

public benefits fund would not be used for low-income programs and energy conservation but rather to pay the administrative expenses of running the program.¹

- 2. The Legislative Council Clearinghouse Report states that the rule does not conform with the 3% cap based on an 8-year period as specified in Wis. Stats. 16.957(4)(c)(3).

Due to many factors that are used to determine the fee, the fee could vary considerably within an 8 –year period. First, the fee is based upon 3 different funding sources: federal funding, funds that utilities have been collecting through rates to pay for existing public benefits programs and, the new fees that utilities are required to collect. There is a formula in the statute to set the funding level based upon low-income need. This formula allows for the fee to vary year-to-year. In addition, the number of customers in a utility service territory and the amount of customers' bills will vary throughout an 8-year period. To attempt to set the fee on a 8 year basis would result in significant discrepancies in how much is collected per customer through the 8 year period and true-up at the end of the 8 year period of what should have been collected. Once the utilities collect the money from customers, it is turned over to DOA. From the utility's perspective, there is not any money to refund on an individual customer basis. In addition, the customer confusion and the administrative costs incurred from attempting to refund those individual customers who overpaid and collect from those who underpaid would far outweigh the method established by rule of setting the fee on a monthly basis. Again, the rule as proposed is the most cost-effective of meeting the intent of the law.

¹ Wis. Stats. 16.957(4)(b)(3) states that the utilities can recover "reasonable and prudent" expenses incurred in complying with the public benefits program

3. The Legislative Council Clearinghouse reports states that the rule only provides for an annual solicitation for voluntary payments rather than a requirement that voluntary payments must be included in electric payments and therefore does not conform with Sect. 16.957(2)(c)4

The language in the statute states that DOA may require an electric utility to provide a space on an electric bill and therefore provides some flexibility for determining the type of solicitation for voluntary payments. Monthly solicitations would again result in double-paged bills and added postage which add significant administrative costs to implementing the public benefits programs and thereby eliminate the benefits of voluntary contributions.

Thank you again for the opportunity to comment.

cc: John Marx 6/30



Madison Gas and Electric Company
P.O. Box 1231
Madison, WI 53701-1231
608-252-7000

life enhancing energy

June 29, 2000

Ms. Donna Sorenson
Department of Administration
101 East Wilson Street, 10th Floor
Post Office Box 7864
Madison, Wisconsin 53707-7864

Subject: Comments on Chapter Adm. 43 of the Wisconsin Administrative Code,
the Nonmunicipal Electric Utility Public Benefits Fee Rule

Dear Ms. Sorenson:

Enclosed are written comments of Madison Gas and Electric Company (MGE) addressing Chapter Adm. 43 of the Wisconsin Administrative Code, the Nonmunicipal Electric Utility Public Benefits Fee Rule. These comments supplement the oral testimony presented by Gregory Bollom at the June 16 public hearing. MGE strongly urges the Department of Administration (DOA) not to make some of the changes recommended by the Legislative Council Staff Rules Clearinghouse.

Specifically, the 3 percent cap should not be implemented over the entire eight-year period, as recommended by the Rules Clearinghouse, but rather on a monthly basis as currently described in the draft rule. If the rule is changed, MGE will be required to track, by individual customer account, fees billed for an eight-year period and only after eight years, determine if a customer was overcharged. This is completely unworkable. MGE has a significant portion of its customer population that changes address annually due to the heavy student population in its service territory. Many of these students do not even remain customers of MGE for eight years. The most equitable way to ensure that no customer pays a public benefits fee in excess of 3 percent of all the other charges on their bill is to check the amount on a monthly basis.

Second, the DOA staff did not err in excluding unmetered services from the definition of nonresidential customers. Applying the public benefits fee to metered services is the most equitable way to define a customer and the most practical way to apply the charge. To put this issue in context, most unmetered service is left unmetered because the cost of metering far exceeds the cost of energy used. Most unmetered services are for public streetlights, private overhead lights, and municipal defense sirens. For example, a 100-watt high-pressure sodium lamp on MGE's customer-owned lighting rate pays \$3.42 per month. While it is certainly possible to add 3 percent or 10 cents per month to the bill for public benefits, the added complication for this very small charge makes no sense. Customers taking service on unmetered rates are also taking service on standard metered tariffs for the majority of their electric use. They will be paying public benefits fees on that portion of their usage. The rule as drafted by DOA represents a very reasonable and equitable solution to application of the charges.

The third issue MGE wishes to address is the use of a separate bill insert and return envelope for voluntary customer contributions to the public benefits fund. The Rules Clearinghouse recommends that the checkoff be placed directly on the customer's bill so contributions can be made directly through the

Ms. Donna Sorenson

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June 29, 2000

customer's bill payment to the utility. MGE has no way to segregate money collected from its customers. We currently maintain our accounts receivable on a total basis, and we do not allocate partial payments even between electric and gas bills. If we are required to place a checkoff on the customer's bill to allow voluntary contributions, we would need to develop a new customer billing system, complete with new accounting rules, accounts receivable rules, bill stock, etc. The total public benefits fees MGE must collect from its customers is only a little more than \$2.5 million. We will very likely spend more than that to rebuild our customer billing and accounting systems if we are required to put a checkoff on the bill. Since we are allowed to recover these expenses from our customers and they count against the 3 percent cap, we could effectively eliminate over an entire year of public benefits funding simply to implement the voluntary checkoff. MGE currently allows its customers to make voluntary contributions to our own Energy Fund. We generate less than \$50,000 in contributions per year. It makes absolutely no sense to spend millions on major computer and accounting system overhauls in the hope of generating only thousands of dollars in contributions. The separate bill insert and return envelope proposed in the current draft rule is the most cost-effective method to achieve the goals of Act 9.

Finally, MGE believes it is important that implementation of the rule results in a uniform residential public benefits fee on a statewide basis. MGE was an active participant during the legislative negotiations that led to Act 9, and we believe a uniform statewide residential fee was clearly the intent of all parties involved. Several of the utilities have a significant number of low-use residential customers, many of whom may be seasonal customers who occupy their residence only a portion of the year. While allocating the statewide residential public benefits fee using year-end reported customers represents a good starting point for developing the annual fee, it does not represent a fair or reasonable end point. MGE believes that DOA should employ an iterative process with the utilities to arrive at a single fee for all residential customers statewide. A single fee where customers pay the lesser of the fixed fee amount or 3 percent of all the other charges on their bill is the only equitable way for DOA to collect the public benefits fees. The rule as currently drafted gives DOA the authority and latitude to implement the fee in this manner. We strongly encourage them to do so.

The rule as drafted and included with the Notice of Hearing represents the most equitable and cost-effective method for implementing the collection of public benefits fees. It represents many months of work balancing the goals of Act 9 with the practical requirements of the utilities to collect fees from their customers. MGE strongly supports the adoption of the rule as currently drafted.

We appreciate the opportunity to comment, and we would be happy to answer any questions you may have with our comments. I can be reached at (608) 252-4748 or by e-mail at gbollom@mge.com.

Sincerely,



Gregory A. Bollom

Assistant Vice President - Electric Marketing

ms



Wisconsin Public Service Corporation
(a subsidiary of WPS Resources Corporation)
700 North Adams Street
P.O. Box 19001
Green Bay, WI 54307-9001

Ms. Donna Sorenson
Department of Administration
101 E. Wilson St., 10th Floor
P.O. Box 7864
Madison, Wisconsin 53702

Dear Ms. Sorenson:

Attached is a copy of Additional Comments of William L. Bourbonnais on behalf of Wisconsin Public Service Corporation regarding the Creation of Chapter Adm. 43 of the Wisconsin Administrative Code for Non-municipal Electric Utility Public Benefits Fees.

This is a written version and supplement to the comments that I made at the Friday, June 16, 2000 Public Hearing on the proposed Chapter Adm. 43.

Wisconsin Public Service Corporation appreciates this opportunity you have provided to express our support and concerns on these proposed rules.

Sincerely,

A handwritten signature in black ink, appearing to read "W. L. Bourbonnais", enclosed within a large, hand-drawn oval.

William L. Bourbonnais
Manager Rates and Economic Evaluation

**Additional Comments of William L. Bourbonnais
On Behalf of Wisconsin Public Service Corporation
June 26, 2000
Creation of Chapter Adm. 43 of The Wisconsin Administrative Code
Relating to
Non-municipal Electric Utility Public Benefits Fees**

Wisconsin Public Service Corporation (WPSC) appreciates the opportunity to provide our comments concerning the Wisconsin Department of Administration (WDOA) Public Benefits Fee, proposed Chapter Adm. 43.

As indicated in my initial comments at the June 16, 2000 Legislative Hearing, WPSC was an active participant on the utility committee that the WDOA assembled to assist in the design of the Public Benefits Fee, Chapter Adm. 43. Based on this participation, WPSC is painfully aware that attempting to design a Public Benefits Fee rule that meets all of the requirements and intent of the Act 9 legislation is difficult if not impossible due to the conflicting requirements of this legislation. Many concessions by all parties were needed to design a Public Benefits Fee rule that would be both effective and efficient in collecting the money for Public Benefits as required by the Act 9 legislation. Based on this participation and knowledge, WPSC supports the proposed Chapter Adm. 43 as proposed by the WDOA with the exception of one concern.

The one major concern that WPSC has is that this Chapter Adm. 43 Public Benefits Fee rule does not result in a uniform maximum Public Benefits Fee for all residential customers across the state. This Public Benefits Fee is a statewide fee that will be used to fund public benefits across the state with no recognition or relationship to the individual utility boundaries. Yet the resulting residential Public Benefits Fee relies on both the rates charged by individual utilities and the customer usage to determine what each residential customer will pay for this program. The major factors that determine what maximum rate each residential customer will pay are the customer usage patterns, and the rate levels of each utility. The higher customer usage patterns and higher rate levels result in lower maximum fee levels for the residential customers. Based on current Public Benefit Fee levels and utility rate levels these two factors result in a maximum residential customer Public Benefits Fee of almost \$5.00 for Wisconsin Public Service Corporation while resulting in a maximum residential customer Public Benefits Fee of less than \$1.50 for customers of Wisconsin Electric Power Company. Both sets of utility customers are paying this vastly different Fee for the right to access the same statewide Public Benefits program.

As an example, the residential customer rates of WPSC are approximately 13% less than those of Wisconsin Electric Power Company (WEPCO). If WPSC residential rates were the same as WEPCO's residential rates, the maximum Fee for residential customers of WPSC would be about \$2.15 rather than \$4.95. The remainder of this rate level difference is the lower usage of the average WPSC customer as compared to average WEPCO customer use. WPSC does not believe that some state utility customers should be punished with a higher Public Benefits Fee because they use less electricity than others in the state and/or due to the effectiveness of their utility in keeping their rate levels low. WPSC does not believe this was the intent of the Act 9 Legislation.

WPSC believes that a uniform statewide maximum residential customer Public Benefits Fee would be the best mechanism to fund the statewide Public Benefits program envisioned by Act 9. This mechanism is possible and would provide a Public Benefits Fee that is reasonable and fair for all residential customers in the state.

WPSC would also like to embellish its Hearing comments regarding the Legislative Council Staff Rules Clearinghouse (Clearinghouse) recommended changes to the proposed Chapter Adm. 43 of the Wisconsin Administrative Code, Non-municipal Electric Utility Public Benefits Fee rule as currently proposed.

The Clearinghouse recommended that the 3% cap was intended and should be enforced only after the entire eight-year period. Based on current WPSC calculations, a majority of WPSC customers would be entitled to a refund under the 3% cap each month and year of the eight years. Developing a refunding mechanism to return overpaid funds to everyone that was a customer during a portion or all of that period and qualified for a refund would be a monumental and expensive task. In addition, one has to question where the funds to make those refunds would come from. It is likely that the WDOA would have spent all or most of this money for public benefits over the eight-year term, as intended by Act 9 and funds for refunds would need to be collected from some other source. The only effective, efficient and rational way to enforce the 3% cap is to enforce it on a monthly basis during the eight-year term of the Public Benefits Fee Rule. This method avoids over-collection from large numbers of then current and former customers and costly refund programs with the resulting funding shortages.

The Clearinghouse recommended that the method chosen to encourage voluntary funding of the WDOA Public Benefits program is inconsistent with the Act 9 legislative intent. The Clearinghouse recommended that a check-off system be used on utility bills so that customers can make contributions directly with their utility bill payment. While this mechanism is easy for customers, it is very labor and re-programming intensive for the utilities. This proposed alternative method will cost the utilities significant dollars, either in labor costs and/or computer programming change costs. It is likely that these costs would exceed anticipated voluntary contributions that would probably be collected. An example is the WPSC voluntary collection of funds for Solar for Schools, a WPSC award winning form of voluntary green pricing. This voluntary programs collects approximately \$\$62,000 annually from about 4,000 customers. Although WPSC has not determined the actual costs of providing the mechanism suggested by the Clearinghouse, it is in the hundreds of thousands of dollars, far exceeding any anticipated voluntary donations from its customers based on our current experiences. WPSC believes that the current proposed method to collect these voluntary contributions, a separate bill insert and return envelop, is the only cost effective and reasonable method available to the utilities today.

In summary, with the addition of a mechanism to obtain uniform statewide residential maximum Public Benefits Fee levels, WPSC believes that the WDOA proposed Chapter Adm. 43 rule is the most effective and efficient way to implement the Act 9 Public Benefits legislation.

June 27, 2000

To: Donna Sorenson
Department of Administration
P.O. Box 7864
Madison, WI 53707-7864
And

Jane Blank
Department of Administration
P.O. Box 8944
Madison, WI. 53708-8944

Re: Creation of Chapter Adm. 43, of Wisconsin Administrative Code, relating to non-municipal electric utility public benefits fees, Creation of ch 44, & Creation of ch 45

I would like these comments included in the record of the proceedings of the above. I was not able to attend the hearings due to location and short hearing notice.

I am a ratepayer, small business owner, and utility shareholder. I object to the unknown dollar amount or percentage to be collected from residential ratepayers for Public Benefits and wonder why commercial customers have been pre-set with a cap, but no cap for residential ratepayers.

I think residential ratepayers and low-income customers will be adversely affected and are being taken advantage of and discriminated against. Commercial customers will build the Public Benefit Fees into their overhead. Residential customers have no ability to re-cover this added expenses- and with the DOA's ability to adjust the residential Public Benefits fee annually, the residential customers will not even be able to pre-plan their budgets.

I think a pre-set dollar amount is sufficient for residential customers, with no ability to adjust the fee annually. We must set limits.

The Census 2000 recently reported (copy-attached) Wisconsin per person energy consumption rose 24% from 1990-1996, while the national average rose only 7%. Wisconsin has lead the nation in dollars spent in conservation & low income for 15 Years, apparently with no success in decreasing energy consumption.

We need to think hard on the scope of this, with its complexity and far reaching effects. Better more input, hold a few more hearings (one hearing in Madison with a 2-1/2 week notice for a \$44 million ratepayer collection annually, is not appropriate) and allow for further written commentary.

I also think an allocation between residential & commercial dollar distribution should be in proportion to dollars collected and distribution should be according to geographic collection.

Re: creation of Chapter Adm 44, energy conservation program

In regards to the program administrator, I do not feel it should have to be a non-stock, non-profit. This is discriminating against any small business, and the recipient, who would have no recourse given the non-profits liability status, and why should a non-profit have more credibility than a for profit business. And what about non-profits and their ability to set up for profit subsidiaries and this impact on small business.

Re: 44.04-44.09 I don't believe the language is adequate. It will take time to gear up for the tremendous amount of additional work to be done under the program. I also think timelines need to be pre-established.

Re: 44.05 The whole section is vague, with no apparent accountability, and independent appeal process in place.

Re: creation of ch 45

I feel as proposed the rule will negatively impact small business. I object to the definition of contractor. I do not believe the intent is that services provided must be by a non-profit. The definition needs to be clearly defined, that the contractor does not have to be a non-profit. Already the language is being interpreted or misinterpreted that all work performed must be done by a non-profit. As presently proposed, it is unclear and is being interpreted to negatively impact small business.

I think an accountable, measurable effort needs to be made to also identify the low-income customers, and meet their needs using contractors- with contractors not being defined as non-profits.

I know that with the assistance of not only the DOA, but also ratepayers, AARP, the VA, Churches, and contractors, the low income needs would be met. I'm sure with local hearings, ratepayer informational promotion and an extended written commentary timeline, this could be a success. I ask the new chapters not start in fiscal year 2001 (October 1, 2000 through September 30, 2001). I ask the existing programs remain in place at this time. Let's do justice for the low-income and ratepayers, residential & commercial, and small business.

Sincerely,

Debby Eaton
14995 Glenora Av. (262)784-8889
New Berlin, WI. 53151

AMERICA IN FOCUS

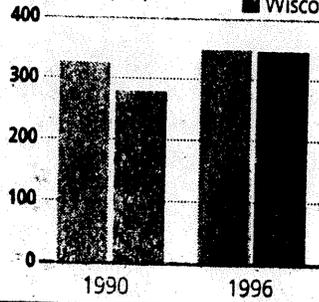


**ENERGY
CONSUMPTION**

Wisconsin's per-person energy consumption rose 24% from 1990 to '96, while the national average rose only 7%. The state's rank among states soared from 38th to 26th.

Energy consumption
Millions Btu per person

■ U.S.
■ Wisconsin

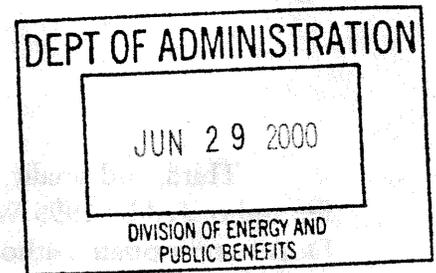


Source: U.S. Census Bureau Journal Sentinel



June 27, 2000

Mr. John Marx, Administrator
Division of Energy and Public Benefits
State of Wisconsin – Department of Administration
101 East Wilson Street, 6th Floor
PO Box #7868
Madison, Wisconsin 53707



Dear Mr. Marx:

The Wisconsin Community Action Program Association (WISCAP) is formally submitting the following as its comments on Administrative Rules 43, 44, and 45 pertaining to public benefits, as authorized by 1999 Wisconsin Act 9.

Our comments are three:

First, we want to acknowledge the very open and inclusive process you and the Division's staff have undertaken in the development of these rules. We have found the opportunities for input and comment to be many and we have, likewise, found the Division to accept this degree of outside participation with good intentions and respect. Even though it has, probably, extended the period for rule development, it has been a valuable part of the process and you are to be congratulated for this.

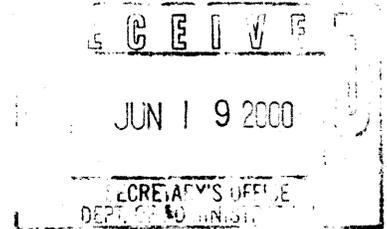
Second, we support the general nature of Admin Rules 44 and 45 and, as currently worded, the flexibility inherent in them. Given the nature of the public benefits program and its intent to forge new ground and methods in the delivery of services, it is critical that the rules – at the front end – not be so prescriptive as to inhibit the full level of creativity which will be necessary to make public benefits a success.

We are confident in the direction the programs are going and in the processes in the Division to ensure adequate quality control and input from interested parties. Current low-income energy programs administered by the Division have a strong history of effective, efficient service ... all under the guidance of operating procedures and the like, without prescriptive administrative rules. We support the lack of specifics in the rules and see the flexibility they would allow as being a strength of public benefits, not a weakness.



Superior Water Light & Power Company

June 14, 2000



Donna Sorenson
Department of Administration
P.O. Box 7864
Madison, WI 53707-7864

Dear Ms. Sorenson:

Superior Water, Light and Power Company submits the enclosed testimony relative to the June 16, 2000 public hearing to consider the creation of Chapter Adm 43 of the Wisconsin Administrative Code, relating to Non-municipal Electric Utility Public Benefits.

If you have any questions please contact me at 715-395-6249.

Sincerely,

William Fennessey
Supervisor, Support Services

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SUPERIOR WATER, LIGHT AND POWER COMPANY
Testimony of William T Fennessey
Relating To June 16, 2000
Public Hearing To Consider The Creation Of Chapter Adm 43 Of The Wisconsin
Administrative Code,
Relating To Non-municipal Electric Utility Public Benefits Fees

- Q. Please state your name and business address.
- A. William T. Fennessey. My business address is 2915 Hill Avenue, Superior, Wisconsin.
- Q. By whom are you employed and in what capacity?
- A. I am employed by Superior Water, Light and Power Company (SWLP) as Supervisor, Support Services.
- Q. Please describe your educational background and business experience.
- A. I am a graduate of the University of Wisconsin-Superior with a Bachelor of Science degree in Business. I have been employed by SWLP since 1974. I have held various positions in both the customer service and operations areas of the Company.
- Q. What is the purpose of your testimony in this proceeding?
- A. The purpose of my testimony is to present SWLP's concerns with the proposed order of the Department of Administration (DOA) to create Chapter Adm 43 of the Wisconsin Administrative Code, relating to Non-municipal Electric Utility Public Benefits Fees.
- Q. Please summarize the concerns SWLP has.
- A. The purpose of Chapter 43 is to establish a fee to be collected by each utility from its customers, and to provide procedures for collecting the fee. Initial projections indicate that SWLP will not be able to collect the entire residential obligation from our customers due to the 3% cap, resulting in SWLP being in a situation where the total residential fee and associated reasonable and prudent expenses will not be able to be fully recovered from SWLP customers. The DOA position that SWLP corporate funds should be used to cover undercollection is unacceptable to SWLP because the cap then penalizes SWLP and other similarly-situated small utilities whose residential customer base does not allow for full recovery of the fee.

- Q. Has SWLP discussed this situation with representatives of the DOA?
- A. Yes. SWLP concerns have been discussed with the DOA. As of the date this testimony was prepared, there has been no resolution of the matter.
- Q. If the fee is put in place prior to resolving this concern, how will SWLP handle collection of the fee under existing Chapter 43 provisions and the DOA interpretation of Chapter 43?
- A. Any requirement that (1) SWLP pay to the DOA an amount greater than that which SWLP can collect from its customers, and/or (2) SWLP incur reasonable and prudent expenses associated with fee collection that cannot be recovered through rates is considered by SWLP to be outside the intent of Chapter 43 and the authority of the DOA. SWLP will collect the maximum amount from its residential customers available under the collection procedures and submit the amount collected (less associated reasonable and prudent expenses) to the DOA. SWLP will not utilize any company funds or other collection procedures to satisfy the deficit created by the difference between SWLP's capped 3% collection under Chapter 43 and the amount expected of SWLP by the DOA.
- Q. Does this conclude your testimony?
- A. Yes, it does.



ALLIANT ENERGY

Comments of Alliant Energy Corporation on Proposed ADM 43 Before the Department of Administration June 16, 2000

Introduction

Proposed Adm. 43 is required by the Reliability 2000 (R2K) portion of 1999 Wisconsin Act 9; specifically sec. 16.957, Stats. That section requires the Department of Administration (DOA or department) to draft rules establishing the amount of a public benefits fee charged by Wisconsin investor-owned utilities (utilities). Alliant Energy supports Adm. 43 and agrees with the manner in which it implements the statutory requirements. Sec. 16.957(2) and (4), Stats. contains ten specific requirements related to the fee, most of which place limitations on how the fee can be calculated.

In its review of the proposed rule, the Legislative Council Rules Clearinghouse (Clearinghouse) noted that Adm. 43 fails to conform with some of these requirements. While a strict interpretation of the statute may lead to this conclusion, the nonconformity is unavoidable. More importantly, nothing in Adm. 43 violates the intent of Sec. 16.957. In fact, the rule proposed by the department achieves the legislative intent of keeping the fees low while ensuring a fair distribution of the charges, and collecting an amount sufficient to assist Wisconsin's low-income residents. The department, with the advice and assistance of a diverse group of stakeholders, took great pains to conform with the statutory requirements and did not ignore any legislative mandates.

Of the ten provisions in sec. 16.957(4), the Clearinghouse raised issues with six. Those six can be separated into two groups for discussion purposes: general fee requirements and limitations on the amount of the fee.

General Requirements

1. Customers to be Charged, sec. 1957(4)(a). Utilities must charge each customer a public benefits fee. Adm. 43.03 defines nonresidential customers as those receiving metered services under a commercial or industrial tariff and assessed a fixed customer charge at the meter's location. The Clearinghouse report questions whether this definition includes all nonresidential customers because it excludes those without meters.

Adm. 43.03 does result in every individual receiving service from a utility being charged a public benefits fee. Sites without meters normally belong to government entities and include facilities such as street lights and stop lights. These governments are metered elsewhere and will be paying the fee. Other non-metered sites belong to private businesses. However, these businesses are metered in different locations and will pay the fee as well. For example, billboards may not be metered, but the premises of billboard companies are metered; hence they are subject to the fee.

2. Fee Amount, sec. 16.957(4)(a). Investor-owned utilities must charge customers a public benefits fee in an amount established in rules promulgated by the department. Under Adm. 43.05, 43.06 and 43.07 the department determines the total amount that must be collected and then bills utilities, allowing them to set the fee in a department-approved collection plan. In its report, the Clearinghouse argues that this does not conform with the statute.

Because the amount to be collected via the fee and the number of customers it must be collected from will vary from year to year, it is impracticable to set a standard fee by rule. Sec. 16.957(4)(c)1 requires the amount of the fee to equal a low-income need target minus federal funding, 1998 public benefits spending by utilities, and half of the public benefits fees charged by municipal utilities and electric cooperatives. The amount of low-income need must be determined each fiscal year, and will likely fluctuate. Similarly, the number of utility customers does not remain constant. Stating within the rule a permanent uniform fee based on the low-income need and number of utility customers in 1999 would result in a need to change the rule each year to reset the public benefit fee. Further, due to the statutory limitation of a customer paying no more than 3 percent, a uniform fee for all residential customers, for example, would not collect each utility's requisite amount of the public benefits fee.

Given the length of the administrative rulemaking process, it is not reasonable to expect DOA to promulgate a new rule containing a revised standard fee at the start of each fiscal year. Adm. 43.05 and 43.06 require the collection of the fee in the only manner feasible given the requirements and constraints of sec. 16.957(4).

3. Billing Requirements, sec. 16.957(4)(am). The public benefits fee must be included in the fixed charges for electricity. Adm. 43.03 requires utilities to add a new item to bills identified as a non-taxable fixed charge. It will likely appear as "customer charge – non-taxable." The Clearinghouse report states that this separate line item may not be consistent with the statute. Attorneys from state agencies, utilities, and various interest groups, have reviewed and discussed sec. 16.957(4)(am), but failed to reach any consensus about its meaning.

Alliant Energy interprets the language to permit a line item. If the legislature did not intend to allow charging the fee in the manner prescribed by Adm. 43.03, it could have included a provision specifically prohibiting a separate line item.

Furthermore, rolling the public benefits fee into the existing customer charge would require significant reprogramming of Alliant Energy's billing system since the fee is not taxable. Everything currently in the customer charge is subject to sales tax. Addressing this requires reprogramming the billing system to calculate sales tax on all but a portion of the customer charge i.e., the public benefits fee. This already complex undertaking becomes nearly impossible as utility efforts to abide by the limitations described below cause the fee to fluctuate from month to month.

In addition to the practical challenges of charging the fee in this manner, utilities face legal limitations. The Public Service Commission of Wisconsin (PSCW) in PSC 113.16(1) requires that utility bills show the amount subject to tax, itemize the present billing period charges and other utility charges and credits, and include all billing factors necessary for the customer to check the calculation of the bill. If the fee is rolled into the existing customer charge, customers will be unable to see the actual charges or the amount subject to tax, or verify bill accuracy.

4. Voluntary Customer Contributions, sec. 16.957(2)(c). DOA must write rules governing the manner in which utilities will allow customers to include voluntary contributions with bill payments for electric service. Adm. 43.10 requires utilities to provide customers this opportunity at least once a year by including a descriptive insert and return envelope with the annual public benefits report. The Clearinghouse report

states that this does not comply with the statutory requirement to provide a mechanism allowing monthly contributions.

Because the cost of requiring a monthly collection mechanism could exceed the amount being collected, the department chose to require an annual collection mechanism. Including contributions with monthly bills would require some utilities to abandon post card billing and require all to create a system of separating contributions from bill payments, recording and tracking contributions, and possibly reprogram billing systems.

Limitations

1. Uniform Fees Required, sec. 16.957(4)(b). The fee must be uniform within each class of customers, although it may vary by class. The Clearinghouse report points out that while individual utilities will presumably meet this requirement, the fees will vary between utilities for the same class of customers since each utility will set its own fee under Adm. 43.06. As explained above, this is the only practicable manner in which to charge the fee.

Each utility has a different proportion of customers within each class that will reach the 3 percent statutory limitation on the fee. Hence, it is not practicable to set the same public benefits fee for the same class of service across utilities. Implementing the rule as drafted is necessary to satisfy the statutory intent, given the diversity in customer populations of the respective utilities.

2. Bill Increases Limited, sec. 16.957(4)(c)3. Customer bills cannot increase by a specified percentage or dollar amount, whichever is less. Between October 29, 1999 and June 30, 2008 the total increase in a customer bill cannot exceed 3 percent of the total

of every other charge or, on a monthly basis, the total increase cannot exceed \$750, whichever is less.

The Clearinghouse reports that Adm. 43.06 bases the percent test on monthly bills rather than the approximate eight-year period required by sec. 16.957(4)(c)3. While this is true, it is necessary to avoid a catastrophe eight years from now. If utilities do not engage in a monthly review and adjust the fee, it is likely large numbers of customers will require refunds after 2008. Since utilities turn over the fee proceeds to DOA for deposit in the public benefits fund, there is no mechanism for refunds. Utilities will not retain the fees and receive a financial benefit, and therefore should not be required to make these customers whole with money collected in rates. Furthermore, DOA will have spent money collected years earlier and it will not be available to refund. Another significant challenge would be locating customers who move during the eight-year period, calculating refunds due, and delivering the refunds to former and current customers. In order to avoid inequities and guarantee fair treatment of utility customers, the test must be done on a monthly basis.

Conclusion

Proposed Adm. 43 implements the provisions of R2K in a manner that honors the legislative intent of small fees and a fair distribution, while collecting the amount necessary to provide assistance to Wisconsin's low-income residents. Reading the statute strictly, as proposed by the Clearinghouse, would not result in a more equitable public benefits fee. It would result in no fee at all since it is impossible to implement the statutory provisions without first considering how they interrelate and then taking steps to reconcile to them.

OAAW

OUTDOOR ADVERTISING ASSOCIATION OF WISCONSIN

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MADISON, WISCONSIN 53703
608-286-0764

Testimony

Admin. 43 Department of Administration

presented

by

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The Outdoor Advertising Association of Wisconsin (OAAW) is a statewide trade association comprised of more than 20 companies which own and offer advertising space on billboards across Wisconsin. The companies which are members of OAAW own between 15 and 1000 sign structures each.

It has come to the attention of the OAAW that implementation of this administrative rule (Admin. 43) will adversely impact its member companies.

The OAAW supports the new Wisconsin law which establishes fees to be collected from the customers of electric utilities in order to fund low-income assistance, energy conservation, and renewable resource programs. The law also states that the fees may vary by class of consumer, but will be uniform within each class. Unfortunately, the mechanism which has been described to me for collection of the fee will not be uniform. The proposed mechanism specifically unfairly targets outdoor advertising companies. OAAW members will be paying much more as fees when compared to other businesses which consume comparable amounts of electricity.

According to a representative of the DOA, the expected average residential electric customer in the State will be charged \$1.60/month as the energy conservation fee. The average commercial customer will be charged between \$3.00 and \$4.00/month.

I surveyed 10 members of OAAW and learned that these ten companies own 1,682 illuminated billboards. Each of these billboards has its own electric meter. The average monthly bill for each of these electric meters runs from \$15 to \$50/month. If \$3.00 were to be charged for each

electric meter each month, the total payment to the State from these 10 companies would be more than \$60,500 annually.

It is, however, my understanding that there is a limitation for small consumers of electricity. This limitation is that no customer will pay more than 3% of his electric bill each month as the proposed energy conservation fee. Even under this scenario, OAAW members will be paying excessive fees. The largest company, with 511 billboards, will be paying \$681/month toward this new fee. Comparable businesses will be paying \$4.00. The smallest billboard company, with 25 billboards in Wisconsin, will be paying \$22/month toward the new energy conservation fee. This small billboard company will still be paying more than five times the fee that other comparable commercial businesses will pay each month.

There is a second limitation on the fees that can be collected from one electric customer. That limitation is that no customer will have to pay more than \$750/month. Interestingly, even the largest billboard company in the State will not be paying more than \$700/month for the 511 meters on its 511 billboards. Even if this large billboard company exceeded \$750/month in total fees paid, it would not meet the criteria for the special exception because this company pays six different utilities each month. In fact, of the 10 billboard companies I surveyed, each company paid between three and 30 electric companies each month.

I hope that the Department of Administration will recognize that the proposed mechanism and/or structure for collecting the new energy conservation fee is not uniform within classes of customers. The outdoor advertising companies pay multiple electric utilities and have literally hundreds of different electric meters on hundreds of billboards. Each of the meters registers minimal consumption of electricity each month -- Far less electricity than even the smallest commercial customers who will be paying \$3.00 to \$4.00/month toward this new fee.

If this rule goes forward without adjustment to address this unfairness, the outdoor advertising companies in Wisconsin will be paying between five and 100 times more in energy conservation fees than will comparable commercial customers.

The OAAW respectfully requests that DOA make an adjustment in the rule to address this violation of uniformity. The OAAW stands ready to work with DOA to determine a mechanism, or structure, of payment for commercial customers which will be fair to all involved.

Thank you for your consideration of our request.

JRS/

Summary of rule revisions based on comments from the Rules Clearinghouse, hearing testimony and written comments received by the Department:

CLEARINGHOUSE RULE 00-080

CHAPTER Adm 43

DEPARTMENT RESPONSE TO RULES CLEARINGHOUSE RECOMMENDATIONS

1. STATUTORY AUTHORITY

- a. The Rules Clearinghouse Report notes that the rule does not meet certain statutory requirements regarding the fee. Those requirements are that the fee amount is established in the rule, is uniform within each customer class, and must not exceed 3% of the total of every other charge for which the customer is billed over an eight-year period. However, internal conflicts within the statute, practical restrictions on the Department's ability to completely rectify those conflicts, and prohibitively high utility administrative costs make it difficult to strictly adhere to these requirements. Rather, the Department, in consultation with the Council on Utility Public Benefits and concerned utilities, developed this rule consistent with the legislative intent, while minimizing the irreconcilable statutory conflicts.

Setting the Fee Amount in the Rule.

The public benefits fee is to be based upon the low-income funding need determined by a formula in s. 16.957 (4) (c), Stats. Annual fluctuations in the amount of federal funds available, the price of energy for the heating season, and the number of people eligible to receive low-income benefits all effect the low-income funding need. Therefore, under the formula, the fee will necessarily change annually, which in turn would require a rule amendment each year if the fee is contained therein. As noted in the rule analysis, the rule instead uses an annual "iterative" process (found in sections Adm 43.05 and Adm 43.06) in cooperation with the non-municipal electric utilities responsible for collecting the fee. (Estimates based on preliminary iterations from the participating utilities indicate the fee for 2000-2001 will be approximately \$1.50 statewide.)

Uniform Fee

The public benefits law allows the fee to vary by class (or tariff--see below). Under the rule, some non-residential customer classes may be exempt from the fee because the service is not metered--for example, stoplights and streetlights. These sites-without-meters are non-residential, many belonging to governmental entities. These services are in fact metered off-site, so the owner will ultimately pay the public benefits fee. Unmetered sites belonging to private entities--billboards for example--will be metered at the company's premises. According to the utilities consulted, the administrative costs of imposing and collecting the fee on these non-metered services would in many cases exceed

the amount actually collected. However, it is important to note that all residential customers statewide will pay the same fee.

The 3% Maximum Bill Increase Restriction Applied Monthly

The only practical way for the Department to test for and apply the 3% bill increase restriction found in s. 16.957 (4) (c) 3., Stats., is on a monthly basis. To do so over an eight year period would require utilities to track every customer's bill over that period and then provide a rebate or refund to those customers who were overcharged due to heating cost or energy use fluctuations or changes of residence. This would be a vast and prohibitively expensive undertaking for the utilities. It is estimated that about 50% of the state's 2 million electrical customers would be affected over the eight-year period. Moreover, any over-collection of the fee during those intervening years would have been deposited in the utility public benefits fund, presumably spent, and simply unavailable for rebate or refund purposes. Finally, the cost of this effort would be a legitimate expense for which utilities could seek reimbursement. The monthly application of the 3% cap avoids these problems and accomplishes the same end in a rational and cost-effective manner.

- b. The public benefits legislation did not define "customer" or "customer class." The Department looked to the electric industry practice and standards to derive these definitions. For rate purposes, the Public Service Commission (PSC) has traditionally considered a customer to be a "meter" and a "customer class" to be a specific tariff filed with the PSC.
- c. The Department is required to create a rule with "requirements for electric utilities to include voluntary contributions. . . with bill payments for electric service." As noted in the rule analysis, the law also clearly states that the rules *may* require an electric utility to provide a space on an electric bill for a contribution. The utilities consulted informed the Department that the expense of creating a monthly collection mechanism could in fact exceed the amount normally collected in other voluntary programs. For example, some utilities, especially many of the smaller ones, would have to change their present postcard-billing format to a larger, multiple page format to allow more space. Additionally, all of the state's non-municipal electric utilities were concerned with the cost of separating contributions from the regular bill payment amounts. The Department chose to require utilities to include an annual solicitation for contributions, which accomplishes the statutory intent without the unnecessary expense of monthly collections.

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE

- a. Recommended Rules Clearinghouse change was adopted.
- b. Recommended Rules Clearinghouse changes were adopted.
- c. Recommended Rules Clearinghouse changes were adopted.
- d. Recommended Rules Clearinghouse change was adopted, specifically using the phrase "has the meaning specified in" in s. Adm 43.03 (11).
- e. Recommended Rules Clearinghouse change was adopted. The substantive provision referenced was moved to s. Adm 43.07 (1).
- f. Recommended Rules Clearinghouse change was adopted.

- g. Recommended Rules Clearinghouse change was adopted. Previous s. Adm 43.06 (e) has been moved to s. Adm 43.07 (5).
- h. Recommended Rules Clearinghouse change was adopted.
- i. Recommended Rules Clearinghouse changes were adopted.
- j. Recommended Rules Clearinghouse changes were adopted.
- k. Recommended Rules Clearinghouse change was adopted.

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES

The Department, in cooperation with the non-municipal electric utilities, developed a mechanism that would comply with the intent of s. 16.957 (4) (a), Stats., and also allow the electric bill formats to comply with section PSC 113.16 (1). The Department also considered the lack of physical space available on some of the smaller non-municipal electric utilities' bills. Adding more than one line would have forced some of these utilities to add another page to their bills, thereby increasing costs for paper, postage and budget system programming.

The public benefits fee will appear on customer bills as a separate line item called a "non-taxable fixed charge." The term "non-taxable" identifies to customers that sales taxes do not apply to this charge. (Some non-municipal electric utilities' bills currently have a "fixed charge" line item, and this fixed charge is subject to sales taxes.) Fixed charges recover many of the fixed costs the company incurs to serve the customer, such as building power plants, transmission and distribution lines, and metering. The Department uses the term "non-taxable fixed charge" in an effort to comply with both the intent of the statute while at the same time allowing the non-municipal electric utilities to remain in compliance with the PSC administrative code.

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS

- a. The Rules Clearinghouse recommendations were adopted.
- b. The Rules Clearinghouse recommendations were adopted by clarifying the specific statutes being interpreted by the rule.
- c. The Rules Clearinghouse recommendations were adopted. This information has been added to the analysis section accompanying the rule.

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE

- a. The Rules Clearinghouse recommendations were adopted. The analysis section accompanying the rule has been expanded.
- b. & c. The Rules Clearinghouse recommendations were adopted. The definition of "aggregate public benefits fee" in former s. Adm 43.03 (1) has been changed to "public benefits program funding level" and was renumbered s. Adm 43.03(16). The definition of "amount invoiced" was added [at s. Adm 43.03 (1)], and the definition of "public benefits fee" [renumbered s. Adm 43.03 (15)] was changed. Sections Adm 43.05, 43.06, 43.07 and 43.08 have all been rewritten accordingly, in order to better distinguish between the total annual revenue to be collected statewide, the amount each utility must collect from its customers, and the fee charged to each customer.

- d. The Rules Clearinghouse recommendations were adopted. The Department will not specifically collect a utility's reasonable and prudent expenses. See s. Adm. 43.07(2).
- e. & f. The Rules Clearinghouse recommendations were adopted. The rule has been changed to specifically reference a date consistent with the time period in s. Adm 43.05 (1) to determine the most recent data used in the Department's calculations.
- g. It is the Department's intent to use two different sources of data for the residential and non-residential customer counts in s. Adm 43.05 (3). The EIA data includes numbers for both municipal and cooperative utilities, as well as non-municipal electric utilities. The Federal Energy Regulatory Commission (FERC) has data that contains more accurate information for non-municipal electric utilities.
- h. It is the Department's intent that any shortfall in total revenues would be included in the reconciliation process for the following years set forth in s. Adm 43.08 (3). However, due to the 3 percent/ \$750 bill increase restriction in s. 16.957 (4) (c) 3., Stats., total revenue shortfalls may be unavoidable. Theoretically, in a year with hot summers and cold winters, utilities will over-collect; those amounts would then be available in other years to cover collection shortfalls.
- i. In some cases, it is possible that the amount of money under-collected will be so small that the utility will not opt to go to the effort of seeking to recoup through the reconciliation process. The rule does not require a utility to seek recovery of any uncollected amount from the Department.
- j. Rules Clearinghouse recommendations were adopted.
- k. The rule has been clarified to indicate that it is the cost of uncollectible revenues that may be included in a utility's request for reasonable and prudent expenses.
- l. Rules Clearinghouse recommendation was adopted.
- m. A majority of utilities consulted informed the Department that there would be few expenses to recover (except possibly billing programming costs in the first year) the way the rule is presently written. The rule clarifies in s. Adm 43.09 that reasonable expenses include development and implementation costs of a fee collection plan.
- n. Rules Clearinghouse recommendation was adopted in s. Adm 43.09 (5)
- o. Rules Clearinghouse recommendation was adopted by adding language in s. Adm 43.07 (1).
- p. Rules Clearinghouse recommendation was adopted.
- q. Rules Clearinghouse recommendation was adopted.
- r. Rules Clearinghouse recommendation was adopted.
- s. Rules Clearinghouse recommendation was adopted.

DEPARTMENT RESPONSE TO WRITTEN COMMENTS

REPRESENTATIVE TIMOTHY T. HOVEN, STATE REPRESENTATIVE 60TH ASSEMBLY DISTRICT, JUNE 30, 2000.

Representative Hoven expressed concern that proposed chapter Adm 43 would create a public benefits fee for residential customers amounting to a flat 3% of their total electric bill. His understanding was that the legislature intended that the fee would be no more than \$1.13 per month for residential customers. Under earlier estimates of the application of the 3% cap, the fee would amount to nearly \$5.00 per month among all utility customers statewide.

Response:

Section 16.957 (4) (c) 3., Stats., imposes a 3% bill increase restriction on every customer's bill such that if the fee were set at \$1.13, the Department would be unable to collect the total revenues required by the law. This was determined by computations made by the affected utilities at the Department's request. Beginning with \$1.13, the utilities each calculated how many customers would cap-out at that level, and how much of a burden would either be shifted to those with higher bills or represent a shortfall. After several iterations using ascending fee amounts, the customer fee per month will be approximately \$1.50 for the first year, with no burden shifting and, *theoretically*, no shortfall. No residential customer will pay more than \$1.50 in the first year.

Without using this iterative process, those residential customers with smaller electric bills will "cap out" before those with higher bills. This would normally place the burden of making up the shortfall on those paying higher bills (even their bills would still be under the fee cap). This, of course, would violate the requirement that the fees be uniform throughout the residential customer class.

WILLIAM L. BOURBONNAIS, WISCONSIN PUBLIC SERVICE CORPORATION (WPSC), JUNE 26, 2000.

Similar to Representative Hoven's comments, the WPSC's major concern was that the application of the chapter Adm 43 would result in a non-uniform fee for all residential customers across the state.

Response:

While it is true that residential customers and non-residential customers will likely pay a different fee, and some non-residential customers may pay differing amounts among their class, all *residential* customers statewide will pay the same amount, approximately \$1.50 per month. Further discussion of this issue can be found in the Department's response to the Rules Clearinghouse comments under the section entitled "Statutory Authority."

The WPSC also commented in support of applying the 3 % cap per month rather than over the span of eight years, and in support of the Department's treatment of voluntary contributions to the program.

WILLIAM FENNESSEY, SUPERIOR WATER, LIGHT AND POWER COMPANY (SWL&P),
JUNE 14, 2000.

The SWL&P is concerned that the statutory 3% cap will result in under-collection from too many residential customers, requiring its corporate or shareholder funds to be used to cover any shortfalls.

Response:

This matter was partly addressed in the Department's response to Rules Clearinghouse comments in the section entitled "Statutory Authority." The Department does not specifically require the use of corporate or shareholder funds to cover any shortfalls caused by the statutorily required 3% cap on the fee amount. It has attempted to address this seemingly irreconcilable statutory problem by providing for an annual reconciliation process under s. Adm 43.08 (3) (a) and (b), and by adding an under-collection waiver request process in s. Adm 43.08 (3) (c).

MS. DEBBIE EATON, REPRESENTING HERSELF, JUNE 27, 2000.

Ms. Eaton expressed several concerns regarding chapter Adm 43. As a ratepayer, she objects to the unknown dollar amount or percentage to be collected from residential ratepayers for the fee and was concerned that there was no cap for the residential ratepayers as there is for commercial customers. She also felt that the allocation between residential and commercial fee distribution should be in proportion to the dollars collected and should be distributed according to geographic collection.

Response:

As noted elsewhere, these concerns occur due to the internal conflicts within the statute itself. The fee can not be set by rule because of the formula requiring annual determinations based on several variables. There is, of course, a 3% cap placed on residential customer bills similar to the cap for commercial customers. Finally, the fee distribution between residential and non-residential customers is required by s.16.957 (4) (b) 2., Stats.

MS. JANET R. SWANDBY, OUTDOOR ADVERTISING ASSOCIATION OF WISCONSIN
(OAAW), JUNE 16, 2000.

The OAAW is concerned that the fee will not be uniform and of the potential cost to companies whose billboards are metered. Figures are cited for some companies paying up to \$681 per month under the proposed Chapter Adm 43 rule.

Response:

Information from the industry indicates that most billboards already pay a fixed charged of \$5 to \$6 dollars a month. They consume approximately \$15 to \$40 dollars per month

worth of electricity. Thus, the 3% cap will hold the vast majority of billboard monthly fees to 3% of the total bill of between \$20 and \$46 dollars. That translates to a monthly fee of between \$.60 and \$1.38 per metered billboard. Billboards are treated the same as any business that has multiple sites such as restaurant chains, convenience stores and cell phone towers, for example. Nonetheless, s. Adm 43.08(3)(c) provides a waiver of fees in excess of \$750.00 when aggregated by an entity paying multiple fees. Further discussion of the application of the fee between and within classes can be found in Department's response to the Rules Clearinghouse comments under "Statutory Authority."

GREGORY BOLLUM, MADISON GAS & ELECTRIC COMPANY (MG&E), JUNE 29, 2000.

MG&E's comments were in support of implementing the 3% cap on a monthly basis rather than over the entire eight year period; in excluding unmetered services from the definition of non-residential customers; and in using a separate bill insert and return envelope for voluntary customer contributions. MG&E also commented that it was important that implementation of the rule results in a uniform residential public benefits fee on a statewide basis.

BOB JONES, WISCONSIN COMMUNITY ACTION PROGRAM ASSOCIATION (WISCAP), JUNE 27, 2000.

WISCAP's comments acknowledged the inclusive process the Department utilized in developing chapter Adm 43, and support its implementation essentially as drafted.

MARC NIELSEN, ALLIANT ENERGY CORPORATION, JUNE 16, 2000.

Alliant Energy Corporation supports chapter Adm 43 as proposed. Alliant felt that the rule achieved the legislative intent of keeping the fees low while ensuring a fair distribution of the fees, and collecting an amount sufficient to assist Wisconsin's low-income residents. Specifically, Alliant was in support of excluding non-metered services from the customer definitions, it was also in support of the Department's procedure for determining the total revenues to be collected and then invoicing the utilities accordingly. Alliant also expressed specific support for: allowing utilities to add the fee to an item noted on the bill as a "non-taxable fixed charge"; the Department's proposed manner for handling voluntary contributions; and applying the 3% cap on a monthly basis rather than over an eight year span.