

2003 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB843)

Received: **02/27/2004**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Jensen (608) 264-6970**

By/Representing: **Brett**

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Public Util. - misc.**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Jensen@legis.state.wi.us**

Carbon copy (CC:) to: **brett.healy@legis.state.wi.us
todd.stuart@legis.state.wi.us
david.lovell@legis.state.wi.us
joseph.kreye@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Technical changes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1	mkunkel 02/27/2004	wjackson 02/27/2004	pgreensl 02/27/2004	_____	lemery 02/27/2004	lemery 02/27/2004	

02/27/2004 02:46:23 PM
Page 2

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FE Sent For:

<END>

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1?	mkunkel	1 WLj 2/27	2/27 p 8	2/27 JEK			

FE Sent For:

<END>

Kunkel, Mark

From: Stuart, Todd
Sent: Tuesday, February 24, 2004 9:54 AM
To: Kunkel, Mark; Lovell, David; Stolzenberg, John
Subject: FW: intent memo

-----Original Message-----

From: Bill Jordahl [mailto:BillJordahl@alliantenergy.com]
Sent: Tuesday, February 24, 2004 9:40 AM
To: Brett.Healy@legis.state.wi.us; Todd.Stuart@legis.state.wi.us; "Haubrich.Joel" <Joel.Haubrich@we-energies.com
Subject: intent memo

I think this might help for purposes of the drafter's file, in terms of explicating intent. It is the note from our attorney explaining the language we suggested to WE energy. The memo is pasted below. I will discuss this with you later today when I stop at your offices.

Bill Jordahl
 458-4814 (o)
 575-3660 (c)

Dear Brian, Joel, and Bill:

Pursuant to our phone conversation, we would propose the following language to address the concern that the PSC **not** be able to directly or indirectly require that a utility use the environmental trust bond financing mechanism on any particular project or set of costs, but rather that environmental trust financing (ETF) could **only** be used when the utility so requests and the PSC grants its approval. We also wish to avoid, to the extent possible, the scenario where the PSC behaves differently in areas such as ratemaking because of the existence of ETF -- for example, disallowing recovery of certain costs in rates, because the PSC sees ETF as a viable (and perhaps preferable, to the PSC) financing mechanism for those costs. In the latter case, the PSC would not be directly mandating the use of ETF, but as Bill has previously described it, would be giving the utility a Hobson's choice of using ETF to cover the costs or otherwise financing those costs through, e.g., other debt or net revenues.

Our goal with this amended language is to make as clear as possible the point you have agreed is central to introduction of the ETF concept: **it must be discretionary on the part of the utility to seek to use it.** The PSC could turn down an application for ETF, under the bill as drafted, but under the current draft we also feel that the PSC could direct a utility to use ETF for a second or third or subsequent project, once the utility has ever used ETF for any purpose. Still more problematically, we fear that the PSC's own approach to financing costs considered "environmental" will change with this legislation, and the PSC will become more inclined to limit our non-ETF options, thus pushing us toward ETF as the only viable option left in particular circumstances, even if the PSC doesn't directly require the use of ETF.

To reflect this agreed-upon intent, we propose amending LRBs0366/1 (Assembly Substitute Amendment 1 to AB 843 -- we assume the Senate bill and substitute are identically drafted) by amending page 8, lines 22-25, to read as follows:

(3)(b) The commission may not order or otherwise directly or indirectly require the energy utility to use environmental trust bonds to finance any project, addition, plant, facility, extension, capital improvement,

02/24/2004

→ (links to project)

environmental control equipment, or any other expenditure, unless the energy utility has made an application under sub. (2) (a) to finance such expenditure using environmental trust bonds. The commission may not refuse to allow a utility to recover costs for environmental control activities in an otherwise permissible fashion solely because of the potential availability of environmental trust financing.

I cannot show the deletion in my e-mail message, but I have underlined the new language. The above wording deletes everything on line 22 up to "[T]he"; retains the language in lines 23-25 specifying what the commission may not order or otherwise require (with the addition of "directly or indirectly" require); and adds language clarifying that the commission may not issue the ETF order unless the utility has applied for an order for the specific expenditure in question. It also adds language requiring the PSC to be "blind" to the availability of ETF when considering utility financing issues and the existing alternatives for recovery of costs now defined as environmental control costs under the bill.

Thank you for your acknowledgment that it is critically important to have the ETF mechanism remain voluntary, initiated by the utility, and not become a tool for the PSC to direct rate formation and breakout of certain costs. We believe this revised language is an essential step to accomplish this objective. Please feel free to call me (458-3265) or Bill Jordahl if you have any questions. Thank you very much.

Terry Hottenroth

Theresa M. Hottenroth
Regulatory Attorney
Alliant Energy Corporation
Phone (608) 458-3265
Fax (608) 458-4820

Kunkel, Mark

From: Stuart, Todd
Sent: Tuesday, February 24, 2004 9:54 AM
To: Kunkel, Mark; Lovell, David; Stolzenberg, John
Subject: FW: Amendments to Assembly Substitute Amendment, to 2003 Assembly Bil I 843

Here is the change to item 6, page 8, line 22 that should clarify our questions from yesterday.
-----Original Message-----

From: Haubrich.Joel [mailto:Joel.Haubrich@we-energies.com]
Sent: Tuesday, February 24, 2004 9:11 AM
To: Brett Healy (E-mail); Todd Stuart (E-mail); Dan Ebert (E-mail)
Cc: 'Theresa Hottenroth'; Bill Jordahl; Haubrich.Joel
Subject: Amendments to Assembly Substitute Amendment, to 2003 Assembly Bil I 843

Attached is the Alliant amendment.

The Alliant amendment replaces the CFC amendment. I've blended CFC request with the Alliant request. Please contact me if you have any questions, I'm in Madison today.

Joel M. Haubrich
We Energies - Government Affairs
231 W. Michigan St.
P.O. Box 2046
Milwaukee, WI 53203
414-221-4102 (MKE office)
414-221-3814 (MKE fax)
608-283-3004 (MDSN office)
608-283-0973 (MDSN fax)
joel.haubrich@we-energies.com

<<Amendments to Assembly Substitute Amenedment.doc>>

Amendments to Assembly Substitute Amendment, to 2003 Assembly Bill 843

1. Page 5 line 20 (We Energies)

(b) *Commission powers and duties.* 1. No later than 120 days after receiving an application under par. (a), the commission shall, after a hearing, issue a financing order or an order rejecting the application. The commission may issue a financing order if the commission finds all of the following:

a. That the order will result in lower overall costs to customers than would alternative methods of financing environmental control activities.

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

2. Page 6 line 11 (We Energies)

2. In a financing order issued to an energy utility, the commission shall do all of the following:

...

c. Include a formula based mechanism for making any adjustments in the environmental control charges that customers are required to pay under the order and making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the energy utility's or assignee's timely recovery of environmental control costs and financing costs.

3. Page 7 line 4 (We Energies)

4. a. If the commission issues a financing order, the commission shall apply, at least annually, the formula based mechanism specified in subd. 2. c. and, based on ~~reasonable~~ estimates of demand and other mathematical factors, make the adjustments described in subd. 2. c. The commission shall make the adjustments within 45 days of the anniversary date on which

environmental trust bonds are issued and after expiration of the comment period described in subd. 4. b.

4. Page 7 line 11 (We Energies)

b. The commission may not hold a hearing for the purpose of making an adjustment under subd. 4. a., but shall allow interested parties 30 days to make comments limited to any manifest error in the application of the formula based mechanism relating to the appropriate amount of any overcollection or undercollection of environmental control charges and the appropriate amount of an adjustment.

5. Page 7 line 13-14 (We Energies)

5. ~~Except as provided in subds. 2. c. and 4., a~~ A financing order is irrevocable and, except as provided in subds. 2. c. and 4., the commission may not reduce, impair, or otherwise adjust environmental control charges approved in the order.

6. Page 8 line 22 (CF!C and Alliant)

(3) EXCEPTIONS TO COMMISSION JURISDICTION.

~~(b) Except as provided for in 4(c), if If an energy utility has not made an application under sub. (2)(a), the commission may not order or otherwise require the energy utility to use environmental trust bonds to finance any project, addition, plant, facility, extension, capital improvement, environmental control equipment, or any other expenditure.~~

(b) The commission may not order or otherwise directly or indirectly require the energy utility to use environmental trust bonds to finance any project, addition, plant, facility, extension, capital improvement, environmental control equipment, or any other expenditure, unless the energy utility has made an application under sub. (2)(a), except as provided for in (2)(c), to finance such expenditure using environmental trust bonds. The commission may not refuse to allow a utility to recover costs for environmental control activities in an otherwise permissible fashion solely because of the potential availability of environmental trust financing.

[2(c) reference should be Subsequent Orders?]

Kunkel, Mark

From: Stuart, Todd
Sent: Monday, February 23, 2004 11:49 AM
To: Kunkel, Mark; Lovell, David; Stolzenberg, John; Renner, Darin
Subject: FW: Amendments to Assembly Substitute Amendment, to 2003 Assembly Bill I 843

Hi guys:

If 3:00 works for everyone, why don't we meet at Leg Council, since you have that conference room.

-----Original Message-----

From: Haubrich.Joel [mailto:Joel.Haubrich@we-energies.com]
Sent: Monday, February 23, 2004 11:43 AM
To: Todd Stuart (E-mail)
Subject: Amendments to Assembly Substitute Amendment, to 2003 Assembly Bill I 843

<<Amendments to Assembly Substitute Amenedment.doc>>

Hey Todd,

Here are some small changes that we need for the final version. Let's talk about process and what else the Senator and your committee might need from us.

CFC and we are signed off on the bill with the changes I 've got here.

Thanks.

Amendments to Assembly Substitute Amendment, to 2003 Assembly Bill 843

1. Page 5 line 20 (We Energies)

(b) *Commission powers and duties.* 1. No later than 120 days after receiving an application under par. (a), the commission shall, after a hearing, issue a financing order or an order rejecting the application. The commission may issue a financing order if the commission finds all of the following:

a. That the order will result in lower overall costs to customers than would alternative methods of financing environmental control activities.

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

2. Page 6 line 11 (We Energies)

2. In a financing order issued to an energy utility, the commission shall do all of the following:

...

c. Include a formula based mechanism for making any adjustments in the environmental control charges that customers are required to pay under the order and making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the energy utility's or assignee's timely recovery of environmental control costs and financing costs.

3. Page 7 line 4 (We Energies)

4. a. If the commission issues a financing order, the commission shall apply, at least annually, the formula based mechanism specified in subd. 2. c. and, based on ~~reasonable~~ estimates of demand and other mathematical factors, make the adjustments described in subd. 2. c. The commission shall make the adjustments within 45 days of the anniversary date on which

environmental trust bonds are issued and after expiration of the comment period described in subd. 4. b.

4. Page 7 line 11 (We Energies)

b. The commission may not hold a hearing for the purpose of making an adjustment under subd. 4. a., but shall allow interested parties 30 days to make comments limited to any ~~manifest~~ error in the application of the formula based mechanism relating to the appropriate amount of any overcollection or undercollection of environmental control charges and the appropriate amount of an adjustment.

5. Page 7 line 13-14 (We Energies)

5. ~~Except as provided in subds. 2. c. and 4.,~~ a A financing order is irrevocable and, except as provided in subds. 2. c. and 4., the commission may not reduce, impair, or otherwise adjust environmental control charges approved in the order.

6. Page 8 line 22 (CF!C)

(3) EXCEPTIONS TO COMMISSION JURISDICTION.

(b) ~~Except as provided for in 4(c), if~~ If an energy utility has not made an application under sub.

(2) (a), the commission may not order or otherwise require the energy utility to use environmental trust bonds to finance any project, addition, plant, facility, extension, capital improvement, environmental control equipment, or any other expenditure.

NOT NEEY?

what
call card

Kunkel, Mark

From: Healy, Brett
Sent: Tuesday, February 24, 2004 4:32 PM
To: Kunkel, Mark
Cc: Lovell, David; Stolzenberg, John; Stuart, Todd; Rep.Gottlieb (Recovered)
Subject: the last set of changes for AB 843 from Jensen. I understand the Fiscal Bureau may still have some questions. Thanks.
Importance: High

Mark,

Sorry about this. these changes are drafted to the substitute amendment. Thanks.

1. Pg. 5 line 20: after "and" insert "expected".
2. Pg. 6 line 11: after "formula" insert "based mechanism".
3. Pg. 7 line 4: after "formula" insert "based mechanism".
4. Pg. 7 line 11: after "to" insert "any manifest error in the application of the formula based mechanism relating to".
5. Pg. 7 line 13: strike "Except as provided in subds.2.c and 4.,a" and insert "A".
6. Pg. 7 lines 13 -14: after "and" insert ",except as provided in subds. 2. c. and 4.,"
7. Pg. 8 line 22: after "(b)" strike "If an energy utility has not made an application under sub. (2) (a).".
8. Pg. 8 line 23: after "otherwise" insert "directly or indirectly".
9. Pg. 8 line 25: after "expenditure" insert ",unless the energy utility has made an application under sub. (2)(a), except as provided for in (2)(c), to finance such expenditure using environmental trust bonds. The commission may not refuse to allow a utility to recover costs for environmental control activities in an otherwise permissible fashion solely because of the potential availability of environmental trust financing."

Please call if you have any questions.

Brett Healy

Rep. Scott Jensen

Energy & Utilities Committee

123 West, State Capitol

608-264-6970

1-888-534-0098 toll-free

Kunkel, Mark

From: Haubrich.Joel [Joel.Haubrich@we-energies.com]
Sent: Friday, February 27, 2004 11:08 AM
To: Todd Stuart (E-mail); Brett Healy (E-mail); Kunkel Mark (E-mail); Helgerson Jason. (E-mail)
Cc: Chandler Richard (E-mail); Bill Broydrick (E-mail); Schubilske.Jim; Salustro.Larry; Winters Brian (E-mail)
Subject: Assem. Sub. Amend. to 2003 AB 843 (LRBs0366/1) - Dropping the nex us section.
Importance: High

After review by counsel we are willing to drop *Section 1.* (the nexus issue).

We believe that a nexus isn't created nor would folks presume one would be when the bonds are purchased. We look forward to DOR affirmation of this but we are comfortable that dropping *Section 1.* is not a problem.

We appreciate everyone's due diligence in this matter and look forward to moving the bill forward.

Thanks.

Joel M. Haubrich

We Energies - Government Affairs

231 W. Michigan St.

P.O. Box 2046

Milwaukee, WI 53203

414-221-4102 (MKE office)

414-221-3814 (MKE fax)

608-283-3004 (MDSN office)

608-283-0973 (MDSN fax)

joel.haubrich@we-energies.com



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBa2425/1
MDK: /:....
WLj

today

C-NOTE

ASSEMBLY AMENDMENT,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 843 ✓

- 1 At the locations indicated, amend the substitute amendment as follows: ✓
- 2 ✓1. Page 1, line 4: delete lines 4 to 8.
- 3 ✓2. Page 1, line 9: before that line insert:
- 4 "SECTION 1m. 76.28 (1) (d) of the statutes is amended to read:
- 5 76.28 (1) (d) "Gross revenues" for a light, heat and power company other than
- 6 a qualified wholesale electric company or a transmission company means total
- 7 environmental control charges paid to the company under a financing order issued
- 8 under s. 196.027 (2) ✓ and total operating revenues as reported to the public service
- 9 commission except revenues for interdepartmental sales and for interdepartmental
- 10 rents as reported to the public service commission and deductions from the sales and
- 11 use tax under s. 77.61 (4), except that the company may subtract from revenues
- 12 either the actual cost of power purchased for resale, as reported to the public service

1 commission, by a light, heat and power company, except a municipal light, heat and
2 power company, that purchases under federal or state approved wholesale rates
3 more than 50% of its electric power from a person other than an affiliated interest,
4 as defined in s. 196.52 (1), if the revenue from that purchased electric power is
5 included in the seller's gross revenues or the following percentages of the actual cost
6 of power purchased for resale, as reported to the public service commission, by a
7 light, heat and power company, except a municipal light, heat and power company
8 that purchases more than 90% of its power and that has less than \$50,000,000 of
9 gross revenues: 10% for the fee assessed on May 1, 1988, 30% for the fee assessed on
10 May 1, 1989, and 50% for the fee assessed on May 1, 1990, and thereafter. For a
11 qualified wholesale electric company, "gross revenues" means total business
12 revenues from those businesses included under par. (e) 1. to 4. For a transmission
13 company, "gross revenues" means total operating revenues as reported to the public
14 service commission, except revenues for transmission service that is provided to a
15 public utility that is subject to the license fee under sub. (2) (d), to a public utility, as
16 defined in s. 196.01 (5), or to a cooperative association organized under ch. 185 for
17 the purpose of providing electricity to its members only. For an electric utility, as
18 defined in s. 16.957 (1) (g), "gross revenues" does not include public benefits fees
19 collected by the electric utility under s. 16.957 (4) (a) or (5) (a). For a generator public
20 utility, "gross revenues" does not include any grants awarded to the generator public
21 utility under s. 16.958 (2) (b). For a wholesale supplier, as defined in s. 16.957 (1) (w),
22 "gross revenues" does not include any public benefits fees that are received from a
23 municipal utility or retail electric cooperative or under a joint program established
24 under s. 16.957 (5) (f). For a municipal utility, "gross revenues" does not include

1 public benefits fees received by the municipal utility from a municipal utility or retail
2 electric cooperative under a joint program established under s. 16.957 (5) (f)."

History: 1983 a. 27, 405; 1985 a. 29, 120; 1987 a. 27; 1993 a. 205; 1995 a. 27, 351; 1997 a. 35; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 107; 2003 a. 33.

3 ✓3. Page 3, line 16: delete "fish,".

4 ✓4. Page 3, line 17: delete "bird, animal," and substitute "animal".

5 ✓5. Page 5, line 20: before "pricing" insert "expected".

6 ✓6. Page 6, line 11: delete "formula" and substitute "formula-based
7 mechanism".

8 ✓7. Page 7, line 4: delete "formula" and substitute "formula-based mechanism".

9 ✓8. Page 7, line 4: delete "reasonable".

10 ✓9. Page 7, line 11: after "limited to" insert "any error in the application of the
11 formula-based mechanism relating to".

12 ✓10. Page 7, line 13: delete that line and substitute:

13 "5. A financing order is irrevocable and, except as provided in subds. 2. c. and
14 4.,".

15 ✓11. Page 8, line 22: delete lines 22 to 25 and substitute:

16 "(b) The commission may not order or otherwise directly or indirectly require
17 an energy utility to use environmental trust bonds to finance any project, addition,
18 plant, facility, extension, capital improvement, environmental control equipment, or
19 any other expenditure, unless, except as provided for in (2) (c), the energy utility has
20 made an application under sub. (2) (a) to finance such expenditure using
21 environmental trust bonds. The commission may not refuse to allow an energy
22 utility to recover costs for environmental control activities in an otherwise

1 permissible fashion solely because of the potential availability of environmental
2 trust financing.”.

3 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa2425/1dn

MDK: /....

WLj

Note that the amendment refers to "any error" rather than "any manifest error" I don't think "manifest" is necessary. In addition, its inclusion might cause unintended confusion over its meaning.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa2425/1dn
MDK:wlj:pg

February 27, 2004

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Mark D. Kunkel
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Phone: (608) 266-0131
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