

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

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Application of Wisconsin Electric Power  
Company for Approval of its Very Large  
Customer and Bespoke Resources Tariffs

Docket No. 6630-TE-113

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**DIRECT TESTIMONY OF STEVEN KIHM  
ON BEHALF OF CITIZENS UTILITY BOARD**

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1   **Q. Please state your name, business address, and occupation.**

2   A.   My name is Steven Kihm, and my business address is the Citizens Utility Board (CUB), 625  
3       North Segoe Rd, Suite 101, Madison, Wisconsin 53705. CUB employs me as its  
4       Regulatory Strategist and Chief Economist.

5   **Q. Please state your educational background and experience.**

6   A.   I earned a Doctor of Business Administration degree focusing on applied corporate finance  
7       and strategy from the University of Wisconsin-Whitewater, a Master of Business  
8       Administration in Finance and a Master of Science in Business (Quantitative Analysis), both  
9       from the University of Wisconsin-Madison, a Master of Arts in Creative Nonfiction Writing  
10      from the University of Denver, and a Bachelor of Science in Economics with Highest Honor  
11      from the University of Wisconsin-La Crosse. I hold the Chartered Financial Analyst (CFA)  
12      credential.

13     I have worked in the field of utility regulation for the past 45 years, 21 of those as a  
14     member of the staff of the Wisconsin Public Service Commission. I served as Principal and  
15     Chief Economist at Slipstream Group and Senior Associate at MSB Energy Associates. I  
16     have held my current position with CUB for four years. I am a member of the

1 macroeconomic forecasting panel that provides input for the Federal Reserve Bank of  
2 Philadelphia's *Survey of Professional Forecasters*. I am Senior Fellow (Finance) at  
3 Michigan State University's Institute of Public Utilities where since 2005 I have trained  
4 regulators, consumer and environmental advocates, and utility managers on financial  
5 concepts in regulation.

6 **Q. Have you previously testified before this Commission?**

7 A. Yes. In addition to appearing before the Wisconsin Commission, I have  
8 testified before utility regulatory bodies in the District of Columbia, Georgia, Hawaii,  
9 Illinois, Maine, Michigan, Minnesota, and Pennsylvania, and in the Oregon Tax Court.

10 **Q. On whose behalf are you testifying in this proceeding?**

11 A. I appear on behalf of CUB.

12 **OVERVIEW**

13 **Q. What is the purpose of your direct testimony?**

14 A. The purpose is to highlight the risks of unrecovered costs and provide recommendations for  
15 mitigating those risks.

16 This proceeding seeks to establish (1) Very Large Customer and (2) Bespoke  
17 Resources tariffs designed to provide service to large customers (currently, specifically data  
18 centers). Under this approach the utility identifies a resource to serve the Very Large  
19 Customer. The Company and the Very Large Customer negotiate a bilateral contract  
20 designed to allow the utility to recover the cost of that resource.

21 The fact that the resource is not included in the rate base that the traditional core  
22 (non-VLC) customers support is significant. In that respect the asset stands alone and does  
23 not have the associated cost recovery protections that a rate base asset would. All goes

1 smoothly if the Very Large Customer fulfills its obligations. But in real markets, especially  
2 in the technology sector, there is a very real possibility that there could be a shortfall. This  
3 creates the possibility of unrecovered costs.

4 **Q. Does the Company see this result as a possibility?**

5 A. No. In response to a Staff request (Ex.-PSC-DRR: AJ-3.2), which asked the Company to  
6 explain how uncollected costs would be recovered if the Tariffs' mechanisms for recovery  
7 were exhausted, the Company states:

8 Wisconsin Electric does not believe such a situation will arise due to the  
9 credit support that would be required of a VLC, as described in Response-  
10 Data Request-PSC-Field-AJF-2.1. The proposed credit support will be set at  
11 the forecasted maximum amount that a VLC could be responsible for at that  
12 time. As currently proposed in the tariffs, the amount of the VLC's  
13 obligation would be re-evaluated annually, and the level of credit support  
14 adjusted (increased or decreased) accordingly as part of that annual  
15 evaluation to match the VLC forecasted maximum obligation at that point in  
16 time.

17  
18 This would require that if the VLC does not pay, the Company will exercise the security  
19 provision instruments provided by the VLC. Those assurances are per Ex.-WEPCO-Stasik-  
20 2, pages 20 to 23 are:

21 Security provisions to ensure the Company receives payment from the Very  
22 Large Customer, even if the customer ceases taking service. They include:

23

- 24 • Letters of credit
- 25 • Cash deposits
- 26 • Guarantees by domiciled affiliates of the Very Large Customer

27  
28 These security provisions are designed to provide reasonable protections against cost  
29 shifting and I support them as tools that might achieve this end. The questions, though, are  
30 (1) when they do apply, and (2) even if they do apply, do they provide absolute guarantees  
31 for cost shifting. As to the first point, it is important to note that per the proposed tariffs the  
32 Very Large Customer needs to supply financial security only if its bond rating falls below

1 investment grade, which is Baa2 for Moody's and BBB for Standard & Poors and it meets a  
2 certain level of liquidity or net worth. I discuss below why this is problematic.

3 And the security provisions are effective only when they are put into effect. We can  
4 develop scenarios in which the Company delays in drawing upon these resources with the  
5 hopes that the Very Large Customer comes out of a difficult time, enabling it to renew these  
6 measures. But if the Company uses its discretion to "give the VLC some time," then the  
7 security provided these provisions may be lost—it is about timing in transition, not about the  
8 tools themselves.

9 **Q. Are the proposed tariffs consistent with the company's position on this point?**

10 A. Not precisely. There is a gap as I explain below. Consider the possibility that a VLC  
11 provides notice to the company that it will not be able to meet the security provisions  
12 required in the tariff for the coming year. If the Company exercises the letter of credit, draws  
13 from the cash deposit, or calls on the affiliate to make good on its pledge, then there is no  
14 revenue shortfall.

15 But that is not what the tariff says. In terms of cashing in the pledge of security, it  
16 says that the Company has the right to do this as opposed to it will do this. Specifically with  
17 respect to letters of credit, at Ex.-WEPCO-Stasik-4, page 14:

18 If the Letter of Credit is not renewed or extended as required, the Company  
19 will have the right to draw immediately upon the Letter of Credit and be  
20 entitled to hold the amounts so drawn as security. (Emphasis added.)

21 As just noted, drawing on the Letter of Credit makes the Company whole. Yet, it is  
22 understandable why the Company might not want to draw upon the Letter of Credit in all  
23 cases when a VLC cannot come up with a future security pledge because it may believe that

1 the VLC's problems may be temporary and can be worked out while the VLC continues to  
2 take service.

3 But once the Letter has expired, and if a new Letter is not forthcoming, then the  
4 Company no longer has a security pledge. If rather than being a temporary problem the  
5 failure to obtain the Letter of Credit for the coming year is simply the beginning of a long-  
6 term decline, the Company is left with unrecovered costs. In many cases what looks like a  
7 bad year is merely the beginning of a bad cycle, one that can end up with devastating  
8 financial consequences.

9 **Q. Please explain.**

10 A. In the technology sector, market dynamics have the potential to significantly transform an  
11 industry within a brief period. For example, Research in Motion, the firm that sold the  
12 ubiquitous Blackberry device (now BlackBerry Limited), traded at \$140 per share in mid-  
13 2008. By year end, its stock had plummeted to \$40, and today it trades at less than \$4 per  
14 share.

From: 02/04/1999 To: 01/01/2026

Zoom: 3M 1Y 2Y 5Y 10Y 20Y All



1  
2 BlackBerry Ltd. management asserted that the iPhone and Android phone were not serious  
3 threats because customers would prefer the “hard” QWERTY keyboard on the BlackBerry  
4 to the glass touch keyboard on the new phones. In 2008 that might have been a reasonable  
5 assumption as it was unclear whether the smartphone would be popular. In 2010 it appeared  
6 that BlackBerry Ltd. might be making a comeback. This is the “just give the VLC some  
7 time to work things out” scenario.

8 We now know that speculation that BlackBerry could fend off the iPhone was  
9 mistaken. The smartphone essentially eliminated demand for BlackBerry devices and by  
10 2012 BlackBerry Ltd. had lost 95% of its market value. It is still operating today but at its

1 current stock price it has now lost 98% of that former market value, which peaked above  
2 \$80 billion in 2008.

3 **Q. Did others miss the degree to which the iPhone would dominate the hand-held  
4 communications market?**

5 A. Yes. Microsoft CEO Steve Ballmer's famous 2007 quote about the iPhone's prospects  
6 provides a quintessential example.

7 There is no chance that the iPhone is going to get any significant market  
8 share. No chance.<sup>1</sup>

9  
10 If leaders of tech giants can miss the mark by such a wide margin, no one in this proceeding  
11 can seriously purport to have unobstructed vision of the technological landscape even a few  
12 years from today.

13 Consideration of worst-case scenarios is not theoretical or an academic exercise. The  
14 AI data center wave and investment frenzy has spawned concerns about whether this wave  
15 of investment constitutes a bubble and whether and when that bubble will burst. This has  
16 been well documented in the business press. The Commission needs to be cognizant of the  
17 context of these concerns, being raised by investors on Wall Street and in academia.<sup>2</sup> It is  
18 therefore essential to proactively address the potential for such a scenario with a Very Large  
19 Customer default now rather than waiting for problems to arise.

20 **Q. Are there other companies that have had financial difficulty in recent years?**

21 A. Yes. There is a long list of famous companies that have filed for bankruptcy protection in  
22 the 21<sup>st</sup> century.<sup>3</sup>

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<sup>1</sup> <https://www.cultofmac.com/apple-history/steve-ballmer-iphone-stomp> (The item cited herein is not record evidence unless separately offered as an exhibit. (NRE))

<sup>2</sup> Big Tech Faces Tough Questions Over the A.I. Spending Spree - *The New York Times* Andrew Ross Sorkin, et al, New York Times, Oct. 29, 2025 (NRE)

<sup>3</sup> <https://www.watchmojo.com/articles/top-20-companies-that-went-bankrupt> (NRE)

20 Large Companies that Sought Bankruptcy Protection in the 21 <sup>st</sup> Century		
Bed, Bath & Beyond	Enron	Sears Holdings
Blockbuster	General Motors	Tower Records
Borders	Lehman Brothers	Toys R Us
CIT Group	Marvel	The Weinstein Co.
Circuit City	Nortel	Washington Mutual
DeLorean Motor Co.	Pacific Gas & Electric (twice)	WorldCom
Eastman Kodak	Pan Am	

1  
2 The speed at which these downfalls can occur is frightening. In August 2000 Enron was the  
3 seventh largest U.S. firm in terms of market value. Its stock traded at \$90.75 per share  
4 giving it a market capitalization of more than \$60 billion in 2000 dollars. Only sixteen  
5 months later, Enron stock would be worthless as it entered bankruptcy protection  
6 proceedings.

7 **Q. How rapidly did Enron implode?**

8 A. On October 29, 2001, Moody's affirmed its Baa1 bond rating for Enron; only 34 days later,  
9 on December 2, 2001, Enron filed for bankruptcy protection. When companies encounter  
10 financial difficulties, they often have limited motivation to fully disclose the extent of their  
11 challenges; Enron serves as a notable example of this tendency.

12 This suggests that maintaining an investment grade bond rating has limited value in  
13 terms of providing long-term surety that the Very Large Customer can meet its obligations.  
14 Therefore, an investment grade bond rating provides little early warning of a revenue  
15 shortfall and it should not eliminate the need for the customer to provide the sorts of  
16 financial security set forth in the tariff.

17 **Q. How does this relate to the tariffs?**

1 A. The company's tariffs state that if the VLC can maintain an investment-grade bond rating,  
2 together with either a defined amount of Tangible Net Worth or liquidity, it does not have to  
3 provide financial security pledges. At Ex.-WEPCO-Stasik-4, page 13 the tariff<sup>4</sup> reads:

4 ... [T]hat [VLC] customer shall not be obligated to provide the Very Large  
5 Customer Security to the Company on or before the Effective Date if  
6 customer has, as of the Effective Date, and maintains (1) credit ratings with  
7 respect to customer's long-term, senior, unsecured, non-credit enhanced  
8 indebtedness of not lower than "BBB" from Standard & Poor's Financial  
9 Services LLC or any successor ("S&P") and "Baa2" from Moody's  
10 Investors Service, Inc. or any successor ("Moody's"), and (2) either (i)  
11 Tangible Net Worth, net of its Commitments and Contingent Liabilities, of  
12 2.0x the required Very Large Customer Security amount or (ii) liquidity, as  
13 calculated in a commercially reasonable manner at the discretion of the  
14 Company and as evidenced by providing quarterly financial statements and  
15 certifications, greater than 10x the required Very Large Customer Security  
16 amount (collectively, the "Bespoke Resource Financial Support  
17 Requirements").

18  
19 We can see that exempting any company in this regard is ill advised. We suggest that the  
20 Commission strike that section of the tariffs, making it mandatory that all VLCs supply a  
21 security pledge.

22 **Q. Does the requirement to have and maintain a minimum Tangible Net Worth or  
23 liquidity solve the problem?**

24 A. No. There are at least two problems with relying on these financial measures as a backstop.  
25 First, in times of acute financial distress, the customer's net worth and liquidity may  
26 evaporate too quickly for Wisconsin Electric to respond. Under the proposed tariffs, if a  
27 VLC fails to maintain its level of Tangible Net Worth or liquidity, it may be required to  
28 obtain financial security, such as a letter of credit. But a company suffering such financial  
29 distress would have a difficult, if not impossible, task obtaining a sizable (potentially multi-  
30 billion) letter of credit at the worst possible time.

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<sup>4</sup> Substantially similar language is found at Ex.-WEPCO-Stasik-2, at p. 20.

1                   Second, the Tangible Net Worth or liquidity requirement depends entirely on the  
2                   customer's own representations about its financial condition, with no meaningful remedy to  
3                   address false representations or a customer's failure to provide a timely update. With no  
4                   monitoring or reporting requirements, Wisconsin Electric could be in the dark about a  
5                   customer's financial situation until far too late.

6                   **Q. Are there any other issues with the proposed Financial Security provisions?**

7                   A. Yes. The proposed language also states that "The Company retains sole discretion to waive  
8                   any of the Bespoke Resource Financial Support Requirements." This level of unilateral  
9                   discretion has the potential to fundamentally undermine the purpose of requiring Financial  
10                   Security in the first place.

11                   **Q. How do you propose the Commission address this issue?**

12                   A. I recommend that the Financial Security section of the Bespoke Resources tariff, section 8a,  
13                   be modified to read only as:

14                   On or prior to the date the Commission approves the applicable Resource  
15                   Agreement (the "Effective Date"), customer shall provide to the Company,  
16                   and thereafter maintain, financial security for its obligations under this tariff  
17                   and such Resource Agreement in an amount equal to the aggregate net book  
18                   value of all Bespoke Resources to which customer is subscribed at such  
19                   time, as reasonably determined by the Company, including the Bespoke  
20                   Resource that is the subject of the applicable Resource Agreement (the  
21                   "Very Large Customer Security"), which shall be determined by October 15  
22                   of each year by the Company and replenished by customer effective January  
23                   1 of each year.

24                   **RECOVERING UNCOLLECTED COSTS**

25                   **Q. How do the tariffs propose to address the issue of unrecovered costs?**

26                   A. The Company starts with the assumption that the Commission should try to transfer the  
27                   costs to another Very Large Customer or to core customers. At Ex.-WEPCO-Stasik-4 we  
28                   find the following:

Termination after Commercial Operation of the Bespoke Resource In the event customer terminates the Resource Agreement after the Bespoke Resource is placed in service, the customer will be obligated to reimburse the Company for the net book value of the Bespoke Resource at the time of termination of Customer's Share, including any and all capital costs for the Customer's Share, including invested capital and any accumulated AFUDC. Company will evaluate the need for such Bespoke Resource and if needed to serve other customers will, subject to Commission approval, move the Customer's Share into the Company's rate base or to assign it directly to another customer under an applicable Company tariff. If the Commission does not authorize recovery or assignment of such costs for the Customer's Share, customer shall be obligated to reimburse Company, subject to Company's mitigation of such costs. If the Commission approves moving the Customer's Share into the Company's rate base or assigning it directly to another customer under an applicable Company tariff, customer will not be obligated to reimburse the Company for any additional costs, including invested capital and accumulated AFUDC. (Emphasis added.)<sup>5</sup>

The tariff recognizes that Commission approval is required to transfer uncollected capital costs but notice that the word “shareholders” is not contained in this section. The Commission should address this omission to put investors on notice that it is a real possibility that they could absorb unrecovered costs associated with a Bespoke Resource. The tariff should add the language: “The shareholders of the company will absorb these unrecovered costs unless...” That is, because the assets are Bespoke the Company must start with the consistent idea that the shareholders have the initial obligation.

**Q. When would it be appropriate to transfer these costs to core customers?**

27 A. To answer that let us assume that there is not another Very Large Customer that needs the  
28 resource. Then, transferring costs to core customers would be appropriate only if those  
29 customers needed additional capacity and the Bespoke Resource were the most cost-  
30 effective means of meeting that need. This raises a CPCN-like<sup>6</sup> assessment of asset

<sup>5</sup> Ex.-WEPCO-Stasik-4 Page 11 of 16

<sup>6</sup> I take no position on whether a formal CPCN is needed, though I note that the Company acknowledges that it "would need to seek Commission approval by way of an application seeking a Certificate of Authority to make that

1 necessity at the time of proposed transfer to the rate base. Even though a Bespoke asset  
2 would have a CPCN, that does not meet the requirement for transferring a Bespoke  
3 Resource to the rate base. In other words, the Company must demonstrate two things: first,  
4 that the resource is necessary to serve the customers who remain, and second, that it is the  
5 most cost-effective method to meet that need. Absent either of those findings, shareholders  
6 should absorb the unrecovered costs.

7 **Q. How do you propose that the Commission address this issue?**

8 A. In the order in this proceeding, the Commission should include an order provision that states  
9 that there is no presumption of entitlement that shareholders are insulated from unrecovered  
10 costs. The Commission will make that determination as to cost recovery responsibility in  
11 any proceeding in which the Company proposes to allocate unrecovered costs to some other  
12 group, either other Very Large Customers or to core customers.

13 **Q. Does this conclude your testimony?**

14 A. Yes.

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transfer into general rate base". Ex.-PSC-DRR: TCM-2.16. The point is that the proposed transfer raises the same questions of need and cost effectiveness present in a CPCN proceeding.