

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Joint Application of Wisconsin Electric Power Company and
Wisconsin Gas LLC for Authority to Adjust Electric, Natural
Gas, and Steam Rates

Docket No. 5-UR-111

INITIAL BRIEF OF THE CITIZENS UTILITY BOARD

I. INTRODUCTION

This is a biennial rate case proceeding to consider the request of Wisconsin Electric Power Company (WEPCO) and Wisconsin Gas LLC (WG) (collectively, “Applicants,” “Utilities,” or “Companies”) to raise customer rates starting January 1, 2025 (test year 2025) and then again starting January 1, 2026 (test year 2026).¹ If the Companies’ rate increase requests were fully approved, WEPCO electricity customers in Wisconsin would see a test year 2025 increase of approximately 6.9% (\$239.6 million) followed by a test year 2026 increase of approximately 4.8% (\$183.7 million), WEPCO gas customers would see a test year 2025 increase of approximately 10.0% (\$57.5 million) followed by a test year 2026 increase of approximately 4.6% (\$31.0 million), and WG gas customers would see a test year 2025 increase of approximately 8.2% (\$67.7 million) followed by a test year 2026 increase of approximately 3.3% (\$30.6 million).²

Considering residential customers specifically, the Company’s request would increase average residential bills by nearly 19% over 2025 and 2026, far outpacing the Fed-projected

¹ Ex.-WEPCO WG-Application: Application Filing Letter-r (PSC REF#:499071) (April 24, 2024).

² Ex.-WEPCO WG-Zgonc-1: Schedule 1. WEPCO Valley Steam is also seeking a rate increase, of \$2.5 million (8.4%) for test year 2025.

4.75% increase in the overall cost of living projected for 2025-26.³ This follows the steady climb in electric bills that the Companies' residential and small commercial customers have taken on since 2005, which grew steeper starting in 2020.⁴ Under the Companies' proposed rates, a typical electricity customer would be paying 36% more, an extra \$40 per month, in January 2026 compared with their monthly bill in December 2022, yielding more than \$486 in additional revenue *per typical customer* just for WEPCO electric.⁵ This shower of customer dollars on the Utilities' shareholders precedes the Utilities' stated intention to expand their rate base by approximately 7.3 gigawatts of generation and energy storage capacity by 2030 at cost to be determined.⁶

In this brief, CUB will address the justness and reasonableness of the requested rate increases by considering the implications of the increases on the Utilities and on customers, in the context of the issues, which are:

Should the Commission grant in whole or in part the applicants' request for electric, natural gas, and steam utility rate increases, and if so, under what terms and conditions?

1. What are the applicants' revenue requirements for electric, natural gas, and steam service?⁷
2. What is the cost of service as related to each customer class?
3. What is the appropriate rate design, including service rules, for each customer class?⁸

CUB requested to intervene in this proceeding on behalf of the public interest on April 17, 2024. In this brief CUB describes the affordability pressures facing customers and contrasts these household financial challenges with the superior market performance of the Utilities' parent company, WEC Energy Group (WEC). Through the required lens of just and reasonable

³ Ex.-WEPCO WG-Nelson-10-2,4; Direct-CUB-Content-r-5.

⁴ Direct-CUB-Singletary-r-6: Figure 1.

⁵ Direct-CUB-Content-r-5.

⁶ *Id.*; Ex.-CUB-Singletary-9.

⁷ The application included a proposed 2025 fuel cost plan required under Wis. Admin. Code § PSC 116.03.

⁸ Prehearing Conference Memorandum (PSC REF#:505921) (June 20, 2024).

ratemaking as a balance between customers and shareholders, CUB recommends the Commission:

For the reasons discussed in this brief, and based on the record of evidence in this proceeding, CUB respectfully recommends the Commission:

- require Applicants to present energy burden analyses when requesting rate increases;
- consider safeguards against customer funding for legal expenses that advance anti-customer, including anti-affordability, positions in regulatory proceedings;
- authorize ROEs of 9.3% and Common Equity Ratios of 53.0%;
- consider a revenue sharing mechanism (RSM) adjustment to account for uncertainty regarding Microsoft as a customer;
- authorize Applicants to depreciate the remaining net book value of Oak Creek Power Plant Units 5 & 6 and no longer earn a return on this book value once the plant is retired and thus no longer used and useful;
- authorize 4-year amortization of the requested LIFT deferral balance, require Applicants to further develop affordability programs, and consider requiring greater shareholder funding for programs needed to manage unaffordable utility bills;
- disallow Applicants' requested incentive compensation;
- disallow Applicants' requested association dues, advertising expenses, and board of directors costs unless these expenses benefit customers; require, in future rate cases, the Applicants to present detailed data showing customer benefits of any requested funding for these items;
- disallow plant in service additions for cost overruns and facilities not yet approved;
- require Applicants to file forestry management annual reports;

- reduce Applicants’ authorized FTE counts to reasonable levels; and
- disallow LDAR costs consistent with Staff’s recommendation.

Additionally, CUB respectfully recommends the cost allocation and rate design treatment described herein.

II. ARGUMENT

a. Just and Reasonable Ratemaking Must Consider Customers.

The Commission’s duty is to protect Wisconsinites’ interest in safe, reliable, affordable, and environmentally responsible utility services. As the WI Supreme Court held, “the primary purpose of the public utility laws in this state is the protection of the consuming public.”⁹

In rate case decisions, the Commission may only authorize those rates that it determines, based on the record of evidence, are just and reasonable.¹⁰ Establishing just and reasonable rates is not a mathematic problem but a matter of regulatory policy.¹¹ Presented with a record of evidence of varying degrees of relevance and persuasiveness, the Commission must weigh the evidence in light of competing public interests, and there is no formula for doing so.¹² A determination that rates are just and reasonable must be based on a fair process, facts, and proper quantitative and qualitative findings.¹³

⁹ *Wisconsin's Env't Decade, Inc. v. Pub. Serv. Comm'n*, 81 Wis. 2d 344, 351 (1978).

¹⁰ The charge made by any public utility. . shall be reasonable and just and every unjust or unreasonable charge for such service is prohibited and declared unlawful. Wis. Stat. § 196.03(1) (2019-20).

¹¹ *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 791 (1968) (“*Permian Basin*”); *Federal Power Commission v. Hope Natural Gas Co*, 320 U.S. 591, 602 (1944) (“*Hope*”).

¹² *See, e.g., Hope* at 602-603; *Mobil Oil Corps. v. FPC*, 417 U.S. 283, 305-306, 316 (1974); *Farmers Union Cent. Exchange, Inc. v. FERC*, 734 F.2d 1486,1502-1503 (D.C. Cir. 1984).

¹³ *Fed. Power Comm'n v. Nat. Gas Pipeline Co. of Am.*, 315 U.S. 575, 586 (1942) (“*Natural Gas Pipeline.*”) (“The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the Commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end.”)

Furthermore, a Commission “is obliged at each step of its regulatory process to assess the requirements of the broad public interests entrusted to its protection...”¹⁴ Investor-owned utilities (IOUs) frequently present their rate increase requests with selective portions of the *Hope* and *Bluefield* decisions that offer technical standards for fairness to investors, as Applicants do in this proceeding.¹⁵ But those cases, and the long line of Supreme Court decisions that preceded and follow them, do not limit themselves to discussing investor wants and needs. The jurisprudence considers customer fairness and the limits of investor expectations, reminding us that “. . . the fixing of ‘just and reasonable’ rates, involves a balancing of the investor and the consumer interests. Thus we stated in the *Natural Gas Pipeline Co.* case that ‘regulation does not insure that the business shall produce net revenues.’”¹⁶ An ROE analysis such as the Applicants’, focusing solely or overwhelmingly on shareholder and utility finance without adequate consideration of customer affordability, is incomplete. It is long held that

It cannot be said that a corporation. . . is entitled as of right, and without reference to the interests of the public, to realize a given per cent. upon its capital stock. . . , stockholders are not the only persons whose rights or interests are to be considered. The rights of the public are not to be ignored. It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders. But that involves an inquiry as to what is reasonable and just for the public.¹⁷

b. The Proposed Rate Increases Would Worsen Serious Affordability

Challenges Facing WEPCO and WG Customers.

As the utility industry experiences rapid and expensive change, customers are already struggling to pay their utility bills.¹⁸ To better understand the customer affordability

¹⁴ *Permian Basin at 791.*

¹⁵ See Direct-WEPCO WG-Bulkley-r-11, citing, generally, *Hope and Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923) (“*Bluefield*”).

¹⁶ *Hope at 603* (1944), citing *Fed. Power Comm'n v. Nat. Gas Pipeline Co. of Am.*, 315 U.S. 575, 590 (1942).

¹⁷ *Covington & Lexington Turnpike Co. v. Sandford*, 164 U.S. 578, 596 (1896).

¹⁸ Direct-CUB-Content-r-4-6.

implications of the Companies' proposed rate increases, CUB examined energy insecurity and energy poverty and undertook an energy burden analysis using data from the Utilities and other sources.¹⁹ The standard definition of energy burden designates a household as having a high energy burden when it spends 6% or more of its gross household income on energy bills and a severe energy burden when it spends 10% or more.²⁰ CUB's analysis shows that a significant percentage of households are experiencing high and even severe energy burdens.²¹

CUB, Walnut Way, the City of Milwaukee, and Staff contextualized energy burden within the broader discussion of energy insecurity, energy poverty, and unaffordability.²² When WEPCO and WG were asked directly how their proposed rate increases would affect their customers' energy burdens, the Companies admitted to undertaking no such analysis.²³ When confronted with their burden of proof with respect to the justness and reasonableness of their proposed rates for customers, the Companies doubled down on their refusal to provide such evidence unless explicitly ordered to do so by the Commission.²⁴ In fact, throughout this proceeding, the Companies put significant time and effort into criticizing Mr. Singletary's energy burden analysis,²⁵ minimizing Walnut Way's and other parties' affordability evidence, and interrogating parties rather than engaging with the customer affordability facts and proposals that parties and Staff presented or offering financial analysis from the consumer perspective. Walnut Way noted the bind the Utilities' customers are in when "ratepayers, already struggling with affordability, are essentially subsidizing legal strategies that may not serve their interests and

¹⁹ Direct-CUB-Singletary-r-9-25; Ex.-CUB-Singletary-1; Ex.-CUB-Singletary-2; Ex.-CUB-Singletary-3; Ex.-CUB-Singletary-4r; Ex.-CUB-Singletary-13.

²⁰ Direct-CUB-Singletary-r-10-11; Direct-WW-Colton-20-21.

²¹ Direct-CUB-Singletary-r-16; Ex.-CUB-Singletary-3.

²² Direct-CUB-Singletary-r-19-21; *see also* Direct-WW-Colton, Direct-WW-Butts, Direct-COM-Dimitrijevic, Direct-PSC-McFerren

²³ Ex.-CUB-Singletary-12.

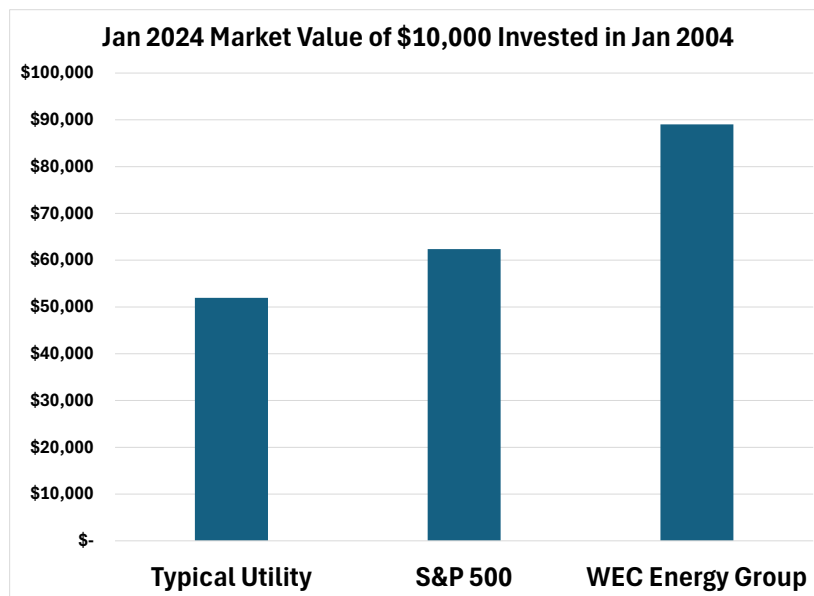
²⁴ *See* Sur-Surrebuttal-WPSC-Stasik-r-4.

²⁵ Rebuttal-WEPCO WG-Stasik-16-19.

could potentially worsen their financial situation.”²⁶ It is in the public interest that Applicants be discouraged from tactics that distract from customer affordability issues. CUB recommends that the Commission require utilities to file energy burden analyses as part of their rate case initial filing requirements, to thoroughly present current energy burdens alongside likely energy burdens should any requested rate increases go into effect.²⁷ CUB also supports Walnut Way’s recommendations for regulatory safeguards against unfettered WEC spending of customer funds on lawyers and witnesses who participate in rate cases to argue against customer affordability.²⁸

c. The Companies Have Long Outperformed Highly Competitive Businesses.

It could be expected, considering finance principles, that a reasonably regulated investor-owned monopoly utility would produce investor returns well below the returns for the S&P 500.²⁹ Yet WEC Energy Group has *outperformed* the broad market, as starkly illustrated by a comparison of the value of \$10,000 invested in the typical utility, the S&P 500, and WEC.³⁰



²⁶ Direct-WW-Butts-7.

²⁷ Direct-CUB-Singletary-r-12-13.

²⁸ Direct-WW-Butts-9-10.

²⁹ Direct-CUB-Kihm-36-37.

³⁰ *Id.* at 55.

As WEC recently boasted to its investors, presumably referring to its utilities collectively and interchangeably with the parent company itself, it is “[t]he only utility to beat [earnings per share (EPS)] guidance every year for 20 years running.”³¹ The Companies’ above-average ROEs in Wisconsin³² have fueled this growth.³³

d. Revenue Requirement Should Reflect the Broad Public Interest.

In light of the affordability pressures facing the Utilities’ customers, WEC’s extraordinary financial performance, and WEC’s massive 5-year capital investment plan for Wisconsin, which WEC recently increased by \$300 million,³⁴ a rebalancing of customer versus shareholder interests would serve the broader public interest. Increased expenses for the Utilities’ customers call for just and reasonable authorized ROEs in this proceeding and proper treatment of stranded costs such that financial burdens are shared between shareholders and customers.³⁵ The Commission should use all available tools to ensure that the rates customers pay recover only those investments, expenses, and utility returns that are essential to providing safe, reliable, affordable, and environmentally responsible service.³⁶

i. A reasonable reduction in the Applicants’ ROEs and common equity ratios would improve customer affordability with no impairment to the Utilities.

Both WEPCO’s and WG’s currently authorized ROE and financial Common Equity Ratio are 9.8% and 53.00% respectively.³⁷ In this proceeding, both Companies requested that the

³¹ Ex.-CUB-Content-4.

³² Direct-WEPCO WG-Bulkley-r-67.

³³ Direct-CUB-Kihm-55.

³⁴ Direct-CUB-Content-r-7-9; Ex.-CUB-Content-2; Ex.-CUB-Content-3.

³⁵ Direct-CUB-Content-r-4.

³⁶ *Id.* at 6.

³⁷ Final Decision at 12-13, 54-57 docket 5-UR-111, Joint Application of Wisconsin Electric Power Company and Wisconsin Gas LLC for Authority to Adjust Electric, Natural Gas, and Steam Rates (PSC REF#:455451) (Dec. 29, 2022).

Commission authorize an ROE of 10.0%³⁸ and a Common Equity Ratio of 53.5%.³⁹ Staff recommended an ROE of 9.65% based on an estimated range of 8.64 to 9.31%⁴⁰ and a Common Equity Ratio of 53.00%.⁴¹ Staff calculated that a change of 10-basis points in the ROE would adjust WEPCO electric revenue requirement in Wisconsin over the test years by approximately \$12.1 million, WEPCO gas revenue requirement by approximately \$2.5 million, and WG revenue requirement by approximately \$3.3 million.⁴² CUB recommends an ROE for the Companies of 9.3%⁴³ and no increase in the common equity ratio of 53.0%.⁴⁴ CUB also recommends that the Commission investigate the possibility of lowering the common equity ratio, given that at a weaker bond rating the Utilities and their customers may pay less for capital overall.⁴⁵

1. The Company's ROE framework is fatally incomplete.

The financial parameters of ROE and common equity ratio affect the extent to which customer funds provide cash flow that helps support the Utility's operations.⁴⁶ A higher ROE directly translates to higher utility bills for customers, while a lower ROE results in lower utility bills. Similarly, a higher common equity ratio means fewer tax savings related to debt financing, typically leading to higher costs for customers.⁴⁷ The law and the evidence support the Commission's centering its financial determinations on customers, including looking at household and small business finance, rather than considering customers as an afterthought.⁴⁸

³⁸ Direct-WEPCO WG-Bulkley-r-4.

³⁹ Direct-WEPCO WG-Bulkley-r-10.

⁴⁰ Direct-PSC-Tierney-r-2.

⁴¹ *Id.* at 6.

⁴² Direct-PSC-Maly-r-29-31.

⁴³ Direct-CUB-Kihm-2-55.

⁴⁴ *Id.* at 11-12.

⁴⁵ *Id.* at 9-12; Rebuttal-CUB-Kihm-10-12.

⁴⁶ Direct-WEPCO WG-Bulkley-r-60, 70.

⁴⁷ Direct-CUB-Kihm-11-12.

⁴⁸ *Id.* at 14.

Viewing macroeconomic conditions from a household finance perspective, short-term inflation is an inescapable challenge for the Companies' residential customers.⁴⁹ As Dr. Kihm testified, the cumulative effect of high inflation over the past few years remains embedded in retail food prices.⁵⁰ Yet, as the financial market evidence of utility stock prices reveals, investors have not only weathered short-term inflation but have prospered because of it.⁵¹ CUB analyzed energy burdens and contextualized customer energy and utility bills within broader customer finance challenges, concluding that the roughly 19% increase to average residential utility bills that the Companies are seeking in this proceeding will exacerbate the ongoing financial struggles of real people and families.⁵²

Just and reasonable ROE determinations must always consider customers. Yet the Company witness requesting a 20-basis point increase in authorized ROE and a substantial increase in common equity ratio provides 150 pages of testimony and 45 exhibits without once sincerely addressing customer affordability concerns. Indeed, the witness only acknowledges customers to state that certain financial outcomes for the Utilities are in the interest of both shareholders and customers⁵³ and to provide irrelevant commentary on the stand-alone ratemaking principle, which she curiously states is the "standard for setting the ROE in a jurisdiction."⁵⁴

Meanwhile, although CUB is Wisconsin's independent public interest *consumer* advocate,⁵⁵ Dr. Kihm's financial evidence thoroughly analyzes utility and shareholder finance through legitimate financial and policy lenses, demonstrating what a proper two-sided ROE

⁴⁹ Direct-CUB-Kihm-15.

⁵⁰ *Id.*

⁵¹ Surrebuttal-CUB-Kihm-4.

⁵² Direct-CUB-Singletary-r-9-25.

⁵³ Direct-WEPCO WG-Bulkley-r-5-6, 71-74; Rebuttal-WEPCO WG-Bulkley-r-34-35.

⁵⁴ Direct-WEPCO WG-Bulkley-r-13.

⁵⁵ Direct-CUB-Content-r-2-3.

analysis looks like. While infinitely high ROEs would satisfy the Company-centric, and incomplete, criteria for a just and reasonable ROE cited by the Companies' witness,⁵⁶ customers would be paying endlessly escalating rates to support that continued growth in share prices and dividends. As the U.S. Supreme Court said long ago, "[t]he public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends."⁵⁷

The Companies once again try to distract from their incomplete ROE analysis by offering misleading financial testimony and an incorrect analysis. For a utility ROE analysis to be valid, it must clearly differentiate ROE from the cost of equity.⁵⁸ ROE is the return on the book value of the utility's invested equity capital set by the commission,⁵⁹ while the cost of equity is an opportunity cost reflecting what investors expect to earn if they invest in comparable-risk stocks out in the market.⁶⁰ The cost of equity, inferred from market trading, offers a market benchmark against which to compare the Commission's authorized ROE.⁶¹ The cost of equity is not the target for the just and reasonable ROE but rather a minimum threshold return.⁶² Among the flaws in the Companies' ROE analysis, their witness repeatedly conflates ROE with cost of equity, testifying, for example, that "[a]n ROE that is adequate to attract capital at reasonable terms. . . should be commensurate with returns expected elsewhere in the market for investments of equivalent risk."⁶³ This demonstrates a misunderstanding of basic finance, a fatal lack of clarity, or both.

⁵⁶ See Direct-WEPCO WG-Bulkley-r-11-13.

⁵⁷ *Covington & Lexington Turnpike Co. v. Sandford*, 164 U.S. 578, 596 (1896).

⁵⁸ Direct-CUB-Kihm-47.

⁵⁹ *Id.*

⁶⁰ *Id.* at 4.

⁶¹ *Id.*

⁶² *Id.* at 30.

⁶³ *Id.* at 13, quoting Direct-WEPCO WG-Bulkley-r-127.

Once a cost of equity is estimated using proper finance principles and methods, the Commission must engage with the evidence regarding the proper balance between customers and shareholders and apply its discretion to determining a just and reasonable ROE. The Company fails to reach this step, instead treating the ROE determination as a math problem, thereby dodging the issue of customer affordability altogether.

The Commission itself described the role of the cost of equity, and of customers, in the ROE analysis as such:

The cost of equity, which is the minimum acceptable return, is a starting point. It would drive utility market values to book value, which eliminates the economic incentive for utilities to expand their systems. Under normal economic conditions, the fair return on equity lies above that minimum rate. Determining the fair return on equity involves matters of regulatory policy, such as the fact that Commission's present policy is to set biennial rates for a utility, which may slightly increase the rate of return, rather than conduct annual rate cases. The U.S. Supreme Court has made it clear that the establishment of a fair return on equity is not a mathematical exercise. *Federal Power Com'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944). No equation or model could provide the answer to such a complex public policy issue. The ultimate determination involves a balancing of consumer and investor interests.⁶⁴

2. The Commission should reject Applicants' flawed ROE analysis.

CUB's ROE financial analysis begins with the premise that a reasonable cost of equity estimate falls between the 10-year Treasury yield (currently 4.1%) and the S&P 500 cost of equity (estimated at 9.1% by Dr. Kihm).⁶⁵ Dr. Kihm estimated a utility cost of equity, which falls within this reasonable ROE range, using the Discounted Cash Flow (DCF) model⁶⁶ and the Capital Asset Pricing Model (CAPM).⁶⁷ The median return of CUB's DCF cost of equity

⁶⁴ *In re Madison Gas and Elec. Co.*, 2007 WL 2728443 (2007) at 12.

⁶⁵ Direct-CUB-Kihm-46.

⁶⁶ *Id.* at 49; Ex.-CUB-Kihm-1.

⁶⁷ Direct-CUB-Kihm-46.

estimates was 7.7%, and the median of his CAPM estimate was 6.8%, producing an overall median of 7.3%.⁶⁸ With the utility cost of equity replacing the yield on the U.S. Treasury bond as the lower bound for the just and reasonable ROE for the Applicant, the range is then the 7.3% utility cost of equity and the 9.1% S&P 500 cost of equity.⁶⁹ In Dr. Kihm's analysis, a 50-basis point reduction in the Applicant's authorized ROE, from 9.8% to 9.3% is just and reasonable as a gradual step toward more affordable rates.⁷⁰ The ROE analysis of Staff witness Tierney, which arrives at an ROE recommendation of 9.65%, is consistent with CUB's approach.⁷¹

The Companies' finance expert witness focuses in minute detail on certain inputs to cost of equity models.⁷² Yet the Companies' cost of equity estimates ranging from approximately 9% to 11.5%, can be summarily dismissed from a technical finance perspective because they fail to meet the definition of cost of equity.⁷³ That is, setting ROEs between 9 and 11.5% would not drive stock prices to book value but instead would allow utilities to create value for shareholders; at 11.5%, that shareholder value creation would be substantial.⁷⁴ Recall that the cost of equity is that return that would drive stock prices to book value, and it is a minimum threshold return.⁷⁵ CUB's recommended ROE is significantly above its estimated cost of equity.

3. A reduction in the Companies' authorized ROEs will not impair their ability to attract capital.

It goes without saying that reducing authorized ROE can cause capital losses for utility investors.⁷⁶ That is, if the Commission lowers the Companies' ROE, this could lower WEC's

⁶⁸ *Id.* at 49; Ex.-CUB-Kihm-1: Schedule 3.

⁶⁹ Direct-CUB-Kihm-49.

⁷⁰ *Id.* at 55-56.

⁷¹ Direct-PSC-Tierney-r-2.

⁷² *See* Rebuttal-WEPCO WG-Bulkley-r-1-8; *see also* Sur-Surrebuttal-WEPCO WG-r-Bulkley-1-16.

⁷³ *See* Direct-WEPCO WG-Bulkley-r-8-9; Direct-CUB-Kihm-32.

⁷⁴ Direct-CUB-Kihm-37-39.

⁷⁵ *Id.* at 44.

⁷⁶ *Id.* at 47.

stock price, and this is a valid consideration when determining just and reasonable rates.⁷⁷ But a reduction in market value as a result of a regulatory decision does not per se invalidate the order.

The *Hope* court wrote:

The fixing of prices, like other applications of the police power, may reduce the value of the property which is being regulated. But the fact that the value is reduced does not mean that the regulation is invalid.⁷⁸

Reducing ROEs can also temper cap ex bias, whereby ROEs that exceed cost of equity encourage a shareholder-focused IOU to incur capital expenditures rather than operating expenditures, even if it is more cost-effective to avoid the capital investment.⁷⁹ The bigger the gap between ROE and cost of equity, the more shareholders profit from capital investments and the greater the cap ex bias.⁸⁰ Tempering cap ex bias is in the public interest but not in the private interest of shareholders.⁸¹ Thus IOUs don't like to acknowledge cap ex bias. The Applicants in this proceeding also did not want to acknowledge CUB's legitimate concern that Company witnesses arguing for high ROEs might own WEC stock and therefore might have a personal financial stake in the outcome of this proceeding.⁸²

To distract from the private shareholder interests in high ROEs, the Applicants' present a pretextual public interest finance argument to support their request for high authorized ROEs: that lower ROEs may hinder the Utilities' ability to attract capital.⁸³ The Applicants offer no empirical evidence of their capital attraction myth. Indeed, finance principles, and any examination of real utilities and real investors in real markets, reveals no link, not even a weak

⁷⁷ *Id.* at 12.

⁷⁸ *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 601 (1944).

⁷⁹ Surrebuttal-CUB-Kihm-r-12

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Ex.-CUB-Kihm-5.

⁸³ Direct-WEPCO WG-Bulkley-r-12.

one, between a utility's ROE and capital attraction.⁸⁴ Consider the fact that Avista Corp and Duke Energy raised significant capital over 16 years with average ROEs of 7.7% and 7.5%, respectively.⁸⁵ Despite Applicants' claims, Avista, which is smaller than WEC, doubled its capital investment, and Duke Energy, which is larger than WEC, raised \$28 billion in capital while maintaining ROEs much lower than WEC's.⁸⁶ The Companies' own evidence showed that investor return expectations, i.e. costs of equity, were the same whether a utility earns an ROE of 8.0% or 14.5%.⁸⁷ These are proven financial facts, not opinions. At any ROE under consideration in this proceeding, the utility will have the same access to capital at the same cost rate.⁸⁸ The financial markets from which capital funds flow will always price utility securities to meet demand; this is how financial markets work.⁸⁹

The Companies' perpetually inflated ROEs have benefited shareholder private interests at the expense of customers and the public interest for decades.⁹⁰ Maintaining, let alone raising, the ROEs in this proceeding, when customers are struggling, will further harm customers.⁹¹ In considering the broad public interest in safe, reliable, and affordable utility service that the Commission is charged with protecting,⁹² the Commission should give weight to customer affordability so as to better balance the interests of customers and shareholders.⁹³

ii. CUB supports appropriate revenue sharing mechanisms.

⁸⁴ Direct-CUB-Kihm-19-29.

⁸⁵ *Id.* at 23; Ex.-CUB-Kihm-1: Schedules 8 and 9.

⁸⁶ Direct-CUB-Kihm-24.

⁸⁷ *Id.* at 19.

⁸⁸ *Id.* at 23.

⁸⁹ *Id.* at 16.

⁹⁰ *Id.* at 55.

⁹¹ Direct-CUB-Content-r-5-7.

⁹² *Wisconsin's Env't Decade, Inc. v. Pub. Serv. Comm'n*, 81 Wis. 2d 344, 351(1978).

⁹³ Direct-CUB-Content-r-7.

The Applicants proposed maintaining the current revenue sharing mechanism (RSM), whereby they retain revenue between 0- and 15-basis points above authorized ROE, return to the customers 50% of revenue over 15- and up to 75-basis points above the authorized ROE, and return to the customers all revenue 75-basis points or more above authorized ROE.⁹⁴ CUB supports an effective RSM⁹⁵ as a way to protect customers from excessive over-earnings.⁹⁶ Given that rate treatment of Microsoft is to be determined, CUB recommends that Commission consider lowering the threshold at which all revenue is returned to customers from 75-basis points above authorized ROE to 40-basis points above authorized ROE.⁹⁷

iii. A reasonable alternative to the Company’s proposed treatment of the retiring Oak Creek Power Plants Units 5 and 6 would be return of, but no profit on, the undepreciated balance.

The Commission previously ordered the Companies to submit in this rate case proceeding “the analysis as to how to address the remaining unrecovered book balance of the Oak Creek Power Plant (OCP).”⁹⁸ The Companies presented four scenarios⁹⁹ and are seeking Commission approval to transfer the undepreciated plant balance of OCPP, approximately \$714 million, into USOA Account 182.2 and amortize it to USOA Account 407, with carrying costs at WEPCO’s authorized weighted average cost of capital, over the plant’s remaining book life of 17 years.¹⁰⁰ CUB testified to the costs that WEPCO customers have paid for OCPP, since it went into service

⁹⁴ Direct-WPSC-Stasik-r2-18.

⁹⁵ Direct-CUB-Singletary-r-27.

⁹⁶ See Final Decision at 58, docket 5-UR-110, Joint Application of Wisconsin Electric Power Company and Wisconsin Gas LLC for Authority to Adjust Electric, Natural Gas, and Steam Rates, (PSC REF#: 455451) (Dec. 29, 2022).

⁹⁷ Rebuttal-CUB-Singletary-r-36.

⁹⁸ Final Decision at 11, order point 44, docket 5-UR-110, Joint Application of Wisconsin Electric Power Company and Wisconsin Gas LLC for Authority to Adjust Electric, Natural Gas, and Steam Rates, (PSC REF#: 455451) (Dec. 29, 2022).

⁹⁹ Ex.-WEPCO WG-Zgonc-4, Schedule 1.

¹⁰⁰ Direct-WEPCO WG-Zgonc-pr2-37-39.

in 1959, to keep it running and environmentally compliant into the future, including decades of ample ROEs to compensate shareholders for the risks (such as early retirement) of running such a plant.¹⁰¹ CUB thus recommended the Commission allow WEPCO to depreciate the remaining net book value of OCPP once it has retired but without a return on those dollars tied to plant no longer used and useful.¹⁰² CUB calculated that this would save customers \$326 million over an assumed 17-year recovery period, with a \$35.7 million reduction in 2026 revenue requirement.¹⁰³

In opposition to CUB's proposed treatment of OCPP, Mr. Stasik stated that "it is a bedrock principle of cost of service regulation that utilities are to be allowed the opportunity to recover not just the cost *of* investments made to provide utility service, but also a reasonable return *on* those investments."¹⁰⁴ Mr. Stasik neither cites legal authority nor explains how he believes the principle he posits applies to CUB's proposed recovery. In fact, it does not apply.

It is well within the Commission's discretion, and the bounds of the Takings Clause of the U.S. Constitution's Fifth Amendment, to allow WEPCO a return of but not on Columbia. The U.S. Supreme Court stated the bedrock "used and useful" regulatory principle in this way: "A state scheme of utility regulation, such as is involved here, does not 'take' property simply because it disallows recovery of capital investments that are not "used and useful in service to the public."¹⁰⁵ The used and useful principle applies to prudent investments. As the Court held:

. . . adoption of the "prudent investment" rule as the single constitutional standard of valuation would be inconsistent with the view of the Constitution that this Court has taken since *Hope Natural Gas* and would unnecessarily foreclose alternatives that could benefit both consumers and investors. The Constitution within broad limits leaves the

¹⁰¹ Direct-CUB-Singletonary-r-31-32.

¹⁰² *Id.* at 32.

¹⁰³ *Id.* at 33.

¹⁰⁴ See Rebuttal-WEPCO WG-Stasik-5.

¹⁰⁵ *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 299 (1989).

States free to decide what ratesetting methodology best meets their needs in balancing the interests of the utility and the public.¹⁰⁶

The question of a constitutional taking is an “ad hoc, factual inquir[y]” with several factors, including “[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations” and “the character of the governmental action.”¹⁰⁷ These are the facts on the record: WEPCO has received a generous return on OCPP throughout its years of operation.¹⁰⁸ Looking forward, WEC Energy Group anticipates “robust growth in asset base” of \$14 billion from 2023 to the end of 2028, with “compound annual EPS [earnings per share] growth of 6.5% to 7.0%.”¹⁰⁹ Mr. Singletary noted specific expenses, including cost associated with the already retired Pleasant Prairie Power Plant (P4) and “the continued torrent of new generation capital investment” either recently approved, pending before this Commission (including \$1.205 billion for South Oak Creek Combustion Turbine and \$456.3 million for Oak Creek gas pipeline), or yet to be proposed but contemplated by the Utility.¹¹⁰ If disallowing a return on the undepreciated OCPP balance would create an earnings hole for WEPCO, WEPCO is poised to more than fill it. Future investments represent not only shareholder wealth but also an unprecedented customer affordability crisis that must be met with reasonable new approaches to ratemaking.

As Mr. Content testified:

The energy transition is focusing attention to the issue of stranded costs from coal plants retiring before the end of their planned retirement dates, well before the depreciation schedules for those big investments have run their course. Given the wave of generation and transmission construction in WEC’s capital plan, the earnings opportunities in the years ahead are considerable. To achieve balance between shareholders and customers,

¹⁰⁶ *Id.*

¹⁰⁷ *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978) (citations omitted).

¹⁰⁸ Direct-CUB-Singletary-r-31-32.

¹⁰⁹ Ex.-CUB-Content-3: slide 3.

¹¹⁰ Rebuttal-CUB-Singletary-r-24-25; see Ex.-CUB-Singletary-9.

utilities and commissions should consider disallowing a return on no longer used and useful plant that's been taken out of service.¹¹¹

Not requiring customers to pay for shareholder profits on unused assets is not a new concept or tool, even if the Companies profess unfamiliarity with it. As commissions are recognizing, it is a just and reasonable approach when unprecedented additions to rate base loom large. For example, on February 28, 2023, the Minnesota Commission ordered that Minnesota Power be allowed recovery of but not on the undepreciated plant balance associated with the retired Taconite Harbor Energy Center (THEC).¹¹² The Minnesota Commission made no finding of imprudence on the part of Minnesota Power with respect to THEC and in fact as part of its integrated resource plan (IRP) proceeding had approved the idling and eventual retirement of THEC.¹¹³

More recently, Interstate Power and Light Company (IPL), an Iowa affiliate of Wisconsin Power and Light Company (WPL) voluntarily agreed to regulatory treatment of the retired Lansing Generating Station that would allow depreciation of but no return on Lansing's remaining net book value.¹¹⁴ On September 17, 2024, the Iowa Utility Commission approved this proposed treatment for Lansing.¹¹⁵ The order also provides for an authorized ROE of 9.65% and a common equity ratio of 51.0%. The Iowa Utility Commission described concern with new approaches, such as the concern Mr. Stasik raised in this proceeding,¹¹⁶ as peripheral to the larger issues facing utilities and customers.

¹¹¹ Direct-CUB-Content-r-9.

¹¹² Ex.-CUB-Singletary-15 (*In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-015/GF-21-335, Findings of Fact, Conclusions, And Order (February 28, 2023)); Direct-CUB-Singletary-35-36.

¹¹³ Surrebuttal-CUB-Singletary-r-5-7 citing *In the Matter of the Application of Minnesota Power*, Docket No. E-015/GF-21-335, at 13.

¹¹⁴ Direct-CUB-Singletary-r-33.

¹¹⁵ Ex.-CUB-Singletary-14 (*In re: Interstate Power and Light Company*, Final Decision and Order, Docket No. RPU-2023-0002 (Sept. 17, 2024)).

¹¹⁶ See Rebuttal-WPSC-Stasik-2; See also Surrebuttal-WPSC-Stasik-3.

Arguments that are often used within regulatory proceedings include “regulatory certainty” and “that is how it has always been done.” The Commission values regulatory certainty. . and the benefits that certainty provide; however, when there is a shift in expected customer load and/or generation type, it may be time to re-evaluate, especially when the utility is distinguished from its peer groups based on cost and customer affordability.¹¹⁷

The Commission should look beyond the Companies’ opposition to CUB’s proposal and consider it on the merits. Further, it should reject Mr. Stasik’s reckless repeated assertion that “[a]dopting Mr. Singletary’s proposal would be counter to Wisconsin’s decarbonization goals”¹¹⁸ as nothing more than a threat. Indeed, CUB encourages the Commission to step toward a future when decarbonization and customer affordability go hand-in-hand.

iv. Affordability programs like LIFT are valuable.

WEC previously represented the Low-Income Forgiveness Tool program (LIFT) as cost-neutral to non-participating customers,¹¹⁹ yet the Companies have requested recovery of \$88.5 million in 2025 and 2026 rates for LIFT.¹²⁰ LIFT helps qualifying customers reduce arrearage balances, get accounts into good standing, avoid late fees, and avoid disconnection/reconnection cycles.¹²¹ Payments from LIFT customers have risen from \$5.2 million in 2021 to \$16.1 million in 2022 and \$23.4 million in 2023,¹²² suggesting that WEPCO and WG are collecting more revenue from LIFT customers than they would if those customers were not participating in the program.¹²³ LIFT’s arrearage reduction and discounted service incentive essentially accelerate to bad debt what would otherwise appear in future write-offs.¹²⁴ As Mr. Singletary said, “Applicants’ customers bear the cost of unaffordable utility bills in the utility’s service territory

¹¹⁷ *Id.* at 13.

¹¹⁸ Rebuttal-WPSC-Stasik-7; Sur-surrebuttal-WPSC-Stasik-r-2.

¹¹⁹ Ex.-WW-Colton-21; Direct-WW-Colton-80-87.

¹²⁰ Direct-WEPCO WG-Stasik-r-15-18.

¹²¹ Direct-CUB-Singletary-r-22.

¹²² Direct-WPSC-Stasik-r-17.

¹²³ Direct-CUB-Singletary-r-22.

¹²⁴ Direct-WEPCO WG-Zgonc-pr-25.

with or without programs like LIFT in place. It is simply a question of *when* customers pay those costs.”¹²⁵ Accordingly, and given that the \$88.5 million¹²⁶ LIFT balance for WEPCO and WG was accumulated over the course of three years, CUB recommends amortization of the requested LIFT deferral balance over a four-year period rather than including it all in 2025 and 2026 revenue requirement.¹²⁷ This would prevent the pancaking of the existing deferred balance on top of the estimated \$46.5 million cost for each of the test years¹²⁸ and therefore ameliorate rate shock at a time when Applicants’ customers are already facing climbing bills.¹²⁹

CUB further points the Commission to the extensive evidence and expert recommendations in support of affordability programs for low-income customers that Walnut Way witness Mr. Colton supplied for the record.¹³⁰ CUB strongly supports LIFT and other affordability programs, which clear crucial customer pathways to getting accounts back in good standing and which relieve customers of the financial, health, and well-being stresses caused by the collections/disconnection/reconnection cycle.¹³¹ CUB recommends that the Commission (1) continue to require development of affordability programs and (2) consider in future proceedings the question of whether it is reasonable for customers to fully fund programs designed to manage unaffordable utility bills or whether such costs might better be shared between Applicants’ customers and Company shareholders.¹³²

v. WEC’s incentive compensation prioritizes shareholder wealth over customer affordability and should not be paid for by customers.

¹²⁵ Direct-CUB-Singletary-r-22.

¹²⁶ Direct-WEPCO WG-Stasik-r2-17-18.

¹²⁷ Direct-CUB-Singletary-r-24-25.

¹²⁸ Direct-WEPCO WG-Stasik-r2-18.

¹²⁹ *Id.*

¹³⁰ Direct-WW-Colton-r-30-96.

¹³¹ *Id.* at 25.

¹³² *Id.*

Staff recommended removing from revenue requirement the Applicants' requested recovery of non-labor short-term incentive compensation of \$15.6 million for 2025 and \$14.6 million for 2026, citing the Commission practice of excluding incentive plans based primarily on financial results and noting instances in which a utility "did not provide sufficient information in the record to demonstrate that the non-financial goals provided customer benefit."¹³³ The Company responded with unsubstantiated assertions that Applicants' incentive compensation programs provide direct customer benefits and that "[f]inancial discipline does not just benefit Applicants' shareholders, because Applicants' customers benefit from efficiencies through lower rates."¹³⁴ Yet the record indicates that the safety and "cost control" performance metrics relate to performance and costs affecting Company expenses and net income.¹³⁵ That is, the "cost control" incentive does not measure cost reductions that would be reflected in lower rates for customers; it measures cost savings that benefit the Company and shareholders. Moreover, Applicants' short-term incentive plan (STIP) uses similar metrics to the WPL STIP that the Commission rejected in Docket 6680-UR-124.¹³⁶

WEC's annual proxy statement filed with the U.S. Securities and Exchange Commission¹³⁷ shows that WEC ties performance compensation of company management to WEC's financial performance.¹³⁸ The metrics assess overall shareholder return, encompassing performance in multiple areas significant to shareholders – such as earnings per share, cash flow, and both authorized and earned return on equity – without addressing any incentives linked to

¹³³ Direct-PSC-Maly-r-16-18.

¹³⁴ Rebuttal-WEPCO WG-Zgonc-p-23-24.

¹³⁵ Rebuttal-CUB-Singletary-r-15, citing Ex.-PSC-Maly-7 and Ex.-PSC-DRR: Response PSCW-Maly-Vbl-9 08052024-1.

¹³⁶ Ex.-CUB-Singletary-8; Rebuttal-CUB-Singletary-r-16; *see* Direct-PSC-Maly-18.

¹³⁷ Ex.-CUB-Content-1

¹³⁸ Direct-CUB-Content-7.

the Applicants' performance on affordability or the customers' capacity to pay increasing bills.¹³⁹ The four large text boxes under the section of the 2024 Proxy Statement entitled "Most Important Performance Measures" are "Adjusted Earnings Per Share," "Net Income," "Cash Flow," and "Return on Equity."¹⁴⁰ As WEC reports to its investors, "Achievement of the Company's goals with respect to the financial measures highlighted above should drive strong TSR [Total Shareholder Return] performance for the Company relative to its peers."¹⁴¹ As Dr. Kihm showed, "improving" financial metrics, such as high ROEs and credit ratings, typically requires higher rates for customers. WEPCO and WG employee compensation programs that further incentivize behavior that boosts WEC shareholder wealth should not be funded by customers, for such programs are not in the customers' interest.

vi. The Companies' requests for association dues, advertising expenses, and board of directors costs should not be included in 2025-2026 rates unless Applicants demonstrate customer benefits.

The Companies are seeking recovery for association dues in an amount of \$1.74 million for 2025 and \$1.78 million for 2026, if CUB's calculations based on somewhat unclear information were correct.¹⁴² CUB believes the Company did not meet its burden of showing customer benefits associated with its dues requests, and so CUB agrees with Staff's removal of 100% of industry association dues from 2025 and 2026 revenue requirement.¹⁴³

With respect to advertising expenses, Staff similarly removed from rate recovery expenses for promotional advertising, institutional or goodwill advertising, and economic

¹³⁹ *Id.*

¹⁴⁰ Ex.-CUB-Content-1: P-70.

¹⁴¹ *Id.*

¹⁴² Direct-CUB-Singletary-r-29-30.

¹⁴³ Direct-PSC- Maly-r-10-11.

development, as those expenses provide no demonstrated ratepayer benefit.¹⁴⁴ CUB agrees with this disallowance.¹⁴⁵ Following the Commission’s recent stance on industry association dues, CUB recommends the Commission ensure only those advertising expenses benefiting customers are included in rates.¹⁴⁶ The Commission could require the Applicants to present detailed data in its next rate proceeding showing the customer benefits linked to advertising expenses for which they seek recovery.¹⁴⁷

The Companies are requesting that the customers fund roughly \$5.9 million in Board of Director (BOD) fees for the 2025 and 2026 test years, which appears to include \$3.03 million for “Board of Directors Deferred Compensation-Mark to Market.”¹⁴⁸ In addition, the Company is seeking recovery for \$3.70 million in Board of Director and Officer Insurance for the test years.¹⁴⁹ It is not clear that these expenses fund activities that benefit customers, and with respect to the “deferred compensation” item, it seems quite possible that this represents additional incentive compensation tied to corporate financial metrics.¹⁵⁰ As with association dues and advertising expenses, the Commission could find it reasonable to exclude these costs from 2025 and 2026 rates unless it can be demonstrated that they benefit customers.¹⁵¹ CUB recommends that the Commission, as part of its initial data request in future rate cases, require the Utility to present detailed data showing the customer benefits of Board of Director costs (including fees and insurance) for which it seeks reimbursement.¹⁵²

¹⁴⁴ Rebuttal-CUB-Singletary-r-3-4.

¹⁴⁵ *Id.* at 4-5; Direct-PSC- Maly-r-11-12.

¹⁴⁶ Rebuttal-CUB-Singletary-r-4-5.

¹⁴⁷ *Id.*

¹⁴⁸ Rebuttal-CUB-Singletary-r-28; Ex.-CUB-Singletary-10.

¹⁴⁹ Rebuttal-CUB-Singletary-28.

¹⁵⁰ *Id.* at 29.

¹⁵¹ *Id.*

¹⁵² *Id.*

vii. The Commission should disallow Applicants’ requested plant in service adjustments for cost overruns and facilities not yet approved.

The Company requested recovery of cost overruns for the Paris, Darien, Bluff Creek LNG, Ixonia LNG, and Badger Hollow II, and because the Commission did not authorize recovery of these additional costs, Staff removed their impact from the Companies’ revenue requirement.¹⁵³ The amounts to net reductions in revenue requirements for WEPCO of \$14.991 and \$17.861 million in 2025 and 2026, respectively.¹⁵⁴ CUB supports this disallowance.¹⁵⁵ The Companies did not provide evidence that the cost overruns were prudent,¹⁵⁶ beyond claiming that they negotiated all *force majeure* change orders “aggressively.”¹⁵⁷ A practice of adding cost overruns, whether or not the Utilities claim they are *force majeure*, to plant-in-service would shift all risk for projects from shareholders to customers, who are already paying high ROEs.¹⁵⁸ Furthermore, such a practice would hold customers accountable for the Companies’ inaccurate assumptions and flawed cost-benefit analyses in their construction applications, evidence that the Commission relies on when approving proposals.¹⁵⁹ Consistent with past Commission practice, CUB also recommends adopting Staff’s suggested disallowance of test year revenue requirements associated with capital projects that the Commission has not yet approved.¹⁶⁰

viii. WEPCO should present thorough information to support forestry management requests and undertake annual reporting.

¹⁵³ Direct-PSC-Maly-r-19-20, 22-26.

¹⁵⁴ *Id.* at 19-26.

¹⁵⁵ Rebuttal-CUB-Singletary-r-17-22.

¹⁵⁶ *Id.* at 19.

¹⁵⁷ Rebuttal-WEPCO WG-Zgonc-p-36-37.

¹⁵⁸ Rebuttal-CUB-Singletary-r-19-20.

¹⁵⁹ *Id.* at 20-21, citing Wis. Stat. § 196.49(3)(b).

¹⁶⁰ Direct-PSC-Maly-r-19-26.

Staff initially made a downward adjustment to WEPCO's requested forestry management funds due to the lack of evidence demonstrating a connection between the increased spending and customer reliability.¹⁶¹ Staff also noted that WEPCO's forestry management costs per mile were high compared to WPSC's.¹⁶² CUB supported Staff's adjustments and noted that the limited data Applicants provided made it difficult to draw meaningful trends regarding budget-to-actual forestry spending.¹⁶³ WEPCO subsequently provided additional information, supplementing the record.¹⁶⁴ CUB declined to offer a final opinion on the Company's forestry request but supports Staff's recommendation that the Commission require WEPCO to file an annual forestry management report that includes basic information regarding the Company's forestry management activities and expenditures.¹⁶⁵

ix. The evidence supports audit Staff's FTE recommendation.

CUB supports Staff's reduction in test year full-time equivalent (FTE) counts to reflect actual staffing levels from April 2024, which reduces 2025-2026 expenses by \$13.0 million.¹⁶⁶ The Utilities should without question be staffed at the level needed to prudently maintain safety and reliability, and they should be allowed to recover reasonable staffing costs from customers.¹⁶⁷ However, customers should not be funding positions that are vacant and that the evidence strongly suggests the Companies are unlikely to fill.¹⁶⁸ Nor should the Commission tolerate any suggestion, as WEPCO made in docket 6630-AF-101, that the Utilities might sacrifice reliability to protect shareholder earnings.¹⁶⁹ If the Commission decides not to adopt

¹⁶¹ Rebuttal-CUB-Singletonary-r-5; Direct-PSC-Maly-r-15; Direct-PSC-Craft-10; Ex.-CUB-Singletonary-7.

¹⁶² Direct-PSC-Craft-5, 11.

¹⁶³ Rebuttal-CUB-Singletonary-r-5-8; Ex-CUB-Singletonary-7.

¹⁶⁴ Rebuttal-WEPCO WG-Megna-1-

¹⁶⁵ Rebuttal-CUB-Singletonary-r-8, citing Direct-PSC-Craft-13-14.

¹⁶⁶ Rebuttal-CUB-Singletonary-r-10, citing Direct-PSC-Maly-14.

¹⁶⁷ Rebuttal-CUB-Singletonary-r-11-13.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 13.

Staff's FTE adjustments, CUB recommends the Commission (1) take a gradual approach by increasing FTEs incrementally, for example 25%, toward the Companies' requested amount and (2) order escrow accounting for any authorized FTE count above audit Staff's recommendation to allow for the refund of any funds associated with unfilled positions.¹⁷⁰

x. The evidence supports audit Staff's recommended disallowance of Applicants' request for leak detection and repair (LDAR) funds.

CUB supports Staff's \$5.8 million reduction for LDAR compliance because costs that are significantly uncertain should not be recoverable through rates, and CUB does not believe the Utilities have provided the evidence needed to support their request.¹⁷¹ If the Commission believes otherwise, it might consider granting the requested increase in annual expense for only the 2026 test year or requiring escrow accounting of LDAR expenses for the 2025 and 2026 test years to allow for true-up of unspent funds.¹⁷²

e. Cost Allocation and Rate Design Issues and Recommendations

CUB offered extensive testimony on cost allocation and rate design.¹⁷³ CUB believes that (1) a commission has broad discretion to set final rates based on the criteria and evidence it believes appropriate for determining that those rates are fair, just, and reasonable and (2) economic principles should guide rate design.¹⁷⁴ These include the "cost-causer – cost payor" principle, which, while not a legal requirement for rate design, this Commission has historically used.¹⁷⁵ Sound economic principles for utility rates, synthesized from Bonbright, Garfield and Lovejoy, and the Regulatory Assistance Project (RAP) are:

¹⁷⁰ Rebuttal-CUB-Singletary-r-13-14.

¹⁷¹ Rebuttal-CUB-Singletary-r-8-9; *see* Direct-PSC-Maly-r-13-14.

¹⁷² Rebuttal-CUB-Singletary-r-9-10.

¹⁷³ Direct-CUB-Singletary-r-36-63.

¹⁷⁴ *Id.* at 37-41.

¹⁷⁵ *Id.* at 39-40.

- Utility rates should be forward-looking and reflect long-run marginal costs;
- Utility rates should focus on the usage components of service, which are the most cost- and price-sensitive;
- Utility rates should be simple and understandable;
- Utility rates should recover system costs in proportion to how much electricity consumers use and when they use it;
- Utility rates should give consumers appropriate information and the opportunity to respond by adjusting usage;
- Utility rates should be temporally and geographically dynamic, when and where possible;
- A customer should be able to connect to the grid for no more than the cost of connecting to the grid;
- Customers should pay for grid services and power supply in proportion to how much they use these services and how much power they consume; and
- Customers who supply power to the grid should be fairly compensated for the full value of the power they supply.¹⁷⁶

Guided by these principles, CUB examined the six COSS methods requested by Staff¹⁷⁷ and recommends adopting an electric revenue allocation within the range of class results bound by COSS Methods 5 and 6.¹⁷⁸ CUB's Proposed COSS B would provide additional rate relief while still being cost-based according to COSS Method 6. CUB views Staff's proposed revenue allocation as based on flawed assumptions but preferable to WEPCO's proposed allocation.¹⁷⁹

CUB supports WEPCO's proposal to maintain its rate design structure for residential and small C&I customers—that is to maintain the current customer charge—whereby any revenue change for these customer classes will be implemented through a change in the energy charges, which depends on the Commission's decision on class revenue allocation.¹⁸⁰ CUB supports the

¹⁷⁶ Direct-CUB-Singletary-r-37-41; Ex.-CUB-Singletary-5r; Rebuttal-CUB-Singletary-r-31-33.

¹⁷⁷ Ex.-CUB-Singletary-6; Direct-CUB-Singletary-r-52-61.

¹⁷⁸ Direct-CUB-Singletary-r-60; Rebuttal-CUB-Singletary-r-32-33.

¹⁷⁹ Rebuttal-CUB-Singletary-r-30-34.

¹⁸⁰ Direct-CUB-Singletary-r-60-61.

general direction of WEPCO’s proposed rate design for residential and small commercial customers, adjusted for final class revenue responsibility.¹⁸¹ For practicality, CUB recommends that the Commission allocate any final revenue requirement adjustments on a class pro-rata basis based on its preferred general revenue allocation results.¹⁸²

For gas, CUB testified that the COSS A and COSS B results, which Staff requested Applicants prepare, provide for a range of reasonableness from which the Commission could select a final gas revenue allocation, with COSS B being preferable in light of customer affordability challenges (for both gas and electric).¹⁸³ CUB again recommends that the Commission allocate any final revenue requirement adjustments on a class pro-rata basis based on its preferred general revenue allocation results.¹⁸⁴

Consistent with the evidence Staff presented, CUB recommends that the Commission direct the Utilities to provide additional information regarding disconnection and reconnection practices and costs, both physical and remote, in their next proceeding.¹⁸⁵ CUB also supports Staff’s suggestion that the Utilities set its non-sufficient charge fee based on the average of the range of financial institution fees they incur, which would recover costs without punishing customers who are struggling financially.¹⁸⁶

Finally, with respect to large potential customer Microsoft, CUB recognizes Microsoft’s commitment to “paying its own way.”¹⁸⁷ CUB notes that the Cp-1 tariff is meant to recover average embedded costs, while a market-based tariff typically only recovers directly assignable

¹⁸¹ Direct-CUB-Singletonary-r-61.

¹⁸² *Id.* at 63.

¹⁸³ Direct-CUB-Singletonary-r-61-63; Rebuttal-CUB-Singletonary-r-36-37.

¹⁸⁴ Direct-CUB-Singletonary-r-63.

¹⁸⁵ Rebuttal-CUB-Singletonary-r-37.

¹⁸⁶ *Id.* at 38.

¹⁸⁷ Rebuttal-CUB-Singletonary-r-35, quoting Direct-Microsoft-Stephens-3-4.

or marginal costs associated with the customer and thus would tend to collect less revenue.¹⁸⁸ CUB is concerned about the Microsoft tariff unknowns, given that a WEPCO windfall could result from assuming a market-based EITM rate for Microsoft in the test years but Microsoft ultimately taking service under Cp-1.¹⁸⁹ Accordingly, the Commission may wish to modify WEPCO's RSM as previously described to ensure that any WEPCO windfalls from inaccurately forecasted revenues associated with Microsoft are returned customers rather than shifted to WEC shareholders.¹⁹⁰

III. CONCLUSION

For the reasons discussed in this brief, and based on the record of evidence in this proceeding, CUB respectfully recommends the above.

CUB appreciates the opportunity to represent Wisconsin customers in this proceeding and to participate on behalf of the public interest.

Dated this day, October 1, 2024.

Respectfully Submitted,

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¹⁸⁸ Rebuttal-CUB-Singletary-r-35-36.

¹⁸⁹ *Id.* at 36.

¹⁹⁰ *Id.*