

WISCONSIN ENERGY CORP  
Form S-8  
October 28, 2011

As filed with the Securities and Exchange Commission on October 28, 2011

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM S-8**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**WISCONSIN ENERGY CORPORATION**

(Exact name of Registrant as specified in its charter)

Wisconsin  
(State or other jurisdiction of  
incorporation or organization)

39-1391525  
(I.R.S. Employer  
Identification No.)

**231 West Michigan Street**

**P.O. Box 1331**

**Milwaukee, Wisconsin**  
(Address of principal executive offices)

**53201**  
(Zip Code)

**WISCONSIN ENERGY CORPORATION**

**1993 OMNIBUS STOCK INCENTIVE PLAN,**

**AS AMENDED AND RESTATED**

(Full title of the plan)

**J. Patrick Keyes**

**Vice President & Treasurer**

**231 West Michigan Street**

**P.O. Box 1331**

**Milwaukee, Wisconsin 53201**

**(414) 221-2345**

(Name, address and telephone number, including area code, of agent for service)

*Copy to:*

**John T. W. Mercer, Esq.**

**Mercer Thompson LLC**

**191 Peachtree Street, Suite 4410**

**Atlanta, Georgia 30303**

**(404) 577-4200**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

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Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

<b>Title of securities to be registered</b>	<b>Amount to be registered (1)</b>	<b>Proposed maximum offering price per share (2)</b>	<b>Proposed maximum aggregate offering price (2)</b>	<b>Amount of registration fee</b>
Common Stock, \$0.01 par value per share	33,000,000	\$32.80	\$1,082,400,000	\$124,044

- (1) Pursuant to Rule 416 of the Securities Act of 1933 (the Securities Act ), as amended, this Registration Statement also covers an indeterminate number of additional shares of common stock that may be issued to prevent dilution resulting from stock splits, stock dividends or similar transactions pursuant to the adjustment provisions of the Wisconsin Energy Corporation 1993 Omnibus Stock Incentive Plan, as Amended and Restated.
- (2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) of the Securities Act, these figures are based on the average of the high and low sale prices of the Common Stock as reported in the New York Stock Exchange consolidated reporting system on October 25, 2011.

**EXPLANATORY NOTE**

This Registration Statement is filed by Wisconsin Energy Corporation ( WEC or the registrant ) to register an additional 33,000,000 shares of WEC s Common Stock for issuance under the Wisconsin Energy Corporation 1993 Omnibus Stock Incentive Plan, as Amended and Restated (the Plan ), for which an earlier registration statement on Form S-8 filed on July 18, 2001 (Registration No. 333-65356) is and shall remain effective until all of the respective shares registered thereby are sold. The increase in the number of shares authorized for issuance under the Plan was approved by WEC s stockholders at the 2011 Annual Meeting of Stockholders, held on May 5, 2011. In addition to the 33,000,000 newly authorized shares, the Plan is also authorized to issue: (i) the 1,319,272 shares of WEC Common Stock remaining available for grant under the Plan; and (ii) the shares of WEC Common Stock subject to awards outstanding under the Plan. For this Registration Statement, the registrant has elected not to rely upon General Instruction E to Form S-8, which permits the filing of an abbreviated registration statement for the registration of additional securities for an employee benefit plan for which an earlier Form S-8 registration statement is effective. Instead, this Registration Statement responds to all applicable items of Form S-8.

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

Information specified in Part 1 of Form S-8 (Items 1 and 2) will be sent or given to Plan participants as specified by Rule 428(b)(1) of the Securities Act.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents are incorporated by reference in this Registration Statement:

- (a) The registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2010.
- (b) The registrant's Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2011 and June 30, 2011.
- (c) The registrant's Current Reports on Form 8-K filed on January 12, 2011, January 21, 2011, February 16, 2011, February 28, 2011, May 10, 2011 (as amended on July 29, 2011), May 26, 2011, and October 6, 2011.
- (d) The description of the registrant's Common Stock contained in its Current Report on Form 8-K, filed on September 1, 1999 (which updates and supersedes the description in the registrant's Registration Statement on Form 8-B dated January 7, 1987, as previously updated), including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the registrant pursuant to Sections 13(a), 13(c), 14, and 15(d) of the Securities Exchange Act of 1934, as amended, prior to the filing of a post-effective amendment which indicates all securities offered hereby have been sold or which deregisters all securities remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents; provided, however, that documents or information deemed to have been furnished and not filed in accordance with Securities and Exchange Commission rules (including information furnished under Items 2.02 and 7.01 of any Current Report on Form 8-K) shall not be deemed incorporated by reference in this Registration Statement unless specifically stated otherwise.

Any statement contained herein or in a document incorporated or deemed to be incorporated by reference in this Registration Statement shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified, to constitute a part of this Registration Statement.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Joshua M. Erickson, Counsel of Wisconsin Electric Power Company ( WEPCO ), a wholly-owned subsidiary of WEC, has passed upon the legality of the shares of Common Stock of WEC to be issued under the Plan. Mr. Erickson is a full-time employee of WEPCO, is eligible to participate in the Plan, and beneficially owns, or has options to acquire, shares of WEC's Common Stock.

**Item 6. Indemnification of Officers and Directors.**

WEC is incorporated under the Wisconsin Business Corporation Law ( WBCL ).



Under Section 180.0851(1) of the WBCL, WEC is required to indemnify a director or officer, to the extent such person is successful on the merits or otherwise in the defense of a proceeding, for all reasonable expenses incurred in the proceeding if such person was a party because he or she was a director or officer of WEC. In all other cases, WEC is required by Section 180.0851(2) to indemnify a director or officer against liability incurred in a proceeding to which such person was a party because he or she was a director or officer of WEC, unless it is determined that he or she breached or failed to perform a duty owed to WEC and the breach or failure to perform constitutes: (i) a willful failure to deal fairly with WEC or its shareholders in connection with a matter in which the director or officer has a material conflict of interest; (ii) a violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful; (iii) a transaction from which the director or officer derived an improper personal profit; or (iv) willful misconduct.

Section 180.0858(1) provides that, subject to certain limitations, the mandatory indemnification provisions do not preclude any additional right to indemnification or allowance of expenses that a director or officer may have under WEC's Restated Articles of Incorporation, Bylaws, any written agreement or a resolution of the Board of Directors or shareholders.

Section 180.0859 of the WBCL provides that it is the public policy of the State of Wisconsin to require or permit indemnification, allowance of expenses and insurance to the extent required or permitted under Sections 180.0850 to 180.0858 of the WBCL, for any liability incurred in connection with a proceeding involving a federal or state statute, rule or regulation regulating the offer, sale or purchase of securities.

Section 180.0828 of the WBCL provides that, with certain exceptions, a director is not liable to a corporation, its shareholders or any person asserting rights on behalf of the corporation or its shareholders, for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a director, unless the person asserting liability proves that the breach or failure to perform constitutes any of the four exceptions to mandatory indemnification under Section 180.0851(2) referred to above.

Under Section 180.0833 of the WBCL, directors of WEC against whom claims are asserted with respect to the declaration of improper dividends or distributions to shareholders or certain other improper acts which they approved are entitled to contribution from other directors who approved such actions and from shareholders who knowingly accepted an improper dividend or distribution, as provided therein.

Articles V and VI of WEC's Bylaws provide that WEC will indemnify to the fullest extent permitted by law any person who is or was a party or threatened to be made a party to any legal proceeding by reason of the fact that such person is or was a director or officer of WEC, or is or was serving at the request of WEC as a director or officer of another enterprise, against expenses (including attorney fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such legal proceeding. WEC's Restated Articles of Incorporation and Bylaws do not limit the indemnification to which directors and officers are entitled under the WBCL.

Officers and directors of WEC are covered by insurance policies purchased by WEC under which they are insured (subject to exceptions and limitations specified in the policies) against expenses and liabilities arising out of actions, suits or proceedings to which they are parties by reason of being or having been such directors or officers.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

The following exhibits are filed or incorporated by reference with this Registration Statement:

- 4.1 Restated Articles of Incorporation of registrant, as amended and restated effective June 12, 1995. (Incorporated herein by reference to Exhibit (3)-1 to the registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 1995, File No. 001-09057.)
- 4.2 Bylaws of the registrant, as amended to May 5, 2005. (Incorporated herein by reference to Exhibit 3.2(b) to the registrant's Annual Report on Form 10-K for the year ended December 31, 2004, File No. 001-09057.)
- 4.3 Wisconsin Energy Corporation 1993 Omnibus Stock Incentive Plan, as Amended and Restated. (Incorporated herein by reference to Exhibit 10.1 to the registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2011, File No. 001-09057.)
- 5.1 Opinion of Joshua M. Erickson as to the legality of the securities being registered (to the extent such securities may be original issuance or treasury shares as opposed to market purchase shares).
- 23.1 Consent of Deloitte & Touche LLP.
- 23.2 Consent of Joshua M. Erickson (included as part of Exhibit 5.1).
- 24.1 Power of Attorney.

**Item 9. Undertakings.**

(a) Undertaking related to Rule 415 offering.

The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
  - (i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

- (iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in the Registration Statement;

*provided, however*, that paragraphs (1)(i) and (1)(ii) of this section do not apply if the registration statement is on Form S-8 and the information required to be included in a post-effective amendment by

those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) Undertaking relating to filings incorporating subsequent Securities Exchange Act of 1934 documents by reference:

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Undertaking relating to filing of registration statement on Form S-8:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit, or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Milwaukee, State of Wisconsin, on October 28, 2011.

**Wisconsin Energy Corporation**

By: \*  
Gale E. Klappa

Chairman of the Board, President, and Chief  
Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated:

**Signature**

\*

Gale E. Klappa, Chairman of the Board, President, Chief  
Executive Officer, and Director    Principal Executive Officer

\*

Frederick D. Kuester, Executive Vice President and Chief  
Financial Officer    Principal Financial Officer

\*

Stephen P. Dickson, Vice President and Controller    Principal  
Accounting Officer

\*

John F. Bergstrom, Director

\*

Barbara L. Bowles, Director

\*

Patricia W. Chadwick, Director

\*

Robert A. Cornog, Director

\*

Curt S. Culver, Director

\*

Thomas J. Fischer, Director

\*

Ulice Payne, Jr., Director

\*

Frederick P. Stratton, Jr., Director

\* By: /s/ J. Patrick Keyes  
J. Patrick Keyes  
As Attorney-in-Fact

October 28, 2011