

Changes to LRB-4030, based on Jan. 22 meeting

- X Drafter's note 4: although it was suggested to include "nonbypassable" in the definition of "environmental control charge", I think we agreed it wasn't necessary. (I am concerned that this "term of art" doesn't have clear meaning.) Change page 6, lines 16 to 17 to refer to customers in the service area of the utility, and require payment to utility or assignee. Intended result: if a customer moves out of service area, that customer isn't required to pay. Only customers in the service area have to pay.
- X Drafter's note 5: add "any taxes related to the recovery of charges" to definition of "financing cost". (Check logic of that approach.) The rationale is that the utility will receive the charges as revenue, and be taxed on the revenue. The amount of the tax should be built into the charge so that the tax can be recovered as part of the charge.
- X Drafter's note 6: no changes necessary.
- X Drafter's note 7: add a reference to revenues. See page 3, lines 4 to 5 of the proposal. The rationale is that the property should be defined to consist of: 1) the right to receive the charges; 2) the right to make adjustments to the charges; and 3) the dollar amount of the charges (i.e., the revenue). The proposal's reference to "revenue" just means the money value of the charges themselves.
- X Drafter's note 8: no changes are necessary.
- X Drafter's note 9: there might be changes to page 7, lines 5 to 8. The idea is to emphasize that the utility has the discretion to choose to finance all of the activities with debt. (I'm not sure why the discretion point is important. Perhaps I can get an explanation?) One person on the conference call mentioned that discretion was established in another state by making a financing order contingent on the utility's acceptance of the order. I think we rejected that approach as inconsistent with Wisconsin law. In any event, the requesters will think about page 7, lines 5 to 8 and get back to me with any suggested changes.
- X Drafter's note 10: the rationale of the proposed language is to ensure that the adjustments to the charges are "automatic" and are not subject to review, and should not provide an opportunity for the PSC, or anybody else, to change the order. Therefore, change the language in the bill on page 6, line 20 to page 7, line 2 to refer to an adjustment formula, and require the PSC to apply the formula. Delete "requirements and procedures" because that might give the PSC too much discretion in the adjustments. Also, add a sentence at the end of this material that emphasizes the mandatory nature of the PSC's duty. Might also add something that prohibits review of adjustments. Carve out an exception to ch. 227 review? (Also think about whether any other carve outs from ch. 227 are necessary.)
- X Drafter's note 11: the requesters are providing language that I think would be added to the judicial review paragraph. The idea is that if the financing order is issued and bonds

are issued, and the order is vacated, the court (or the PSC) must still protect the bondholders.

- X Drafter's note 12: Make sure the material on page 8, lines 9 to 15 achieves the requester's intent regarding ratemaking. Maybe revise to refer to rate-making specifically? Also, consider revising to prohibit the PSC from determining that charges are unjust or unreasonable (which might otherwise give the PSC jurisdiction to change what it did in the order).
- ✓ Drafter's note 14: add the language in the proposal at page 11, lines 5 to 7 to the end of page 9, line 6.
- X Drafter's note 15: add a "conflicts" subsection that uses the language in the proposal on page 11, lines 14 to 15, except delete "of this state or any other state".
- X Drafter's note 17: I think we decided to delete the material on page 3, lines 1 to 4, based on Leg. Council's point that an assignee would not otherwise fall under the definition of "public utility" if the assignee does not provide utility service. However, one of the lawyers thought the material should stay in. I will delete it and ask whether that's okay in a drafter's note.
- ✓ Revise draft to refer to "energy utility" (or a comparable term used in Act 89?) instead of "public utility". And refer to energy customers instead of electric customers, etc., throughout the bill. The rationale is that a reference to all public utilities is too broad (telecommunications utilities aren't affected by the bill) and a reference to electric utilities is too narrow (because gas utilities may be affected by the bill).
- X No changes necessary for drafter's notes 18 and 19.
- X Joe Kreye's drafter's note: Joe now understands what the requesters want and will provide me with an insert.
- X Other changes: define "environmental control cost" to refer to cost incurred by person entering into a leased generation contract (a nonutility affiliate?), in addition to a cost incurred by a utility.
- X The requesters are reviewing the definition of "environmental control equipment". Other equipment might need to be described.
- X Page 7, lines 10 and 11: revise to may "not" reduce, etc., "except". Logic is the same, but requesters believe the emphasis is greater.
- X Page 9, line 13: the reference to default on "agreement" is wrong. The default should regard the payment of revenues (i.e., charges). Change to be consistent with the proposal, page 10, lines 17 to 23.

20 - 6

Drafter's notes 13, 1, 2, and 3: hold off on making changes until requesters review and suggest specific changes. Much of what I did is based on tobacco settlement, and it might be advisable not to follow tobacco model, for political reasons. The draft should do 3 things: 1) create the property right, which belongs to the utility, in the financing order; 2) provide that the sale of the property right by the utility to the assignee is a "sale" for UCC purposes; and 3) allow the assignee to grant a security interest in the property right through procedures that trump the UCC. The creation and perfection of the security interest must trump the requirements of Art. 9 of the UCC. (Get more clarification on the third point and how it fits into the overall processing. Note that the financing order is intended to be a financing agreement for purposes of the UCC. How does that relate to the rest of the process?)

Other information obtained at meeting:

The "assignee" is the trust, or special purpose entity, that will issue the bonds. It will be a limited liability corporation under Delaware law.

The right to recover charges should be completely independent of rate-making.

The financing order must create an obligation of the utility to collect the charges.

The whole purpose of the property aspects of the bill is that a property right in the charges must be created under state law so that it will not be affected by bankruptcy of the utility. The requesters are aware of the fact that state law can't trump federal bankruptcy law, but I think the idea is that the bond attorneys need such language anyway.

**2003 BILL**

1 **AN ACT to renumber and amend** 201.01 (3); and **to create** 196.01 (5) (b) 7.,  
2 196.027 and 201.01 (3) (e) of the statutes; **relating to:** the issuance of debt by  
3 public utilities to finance certain environmental activities.

---

***Analysis by the Legislative Reference Bureau***

This bill allows an electric public utility, with the approval of the Public Service Commission (PSC), to finance the cost of certain environmental control activities with the proceeds of "environmental trust bonds," which the bill defines as bonds that are secured by charges paid by the public utility's customers. The bonds may be issued by the public utility, or an assignee of the public utility, including an affiliate.

A public utility that applies to the PSC for an order approving the issuance of the bonds must describe the environmental control activities that the public utility proposes to undertake and the reasons for undertaking the activities. An "environmental control activity" is defined as any of the following: 1) construction, installation, or otherwise putting in place equipment for controlling pollution; 2) the retiring of existing property to control pollution; or 3) a conservation, energy efficiency, or similar demand-side management program. In addition, the public utility must estimate the costs of proposed activities and indicate whether the public utility proposes to finance all or a specified portion of such costs with the bonds. Also, the public utility must estimate the financing costs of issuing the proposed bonds.

No later than 90 days after the PSC receives an application, the PSC must issue an order that rejects or approves the application. The PSC must approve the application if such approval is in the public interest. The bill refers to an order that

**BILL**

approves an application as a "financing order." If the PSC issues a financing order, the order must specify the amount of environmental control and financing costs that the public utility may recover through charges that the public utility's customers must pay over a period specified in the order. The bill refers to such charges as "environmental control charges." The PSC may exclude a portion of environmental control costs from recovery as environmental control charges only if the public utility indicates in the application that it does not propose to finance that portion with bonds. The order must also require the customers to pay the charges to the public utility, even if the customers subsequently receive electric service from a different public utility. In addition, the order must specify the "environmental control property" that is created and that may be used to secure the bonds. "Environmental control property" is defined as the right, specified in the order, to impose, collect, or receive the environmental control charges.

The bill also allows for the PSC to adjust the environmental control charges that are approved in a financing order. The order itself must include procedures for the PSC to review environmental control charges annually within 45 days of the anniversary date of the issuance of the bonds. The purpose of the review is to determine whether any adjustments to the charges are necessary based on any overcollection or undercollection of the charges. In addition, based on the review, the PSC may make any other adjustments that are necessary to ensure the public utility's timely recovery of the environmental control and financing costs. The bill also allows a public utility to request a subsequent financing order that allows for retiring or refunding the bonds issued pursuant to the original financing order. The PSC may issue a subsequent order if the financing costs of bonds issued pursuant to the subsequent order are lower than the financing costs of the bonds issued pursuant to the original order. The PSC may also issue a subsequent order if retiring or refinancing the bonds issued pursuant to the original order is otherwise in the public interest.

The bill prohibits the PSC from revoking a financing order, except for changes made by a subsequent financing order described above. In addition, the bill provides that a financing order remains in effect until environmental trust bonds issued pursuant to the order have been paid in full and the financing costs of the bonds have been recovered in full. Also, the bill provides that a financing order issued to a public utility remains in effect notwithstanding the bankruptcy of the public utility. The bill also creates the following limits on the PSC's jurisdiction over a public utility that is issued a financing order: 1) the PSC may not consider environmental trust bonds to be the debt of the public utility; 2) the PSC may not consider the environmental control charges paid under the order to be the revenue of the public utility; and 3) the PSC may not consider the environmental control or financing costs specified in the order to be the costs of the public utility.

In addition, the bill does all of the following:

1. The bill establishes legal characteristics of environmental control property that is created in a financing order and of any sale, assignment, or transfer of such property.

**BILL**

2. The bill provides that, with certain specified exceptions, the state's version of article 9 of the Uniform Commercial Code governs the granting and enforcing of security interests in environmental control property created in a financing order.

3. The bill provides that the state is not liable on environmental control bonds and that the bonds are not public debt.

4. The bill requires a public utility to place the proceeds of any environmental trust bonds into a separate account and use the proceeds only for paying environmental control and financing costs.

5. The bill requires a public utility that is issued a financing order to provide annual explanations of environmental control charges to its customers.

6. The bill allows a party to a proceeding in which the PSC issues a financing order, or rejects an application for an order, to seek judicial review of the PSC's action in Dane County circuit court.

7. The bill provides that requirements under current law that apply to the issuance of securities by public utilities do not apply to the issuance of environmental trust bonds under the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 196.01 (5) (b) 7. of the statutes is created to read:

2           196.01 (5) (b) 7. An assignee, as defined in s. 196.027 (1) (b), unless the assignee  
3 furnishes, directly to the public, telecommunications or sewer service, heat, light,  
4 water, power, or, by means of pipes or mains, natural gas.

5           **SECTION 2.** 196.027 of the statutes is created to read:

6           **196.027 Environmental trust financing.** (1) **DEFINITIONS.** In this section:

7           (a) "Ancillary agreement" means any bond insurance policy or other financial  
8 arrangement entered into in connection with the issuance of environmental trust  
9 bonds.

10          (b) "Assignee" means any person to which an interest in environmental control  
11 property is sold, transferred, or conveyed and any successor to such a person.

12          (c) "Environmental control activity" means any of the following:

**BILL**

1           1. Construction, installation, or otherwise putting into place environmental  
2 control equipment.

3           2. The retiring of any existing plant, facility, or other property to reduce,  
4 control, or eliminate environmental emissions in accordance with federal or state  
5 law.

6           3. A conservation, energy efficiency, or similar demand-side management  
7 program or measure.

8           (d) "Environmental control charge" means a charge paid by customers of a  
9 public utility for the public utility to recover environmental control costs and  
10 financing costs.

11           (e) "Environmental control cost" means a cost incurred or expected to be  
12 incurred by a public utility in undertaking an environmental control activity and,  
13 with respect to an environmental control activity described in par. (c) 2., includes the  
14 book value of property that is retired and any demolition or similar costs that exceed  
15 the salvage value of the property.

16           (f) "Environmental control equipment" means any device, facility, or technology  
17 that is designed for the primary purpose of removing pollution from or preventing,  
18 reducing, or remediating the pollution of air, water, or soil.

19           (g) "Environmental control property" means the right specified in a financing  
20 order to impose, collect, or receive environmental control charges, or to obtain  
21 adjustments to such charges as provided in this section, and any interest in such  
22 right.

23           (h) "Environmental trust bonds" means bonds, debentures, notes, certificates  
24 of participation, certificates of beneficial interest, certificates of ownership, or other  
25 evidences of indebtedness that are issued by a public utility or an assignee, the

~~not applicable~~

prom order into the order  
LGC

~~at the~~

~~adjust proceed~~

add in reference to recover per p 3 lines 4-5

**BILL**

1 proceeds of which are used directly or indirectly to recover, finance, or refinance  
2 environmental control costs and financing costs, and that are secured by or payable  
3 from environmental control property.

4 (i) "Financing cost" means any of the following:

5 1. Debt service, including interest, that is payable on environmental trust  
6 bonds.

7 2. A payment required under an ancillary agreement, including any amount  
8 required to fund a reserve account.

9 3. Any other cost related to issuing and servicing environmental trust bonds,  
10 including servicing fees, trustee fees, legal fees, administrative fees, placement fees,  
11 capitalized interest, and rating agency fees.

12 (j) "Financing order" means an order issued by the commission under sub. (2)  
13 that allows for the issuance of environmental trust bonds, the collection of  
14 environmental control charges, and the creation of environmental control property.

15 (k) "Public utility" means a public utility that provides electricity directly or  
16 indirectly to the public and includes any successor to such a public utility.

17 (2) FINANCING ORDERS. (a) *Applications*. A public utility may apply to the  
18 commission for a financing order. In addition to any other information required by  
19 the commission, a public utility shall do all of the following in an application:

20 1. Describe the environmental control activities that the public utility proposes  
21 to undertake and the reasons for undertaking the activities.

22 2. Estimate the environmental control costs of the activities described under  
23 subd. 1.

24 3. Indicate whether the public utility proposes to finance all or a portion of the  
25 costs estimated under subd. 2. with environmental trust bonds. If the public utility

**BILL**

1 proposes to finance a portion of the costs, the public utility shall identify that portion  
2 in the application.

3 4. Estimate the financing costs of the environmental trust bonds proposed  
4 under subd. 3.

5 5. Estimate the environmental control charges necessary to recover the  
6 environmental control costs and financing costs estimated in the application.

7 (b) *Commission powers and duties.* 1. No later than 90 days after receiving an  
8 application under par. (a), the commission shall issue a financing order or an order  
9 rejecting the application. The commission shall issue a financing order if the  
10 commission finds that the order is consistent with the public interest.

11 2. In a financing order issued to a public utility, the commission shall do all of  
12 the following:

13 a. Except as provided in subd. 3., specify the amount of environmental control  
14 costs and financing costs that may be recovered through environmental control  
15 charges and the period over which such costs may be recovered.

16 b. Require customers of the public utility to pay environmental control charges  
17 to the public utility during the period specified in the order, regardless of whether  
18 the customers subsequently obtain electric service from a different public utility  
19 during the period. *in the geographic area service territory*  
*or its assignee*  
*live w/ service territory*  
*- NJP*

20 c. Include requirements and procedures for the commission to review  
21 environmental control charges at least annually within 45 days of the anniversary  
22 date that environmental trust bonds are issued pursuant to the order and, if  
23 necessary, adjust the environmental control charges that customers are required to  
24 pay under the order to correct for any overcollection or undercollection of the charges

*formula, inputs*  
*see - NJ formulae*

**BILL**

INSERT: mandatory  
duty of PSC

1 or to otherwise ensure the public utility's timely recovery of environmental control  
2 costs and financing costs. *material formula*

3 d. Specify the environmental control property that is created and that may be  
4 used to pay or secure environmental trust bonds.

5 3. In a financing order the commission may exclude a portion of environmental  
6 control costs from recovery only if a public utility indicates under par. (a) 3. that the  
7 public utility does not propose to finance that portion with environmental trust  
8 bonds.

9 4. Except as provided in par. (c), a financing order is irrevocable and the  
10 commission may <sup>not</sup> reduce, impair, or otherwise adjust environmental control charges  
11 approved in the order ~~only~~ <sup>except</sup> as provided under subd. 2. c.

12 (c) *Subsequent orders.* At the request of a public utility that has been issued  
13 a financing order par. (b), the commission may issue a subsequent financing order  
14 that provides for retiring or refunding environmental trust bonds issued pursuant  
15 to the original financing order if the commission finds that environmental trust  
16 bonds issued pursuant to the subsequent financing order have lower financing costs  
17 than the environmental trust bonds issued pursuant to the original financing order  
18 or that retiring or refunding the environmental trust bonds issued pursuant to the  
19 original financing order is otherwise in the public interest.

20 (d) *Judicial review.* 1. In this paragraph, "order" means a financing order or  
21 an order rejecting an application under par. (b) 1.

22 2. Notwithstanding s. 227.52, an order is reviewable only by an action for  
23 certiorari in the circuit court for Dane County that is commenced by any party to the  
24 proceeding on the order, within 30 days after the date on which notice of the order  
25 is mailed to that party. The court shall proceed to hear and determine the action as

**BILL**

1 expeditiously as possible and give the action precedence over other matters not  
2 accorded similar precedence by law. Any party to the certiorari proceedings may  
3 appeal the decision of the court.

4 (e) *Effect of orders.* 1. A financing order shall remain in effect until the  
5 environmental trust bonds issued pursuant to the order have been paid in full and  
6 the financing costs of the bonds have been recovered in full.

7 2. A financing order issued to a public utility shall remain in effect and  
8 unabated notwithstanding the bankruptcy of the public utility.

9 (3) EXCEPTIONS TO COMMISSION JURISDICTION. If the commission issues a  
10 financing order to a public utility, the commission may not, in exercising its powers  
11 and carrying out its duties under this chapter, consider the environmental trust  
12 bonds issued pursuant to the order to be the debt of the public utility, the  
13 environmental control charges paid under the order to be the revenue of the public  
14 utility, or the environmental control costs or financing costs specified in the order to  
15 be the costs of the public utility. ADD in just §, reasonable?

16 (4) PUBLIC UTILITY DUTIES. (a) A public utility shall place the proceeds of any  
17 environmental trust bonds issued pursuant to a financing order in a separate  
18 account and may use the proceeds only for paying environmental control costs and  
19 financing costs, except that, if the public utility proposes to retire property, the  
20 proceeds corresponding to the book value of that property may be used only for  
21 refinancing or retiring debt or equity of the public utility.

22 (b) A public utility shall annually provide to its customers a concise explanation  
23 of the environmental control charges approved in a financing order issued to the  
24 public utility. The explanation may be made by bill inserts, Web site information, or  
25 other appropriate means.

**BILL**

1 (5) ENVIRONMENTAL CONTROL PROPERTY. (a) *In general.* 1. Environmental  
 2 control property that is specified in a financing order shall constitute a present  
 3 property right notwithstanding that the imposition and collection of environmental  
 4 control charges depend on the public utility to which the order is issued performing  
 5 its servicing functions relating to the collection of environmental control charges and  
 6 on future electricity consumption. + ~~1/5 shall be from~~ ADD P. 11 line 5-7

7 2. Environmental control property specified in a financing order shall continue  
 8 to exist until the environmental trust bonds issued pursuant to the order are paid  
 9 in full and all financing costs of the bonds have been recovered in full.

10 3. Environmental control property specified in a financing order issued to a  
 11 public utility may be transferred, sold, or assigned to any person, including an  
 12 affiliate of the public utility, and may be pledged to secure environmental trust bonds  
 13 issued pursuant to the order. If a public utility defaults on an agreement for such  
 14 a transfer, sale, assignment, or pledge, the commission or a court, upon application  
 15 by an interested party, and without limiting any other remedies available to the  
 16 applying party, shall order the sequestration and payment of any revenue arising  
 17 from the environmental control property that is necessary to enforce the agreement.  
 18 Any such order shall remain in full force and effect notwithstanding any bankruptcy,  
 19 reorganization, or other insolvency proceedings with respect to the public utility.

20 4. The interest of an assignee or pledgee in environmental control property  
 21 specified in a financing order issued to a public utility, and in the revenue and  
 22 collections arising from that property, are not subject to setoff, counterclaim,  
 23 surcharge, or defense by the public utility or any other person or in connection with  
 24 the bankruptcy of the public utility or any other entity.

See  
P10  
line  
12<sup>23</sup>

Revenue  
(not agreed)

**BILL**

1           (b) *Security interests.* Except as otherwise provided in this paragraph, the  
2 creation, perfection, and enforcement of security interests in environmental control  
3 property to secure environmental trust bonds are governed by ch. 409.  
4 Notwithstanding ch. 409, with regard to creating, perfecting, and enforcing a valid  
5 security interest in environmental control property to secure environmental trust  
6 bonds, all of the following apply:

7           1. The description of environmental control property in a security agreement  
8 is sufficient if the description refers to this section and the financing order creating  
9 the environmental control property.

10           2. A security interest is created, valid, binding, and perfected at the time a  
11 security agreement is made and attaches without any physical delivery of collateral  
12 or other act, and the lien of such security interest shall be valid, binding, and  
13 perfected against all parties having claims of any kind in tort, contract, or otherwise  
14 against the person granting the security interest, regardless of whether such parties  
15 have notice of the lien. The filing or recording of a financial statement or instrument  
16 in which such a security interest is created is not required.

17           3. A security interest in environmental control property is a continuously  
18 perfected security interest and has priority over any other lien created by operation  
19 of law or otherwise, which subsequently attaches to the environmental control  
20 property.

21           4. The priority of a security interest created under this paragraph is not  
22 affected by the commingling of proceeds arising from environmental control property  
23 with other amounts.

**BILL**

1           5. Any changes that the commission makes to a financing order that creates  
2 the environmental control property does not affect the validity, perfection, or priority  
3 of a security interest in the environmental control property.

4           (c) *Sales*. The sale, assignment, and transfer of environmental control property  
5 are governed by this paragraph. All of the following apply to a sale, assignment, or  
6 transfer under this paragraph:

7           1. The sale, assignment, or transfer is an absolute transfer of, and not a pledge  
8 of or secured transaction relating to, the seller's right, title, and interest in, to, and  
9 under the environmental control property, if the documents governing the  
10 transaction expressly state that the transaction is a sale or other absolute transfer.  
11 After such a transaction, the environmental control property is not subject to any  
12 claims of the seller or the seller's creditors, other than creditors holding a prior  
13 security interest in the environmental control property perfected under par. (b).

14           2. The characterization of the sale, assignment, or transfer as an absolute  
15 transfer under subd. 1. and the corresponding characterization of the purchaser's  
16 property interest is not affected by any of the following factors:

17           a. Commingling of amounts arising with respect to the environmental control  
18 property with other amounts.

19           b. The retention by the seller of a partial or residual interest, including an  
20 equity interest, in the environmental control property, whether direct or indirect, or  
21 whether subordinate or otherwise.

22           c. Any recourse that the purchaser may have against the seller.

23           d. Any indemnifications, obligations, or repurchase rights made or provided by  
24 the seller.

25           e. The responsibility of the seller to collect environmental control charges.

**BILL**

1 f. The treatment of the sale, assignment, or transfer for tax, financial reporting,  
2 or other purposes.

3 (6) ENVIRONMENTAL TRUST BONDS NOT PUBLIC DEBT. The state is not liable on  
4 environmental trust bonds and the bonds are not a debt of the state. An issue of  
5 environmental trust bonds does not, directly or indirectly or contingently, obligate  
6 the state or a political subdivision of the state to levy any tax or make any  
7 appropriation for payment of the bonds.

8 (7) ENVIRONMENTAL TRUST BONDS AS LEGAL INVESTMENTS. Any of the following  
9 may legally invest any sinking funds, moneys, or other funds belonging to them or  
10 under their control in environmental trust bonds:

11 (a) The state, the investment board, public officers, municipal corporations,  
12 political subdivisions, and public bodies.

13 (b) Banks and bankers, savings and loan associations, credit unions, trust  
14 companies, savings banks and institutions, investment companies, insurance  
15 companies, insurance associations, and other persons carrying on a banking or  
16 insurance business.

17 (c) Personal representatives, guardians, trustees, and other fiduciaries.

18 (8) STATE PLEDGE. (a) In this subsection, "bondholder" means a person who  
19 holds an environmental trust bond.

20 (b) The state pledges to and agrees with bondholders that the state will not do  
21 any of the following:

22 1. Take or permit any action that impairs the value of environmental control  
23 property.

24 2. Except as allowed under this section, reduce, alter, or impair environmental  
25 control charges that are imposed, collected, and remitted for the benefit of the

**BILL**

1 bondholders until any principal, interest, premium, or other charge incurred, or  
2 contract to be performed, in connection with environmental trust bonds held by the  
3 bondholders are paid or performed in full.

4 (c) Any person who issues environmental trust bonds is allowed to include the  
5 pledge specified in par. (a) in the bonds and relating documentation.

6 **SECTION 3.** 201.01 (3) of the statutes is renumbered 201.01 (3) (intro.) and  
7 amended to read:

8 201.01 (3) (intro.) "Securities" means capital stock and evidences of  
9 indebtedness of a public service corporation, ~~not including, however, (a) any but do~~  
10 not include any of the following:

11 (a) Any obligation of a public service corporation which is not a public utility  
12 as defined in the federal ~~power act~~ Power Act, falling due one year or less after its  
13 date and bearing date not later than the day of sale; ~~or (b) any.~~

14 (b) Any evidence of indebtedness of a public service corporation which is a  
15 public utility as defined in the federal ~~power act~~ Power Act, the issuance, renewal or  
16 assumption of which is exempt from ~~see. section~~ section 204 (a) of the federal ~~power act~~  
17 Power Act by the provisions of ~~see. section~~ section 204 (e) thereof; ~~or (c) any.~~

18 (c) Any obligation issued to the United States of America in connection with  
19 loans for rural telecommunications facilities made pursuant to the ~~rural~~  
20 ~~electrification act~~ Rural Electrification Act of 1936, as amended; ~~or (d) any.~~

21 (d) Any securities issued by a corporation organized under ch. 185 for the  
22 purpose of furnishing telecommunications service in rural areas.

23 **SECTION 4.** 201.01 (3) (e) of the statutes is created to read:



1 **Section 1.**

2 This Act shall be known as the Environmental Improvements Financing Act.

3 **Section 2.** As used in this Act:

4 (A) "Ancillary Agreement" means any bond insurance policy or other financial  
5 arrangement entered into in connection with the issuance of Environmental Trust Bonds.

6 (B) "Assignee" means a corporation or other legally recognized entity, including any  
7 special purpose entity, which may be an affiliate of the Public Utility, to which an interest in  
8 Environmental Control Property is sold, transferred or conveyed.

9 (C) "Commission" means the Public Service Commission of Wisconsin.

10 (D) "Environmental Control Activities" means actions undertaken by a Public Utility  
11 that causes the Public Utility to incur Environmental Control Costs.

12 (E) "Environmental Control Charges" means Nonbypassable Charges for the use or  
13 availability of utility services approved by the Commission under a Financing Order to fully  
14 recover Environmental Control Costs, that shall be collected by a Public Utility, its successors,  
15 or other collection agents; as provided for in the Financing Order.

16 (F) "Environmental Control Costs" means:

17 (i) all costs incurred or to be incurred by a Public Utility to construct, install  
18 or otherwise put in place Environmental Control Equipment;

19 (ii) all costs incurred or to be incurred by a Public Utility to retire any existing  
20 plant, facility or other utility property in order to reduce, control or eliminate environmental  
21 emissions in accordance with federal or state statutes, regulations, administrative orders or  
22 judicial orders or decrees. Such retirement costs shall include, without limitation, the book value  
23 of the property to be retired as well as demolition and similar costs, net of any salvage value;

*all taxes § 21 imposed on the  
revenue generated from the collection  
of charge.*

1 (iii) all costs incurred or to be incurred by an Public Utility for conservation,  
2 energy efficiency or similar demand-side management programs or measures;

3 (iv) all debt service, including interest, payable on Environmental Trust Bonds  
4 issued pursuant to a Financing Order;

5 (v) all taxes, including gross receipts taxes and income taxes, related to the  
6 collection and recovery of Environmental Control Charges;

7 (vi) all payments required to be made pursuant to Ancillary Agreements, as  
8 well as amounts needed to fund any reserve accounts; and

9 (vii) all other costs related to the issuance and servicing of Environmental  
10 Control Bonds, including, without limitation, servicing fees, trustee fees, legal fees,  
11 administrative fees, placement fees, capitalized interest and rating agency fees.

12 (G) "Environmental Control Equipment" means any device, facility or technology  
13 designed for, and with the primary purpose of, removing pollution from or preventing or  
14 reducing or remediating the pollution of air, water or soil. "Environmental Control Equipment"  
15 shall include, but not be limited to: (i) "control device" as defined at Wis. Admin.  
16 Code § NR 400.02(46); (ii) "control systems" as defined at Wis. Admin. Code § NR 400.02(48);  
17 (iii) "treatment work" as defined at Wis. Admin. Code § NR 205.03(40); and (iv) any other  
18 device, equipment, facility, or technology for the "pretreatment" of "wastewater" or the removal  
19 of "pollutants" from "wastewater", as those terms are defined at Wis. Admin.  
20 Code § NR 211.03(13) and Wis. Admin. Code § NR 205.03(28) and (43), respectively.

21 (H) "Environmental Control Property" means the rights and interests of a  
22 Public Utility, or its successors or any Assignee, under a Financing Order, including without  
23 limitation, all of the following:

1 (i) The right to impose, collect and receive Environmental Control Charges  
2 authorized in the Financing Order in an amount necessary to provide the full recovery of all  
3 Environmental Control Costs.

4 (ii) The right under the Financing Order to obtain periodic adjustments of  
5 Environmental Control Charges under Section 3(D).

6 (iii) All revenue, collections, payments, money and proceeds arising out of the  
7 rights and interests described in this Section 2(H).

8 (I) "Environmental Trust Bonds" means bonds, debentures, notes, certificates of  
9 participation, certificates of beneficial interest, certificates of ownership, or other evidences  
10 of indebtedness that are issued by an Public Utility, its successors or an Assignee under a  
11 Financing Order, the proceeds of which are used directly or indirectly to recover, finance  
12 or refinance Environmental Control Costs, and that are secured by or payable from  
13 Environmental Control Property. If certificates of participation, certificates of beneficial interest,  
14 or certificates of ownership are issued, references in this Act to principal, interest, or premium  
15 shall refer to comparable amounts under those certificates.

16 (J) "Financing Order" means an order of the Commission approving the issuance of  
17 Environmental Trust Bonds, the collection of Environmental Control Charges and the creation of  
18 Environmental Control Property.

19 (K) "Nonbypassable Charge" means a charge in a Financing Order payable by a  
20 customer to a Public Utility or its Assignees or successors regardless of the identity of the  
21 customer's public utility service supplier.

22 (L) "Public Utility" means a public utility as defined in Section 196.01.  
23

1 **Section 3.**

2 (A) A Public Utility may, at its discretion, apply to the Commission for a  
3 Financing Order. An application for a Financing Order shall include: a description of the  
4 Environmental Control Equipment the Public Utility proposes to install, of the property it  
5 proposes to retire, or of the demand-side management programs or measures it proposes to  
6 implement; the reasons for installing the Environmental Control Equipment, retiring the property  
7 or implementing the demand-side management programs or measures; and an estimate of the  
8 cost to install the Environmental Control Equipment, to retire the property or to implement the  
9 demand-side management programs or measures. A Public Utility may, in its sole discretion,  
10 choose to finance the Environmental Control Activities that are the subject of a Financing Order  
11 entirely with debt and will indicate its choice in its application. The information provided in an  
12 application for a Financing Order is in addition to, and does not replace, information otherwise  
13 required by the Commission in an application for a certificate of public convenience and  
14 necessity, or other authorization required to install the Environmental Control Equipment, to  
15 retire the property or to implement the demand-side management programs or measures.  
16 An application for a Financing Order under this Act shall take the place of any application that  
17 would otherwise be required under Wis. Stat. Section 201.05 and a Financing Order shall take  
18 the place of any certificate of authority that would otherwise be required under Wis. Stat.  
19 Section 201.06.

20 (B) The Commission shall issue a Financing Order or an order rejecting the  
21 application no later than [90] days after the Public Utility files its application. In deciding  
22 whether to approve or reject the application, the Commission shall apply a public interest  
23 standard.

1 (C) In a Financing Order, the Commission shall:

2 (i) Indicate the amount of Environmental Control Costs to be recovered and  
3 the period over which the Environmental Control Charges are to be recovered.

4 (ii) Include terms ensuring that the imposition and collection of  
5 Environmental Control Charges authorized in the Financing Order are a Nonbypassable Charge.

6 (iii) Include a mechanism requiring that Environmental Control Charges be  
7 reviewed and adjusted by the Commission at least annually within 45 days of the anniversary  
8 date of the issuance of the Environmental Trust Bonds, to correct any overcollection or  
9 undercollection of the preceding 12 months (or shorter period as applicable) and to otherwise  
10 ensure the expected recovery of amounts sufficient to timely provide for the recovery of all  
11 Environmental Control Costs, including all payments of debt service and other charges in  
12 connection with the Environmental Trust Bonds.

13 (D) Notwithstanding any other provision of law, Environmental Control Bonds may  
14 not be considered by the Commission for any regulatory or other purpose to be debt of the  
15 Public Utility.

16 (E) A Financing Order is effective in accordance with its terms, and, notwithstanding  
17 any law to the contrary, the Financing Order, together with the Environmental Control Charges  
18 authorized in the Order, shall be irrevocable and, except for periodic adjustments in the  
19 Environmental Control Charges under this Section 3(D), shall not be subject to reduction,  
20 impairment, or adjustment by further action of the Commission, for any reason, including but not  
21 limited to the application of the proceeds of the Environmental Trust Bonds to purposes other  
22 than Environmental Control Costs or otherwise in violation of the Act or the Financing Order.

1 (F) Notwithstanding any other provision of law, the Commission shall approve such  
2 adjustments to the Environmental Control Charges as may be necessary to ensure timely  
3 recovery of all Environmental Control Costs that are the subject of the Financing Order, and the  
4 costs associated with the provision, recovery, financing, or refinancing thereof, including the  
5 costs of issuing, servicing, and retiring the Environmental Trust Bonds.

6 (G) Environmental Trust Bonds, Environmental Control Charges and all transactions  
7 herein authorized or permitted under a Financing Order shall be binding in accordance with their  
8 terms notwithstanding that the Financing Order is later vacated, modified or otherwise held to be  
9 invalid in whole or in part.

10 (H) Notwithstanding any other provisions of law, a Financing Order may be reviewed  
11 by the Circuit Court of Dane County upon a filing within 30 days after the Financing Order is  
12 issued by a party to the Commission proceeding in which the Financing Order was approved.  
13 All appeals of a Financing Order shall be heard and determined as expeditiously as possible with  
14 lawful precedence over other matters. Judicial review of a Financing Order shall be based solely  
15 on the record before the Commission and briefs to the court and shall be limited to whether the  
16 Financing Order conforms to the Constitution and laws of this State and the United States and is  
17 within the authority of the Commission under this Act.

18 (I) At the request of a Public Utility, the Commission may adopt a Financing Order  
19 providing for retiring and refunding Environmental Trust Bonds if the Commission finds that the  
20 future Environmental Trust Charges required to service the new Environmental Trust Bonds,  
21 including transaction costs, will be less than the future Environmental Control Charges required  
22 to service the Environmental Trust Bonds being refunded, or that the refunding is otherwise in

1 the public interest. On the retirement of the refunded Environmental Trust Bonds, the  
2 Commission shall adjust the related Environmental Control Charges accordingly.

3 (J) The Commission shall not have authority either by rescinding, altering, or  
4 amending the Financing Order or otherwise, to revalue or revise for rate-making purposes the  
5 Environmental Control Costs, or the costs of providing, recovering, financing, or refinancing the  
6 Environmental Control Costs, determine that the Environmental Control Charges are unjust or  
7 unreasonable, or in any way reduce or impair the value of Environmental Control Property either  
8 directly or indirectly by taking the Environmental Control Charges into account when setting  
9 other rates for the Public Utility, nor shall the amount of revenues arising with respect thereto be  
10 subject to reduction, impairment, postponement, or termination.

11 **Section 4.**

12 (A) Environmental Control Property shall constitute a present property right even  
13 though the imposition and collection of Environmental Control Charges depends on the  
14 Public Utility performing its servicing functions relating to the collection of Environmental  
15 Control Charges and on future electricity consumption. The Financing Order shall remain in  
16 effect and the Environmental Control Property shall continue to exist until the Environmental  
17 Trust Bonds and all costs related to the bonds and any Ancillary Agreements have been paid in  
18 full.

19 (B) The interest of an Assignee or pledgee in Environmental Control Property and in  
20 the revenues and collections arising from that property are not subject to setoff, counterclaim,  
21 surcharge or defense by the Public Utility or any other person or in connection with the  
22 bankruptcy of the Public Utility or any other entity. A Financing Order shall remain in effect  
23 and unabated notwithstanding the bankruptcy of the Public Utility or its successors.

1 **Section 5.**

2 (A) The proceeds of the Environmental Trust Bonds shall be placed in a separate  
3 account and used solely for the purpose of paying Environmental Control Costs, except that,  
4 where the Public Utility proposes to retire property, the proceeds corresponding to the book  
5 value of that property shall be used solely for the purpose of refinancing or retiring debt or equity  
6 of the Public Utility.

7 (B) Environmental Control Property may be transferred, sold or assigned to an  
8 Assignee and may be pledged to secure Environmental Trust Bonds.

9 (C) A Public Utility recovering Environmental Control Charges shall provide a  
10 concise explanation of the Charges to its customers annually by means of bill inserts, website  
11 information or other appropriate means.

12 (D) The Environmental Trust Bonds are hereby made securities in which all public  
13 officers and bodies of this state and all public corporations, municipalities and municipal  
14 subdivisions, all insurance companies and associations and other persons carrying on an  
15 insurance business, all banks, bankers, trust companies, savings banks and savings associations  
16 including savings and loan associations, building and loan associations, investment companies  
17 and other persons carrying on a banking business, all administrators, conservators, guardians,  
18 executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may  
19 hereafter be authorized to invest in bonds or in other obligations of this state, may properly and  
20 legally invest funds, including capital, in their control or belonging to them. The Environmental  
21 Trust Bonds are also hereby made securities which may be deposited with and may be received  
22 by all public officers and bodies of this state and all municipalities and public corporations for

1 any purpose for which the deposit of bonds or other obligations of this state is now or may  
2 hereafter be authorized.

3 **Section 6.**

4 (A) An agreement by a Public Utility or assignee to transfer Environmental Control  
5 Property that expressly states that the transfer is a sale or other absolute transfer signifies that the  
6 transaction is a true sale and is not a secured transaction and that title, legal and equitable, has  
7 passed to the Assignee.

8 (B) A true sale under this Act applies regardless of whether the purchaser has any  
9 recourse against the seller, or any other term of the parties' agreement, including the seller's  
10 retention of an equity interest in the Environmental Control Property, or the providing of any  
11 indemnifications, obligations or repurchase rights by the seller, the fact that the Public Utility  
12 acts as a servicer of Environmental Control Charges relating to the Environmental Control  
13 Property, or the treatment of the transfer as a financing for tax, financial reporting or other  
14 purposes.

15 **Section 7.**

16 (A) A valid and enforceable lien and security interest in Environmental Control  
17 Property or Environmental Control Charges may be created only by a Financing Order and the  
18 execution and delivery of a pledge or assignment of such property or charges to secure  
19 Environmental Trust Bonds.

20 (B) Notwithstanding any provision of the uniform commercial code to the contrary,  
21 any pledge of or other security interest in revenues, moneys, accounts, contract rights, general  
22 intangibles or other personal property made or created to secure Environmental Trust Bonds  
23 shall be valid, binding and perfected from the time when such pledge is made or other security

1 interest attaches without any physical delivery of the collateral or further act, and the lien of any  
2 such pledge or other security interest shall be valid, binding and perfected against all parties  
3 having claims of any kind in tort, contract or otherwise against the pledgor or grantor irrespective  
4 of whether or not such parties have notice thereof. No instrument by which such a pledge or  
5 security interest is created nor any financing statement need be recorded or filed.

6 (C) The lien and security interest shall attach automatically from the time that value is  
7 received for the Environmental Trust Bonds and shall be a continuously perfected lien and  
8 security interest in the Environmental Control Property and all proceeds of the property, whether  
9 accrued or not, and shall take precedence over any subsequent judicial and other lien creditor.

10 (D) The priority of a lien and security interest under this Act is not impaired by any  
11 later modification of the Financing Order or by the commingling of funds arising from  
12 Environmental Control Charges with funds of the Public Utility, and any other security interest  
13 that may apply to those funds shall be terminated when they are transferred to a segregated  
14 account for the Assignee or otherwise the secure Environmental Trust Bonds. If Environmental  
15 Control Property has been transferred to an Assignee, any proceeds of that property shall be held  
16 in trust for the Assignee.

17 (E) In the event of default by the Public Utility or its successors, in payment of  
18 revenues arising with respect to Environmental Control Property, the Commission or a court of  
19 appropriate jurisdiction, upon the application of the Assignee or a party holding Environmental  
20 Trust Bonds or representing the holders thereof, and without limiting any other remedies  
21 available to the applying party, shall order the sequestration and payment, pursuant to this Act  
22 and refinancing arrangements hereunder, of revenues arising with respect to the Environmental  
23 Control Property. Any such order shall remain in full force and effect notwithstanding any

1 bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor  
2 or transferor of the property.

3 (F) Environmental Control Property shall constitute an account as that term is used in  
4 this Act.

5 (G) Environmental Control Property shall be in existence whether or not the revenue  
6 or proceeds in respect to the property have accrued and whether or not the value of the property  
7 right is dependent on the customers of a Public Utility receiving service.

8 (H) Changes in the Financing Order or in the customers' Environmental Control  
9 Charges do not affect the validity, perfection, or priority of a security interest pursuant to this  
10 Act.

11 (I) The description of Environmental Control Property in a security agreement or  
12 other agreement is sufficient if it refers to this Act and the Financing Order establishing the  
13 Environmental Control Property.

14 (J) This Act shall control in any conflict between this Act and any other law ~~of this or~~  
15 ~~any other state~~ regarding the attachment and perfection and the effect of perfection and priority  
16 of any security interest in Environmental Control Property.

17 **Section 8.**

18 (A) Environmental Trust Bonds are not a debt or obligation of the state and are not a  
19 charge on its full faith and credit or taxing power.

20 (B) The state pledges, for the benefit and protection of the holders of Environmental  
21 Trust Bonds and the Public Utility, that it will not take or permit any action that would impair the  
22 value of Environmental Control Property, reduce or alter, except as allowed under Section 3(D),  
23 or impair the Environmental Control Charges to be imposed, collected, and remitted for the

1 benefit of the holders of Environmental Trust Bonds, until the principal, interest and premium,  
2 and any other charges incurred and contracts to be performed in connection with the related  
3 Environmental Trust Bonds have been paid and performed in full. Any party issuing  
4 Environmental Trust Bonds is authorized to include this pledge in such bonds and any  
5 documentation relating thereto.

6 **Section 9.**

7 (A) The acquisition, ownership or disposition of any direct interest in any  
8 Environmental Trust Bond shall not be taken into account in determining whether a person is  
9 subject to any income tax, single business tax, franchise tax, business activities tax, intangible  
10 property tax, excise tax, stamp tax, or any other tax imposed by this state or any agency or  
11 political subdivision of this state.

*regarding the ECChs  
in the financing order  
or  
savings*

12 (B) Any successor to a Public Utility, whether pursuant to any bankruptcy,  
13 reorganization, or other insolvency proceeding or pursuant to any merger or acquisition, sale or  
14 transfer, by operation of law, as a result of Public Utility restructuring or otherwise, shall  
15 perform and satisfy all obligations of the Public Utility in the same manner and to the same  
16 extent as the Public Utility, including, but not limited to, collecting and paying to the person  
17 entitled to revenues with respect to the Environmental Control Property.

18 (C) An Assignee or financing party shall not be considered to be a public utility or  
19 person providing electric service solely by virtue of the transactions described in this Act.

20 **Section 10.**

21 Effective on the date the first Environmental Trust Bonds are issued under this Act, if any  
22 provision of this Act or portion of this Act is held to be invalid or is invalidated, superseded,  
23 replaced, repealed, or expires for any reason, that occurrence does not affect the validity or

-12-  
*collect charge, 1/2 respect sale agreement*

1 continuation of any other provision of this Act that is relevant to the issuance, administration,  
2 payment, retirement, or refunding of Environmental Trust Bonds or to any actions of the  
3 Public Utility, its successors, an Assignee, a collection agent, or a party to transactions  
4 authorized by this Act, which shall remain in full force and effect.

# Environmental Trust Financing

---

## Frequently Asked Questions & Answers

**Q. What is Environmental Trust Financing?**

A. A method used to finance utility related environmental upgrades. The legislature gives the Public Service Commission the authority to approve a property right for a charge on utility bills. Once the PSCW does this, the utility through an Environmental Trust can issue Environmental Trust Bonds to pay for commission approved environmental costs.

**Q. Why is Environmental Trust Financing good for customers?**

A. When a utility uses Environmental Trust Financing, the utility does not earn a rate of return on the environmental control costs. The customers pay less in financing costs on the qualified environmental expenditure. Moreover, the bonds that are sold are rated – in most cases – AAA and receive the lowest market interest rate available (for example, 5% vs. 14% on a typical utility investment). On the purchase of \$1 billion dollar of environmental control equipment, when Environmental Trust Financing is used, customers will save \$500 million over 10 years.

**Q. Is Environmental Trust Financing good for utilities?**

A. It may be good for some, but not others. A utility that uses Environmental Trust Financing will not have to commit equity for the equipment purchased nor will the purchase affect the utility's ability to borrow dollars for other projects (it keeps the utility's credit rating strong). On the other hand, it will not increase utility earnings compared to a traditional investment. For those reasons, this financing should be optional for each utility.

**Q. What is a Financing Order?**

A. It is an order of the Public Service Commission of Wisconsin that approves the issuance of Environmental Trust Bonds that are funded by a charge on customers' bills.

**Q. What is an Environmental Trust Bond?**

A. Bonds issued by the utility that through a property right are secured by the charge on the utility bill.

**Q. What is "property right"?**

A. Ownership. In essence the proceeds from the charge on the utility bill are owned by the utility's Environmental Trust to use to repay the bondholders on their investment.

**Q. What are Environmental Control Costs?**

A. Three types of expenditures qualify as Environmental Control Costs. First, all environmental control equipment such as a device, facility, technology designed for the primary purpose of removing pollution from the air, water or soil. Second, costs incurred to retire existing plants that will reduce, control or eliminate pollution. Finally, expenditures that conserve energy or increase efficiency of energy use.

---

## ENVIRONMENTAL TRUST FINANCING

Attached is a comparison of key provisions found in securitization legislation for the states of Connecticut, Michigan, California and New Jersey.

It is important to note that the specific examples highlighted in the attached, in their isolation, may not be enough to get the rating agencies comfortable that the legislation provides adequate protection to bondholders.

The Environmental Trust Financing legislation will need to be viewed in its entirety and in its relationship to general statutes.

**Comparison of Rate Reduction Bond Legislation – Irrevocability**

**Connecticut**

Sec. 16-245h (b)(1) Notwithstanding any general or special law, rule, or regulation to the contrary, except as otherwise provided in this subsection with respect to transition property that has been made the basis for the issuance of rate reduction bonds, the financing orders and the competitive transition assessment shall be irrevocable and the department shall not have authority either by rescinding, altering, or amending the financing order or otherwise, to revalue or revise for rate-making purposes the stranded costs, or the costs of providing, recovering, financing, or refinancing the stranded costs, determine that the competitive transition assessment is unjust or unreasonable, or in any way reduce or impair the value of transition property either directly or indirectly by taking the competitive transition assessment into account when setting other rates for the electric company or electric distribution company; nor shall the amount of revenues arising with respect thereto be subject to reduction, impairment, postponement, or termination.

**Michigan**

§ 460.10i. (4) A financing order is effective in accordance with its terms, and the financing order, together with the securitization charges authorized in the order, shall be irrevocable and not subject to reduction, impairment, or adjustment by further action of the commission, except as provided under section 10k(3).

1-5 A F

**California**

Sec. 848.1 (e) Notwithstanding Section 455.5, Section 1708, or any other provision of law, except as otherwise provided in this subdivision with respect to recovery property that has been made the basis for the issuance of recovery bonds and with respect to any associated fixed recovery tax amounts, the financing order, the fixed recovery amounts and any associated fixed recovery tax amounts shall be irrevocable, and the commission shall not have authority either by rescinding, altering, or amending the financing order or otherwise, to revalue or revise for ratemaking purposes the recovery costs or the costs of recovering, financing, or refinancing the recovery costs, determine that the fixed recovery amounts, any associated fixed recovery tax amounts or rates are unjust or unreasonable, or in any way reduce or impair the value of recovery property or of the right to receive any associated fixed recovery tax amounts either directly or indirectly by taking fixed recovery amounts or any associated fixed recovery tax amounts into account when setting other rates for the recovery corporation or when setting charges for the Department of Water Resources; nor shall the amount of revenues arising with respect thereto be subject to reduction, impairment, postponement, or termination.

**New Jersey**

§ 48:3-65. Orders become irrevocable upon issuance  
 a. Notwithstanding any other provision of law, each bondable stranded costs rate order and the transition bond charges authorized therein shall become irrevocable upon the issuance of such order and its becoming effective pursuant to section 19 of this act  
 b. Neither the board nor any other governmental entity shall have the authority, directly or indirectly, legally or equitably, to rescind, alter, repeal, modify or amend a bondable stranded costs rate order, to revalue, re-evaluate or revise the amount of bondable stranded costs, to determine that the transition bond charges or the revenues required to recover bondable stranded costs are unjust or unreasonable, or in any way to reduce or impair the value of bondable transition property, nor shall the amount of revenues arising with respect thereto be subject to reduction, impairment, postponement or termination, provided, however, that nothing in this section shall preclude adjustments of the transition bond charges in accordance with the provisions of paragraph (2) of subsection a. and of subsection b. of section 15 of this act.

## *Comparison of Rate Reduction Bond Legislation - Non-bypassability*

### Connecticut

Sec. 16-245e (13) "Transition property" means the property right created pursuant to this section and sections 16-245f to 16-245k, inclusive, in respect of those stranded costs that are eligible to be funded with the proceeds of rate reduction bonds pursuant to section 16-245f, including, without limitation, the right, title, and interest of an electric company or electric distribution company or its transferee (A) in and to the rates and charges established pursuant to a financing order, as adjusted from time to time in accordance with subdivision (2) of subsection (b) of section 16-245i and the financing order, (B) to be paid the amount that is determined in a financing order to be the amount that the electric company or electric distribution company or its transferee is lawfully entitled to receive pursuant to the provisions of this section and sections 16-245f to 16-245k, inclusive, and the proceeds thereof, and in and to all revenues, collections, claims, payments, money, or proceeds of or arising from the rates and charges or constituting the competitive transition assessment that is the subject of a financing order including those non-bypassable rates and other charges referred to in subdivision (2) of this subsection, and (C) in and to all rights to obtain adjustments to the rates and charges pursuant to the terms of subdivision (2) of subsection (b) of section 16-245i and the financing order. "Transition property" shall constitute a current property right notwithstanding the fact that the value of the property right will depend on consumers using electricity or, in those instances where consumers are customers of a particular electric company or electric distribution company, the electric company or electric distribution company performing certain services.

### Michigan

§ 460.10h (f) "Nonbypassable charge" means a charge in a financing order payable by a customer to an electric utility or its assignees or successors regardless of the identity of the customer's electric generation supplier.

§ 460.10h (i) "Securitization charges" means nonbypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to fully recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in the financing order.

§ 460.10k (2) A financing order shall include terms ensuring that the imposition and collection of securitization charges authorized in the order are a nonbypassable charge.

### California

Sec. 848. (d) "Fixed recovery amounts" means those nonbypassable rates and other charges, including, but not limited to, distribution, connection, disconnection, and termination rates and charges, that are authorized by the commission in a financing order to recover (1) recovery costs specified in the financing order, and (2) the costs of recovering, financing, or refinancing those recovery costs through a plan approved by the commission in the financing order, including the costs of servicing, and retiring recovery bonds.

### New Jersey

§ 48:3-67. The transition bond charges established by the board in bondable stranded costs rate orders shall be assessed against all customers of the electric public utility, except as provided in section 28 of this act. Transition bond charges shall be established by the board in accordance with sections 14 and 15 of this act and shall apply equally to each customer of the electric public utility based on the amount of electricity delivered to the customer through the transmission and distribution system of the electric public utility or any successor.

## Comparison of Rate Reduction Bond Legislation - Bankruptcy-Remoteness

### Connecticut

Sec. 16-245k (e) If an event of default occurs under the security agreement covering the transition property, the pledgees of the transition property, subject to the terms of the security agreement, shall have all rights and remedies of a secured party upon default under article 9 of title 42a, and shall be entitled to foreclose or otherwise enforce their security interest in the transition property, subject to the rights of any third parties holding prior security interests in the transition property perfected in the manner provided in this section. In addition, the department may require, in the financing order creating the transition property, that, in the event of default by the electric company or electric distribution company in payment of revenues arising with respect to the transition property, the department and any successor thereto, upon the application by the pledgees or transferees, including transferees under this section, of the transition property, and without limiting any other remedies available to the pledgees or transferees by reason of the default, shall order the sequestration and payment to the pledgees or transferees of revenues arising with respect to the transition property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the transition property. Any surplus in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the rate reduction bonds, and other costs arising under the security agreement, shall be remitted to the debtor or to the pledgor or transferor.

### Michigan

§ 460.10k (1) The interest of an assignee or pledgee in securitization property and in the revenues and collections arising from that 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. A financing order shall remain in effect and unabated notwithstanding the bankruptcy of the electric utility, its successors, or assignees.

### California

Sec. 848.3 (e) If an event of default occurs under the security agreement covering the recovery property, the pledgees of the recovery property, subject to the terms of the security agreement, shall have all rights and remedies of a secured party upon default under Division 9 (commencing with Section 9101) of the Commercial Code, and shall be entitled to foreclose or otherwise enforce their security interest in the recovery property, subject to the rights of any third parties holding prior security interests in the recovery property perfected in the manner provided in this section. In addition, the commission may require, in the financing order creating the recovery property, that, in the event of default by the recovery corporation in payment of revenues arising with respect to the recovery property, the commission and any successor thereto, upon the application by the pledgees or transferees, including transferees under Section 848.4, of the recovery property, and without limiting any other remedies available to the pledgees or transferees by reason of the default, shall order the sequestration and payment to the pledgees or transferees of revenues arising with respect to the recovery property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor. Any surplus in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the recovery bonds, and other costs arising under the security agreement, shall be remitted to the debtor.

### New Jersey

§ 48:3-71 e. In the event of default by the electric public utility or its assignee in payment of revenues arising with respect to the bondable transition property, and upon the application by the pledgees or transferees of the bondable transition property, the board or any court of competent jurisdiction shall order the sequestration and payment to the pledgees or transferees of revenues arising with respect to the bondable transition property, which application shall not limit any other remedies available to the pledgees or transferees by reason of the default. Any such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization or other insolvency proceedings with respect to the debtor, pledgor or transferor of the bondable transition property. Any amounts in excess of amounts necessary to satisfy obligations then outstanding on or related to transition bonds shall be applied in the manner set forth in subsection d. of section 15 of this act.

## Comparison of Rate Reduction Bond Legislation – True-Up

### Connecticut

Sec. 16-245i. (b) (2) Notwithstanding any other provision of this section, the department shall approve the adjustments to the competitive transition assessment as may be necessary to ensure timely recovery of all stranded costs that are the subject of the pertinent financing order, and the costs of capital associated with the provision, recovery, financing, or refinancing thereof, including the costs of issuing, servicing, and retiring the rate reduction bonds contemplated by the financing order.

Sec. 16-245i. (c) The department shall provide in any financing order for a procedure for the timely approval by the department of periodic adjustments to the competitive transition assessment that is the subject of the pertinent financing order, as required by subdivision (2) of subsection (b) of this section. The procedure shall require the department to determine whether the adjustments are required on each anniversary of the issuance of the financing order, and at the additional intervals as may be provided for in the financing order, and for the adjustments, if required, to be approved within ninety days of each anniversary of the issuance of the financing order, or of each additional interval provided for in the financing order.

### Michigan

§ 460.10k (3) A financing order shall include a mechanism requiring that securitization charges be reviewed and adjusted by the commission at least annually, within 45 days of the anniversary date of the issuance of the securitization bonds, to correct any overcollections or undercollections of the preceding 12 months 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 securitization bonds.

### California

Sec. 848.1 (e) Notwithstanding any other provision of this section, the commission shall approve adjustments to the fixed recovery amounts and any associated fixed recovery tax amounts as may be necessary to ensure timely recovery of all recovery costs that are the subject of the pertinent financing order, and the costs of capital associated with the recovery, financing, or refinancing thereof, including servicing, and retiring the recovery bonds contemplated by the financing order.

Sec. 848.1 (g) The commission shall provide in any financing order for a procedure for the expeditious approval by the commission of periodic adjustments to the fixed recovery amounts and any associated fixed recovery tax amounts that are the subject of the pertinent financing order, as required by subdivision (e). The procedure shall require the commission to determine whether the adjustments are required on each anniversary of the issuance of the financing order, and at the additional intervals as may be provided for in the financing order, and for the adjustments, if required, to be approved within 90 days of each anniversary of the issuance of the financing order, or of each additional interval provided for in the financing order.

### New Jersey

§ 48:3-64 b. Each bondable stranded costs rate order shall provide for mandatory periodic adjustments by the board of the transition bond charges that are the subject of the bondable stranded costs rate order, upon petition of the affected electric public utility, its assignee or financing entity, to conform the transition bond charges to the schedule of payments of principal and interest on the transition bonds provided to the board by the electric public utility pursuant to subsection a. of this section. Such adjustments shall be made at least annually. Each such adjustment shall be formula-based, shall be in the amount required to ensure receipt of revenues sufficient to provide for the full recovery of bondable stranded costs, including, without limitation, the timely payment of principal of, and interest and acquisition or redemption premium on, transition bonds issued to finance such bondable stranded costs, which shall be recovered over the term of the transition bonds and in accordance with the schedule of payments of principal and interest on the transition bonds provided to the board by the electric public utility pursuant to subsection a. of this section and shall become effective 30 days after filing thereof with the board absent a determination of manifest error by the board. The electric public utility shall propose such adjustments in a filing with the board at least 30 days in advance of the date upon which it is requested to be effective. The proposed adjustment shall become effective on an interim basis on such date and, in the absence of a board order to the contrary, shall become final 60 days thereafter. Each such adjustment shall be formula-based and shall be in the amount required to ensure receipt of revenues sufficient to provide for the full recovery of bondable stranded costs including, without limitation, the timely payment of principal of, and interest and acquisition or redemption premium on, transition bonds issued to finance such bondable stranded costs, which shall be recovered over the term of the transition bonds and in accordance with the schedule of payments of principal and interest on the transition bonds provided to the board by the electric public utility pursuant to subsection a. of this section. Such periodic adjustments shall not in any way affect the validity or irrevocability of the bondable stranded costs rate order or any sale, assignment or other transfer of or any pledge or security interest granted with respect to the related bondable transition property and shall not affect rights of bondholders.

State Comparisons of Rate Recovery Bonds

	Texas	Connecticut	Pennsylvania	New Jersey
State Pledge	Pledge not to impair transition property, transition charges	Pledge not to impair CTA, transition property, financing orders	Pledge not to impair investor rights unless adequate provision is made	Pledge not to impair bondable transition property
Political Support	Senate UNANIMOUS House 142-4	Senate 87-7 House 126-17	Senate 40-10 House 171-28	87 to 15 of the Legislature voted for the Act
Severability Language of Statute	Severable	Severable	Severable	Severable
Irrevocability of Order	Yes	Yes	Yes	Yes
Viewer Initiative Permitted	No	No	No	No
Controversy Surrounding Legislation	Two utilities' (CP&L and TXU) financing orders were appealed. Texas Supreme Court unanimously affirmed the constitutionality of the financing orders and rejected a request for a rehearing	Appeal of the Financing Order was withdrawn through a Settlement Agreement with the OCC in March 9, 2001	Ongoing legal battles have all been settled or defeated	Orders authorizing bonds were challenged in NJ Appellate Court, but were upheld in 3-0 decision; New Jersey Supreme Court upheld by 4-1 decision; Order final under NJ law
State Involvement	Active role in issuance	Sponsored by state agency, active role in issuance	No state agency, utility specific	No state agency, utility specific
Customer Base	Residential, commercial, industrial. Cross-collateralization of True-Up among customers	Residential, commercial and industrial. Cross-collateralization of True-Up among customers	Residential (41%), commercial and industrial (59%). No cross-collateralization of True-Up among customers	Residential, commercial and industrial. Cross-collateralization of True-Up among customers
Credit Enhancement	50 bps Overcollateralization (built up over time)  50 bps Equity/ capital account (equity replenished if used)  True-Up: Annual; up to semiannually if principal balance exceeds expected balance by 5% in absolute value	50 bps Overcollateralization (built up over time)  50 bps Equity/ capital account (equity replenished if used)  True-Up: Annual; up to monthly during the last year	200 bps (PECO)/50 bps (PP&L) Overcollateralization (built up over time)  50 bps Equity/ reserve account (equity is <del>not</del> replenished if used)  True-Up: Annual, up to monthly during last year	50 bps Overcollateralization (built up over time)  50 bps Equity/ capital account (equity replenished if used)  True-Up: Annual; quarterly in the last year
Statutory Limit on Amount of Bonds	None	None	None	Up to 75% of generation-related stranded costs and 100% of long term purchase power contracts
Termination	The term of the Transition Bonds cannot exceed 15 years  Soft cap: Transition Charge must not exceed maximum allowable rate for each customer class	No final date to collect charge  No cap on charge	Charge cannot be collected on services imposed after December 31, 2010.	No final date to collect charge  No cap on charge

RRB State Comparisons (cont'd)

	California	Illinois	Massachusetts	Michigan
State Pledge	Pledge not to impair investor rights unless adequate provision is made	Pledge not to impair investor rights	Pledge not to impair investor rights	Pledge not to impair securitization property and charges
Political Support	Unanimous	Senate 58-2 House 108-7	Senate 32-6 House 124-30	Senate 23-13 House 67-33
Severability Language of Statute	Severable	Inseverable	Severable	Severable
Irrevocability of Order	Yes	Yes	Yes	Yes
Voter Initiative Permitted	Yes	No	Yes	Yes
Controversy Surrounding Legislation	Voter initiative was defeated by strong majority in November 1998	Possible, but virtually unanimous political support initially	Chapter 164 was subject to a Referendum in the November 1998 ballot but was approved by 71% of Massachusetts voters	Single appeal was withdrawn
State Involvement	Sponsored by state agency, active role in issuance & during initiative	No state agency, utility specific	Sponsored by state agency, active role in issuance	No state agency, utility specific
Customer Base	Residential and small commercial. Cross-collateralization of True-Up among customers	Residential, commercial and industrial (22%). Cross-collateralization of True-Up among customers	Residential, commercial and industrial. Cross-collateralization of True-Up among customers	Residential (35%), commercial (44%) and industrial (21%)
Credit Enhancement	50 bps Overcollateralization (built up over time)  50 bps Equity/ reserve account (equity replenished if used) True-Up: Annual	50 bps Overcollateralization (built up over time)  50 bps Equity/ reserve account (equity replenished if used) True-Up: Semiannual, every alternate quarter if balance exceeds expected balance by 5%	50 bps Overcollateralization (built up over time)  50 bps Equity/ reserve account (equity replenished if used) True-Up: Annual, quarterly in last year or as needed	50 bps Overcollateralization (built up over time)  50 bps Equity/ capital account (equity replenished if used) True-Up: Annual, quarterly in the last year
Statutory Limit on Amount of Bonds	\$10,000,000,000 of bonds outstanding at any time	After August 1999, 50% of the utility's capitalization multiplied by the ratio of its revenues	None	None
Termination	No final date to collect charge No cap on charge	The final date utilities can charge and collect IFCs may not be later than 12/31/08	No final date to collect charge but there is a fixed yearly cap on charge	Securitization charge cannot exceed 15 year period Soft cap: securitization charge must not exceed maximum allowable rate for each customer class

**Testimony of Allen Leverett  
Chief Financial Officer of  
Wisconsin Energy Corporation  
for  
PUBLIC HEARING  
of the  
Wisconsin State Assembly  
Committee on Energy and Utilities**

**Wednesday, January 28, 2004**

**10:00 AM**

**415 Northwest**

**LRB-4030/1**

**The issuance of debt by public utilities to finance  
certain environmental control activities.**

**Wisconsin State Assembly Committee on Energy and Utilities**  
**Testimony of Allen Leverett**  
**Chief Financial Officer of Wisconsin Energy Corporation**

Good morning. My name is Allen Leverett, and I am the Chief Financial Officer at Wisconsin Energy. I appreciate the opportunity to talk with all of you about Environmental Trust Financing proposal. Environmental Trust Financing will provide lower costs to utility customers, retain Wisconsin's strong tradition of regulatory oversight and assist in the advancement of cleaner energy throughout Wisconsin. This type of financing has been used to fund a variety of types of investments and other obligations in numerous other states.

Some brief background on the need to expand and improve the electrical infrastructure in the state of Wisconsin is important in order to put the proposal into context. Over the next seven years we expect to invest roughly \$3 billion in new power plants, as well as substantial sums to meet new environmental regulations imposed on our existing plants. In addition, we plan additional investment to continue to improve the reliability of our distribution system. Making these necessary investments will be a major financing challenge for us.

These investments have significant implications for our customers and our company. From our customer's point of view these investments – though important – represent upward pressure on prices for electricity. From our company's perspective they represents an enormous requirement to raise and borrow funds. The Environmental Trust Financing approach is intended to address both of these issues. It will mitigate price increases for our

**Wisconsin State Assembly Committee on Energy and Utilities**  
**Testimony of Allen Leverett**  
**Chief Financial Officer of Wisconsin Energy Corporation**

customers and provide an additional pool of capital that our company can use along with traditional sources in order to fund the much-needed new electrical infrastructure that is required.

The traditional means of funding investments involves raising a mix of equity and debt. Equity comes from re-investing our shareholder's earnings and/or selling additional shares to investors. Debt comes from selling bonds to investors. Through the setting of rates, the Wisconsin Public Service Commission gives the company the opportunity to recover its initial investment in utility property as well as an allowed return on the equity committed to the project and the interest on the bonds. Note that the return on the equity is not guaranteed; it is only earned if the utility effectively manages its business and other assumptions such as demand and fuel costs used in the setting of rates materialize. It is because of this element of risk that the purchasers of the bonds and credit rating agencies require a significant amount of equity to be included in the mix of capital. A debtholder needs to assure himself that the Company will have sufficient revenue in order to repay the money it borrows.

The Environmental Trust Financing approach that we are proposing relies on the elimination of the risks that I mentioned in order to maximize the amount of debt that can be used to fund investments and minimize the interest rate on the debt. It does this by following a multi-step process that I will quickly outline for you.

**Wisconsin State Assembly Committee on Energy and Utilities**  
**Testimony of Allen Leverett**  
**Chief Financial Officer of Wisconsin Energy Corporation**

Step one is enabling legislation that allows a utility at its option to request that the PSCW give it the right to collect a charge dedicated solely to the funding of one or more specifically identified environmental investments. Current law requiring PSC approval of projects is not changed. In addition, the commission would allow the utility to use the Environmental Trust Financing approach only if it finds this method is in the public interest due to lower customer costs or for some other reason. Once granted, the right to collect this charge cannot be revoked by the commission or the legislature. It is also non-bypassable, meaning that regardless of any changes in the regulatory structure customers must pay the charge until the obligation is paid off.

Step two involves obtaining a financing order from the commission that outlines the sale of debt whose principal and interest payments are backed solely by the proceeds from the collection of the charge on electricity. The proceeds from the sale of this debt are used to fund the investments approved by the PSCW.

Finally, step three involves the ongoing servicing of the debt through the collection of the charge. These collections are also subject to oversight by the PSCW. They will adjust the charge to customers up or down subject to the terms of the bonds to insure that the appropriate amount is being collected to pay the interest and principal on the bonds. When the principal

**Wisconsin State Assembly Committee on Energy and Utilities**  
**Testimony of Allen Leverett**  
**Chief Financial Officer of Wisconsin Energy Corporation**

value of the bonds is paid off the charge will no longer be collected.

This approach allows for the use of almost 100 percent debt financing and could result in a triple-A credit rating for these bonds. Also, since the owners of the bonds can only look to the charges collected, as opposed to the utility's general corporate funds for payment, the bonds do not have any impact on the utility's credit rating. Furthermore, the bonds issued through the Environmental Trust would not be a legal or moral obligation of the state of Wisconsin.

When compared to traditional financing, the Environmental Trust Financing approach results in significant savings to customers. For a hypothetical \$1 billion investment made over 10 years, customers will save \$500 million in carrying costs over the life of the investment. This will mitigate increases in electricity prices to our customers.

At several points in my comments, I have noted the role of PSCW oversight. The EFT proposal which is the subject of this hearing does not, in any way, circumvent or eliminate the Commission's traditional right to make determinations and take actions regarding the prudence of the investments which are funded by the EFT method. The process for CA and CPCN approval, as well as rate case oversight to order appropriate recovery will still be in place to protect customers from imprudent actions or investment.

**Wisconsin State Assembly Committee on Energy and Utilities  
Testimony of Allen Leverett  
Chief Financial Officer of Wisconsin Energy Corporation**

---

In summary, we are asking that the legislature allow the creation of the Environmental Trust Financing mechanism. This tool, which will be fully subject to ongoing commission oversight, can deliver significant savings to customers while funding investments that will continue to meet reliability requirements while improving the environment.

Thank you again for the opportunity to appear before you today. I would be happy to address any questions that you might have about the proposal.



# Customers First!

*Plugging Wisconsin In*

## Statement by Customers First! Coalition Assembly Energy Committee Hearing Environmental Trust Financing Proposal (LRB 4030/1) January 28, 2004

Customers First! is an alliance of customer groups, municipal utilities, rural electric cooperatives, labor unions, environmental groups and one investor-owned utility. Since 1996 it has been providing input to policymakers and encouraging bipartisan consensus on Wisconsin's energy policy.

CFC generally supports a sequential, one-step-at-a-time approach to change in the electric industry and advocates putting the interests of Wisconsin customers & users first.

In concept, CFC is interested in this legislation, LRB 4030/1, which proposes to finance environmental control activities through bonds rather than through the traditional rate recovery approach. As the state enters a building cycle, measures to control costs for ratepayers are welcome ideas.

However, as the legislation is currently drafted, CFC has some serious concerns:

### Scope

- The scope of the bill should be limited to environmental control equipment and plant retirements for purposes that the PSCW finds to be prudent, reasonable, and appropriate (including as to level of costs)(see below under "Standards")
- Energy efficiency and conservation expenditures should not be included (p.4)
- Only capital costs, not operating expenses, should be bondable
- The definition of removing or remediating "pollution" under "environmental control equipment" (p. 4) needs to be better defined

### Standards

- The trust instruments should be 100% debt
- The "public interest" standard (p. 6) should be supplemented with a more specific standard of benefit to ratepayers

---

American Association of Retired Persons-Wisconsin • Citizens' Utility Board • Dairyland Power Cooperative • International Brotherhood of Electrical Workers-Local 2304 • International Brotherhood of Electrical Workers-Local 2150 • Madison Gas & Electric Company • Municipal Electric Utilities of Wisconsin • National Federation of Independent Business-Wisconsin • RENEW Wisconsin • Wisconsin Alliance of Cities • Wisconsin Coalition of Energy Consumers • Wisconsin Community Action Program Association • Wisconsin Electric Cooperative Association • Wisconsin Federation of Cooperatives • Wisconsin Merchants Federation • Wisconsin National Farmers Organization • Wisconsin Public Power Inc. • Wisconsin Retired Educators' Association • Wisconsin Towns Association

A Coalition  
to Preserve  
Wisconsin's  
Reliable  
and Affordable  
Electricity

608.286.0784

888.960.4778 toll free

fax 608.286.6174

P.O. Box 54

Madison, WI 53701

[www.customersfirst.org](http://www.customersfirst.org)



- One such standard is that applicants should demonstrate that there are material net benefits to customers that will result in lower rates than traditional financing by the utility
- The PSC should find that the applicant acted reasonably and prudently in incurring the environmental-control costs (i.e. nothing in the bill affects the Commission's existing authority to determine the extent to which environmental-control costs and retirement costs should be borne by ratepayers and/or shareholders)
- The PSC should find that all costs included in such charges are reasonable and prudent
- Especially for plant retirements, bond proceeds should be used in an order of preference that provides the greatest benefit in reducing customer costs
- Use the true-up mechanism (p. 6-7) to insure that such costs are not more than actual costs, and that any adjustments are reasonable and prudent (i.e. that the adjustment process does not turn into cost-plus approvals)
- Delete the provision that requires the PSC to exclude from recovery only costs which the applicant does not propose to finance with bonds (p. 7, l. 5-7).

### **Procedure**

- A contested-case hearing should be required prior to the approval of an application for such bonds
- More discussion is needed about whether expedited PSCW action and judicial review are required
- The bill should clarify that it does not repeal the PSCW's existing authority to approve an application with reasonable conditions, not just accept or reject the application (p. 6)
- Standard judicial review under the Administrative Procedure Act (Chapter 227) is appropriate. (p. 7)
- The applicant should have the obligation (and not just the option (p. 7)) to initiate PSCW consideration of refinancing or retirement of the bonds if this will provide a material net benefit to ratepayers

### **Other Issues**

- Clarify the revised "non-bypassable" language (p. 6, l. 17-19); insure non-bypassability for the duration of the bonds without reference to retail competition
- Clarify that the utility owns (or at least has the management and control of) the environmental control equipment and will benefit from its use
- Determine whether the provisions that allow transfer, sale, or assignment of the right to receive environmental control charges to a third party (including an affiliate of the public utility) (p. 9, l. 10-13) are essential to placement of the bonds
- Determine whether the many "irrevocability" provisions in the bill (p. 8-14) are all necessary in order to obtain a AAA bond rating for these bonds

- Insure that existing statutory standards regarding construction or installation of environmental-control equipment and plant retirements (including sec. 196.49 regarding CAs and sec. 196.491(3) regarding CPCNs) remain in effect

Customers First! looks forward to working with policy-makers to find a consensus solution to this matter.

# Environmental Trust Financing

---

**Q. What is Environmental Control Equipment?**

A. A device, facility, technology designed for the primary purpose of removing pollution from the air, water or soil, such as air pollution control equipment placed at a power plant.

**Q. Is the State of Wisconsin obligated to back up the bonds?**

A. No. The bonds represent a property right but are neither a moral or general obligation of the state. The financing is secured only by the Financing Order issued by the PSCW.

**Q. What would prevent the utility from overcollecting from customers?**

A. The money collected would be monitored by the PSCW and a true-up process established to insure that the money collected from customers was no more than required to pay the bond obligations.

**Q. How would the Environmental Control Equipment and Costs be selected?**

A. The utility would propose the specific projects that would be eligible for Environmental Trust financing, and the PSCW would have to approve those projects in the same way that it currently approves such projects. There would be no change in the PSCW's authority in this area.

**Q. Are other states using Environmental Trust Financing?**

A. Yes and No. The state of Michigan is exploring a similar mechanism but in their case they have enabling legislation on the books. Currently, no state is using this type of financing to fund pollution control expenses. However, throughout the nation, states are using a similar process to pay for utility assets that have been stranded because of deregulation. The state of Connecticut is using a similar financing to assist in reducing the burden on its general fund. Michigan, Illinois, Massachusetts, New Jersey, Texas, Connecticut and others have used similar financing to raise \$29.6 billion for rate reduction due to stranded costs as a result of deregulation.

**Q. Is Environmental Trust Financing a step toward deregulation?**

A. No. Environmental Trust Financing has nothing to do with deregulation in Wisconsin. It is simply a method used to reduce the rate burden on the consumer and reduce the debt burden on a utility when the utility needs to make a sizable qualified environmental expenditure in pollution control equipment.

**Q. Why not use this method to finance everything?**

A. If all utility operations were funded this way utilities would essentially be collection agencies and earn virtually nothing. Investors would find the stock of Wisconsin utilities less attractive and if they would cease to invest in our utilities it would put the jobs of close to 20,000 Wisconsin residents in jeopardy.

# Environmental Trust Financing

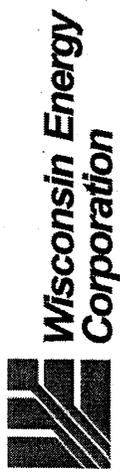
---

A method used to finance utility related environmental upgrades. The Public Service Commission would have the authority to allow a utility to receive proceeds from a charge on a utility bill that will be used to pay back purchasers of Environmental Trust Bonds. The tool will save customers, over a ten-year period, \$500 million on a \$1 billion environmental upgrade investment.

Environmental Trust Financing will allow utility's to seek approval from the PSCW to create an Environmental Trust that can issue Environmental Trust Bonds to finance environmental related expenditures where the commission determines that the environmental improvement costs are prudent and where the Environmental Trust financing mechanism will reduce the financial impact to the consumer.

The Environmental Trust Bonds would be backed by the PSCW's financing order that allows for a specific charge on an electric bill to finance the repayment of the bonds. In doing so, the PSCW would not allow the utility to earn a rate of return on charges for the investment. Because the line item would be locked-in by the PSCW until the bonds are retired, it would also act as equity for the environmental improvements. From time-to-time, the charge would be adjusted to insure customers were neither overpaying nor underpaying. It should be noted that the financing would not be a debt or obligation of the state and is not a charge on its full faith and credit or taxing power.

The proposed Environmental Trust will significantly reduce impact on customers compared to traditional utility financing.



---

# Environmental Trust Financing

# Environmental Trust Overview Financing

---

## Attributes of Environmental Trust Financing

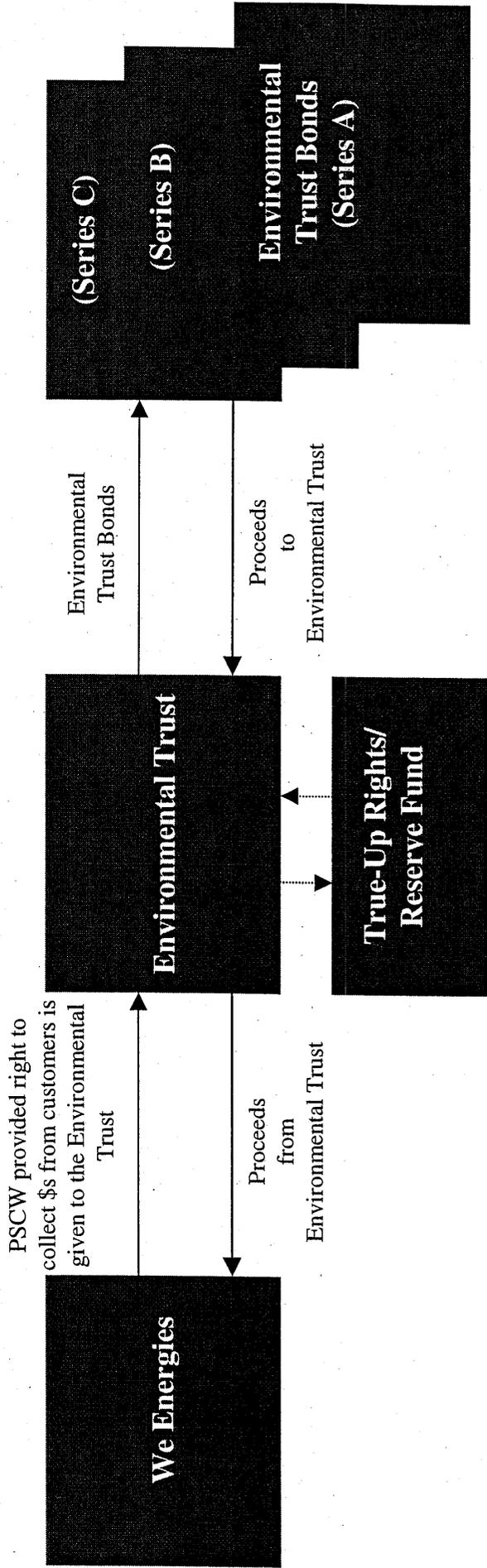
- ◆ Environmental Trust Financing (“ETF”) can be economically advantageous for the following reasons:
  - Reduces costs to utility customers
  - Allows for funding at AAA debt levels
  - Allows for virtually 100% debt funding vs. funding at marginal capital structure
  - Frees up capital requirements, allows utility to use capital on other projects
  - Allows for debt funding under GAAP while considered fully “off-credit” by the rating agencies
  - Allows for recovery over a different term than the expected life of the Environmental expenditures



# Structure

## Transaction at Closing

Environmental Trust Financing involves providing a “property right” to an Environmental Trust that allows for the issuance of Environmental Trust Bonds, backed by such assets and/or cash flows

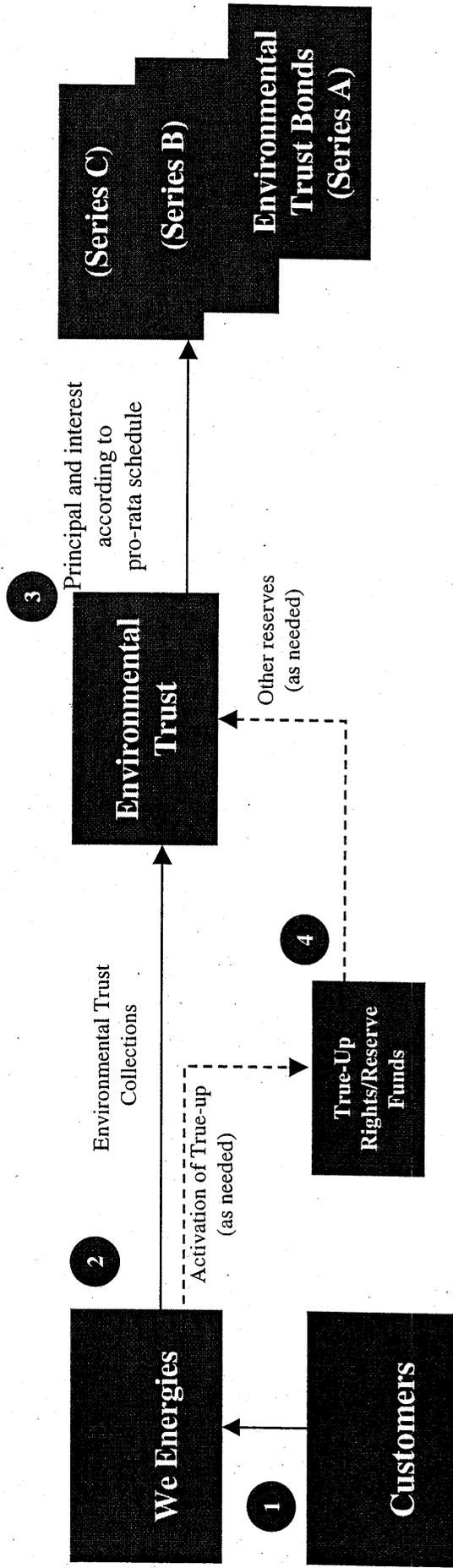


- 1) Environmental improvement assets are transferred to a bankruptcy-remote Environmental Trust in accordance with a “true sale” of assets
- 2) Credit enhancement is provided to protect against credit and timing risks of cash flows, such as the case that collections are insufficient to make payments on the Environmental Trust Bonds, We Energies will be able to petition to the PSCW for periodic adjustments to the Environmental Trust rate (the “True-Up Mechanism”)
- 3) Environmental Trust Bonds, backed solely by the Environmental Trust assets and credit enhancement, are issued
- 4) From time to time, additional series of Environmental Trust Bonds (with different maturity, credit, and interest rate profiles) may be issued in order to meet environmental improvement costs.



# Structure

## Ongoing Cash Flows



- 1) A charge in monthly bills, could be blended with established line items.
- 2) We Energies, as servicer on all utility charges, will remit collections monthly to the Environmental Trust charges, where it will be reinvested until interest and principal on the Environmental Trust Bonds become due
- 3) Level payments of interest and principal on the Environmental Trust Bonds will be payable by the Environmental Trust quarterly or semiannually, according to a mortgage-style amortization schedule
- 4) If collections overstated or are understated, We Energies will be able to petition to the PSCW for periodic adjustments to the Environmental Trust rate (the "True-Up Mechanism")



# Accounting Tax and Rating Agency Considerations

---

## **GAAP Treatment**

- ◆ Because 100% of the equity in the Environmental Trust will be held by the Company, the Environmental Trust will be consolidated with the Company
- ◆ As a result, environmental control equipment assets will remain on the books of the Company, and the liabilities issued by the Environmental Trust will be treated as debt of the Company

## **Tax Treatment**

- ◆ Similar to the accounting treatment, the securitization will be treated as debt financing, and no gain will be recognized on the “sale” of the environmental control equipment assets
  - Overcollateralization and capital provided to the Environmental Trust by the Company will be sized to establish sufficient certainty as to timing of principal and interest in order to characterize the financing as “debt-like”
- ◆ Interest expense will be tax deductible (offsetting taxable income on environmental control equipment collections)

## **Rating Agency Treatment**

- ◆ The rating agencies will not consider Environmental Trust Bonds as part of the corporate capital structure but rather as liabilities solely of the Environmental Trust
  - Their rationale is that, while the utility will service the line item collections, such collections will be remitted to a defeasance account controlled by the Environmental Trust, and the Company will have no liability to the Environmental Trust’s bondholders
- ◆ The rating agencies will effectively treat the Environmental Trust as deconsolidated from the Company, with both the debt and the line item revenues backing it being ignored for the purpose of rating the Company



---

# Frameworks

## Legislative Framework

- ◆ The first stage in accomplishing the multifaceted goals of the Environmental Trust Financing is the development of a fundamental framework composed of specific legislation and the terms of a regulatory-based financing order
  - The fundamental framework serves as the basis for the structure of the bonds as well as the rating agency and marketplace review
- ◆ Enactment of a legislative framework typically provides a generic framework that leaves the details to be provided by the regulatory body pursuant to restructuring and/or financing orders
- ◆ Critical legislation elements include:
  - Authorizes Commission to issue an irrevocable financing order
  - Authorizes Commission to implement a non-bypassable charge on customers bills
  - Recognizes line item represents a property right
  - Recognizes assignment rights as a “true sale” and grants a perfected security interest
  - Authorizes “true-up” provisions
  - Invokes a State covenant



---

# Frameworks

## Regulatory Framework

- ◆ The Regulatory Framework will consist primarily of a Financing Order, which should supplement the enabling legislation by authorizing and establishing details that will be critical to the rating agencies, tax authorities, the Utility and investors:
  - Granting of authorization:
    - Assessment of line item
    - Property and transfer rights
    - Non-bypassable/irrevocable charge
    - Formation of issuance vehicle (bankruptcy requirements)
  - Structure mechanisms:
    - True-Up details
    - Credit enhancement
    - Bond cash flows
    - Priority of line item
    - Line item cash flows
    - Remittance procedures
    - Hedging



---

# Frameworks

## Structuring, Marketing, and Distribution Framework

- ◆ The structuring phase will involve:
  - A rating agency review, which will shape terms of structure (e.g. true-up mechanisms, other credit enhancement)
  - An SEC review
  - An IRS Private Letter Ruling
  - Drafting of legal documentation
  - Written legal opinions concerning legality and constitutionality of the securitization
- ◆ Marketing and distribution will involve:
  - Determination of bond tranche structure
  - A management outreach, investor one-on-ones, and/or investor conference calls (2-3 week management time commitment)
  - Launch and pricing
  - Closing, including document sign-off and transfer of bonds to investors



# Environmental Trust Economics

## Capital Cost: Simplified Example

Traditional Financing		Environmental Trust Financing	
Environmental CapEx	\$1,000	Environmental CapEx	\$1,000
Debt	\$500	ABS	\$1,000
Equity	\$500	Equity	--
Total	\$1,000	Total	\$1,000

After-Tax Cost of Capital <sup>(1)</sup>	
Debt (47%)	3.15%
Equity (53%)	12.20%
Weighted Avg.	7.95%

After-Tax Cost of Capital <sup>(1)</sup>	
Debt (100%)	3.00% <sup>(2)</sup>
Equity (0%)	N/A
Weighted Avg.	3.00%

**Approximately 495 bps of after-tax capital cost savings**

1. Assumes a marginal tax rate of 40%
2. Weighted average rate assuming 15-year amortization



# Environmental Trust Economics

## Effect on Ratepayers: Simplified Example

	<u>Traditional Ratemaking</u> (Billions)	<u>Environmental Trust</u> (Billions)	<u>Difference</u>
<b>Cost of Capital Assumptions</b>			
Asset Cost	\$1,000,000,000	\$1,000,000,000	-----
Recovery Period	10 Years	10 Years	-----
Cost of Capital	14.10%	5.00%	9.10%
Customer Impact			
Average Annual Cost	\$178,000,000	\$128,000,000	\$500,000,000 10-year period
<b>Total Cost</b>			
Undiscounted	\$1,776,000,000	\$1,275,000,000	
Present Value at 8.5%	\$1,225,000,000	\$857,000,000	
Customer Impact	8.9%	6.4%	29%

### Assumptions

- 1) Traditional financing assumes 53% equity at 12.2% and 47% debt with 14.1% pre-tax cost.
- 2) Environmental trust assumes 100% of debt (off credit to the utility) with no equity component or ROE.
- 3) Recovery pattern is assumed to be straight line in both cases.
- 4) Discount rate is set at utility's average-tax weighted average cost of capital.
- 5) Electric revenue requirement of \$2 billion.

