

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of)	DOCKET U-190531
)	
WASHINGTON UTILITIES AND)	COMMENTS OF THE ALLIANCE OF
TRANSPORTATION COMMISSION)	WESTERN ENERGY CONSUMERS
)	
Inquiry into Valuation of Public Service)	
Company Property Used and Useful after)	
Rate Effective Date.)	
_____)	

I. INTRODUCTION

1 Pursuant to the Washington Utilities and Transportation Commission’s (“Commission”) July 5, 2019 Notice of Opportunity to File Written Comments in the above-referenced docket, the Alliance of Western Energy Consumers (“AWEC”) submits these comments. AWEC’s comments are in response to the Commission’s questions and do not indicate AWEC’s support for, or opposition to, ratemaking that includes property that has not yet been placed into service for the benefit of customers. Additionally, AWEC intends to review the comments of other stakeholders and reserves the right to refine or modify its position in response to those comments.

2 Overall, AWEC recommends that, if the Commission is to establish rates for a utility that includes property that will be placed into service during the rate effective period, it should review the prudence of these plant additions, and ensure that such additions have in fact occurred and benefit customers, in a subsequent rate case. Thus, if a utility requests a three-year rate plan, rates established in that rate plan would assume a level of plant investment over the rate-effective period, based on evidentiary support, and the actual investments made during this

period would be reviewed in the rate case immediately following the rate plan. AWEC recommends that the Commission refrain from a prescriptive approach over how plant that will be put in service during a rate plan is valued, and should address this on a case-by-case basis based on an evidentiary record. AWEC further recommends that the Commission require, as a condition of approving a multi-year rate plan, that the utility file a general rate case at the end of the rate plan so that plant additions may be reviewed relatively soon after they have been placed in service, and the utility's overall rates may be holistically determined following the rate plan.

3 AWEC does not recommend that the Commission hold separate processes for identifying and reviewing plant that is placed into service during the rate-effective period. The administrative burden of holding these separate processes would likely outweigh any benefits, especially if such a process can be undertaken within the scope of a subsequent general rate case.

4 If the Commission does review plant placed in service during the rate-effective period in a subsequent general rate case, AWEC recommends that the result of this review be a one-sided true-up to rates such that, if any investment is found to be imprudent or if the assumed rates were higher than necessary to recover investments made during the rate-effective period, the Commission would order a refund to customers. At least one other utility commission has authorized such a refund in the context of a multi-year rate plan.^{1/} This refund could be incorporated into rates established in the rate case in which the review occurred. If, conversely, it is determined that the utility invested more than what was assumed in rates, the Commission would not order a surcharge (thus making the true-up one-sided).

^{1/} Re Application of Northern States Power Co., Minnesota Public Utilities Comm'n Docket No. E-002/GR-13-868, 2015 WL 2210320, 320 P.U.R.4th 412 at *5-*6 (May 8, 2015).

5 This type of one-sided true-up is appropriate for several reasons. First, by authorizing a multi-year rate plan or attrition adjustment, the Commission is significantly reducing a utility's risk of cost recovery and providing the utility with more certainty and, thus, greater control over the ability to earn its authorized return. Denying additional cost recovery above what is authorized in a rate plan or attrition adjustment ensures that at least some risk remains on shareholders to justify the return they receive. Further, if a significant investment is required during the rate-effective period that was not anticipated when rates were set, utilities have the ability to file for deferred accounting. AWEC cautions, however, that particularly when a utility is in the middle of a multi-year rate plan, the ability to defer excess costs should be severely restricted to only the most extraordinary circumstances.

6 AWEC recognizes that a review of plant investments in a subsequent rate case with a one-sided true-up will provide a strong incentive for utilities to invest up to the level allowed by the authorized rates. While this is a downside, utilities already establish capital budgets that are informed by authorized rates, so this would not be a significant change from what already occurs. Further, the Commission can mitigate the incentive utilities will have to overspend by establishing rates in any rate plan or attrition adjustment that accounts for the incentive to spend to authorized levels. Rates established, in other words, should encourage utilities to invest as efficiently as possible.

7 AWEC does not believe that a one-sided true-up as described above would violate the rule against retroactive ratemaking. First, any refund to customers would be incorporated into new rates set in the rate case in which the review of plant investments occurred. As these rates are in effect going forward, retroactive ratemaking arguably is not implicated. Further,

even if it is implicated, Section 20(3) of SB 5116 appears to authorize a limited exception to the traditional bar against such ratemaking, as it provides that Commission must “identify, *review*, and approve public service company property that becomes used and useful for service in this state after the rate effective date” (emphasis added). As such a review necessarily comes after rates are set that assume the property being reviewed, an adjustment to previously set rates following such a review appears to be both contemplated and necessitated by the legislation.

8 Finally, the Commission asked whether pro forma plant additions should be considered under the same process used to review plant placed in service during the rate-effective period. If the Commission authorizes rates that include plant that has not yet been placed in service, either through a multi-year rate plan, attrition adjustment, or other mechanism, it should consider eliminating pro forma adjustments altogether. Plant that would otherwise be included in a pro forma adjustment should instead be included in rates that account for all future plant additions and be subject to the same review and true-up applicable to all future plant additions described above.

Dated this 5th day of August, 2019.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Tyler C. Pepple

Tyler C. Pepple, WSB # 50475
1750 SW Harbor Way, Suite 450
Portland, Oregon 97201
(503) 241-7242 (phone)
(503) 241-8160 (facsimile)
tcp@dvclaw.com
Of Attorneys for the
Alliance of Western Energy Consumers

PAGE 4 – COMMENTS OF THE ALLIANCE OF WESTERN ENERGY CONSUMERS

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97201
Telephone: (503) 241-7242