



**James C. Fleming**  
Executive Vice President & General Counsel

231 W. Michigan St.  
Milwaukee, WI 53203

Phone 414.221.2184  
Fax 414.221.2185  
E-mail [james.fleming@wisconsinenergy.com](mailto:james.fleming@wisconsinenergy.com)

March 28, 2011

**VIA E-MAIL (rule-comments@sec.gov)**

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Securities and Exchange Commission File No. S7-18-08; Release No.33-9186

Dear Ms. Murphy:

Wisconsin Energy Corporation ("Wisconsin Energy") appreciates the opportunity to offer comments on the proposed rule amendments of the Securities and Exchange Commission (the "Commission") to remove references to credit ratings in rules and forms promulgated under the Securities Act of 1933, as amended (the "Securities Act"), and the Securities and Exchange Act of 1934, as amended (the "Exchange Act"). The Commission published the proposed rule changes at 76 Fed. Reg. 8946 on February 16, 2011 (Release No. 33-9186; 34-63874; File No. S7-18-08; hereinafter the "Release"). In 2008, the Commission proposed similar rule changes in Release No. 33-8940 but did not act on that proposal. Wisconsin Energy, along with several other utility holding companies and the Edison Electric Institute, raised several concerns about the impact the 2008 proposal would have on utility subsidiaries in utility holding company structures. Those same concerns apply to the current Release. Specifically, we herein comment on the proposed changes to the eligibility requirements for the use of Form S-3 under the Securities Act.

Wisconsin Energy (NYSE: WEC) is a well-known seasoned issuer ("WKSI") with a market capitalization of over \$7 billion. Wisconsin Energy is a holding company with state-regulated electric and gas utility subsidiaries and non-utility energy subsidiaries. Wisconsin Energy's principal subsidiary is Wisconsin Electric Power Company ("WEPCO"), the largest electric utility in the State of Wisconsin. For the year ended December 31, 2010, WEPCO had net income of approximately \$315.4 million, which represented nearly 70% of Wisconsin Energy's total net income. WEPCO had total assets of approximately \$10.2 billion, representing approximately 78% of Wisconsin Energy's total assets.

Wisconsin Energy's ownership structure as a holding company and issuer of common stock, with WEPCO as a utility operating subsidiary, is common for an electric utility. Wisconsin Energy holds all of WEPCO's common stock.

WEPCO's rates and services are determined in regulatory proceedings before the Public Service Commission of Wisconsin ("PSCW"), WEPCO's primary regulator; the Michigan Public Service

Commission; and the Federal Energy Regulatory Commission. The issuance and sale of securities by WEPCO is subject to PSCW approval, who must first find that the financial condition, plan of operation, and proposed undertakings by WEPCO are such as to afford reasonable protection to the purchasers of the debt to be issued. In addition, PSCW approval generally requires that the issuance be consistent with the public interest and that the proceeds be used for proper corporate utility purposes.

WEPCO files periodic and current reports under the Exchange Act and meets the Registrant Requirements of General Instruction I.A of Form S-3. WEPCO historically has issued its investment grade debt securities in public offerings through shelf registration statements on Form S-3 in reliance upon the Transaction Requirement of General Instruction I.B.2 of Form S-3.<sup>1</sup> As of December 31, 2010, WEPCO had outstanding approximately \$2.0 billion of debt securities that were issued in public offerings through its shelf registration statements. However, if the proposed changes to the Form S-3 eligibility requirements contained in the Release are adopted, WEPCO will no longer be eligible to use Form S-3 as it will not satisfy the \$1.0 billion debt issuance threshold (WEPCO has issued a total of \$800 million of debt securities during the past three years).

WEPCO's ability to use Form S-3 has allowed for quick and timely access to the debt capital markets. The flexibility that Form S-3 provides is extremely important to an issuer of debt securities as the precise timing of an offering is often dependent upon fluctuations in market interest rates. The loss of the eligibility to use Form S-3 would require issuers to use the more time consuming, more expensive, and less flexible Form S-1. Given the limited flexibility under Form S-1, WEPCO will have to consider issuing its debt securities through unregistered offerings under Rule 144A. Such offerings will necessarily be limited to the largest institutional investors, thereby limiting the pool of potential investors, which would likely lead to higher interest rate costs. Either way, we are concerned that the increased financing costs associated with the loss of Form S-3 eligibility will be passed on to WEPCO's utility customers in the form of higher rates.

We understand and appreciate that the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") requires the Commission to review any references to credit ratings in its regulations. However, we are concerned with the Commission's proposal to replace the investment grade rating criterion of Form S-3 with the requirement that a registrant have issued \$1.0 billion of registered non-convertible securities for cash over the prior three years.

The market turmoil in 2008 and 2009, which led to the adoption of the Dodd-Frank Act, involved asset-backed securities and other structured products. Issuances of securities by public utilities were never in question. The market turmoil did, however, highlight the need for high quality issuers like WEPCO to have the ability to access the capital markets quickly, which WEPCO was able to do twice at the end of 2008 and again at the end of 2009 because it had a

---

<sup>1</sup> Primary Offerings of Non-convertible Investment Grade Securities.

Form S-3 on file. Loss of the ability to use Form S-3 would have made these issuances, and will make future issuances under time-sensitive conditions, impossible.

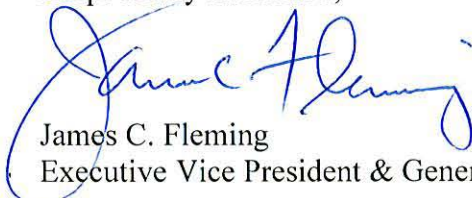
One significant problem we see with the \$1.0 billion threshold is the variability in the amount of registered debt raised, year over year, at a subsidiary that is otherwise well-known. The Commission stated in the Release that it was seeking to reduce the reliance on credit ratings "...while also preserving the use of Form S-3 (and similar forms) for issuers that we believe are widely followed in the market." As discussed above, WEPCO contributes the substantial majority of Wisconsin Energy's overall operations. To properly evaluate Wisconsin Energy, investors must necessarily evaluate WEPCO who has been filing reports with the Commission for many years. Given WEPCO's contributions to Wisconsin Energy, as well as the significant amount of registered debt it has outstanding, WEPCO, like Wisconsin Energy, is widely followed and well-known in the market.

For all of the reasons stated above, we suggest that rather than the \$1.0 billion threshold proposed by the Commission, Form S-3 eligibility be provided for public utility companies where the issuance of their securities requires the authorization of any federal, state, or local governmental authority.

In addition to the public utility standard, we would also support the "grandfathering" of continued Form S-3 eligibility for issuers who are eligible to use Form S-3 to issue non-convertible investment grade debt as of the date the Commission takes action on a final rule. Alternatively, an eligibility test based on asset size of an issuer and/or the amount of debt outstanding of an issuer would be more predictable than a test based on the amount of registered debt issued every three years. We could also support other eligibility standards that may have more general applicability. However, we would not want any such alternate standards added by the Commission in lieu of the public utility standard we are suggesting. We believe this standard best addresses the concerns and needs of public utilities like WEPCO, while still providing adequate protection to investors.

If the Commission has any questions regarding this letter, please contact Joshua M. Erickson at (414) 221-2544.

Respectfully submitted,



James C. Fleming  
Executive Vice President & General Counsel