SPE for the purposes and in accordance with the terms set forth in this Financing Order; (d) to cause the absolute sale and transfer of the environmental control property to the SPE in accordance with the terms set forth in this Financing Order; and (e) to

Deleted: Although it is reasonable to allow WEPCO to use its existing method to allocate customer payments, it is important to ensure that the utility will not true-up normal operational variances in the application of the Environmental Control Charges true-up. Such an analysis shall be done in the Applicant's future rate proceeding reviews.¶

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cause the SPE to issue environmental trust bonds secured by the environmental control property in accordance with the terms set forth in this Financing Order.

3. The SPE may pledge to the indenture trustee, as collateral for payment of the environmental trust bonds, the environmental control property, including the SPE's right to receive the related environmental control charges when collected, and the other collateral described in the indenture. Consistent with Wis. Stat. § 196.027(5)(b)2., any security interest in the environmental control property shall be deemed to be created, valid, binding and perfected at the time a security agreement is made and attaches automatically from the time that value is received for the environmental control property and, further, shall be deemed a continuously perfected lien and security interest in the environmental control property, and the filing or recording of a financing statement or instrument, or any continuation statements or instruments, in which such a security interest is created is not required.

4. Consistent with Wis. Stat. §§ 196.027(5)(b)4. and 5., the priority of any lien and security interest in the environmental control property arising from this Financing Order shall not be considered impaired by any later modification of this Financing Order or by the commingling of the funds arising from environmental control charges with any other funds.

5. When WEPCO transfers environmental control property to the SPE pursuant to the terms of this Financing Order under an agreement that expressly states that the transfer is a sale or other absolute transfer in accordance with the "absolute transfer" provisions of Wis. Stat. § 196.027(5)(c), that transfer shall constitute an absolute transfer and not a secured transaction or other financing arrangement, and title (both legal and equitable) to the environmental control property shall immediately pass to the SPE. After such a transfer, the environmental control

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property shall not be subject to any claims of the seller or the seller's creditors, other than creditors holding a properly perfected prior security interest in the environmental control property by virtue of the transactions authorized in this Financing Order. As provided by Wis. Stat. § 196.027(5)(c)2., the characterization of the sale, assignment, or transfer of environmental control property as an absolute transfer and the corresponding characterization of the purchaser's property interest shall not be affected by whether the purchaser has any recourse against the seller, or any other term of the parties' agreement, including the seller's retention of an indirect equity interest in the environmental control property by reason of its equity interest in the SPE, the fact that WEPCO acts as the collector of environmental control charges relating to the environmental control property, any indemnifications, obligations, or repurchase rights made or provided by the seller, or the treatment of the transfer as a financing for tax, financial reporting, or other purposes.

6. The SPE created pursuant to this Financing Order, when issuing environmental trust bonds, is authorized, pursuant to Wis. Stat. § 196.027(8)(c) and this Financing Order, to include the state of Wisconsin pledge with respect to environmental control property and environmental control charges in any documentation relating to the environmental trust bonds as provided for in Wis. Stat. § 196.027(8)(b).

7. Subsequent to the issuance of this Financing Order, the Commission shall monitor compliance with this Financing Order and the progress of the issuance of the environmental trust bonds. WEPCO shall provide to the Commission a copy of each filing made with the Securities and Exchange Commission in connection with the proposed issuance of the environmental trust

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bonds. Prior to the issuance of the environmental trust bonds, WEPCO also shall provide such regular updates and progress reports as may be requested by the Commission.

8. Before the environmental trust bonds may be issued, WEPCO must obtain Commission approval of the proposed Affiliated Interest Agreements in a separate Affiliated Interest Agreement Final Decision. In the course of finalization of the bond issuance, the Commission may review and approve the Affiliated Interest Agreements to ensure they result in the lowest environmental control charges that are consistent with market conditions at the time the bonds are issued and the terms of this Financing Order.

9. Those environmental control costs, in an aggregate amount equal to the sum of (a) $100 million of the undepreciated cost of environmental control activities at Pleasant Prairie as described herein, plus (b) capitalized costs being recorded as a regulatory asset equal to a return at WEPCO's current authorized WACC on such $100 million of undepreciated cost from January 1, 2020 through the date of issuance of the environmental trust bonds, and those upfront financing costs incurred in connection with the issuance of the environmental trust bonds, may be included in the principal amount of the environmental trust bonds to be issued and may be recovered through environmental control charges. Assuming an issuance of the environmental trust bonds by April 1, 2021, with the $100 million in Undepreciated Costs, estimated Capitalized Carrying Costs of approximately $12.6 million, and estimated upfront financing costs of approximately $5.3 million, WEPCO estimates that the aggregate principal amount of the bonds to be issued will be approximately $117.9 million. The actual amount financed will depend on when the bonds are issued and the actual upfront financing costs.

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Commented [CDE47]: May the Commission decline to issue and approving Affiliated Interest Agreement Final Decision if WEPCO is unable to document that its structuring, marketing and pricing of the bonds in fact resulted in the lowest Storm Recovery Charges? For example, a flawed pricing is not likely to implicate any Affiliated Interest Agreement.

Deleted: <#>Before the environmental trust bonds may be issued, the Applicant must submit to the Commission an issuance advice letter in the form required by the Commission in which the Applicant demonstrates, based upon the actual market conditions at the time of pricing, that the proposed structuring, marketing, and pricing of the environmental trust bonds results in the¶
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lowest cost of funds and the lowest environmental control charges consistent with market conditions at the time of pricing and the general parameters set out in this Financing Order. The Applicant shall file with the Commission for each series of environmental trust bonds issued, and no later than the next business day after the pricing date for that series of environmental trust bonds, such an issuance advice letter. The environmental trust bonds may be issued on the terms set forth in the issuance advice letter on or after the third business day after submission to the Commission unless, before the third business day, the Commission issues an order finding that the proposed issuance does not comply with the requirements of Wis. Stat. § 196.027 and this Financing Order.

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Those environmental control costs, in an aggregate amount not to exceed¶
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$424,581,000; and those up-front financing costs, in an aggregate amount not to exceed¶
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$8,461,000, all as described and approved in accordance with the terms of this Financing Order may be recovered through environmental control charges. In addition, those

10. WEPCO shall update, prior to issuance of the environmental trust bonds, its estimates of the Capitalized Carrying Costs and upfront financing costs. WEPCO shall provide notice to the Commission if WEPCO's updated estimated Capitalized Carrying Costs or upfront financing costs are in excess of the estimates set forth in this Financing Order. Further, if WEPCO's estimate of the Capitalized Carrying Costs or the upfront financing costs has decreased at the time of issuance of the bonds, WEPCO shall make a corresponding reduction in the principal amount of the bonds.

11. Those future periodic financing costs of the types described in Wis. Stat. § 196.027(1)(k), including without limitation, interest on the environmental trust bonds, other ongoing financing costs described in the Financing Order and taxes imposed on the revenues generated from the collection of environmental control charges, as provided for and approved in accordance with the terms of this Financing Order, may be recovered through environmental control charges.

12. A portion of the proceeds from the authorized environmental trust bonds shall be used by the SPE to pay for the upfront financing costs incurred in connection with the issuance of the bonds and to reimburse WEPCO for any issuance costs that were paid directly by WEPCO in advance of the bond issuance. The remaining proceeds will be used to reimburse WEPCO for such environmental control costs, all of which shall have been incurred by WEPCO at the time of issuance of the environmental trust bonds. As a result, no funds will remain in a segregated account for environmental control costs to be incurred in the future. Any failure to use the proceeds of the environmental trust bonds in accordance with the terms of this Financing Order shall not invalidate, impair, or affect this Financing Order, the environmental control property,

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any such environmental trust bond proceeds have not been disbursed and used in accordance with the terms of this Financing Order, the Commission may adjust or reduce the Applicant's revenue requirements

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The Applicant

the environmental control charges or the environmental trust bonds contemplated by this Financing Order, and the Commission shall not take any action to impair the assessment, collection and/or true-up of environmental control charges in the manner provided pursuant to this Financing Order.

13. WEPCO is authorized to form or cause to be formed the SPE to be structured and conditioned as discussed and provided in this Financing Order and the related Affiliated Interest Agreement Final Decision and to enter into the LLC Operating Agreement, on terms and conditions substantially consistent with those in the form of LLC Operating Agreement filed with the Application, with such further changes as shall be necessary to satisfy any bankruptcy or rating agency requirements or that are otherwise consistent with the provisions of this Financing Order. The SPE is authorized to issue environmental trust bonds as specified in this Financing Order, and to enter into an indenture with an indenture trustee on terms and conditions substantially consistent with those in the form of indenture filed with the Application, with such further changes as shall be necessary to satisfy any bankruptcy or rating agency requirements or that are otherwise consistent with the provisions of this Financing Order. WEPCO and the SPE are authorized to execute and deliver such additional agreements, documents, certificates and instruments as shall be legally appropriate and necessary in order to effectuate the issuance of the environmental trust bonds in accordance with the provisions of this Financing Order.

14. WEPCO shall use the SPE as approved by the Commission in conjunction with the issuance of any environmental trust bonds authorized under this Financing Order. The SPE shall be funded with an amount of capital that shall not be less than 0.5 percent of the original principal amount of the environmental trust bonds issued by the SPE.

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15. The capital contribution by WEPCO to the SPE with respect to the environmental trust bonds shall be funded by WEPCO and not from the proceeds of the sale of environmental trust bonds. WEPCO shall be authorized to earn a rate of return on its capital contribution to the SPE that is equal to the interest rate on the environmental trust bonds (or, if there is more than one tranche, the interest rate on the longest maturing tranche of the environmental trust bonds). This return will be an ongoing financing cost recovered through the environmental control charges.

16. As long as the environmental trust bonds remain outstanding, the SPE shall have at least one independent manager, *i.e.,* with no organizational affiliation with WEPCO, or its holding company or affiliates (other than serving as an independent manager of another bankruptcy remote affiliate).

17. The SPE will not be permitted to amend the provisions of the organizational documents that ensure bankruptcy-remoteness of the SPE without the consent of the independent manager of the SPE. The SPE will not be permitted to institute bankruptcy or insolvency proceedings or to consent to the institution of bankruptcy or insolvency proceedings against it, or to dissolve, liquidate, consolidate, convert, or merge without the consent of the independent manager.

18. Other restrictions to ensure bankruptcy remoteness may be included in the LLC Operating Agreement of the SPE as indicated by the rating agencies and determined by WEPCO.

19. The servicer shall bill and collect from ratepayers, as provided in this Financing Order, environmental control charges in an amount sufficient to provide for the timely recovery of its aggregate environmental control costs and financing costs authorized in this Financing

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The Commission, acting on its own behalf or through the Attorney General, may enforce this Financing Order and related transaction documents, including those contemplated by the related Affiliated Interest Final Decision, for the benefit of Wisconsin ratepayers to the extent permitted by law including, the enforcement of any ratepayer indemnification provisions in connection with specified items in the servicing agreement.

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Order (including payment of principal and interest on the environmental trust bonds and other ongoing financing costs). The servicer shall make remittances of the environmental control charge collections (or estimates of such collections as described in this Financing Order) to the indenture trustee not later than two servicer business days following deemed receipt thereof. The servicer shall allocate partial payments of customer bills as described in this Financing Order.

20. The environmental control charges shall be recovered until all principal and all financing costs, including interest and other costs related to the environmental trust bonds have been paid in full.

21. WEPCO shall allocate the environmental control charges among customers in the manner described in this Financing Order.

22. For the period during which environmental control costs and financing costs may be recovered through environmental control charges, so long as any retail electric customer obtains distribution service from WEPCO or its successors (including successors by merger or other combination, as well as successors through asset acquisitions), the customer shall pay, non-bypassable environmental control charges to WEPCO or its successors or assignees regardless of whether the customer obtains other service from a different energy utility or other energy supplier. For purposes of this paragraph, "distribution service" means service from the energy utility, regardless of voltage and the source of the energy, if the energy supplied is not for resale.

23. This Financing Order, together with the environmental control charges authorized by this Financing Order, shall be binding upon WEPCO and any of its successors or affiliates that provide distribution service to customers in WEPCO's service area as it exists on the initial

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date of issuance of the environmental trust bonds, as well as any other entity that provides electric distribution services to customers within that service area. This Financing Order is also binding upon any servicer or other entity responsible for billing and collection of environmental control charges on behalf of the owners of environmental control property, and upon any successor to the Commission. WEPCO shall not sell, transfer, or convey any distribution property of any type, or any rights to its service territory or existing customers, without requiring the entity acquiring the distribution property, rights or customers to charge, collect, and timely remit the environmental control charges to the servicer.

24. True-ups of the environmental control charges shall be undertaken and conducted as described in this Financing Order. The servicer shall file each true-up adjustment as a compliance filing in this docket.

25. The creation of the environmental control property is hereby approved. The environmental control property shall consist of the rights and interests of WEPCO and the SPE under this Financing Order, including the right to bill, collect and receive environmental control charges in an amount sufficient to provide for the timely recovery of its aggregate environmental control costs and financing costs authorized in this Financing Order (including payment of principal and interest on the environmental trust bonds and other ongoing financing costs), the right to obtain true-up adjustments to the envirionmental control charges as provided in this Financing Order, and all revenues and proceeds resulting from such rights and interests. No environmental control property shall be created under this Financing Order, and WEPCO shall not be authorized to impose, collect, and receive environmental control charges, until the transfer

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of WEPCO's rights hereunder to the SPE occurs in conjunction with the issuance of the environmental trust bonds.

26. WEPCO is authorized to allocate to customer classes electric environmental control costs and financing costs on the basis of 75 percent on demand and 25 percent on energy for the purposes of determining revenue responsibility and setting electric environmental control charges.

27. In its role as servicer, WEPCO is authorized to include in its existing rates for retail electric service the environmental control charges calculated in the manner described in this Financing Order, including the formula shown in Attachment 1 to Appendix B. The environmental control charges shall be reflected as a separate line item on customer bills and shall be adjusted periodically pursuant to the true-up adjustments approved in this Financing Order. WEPCO shall include a note to customers explaining the environmental control charges in detail with its bills, along with periodic informational updates.

28. A routine annual true-up adjustment to the environmental control charges to correct for any over-collections or under-collections and to provide for timely payment of principal and interest and other ongoing financing costs shall become effective each year not later than 45 days following the anniversary date of issuance of the bonds (with the precise timing to be determined at the time of issuance of the bonds). The servicer shall file the routine annual true-up adjustment information with the Commission each year not later than 45 days prior to the effective date of the routine annual true-up adjustment. In addition, if necessary, a routine mid-year true-up adjustment to the environmental control charges shall become effective on the date that is 6 months from the date of the routine annual true-up adjustment. Each year

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not later than 45 days prior to the routine mid-year true-up adjustment date, the servicer shall determine whether estimated environmental control charge collections over the upcoming collection period will be sufficient (i) to make on a timely basis all scheduled payments of interest, principal and other amounts payable in respect of the environmental trust bonds during such period and (ii) to maintain the Capital Subaccount at the required level. If the servicer determines that estimated environmental control charge collections will not be sufficient for such purposes, the servicer shall file with the Commission routine mid-year true-up adjustment information not later than 45 days prior the mid-year true-up adjustment date. The updated environmental control charges reflected in any such true-up adjustment filing shall be subject to review only for errors in the application of the formula and shall become effective automatically without the need for further Commission action.

29. If any environmental trust bonds remain outstanding after the final scheduled payment date for such bonds, the servicer also shall file for additional routine quarterly true-up adjustments until such bonds are paid in full, with such additional routine quarterly true-up adjustments to become effective on the dates that are 3 months and 9 months from the date of the routine annual true-up adjustment, and with such filings to occur no later than 45 days prior to the effective date of the routine quarterly true-up adjustment. The servicer also may file for a routine optional true-up adjustment at any time the servicer forecasts environmental control charge collections during the collection period will be insufficient to make all scheduled payments of principal and interest and payment of other ongoing financing costs in a timely manner, to replenish any draws on the Capital Subaccount or generally to correct for any under-collection or over-collection in order to assure timely payment of the bonds. The updated

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environmental control charges reflected in any such routine quarterly true-up adjustment filing or routine optional true-up adjustment filing shall be subject to review only for errors in the application of the formula and shall become effective automatically without the need for further Commission action.

30. In connection with each true-up adjustment filing, WEPCO shall update the assumptions underlying the calculation of the environmental control charges, including use of current sales and demand forecasts and current estimates of weighted average days sales outstanding, uncollectible amounts, and ongoing financing costs.

31. The servicer is authorized to file for a non-routine true-up adjustment if the servicer determines that the existing model for calculating the environmental control charges should be amended or revised. To implement a non-routine true-up adjustment, the servicer shall file a non-routine true-up letter with the Commission designating the adjustments to be made to such model and any corresponding adjustments to the environmental control charges. Any non-routine true-up adjustment shall be subject to the review and approval of the Commission that such adjustment is necessary to ensure the timely recovery of environmental control costs and financing costs with such review and determination to occur within 45 days of such filing. The Commission has delegated to the Administrator of the Division of Energy Regulation and Analysis the authority to review and approve true-up adjustments under Wis. Stat. § 196.027(2)(b)4.a. To the extent possible, WEPCO will work with the Commission staff prior to the filing of a non-routine true-up adjustment in order to streamline the review process for the request.

32. The environmental control charges initially authorized shall be those submitted to the Commission in a report filed following the issuance of the environmental trust bonds, and

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The environmental control project costs allocated to the Wisconsin retail jurisdiction shall be based on the average monthly coincident demand of 0.874901154

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Annual true-up information to correct

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Future true-ups of

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WEPCO shall calculate and apply

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such environmental control charges shall become effective the first day of the first full month following the issuance of the environmental trust bonds.

33. The SPE may, in accordance with the terms of this Financing Order, issue environmental trust bonds in an aggregate amount not to exceed the principal amount approved by this Financing Order and will pledge to an indenture trustee, as collateral for payment of the environmental trust bonds, the environmental control property, including the SPE's right to receive the environmental control charges as and when collected, the SPE's rights under the Servicing Agreement and certain other collateral described in the indenture. Environmental trust bonds may be issued in one series, with one or more tranches, in accordance with the terms of this Financing Order over a period of one year following the later of the date upon which this Financing Order becomes final and no longer appealable or, if appealed, is no longer subject to further judicial review.

34. WEPCO may provide for various forms of additional credit enhancement for the environmental trust bonds (beyond the true-up adjustment mechanism and Capital Subaccount approved in this Financing Order), including letters of credit, over-collateralization or reserve accounts, surety bonds, swap arrangements, hedging arrangements and other mechanisms designed to promote the credit quality and marketability of the environmental trust bonds or to mitigate the risk of an increase in interest rates, subject to review and approval by the Commission.

35. The legal final maturity of the environmental trust bonds authorized by this Financing Order shall not exceed 15 years, and the scheduled final maturity of the bonds shall not exceed 13 years.

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Following determination of the final terms of each series of environmental trust bonds and prior to issuance of the series of environmental trust bonds, the Applicant, in consultation with the Commission, shall file with the Commission no later than the next business day after the pricing date of the series of environmental trust bonds an issuance advice letter in the form required by the Commission.¶
Following determination of the final terms of each series of environmental trust bonds and prior to issuance of the environmental trust bonds, the Commission may require any certificates from the Applicant's underwriter.

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The Applicant may provide for various forms of credit enhancement …

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36. WEPCO shall structure the issuance of the environmental trust bonds in a manner consistent with the requirements of Internal Revenue Service Revenue Procedure 2005-62.

37. Subject to compliance with the requirements of this Financing Order, WEPCO and the SPE shall be afforded flexibility in establishing the terms and conditions of the environmental trust bonds, including the repayment schedules, term, payment dates, collateral, credit enhancement, required debt service, reserves, interest rates, indices, and other financing costs and the ability of WEPCO, at its option, to issue the environmental trust bonds in one or more tranches to obtain the lowest environmental control charges available at the time the bonds are issued.

38. In its capacity as the initial servicer under the Servicing Agreement, WEPCO is authorized to calculate, bill, collect, and receive for the account of the SPE, the environmental control charges established under this Financing Order, as adjusted from time to time pursuant to the true-up adjustment mechanism, and to make such filings and take such other actions as are required or permitted by this Financing Order. The servicer will be entitled to receive servicing fees determined by the Commission in a separate proceeding.

39. WEPCO shall not resign as servicer except upon either (a) a determination by WEPCO that the performance of its duties as servicer shall no longer be permissible under applicable law or (b) satisfaction of the following: (i) receipt of confirmation that such action will not result in a suspension, reduction or withdrawal of the then current ratings on any of the environmental trust bonds and (ii) the Commission shall have approved of such resignation. Upon the occurrence of an event of default under the Servicing Agreement relating to WEPCO's performance of its servicing functions with respect to the environmental control charges, the

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such request as described in the Application or, alternatively, an opinion of independent tax counsel in form and substance satisfactory to the Commission.¶

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Operating and maintenance expense and removal costs for wet flue gas desulphurization and selective catalytic reduction at the Pleasant Prairie power plant Units 1 and 2 shall be excluded from the environmental trust financing authorized in this Financing Order.¶
Internal labor costs shall not be included in up-front and on-going finance costs.¶
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Servicing costs incurred by WEPCO may not be included in future rate proceedings unless WEPCO demonstrates that the servicing costs are incremental to on-going operating costs that it normally incurs.¶
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Any qualified plant already in service at the time

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Prior to expending the proceeds from any environmental trust bonds on NO_X projects that are not clearly described in the application and NO_X projects for which a certificate is required but which has not yet been obtained, the Applicant shall file information with the Commission describing the activities it wishes to fund and demonstrating that the proceeds will only be used to pay environmental control costs.¶ ... [45]

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indenture trustee may replace WEPCO as the servicer in accordance with the terms of the Servicing Agreement. If the servicing fee of the replacement servicer will exceed the applicable maximum servicing fee specified herein, the appointment of such replacement servicer shall not be effective until (i) the date the Commission approves the appointment of such replacement servicer, or (ii) if the Commission does not act to either approve or disapprove of such appointment, the date which is 45 days after the date notice of appointment of the replacement servicer is provided to the Commission. No entity may replace WEPCO as servicer in any of its servicing functions if the replacement would cause any of the then-current credit ratings on the environmental trust bonds to be suspended, withdrawn, or downgraded.

40. WEPCO shall be entitled to receive an administration fee for its performance of administration duties under the Administration Agreement, as determined by the Commission in a separate proceeding.

41. Servicing costs and administration costs incurred by WEPCO may not be included in WEPCO's cost of service in future rate proceedings. Servicing fees and administration fees received by WEPCO under the Servicing Agreement and Administration Agreement, respectively, shall not be considered revenues of WEPCO in future rate proceedings.[1]

42. WEPCO shall, at least annually, provide written notification to each ratepayer for which the entity bills environmental control charges that the environmental control charges are the property of the SPE and not of the entity issuing the bill. WEPCO shall annually provide to its retail electric customers a concise explanation of the environmental control charges approved in this Financing Order. The explanation may be made by bill inserts, Web site information, or

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[1] This is the REVERSE of "best practices" and 2004 FO

other appropriate means.

43. The Commission shall require such terms and conditions in the transaction documents through its Affiliated Interest Agreement Final Decision as may be needed to provide additional ratepayer protections and achieve the lowest environmental control charges consistent with market conditions at the time the bonds are issued and the terms of this Financing Order.

44. All regulatory approvals within the jurisdiction of the Commission that are necessary for the securitization of the environmental control charges associated with the environmental control property and other qualified costs that are the subject of the Application are granted.

45. This Financing Order constitutes a legal financing order for WEPCO under Wis. Stat. § 196.027. The Commission finds this Financing Order complies with the provisions of Wis. Stat. § 196.027(2)(b)1. A financing order gives rise to rights, interests, obligations, and duties as expressed in Wis. Stat. § 196.027. It is the Commission's express intent to give rise to those rights, interests, obligations, and duties by issuing this Financing Order. If WEPCO proceeds to issue environmental trust bonds pursuant to this Financing Order, WEPCO and the servicer of environmental trust bonds authorized by this Financing Order are directed to take all actions as are required to effectuate the transactions approved in this Financing Order, subject to the compliance with the criteria established under Wis. Stat. § 196.027 and this Financing Order.

46. This Financing Order is a final order, the appeal of which is to be conducted pursuant to Wis. Stat. § 196.027(2)(d). The finality of this Financing Order is not impacted by the actions or inactions taken by the Commission with respect to any other matters considered in this proceeding. Should any other order entered in this proceeding, if appealed to the courts, not

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trading of the bonds. The Applicant shall pay the fee of the Commission's financial advisor as a financing cost from the proceeds of the environmental trust bonds in immediately available funds as a condition of closing

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be upheld in full on appeal, such judicial ruling will in no event impact or modify the finality or effectiveness of this Financing Order.

47. WEPCO shall record all environmental control costs that are financed with environmental trust bonds in separate accounts or subaccounts so that these costs are excluded from traditional rate recovery in future proceedings to avoid double recovery of any costs.

48. Upon the maturity of the environmental trust bonds and the discharge of all obligations with respect to them, remaining amounts in the Collection Account will be released to the SPE and will be available for distribution by the SPE to WEPCO. Other than amounts that were in the Capital Subaccount or any accrued but unpaid return on WEPCO's capital contribution, customers shall be credited an amount equal to the amount released to the SPE from the Collection Account.

49. WEPCO shall provide to the Commission a copy of the final closing documents relating to the issuance of the environmental trust bonds.

50. This Financing Order is irrevocable, and the Commission shall not take or permit any action in this proceeding or any future proceeding that would impair the value of the environmental control property, or, except for the true-up expressly allowed by law, reduce, alter, or impair the environmental control charges to be imposed, collected, and remitted to financing parties, until the principal, interest, and premium, and any other charges incurred and contracts to be performed in connection with the related environmental trust bonds have been paid and performed in full.

51. As provided in Wis. Stat. § 196.027(10), effective on the date that environmental trust bonds are first issued under Wis. Stat. § 196.027, if any provision of Wis. Stat. § 196.027 is

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held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence shall not affect any action allowed under Wis. Stat. § 196.027 that is taken by WEPCO, an assignee, a collection agent, or a party to a transaction, and any such action shall remain in full force and effect.

52. This Financing Order to be effective one day after the date of mailing or the day of personal service on WEPCO, whichever is earlier.

Dated at Madison, Wisconsin, the 17th day of November, 2020.

By the Commission:

Steffany Powell Coker
Secretary to the Commission

SPC:MB:jlt:DL:01769775

See attached Notice of Appeal Rights

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The Applicant shall make available to the Commission for review all requisite final opinion letters from underwriters, issuer's counsel, and other counsel. The Commission shall monitor the progress and review opinions letters as necessary.¶
Electric rates shall be placed in all offices and stations of the utility by a date no sooner than one week after finalization of financing and shall be effective on the date placed in all offices and stations of the utility.¶

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