

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Rulemaking to Address Electric and Natural
Gas Cost of Service

DOCKETS UE-170002 and UG-170003

COMMENTS OF PUBLIC COUNSEL

1. The Public Counsel Unit of the Washington Attorney General’s Office (“Public Counsel”) submits the following comments pursuant to the Notice of Opportunity to File Written Comments on Proposed Rules dated February 12, 2020.

I. INTRODUCTION

2. Public Counsel appreciates the efforts of the Utilities and Transportation Commission Staff (“Staff”) and the broad range of stakeholders who have participated in the cost of service rulemaking. These dockets were initiated as collaboratives in which the stakeholders were tasked to identify the areas in which they could agree, despite their divergent viewpoints. Each of the stakeholders entered the conversations regarding cost of service with a collaborative, productive spirit that continued as the proceeding morphed into a rulemaking. The stakeholders, who often go toe-to-toe in litigated matters on principle, provided Staff with a wealth of information stemming from decades of experience.
3. Indeed, workshops were attended by leading cost of service experts. Experts for the five investor-owned utilities, Staff, Public Counsel, industrial customers, commercial customers, NW Energy Coalition, and The Energy Project came together to discuss and debate the questions

posed in this rulemaking. These numerous experts provided their insights on specific cost allocation issues as well as their individual candid reactions to other experts' insights and proposals.

4. As Public Counsel noted throughout the proceeding, there are often significant philosophical differences among the experts on how specific FERC account costs should be assigned or allocated to the customer classes. Despite these philosophical differences, the level of respect among these experts for one another was evident throughout the discussions. The comments Public Counsel submits now are not based on philosophical differences, but rather on a desire to ensure that the rules adopted by the Utilities and Transportation Commission ("UTC" or "Commission") are sensible and functional.

II. WAC 480-XXX-030, DEFINITIONS

5. Definitions are found in proposed WAC 480-xxx-030. In comments filed on June 14, 2019, Public Counsel offered edits to the definitions for "allocation factor" and "cost of service study."¹ Neither of the edits were incorporated into the draft rules.

6. The definition used for "allocation factor" is incorrect in the draft rule. The definition used in proposed WAC 480-xxx-030(1) is:

a mathematical expression of the specific cost relationship among revenue requirement and customer classes.

An allocation factor, as noted in our June 14, 2019, comments, is simply a percentage of a total, which is used to allocate a particular jointly-incurred FERC account across rate schedules.²

While rates are ultimately spread across a utilities' customer classes, the cost of service study

¹ Comments of Public Counsel, ¶¶ 19-22 (June 14, 2019).

² *Id.*, ¶ 19.

allocation factors allocate specific FERC accounts, not a utility’s “revenue requirement.” Public Counsel continues to recommend that the UTC adopt the following correct definition of “allocation factor”:

“Allocation factor” means the customer class (or rate schedule) percentage contribution to the total utility amount of a particular attribute used to allocate jointly-incurred costs.

7. The definition for “cost of service study” in proposed WAC 480-xxx-030(3) states:

“Cost of service study” means a study that identifies and calculates, using regulatory accounting rules and principles, the extent to which customers in various customer classes cause costs to a utility. This study correlates a utility’s costs and revenues with the service provided to customers in each customer class.

This definition provides the illusion that a cost of service study is a precise calculation that can only have one correct result. Instead, as noted by Public Counsel in our June 14, 2019, comments, cost allocation is not a precise science, but rather an exercise that requires judgment.³ Indeed, the U.S. Supreme Court has recognized the judgment that is required in allocating utility costs.⁴ Additionally, there was general consensus among the stakeholders that direct assignment of costs is preferred when possible. Thus, Public Counsel continues to recommend that the Commission adopt the following definition:

“Cost of service study” means an embedded study that allocates revenues, operating income, and rate base items to individual customer or rate classes based on direct assignment where practical. Costs are allocated based on cost causative factors to the extent that such cost causative factors can be identified and quantified or allocated based on what can be considered fair and reasonable.

³ *Id.*, ¶ 21.

⁴ Comments of Public Counsel, ¶ 21 (June 14, 2019); *Colorado Interstate Gas Co. v. Fed. Power Comm’n*, 324 U.S. 581, 589, 65 S. Ct. 829, 833 (1945) (“But where, as here, several classes of services have a common use of the same property, difficulties of separation are obvious. Allocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science.”).

III. WAC 480-XXX-040, MINIMUM FILING REQUIREMENTS

8. Proposed WAC 480-xxx-040(1) refers to electric cost of service templates and gas cost of service templates, and the proposed rule requires all cost of service studies to be filed using the template forms. Templates for both electric and natural gas were shared with stakeholders on October 11, 2019. Several of the utility stakeholders raised questions or proposed revisions to the templates.⁵ The templates were not circulated with the most recent Notice of Opportunity to File Written Comments, so the final templates are unknown. If the templates have been modified, it may be useful to circulate them for additional stakeholder review and comment.

IV. WAC 480-XXX-050, COST OF SERVICE STUDY INPUTS

9. Proposed WAC 480-xxx-050(1)(d) states:

For utilities that do not have advanced metering technology described in subsections (1)(a), (1)(b), or (1)(c), a load study must be used. Data from special contracts may be used in a load study.

This proposed provision conflicts with certain natural gas proposed rules. Specifically, proposed WAC 480-xxx-060, Cost of Service Methodology (Table 4) requires demand (load) to be allocated based on “Design Day.” Design day demands are based on econometric analysis, not load studies.

10. Staff, in responding to stakeholder comments in the Summary of Comments, states that econometric analysis is not acceptable as a data source because it relies on estimations instead of actual customer usage.⁶ While it is true that econometric analysis relies on estimations rather than actual usage, the cost of service methodology in proposed WAC 480-xxx-060 (Table 4)

⁵ On December 5 and 6, 2019, comments were filed by Avista, Puget Sound Energy, and Northwest Natural Gas Company. NW Energy Coalition and the Alliance of Western Energy Consumers also filed comments.

⁶ Summary of Comments at 43.

requires the use of econometric analysis. Estimations are therefore required in natural gas cost of service studies. Public Counsel recommends the language in proposed WAC 480-xxx-050(1)(d) be modified as follows:

For utilities that do not have advanced metering technology described in subsections (1)(a), (1)(b), or (1)(c), a load study or econometric analysis must be used. Data from special contracts may be used in a load study or econometric analysis.

V. WAC 480-XXX-060, COST OF SERVICE METHODOLOGY

11. Public Counsel provided input and feedback regarding the four tables that appear in proposed WAC 480-xxx-060.⁷ We do not repeat the majority of the comments here. However, Public Counsel would like to highlight our concern regarding Tables 1 and 3, which would specifically require parties to functionalize costs and investments in particular ways.
12. The primary concern Public Counsel has with Tables 1 and 3 is that the requirement to explicitly functionalize each cost component is unnecessarily burdensome and provides no additional useful information.⁸ Functionalization is not typically contentious, and the FERC Uniform System of Accounts provides general functionalization of individual accounts.⁹ Public Counsel continues to question the need for Tables 1 and 3 and supports removal of those tables.

VI. WAC 480-XXX-070, EXEMPTIONS

13. If a party wishes to present a cost of service study that varies from the requirements in proposed WAC 480-xxx-060, Cost of Service Methodology, proposed WAC 480-xxx-070 requires the party to request an exemption pursuant to WAC 480-07-110. As many commenters

⁷ Comments of Public Counsel, ¶¶ 35-52 (June 14, 2019).

⁸ *Id.*, ¶ 36.

⁹ *Id.*

have stated throughout the course of the rulemaking, (1) cost allocation is not an exact or precise science, (2) there are differing points of view regarding how to allocate costs to the customer classes, and (3) there is no single or absolutely correct answer.

14. As a result, parties may reasonably disagree about how the Commission should allocate costs for a given utility. The Commission recognized that a one-size-fits-all approach may have limitations when it stated:

We caution Staff and the other parties who participate in these generic proceedings that while the goal to create consistent guidelines that reduce the analytical burden in future rate cases is laudable, *it must be balanced against the need to provide flexible methodologies that take into account a utility's unique circumstances.*¹⁰

A. Requiring Parties to Seek an Exemption to Present Alternative Cost of Service Studies Is Inconsistent with the Need to Reflect Each Utility's Unique Circumstances.

15. The Washington Legislature delegated ratemaking, a legislative function, to the Commission. The Commission has broad authority under that delegation. In *Colorado Interstate*, the U.S. Supreme Court noted that, absent legislation requiring the Federal Power Commission to use a particular methodology for segregating property, the Commission may employ any methodology that falls within its statutory authority. In that situation, courts cannot say that a regulator must use one particular methodology over another.¹¹

16. To require parties to seek an exemption before they may present alternatives improperly limits the evidence that the Commission has available in the record. Indeed, by requiring parties

¹⁰ *WUTC v. Avista Corp.*, Dockets UE-160228 and UG-160229, Order 06, ¶ 100 (Dec.15, 2016) (emphasis added).

¹¹ *Colorado Interstate*, 324 U.S. at 589 (“When Congress, as here, fails to provide a formula for the Commission to follow, courts are not warranted in rejecting the one which the Commission employs unless it plainly contravenes the statutory scheme of regulation. If Congress had prescribed a formula it would be the duty of the Commission to follow it. But we cannot say that under the Natural Gas Act the Commission can employ only one allocation formula and that that formula must entail a segregation of property.”).

to seek an exemption, there is little room for any party to offer alternative studies or disagreement with the prescribed methodology. This is not in the public interest. Rather, the public interest is met by requiring parties to present their cost of service studies in the UTC's preferred method, but also allowing parties to offer alternatives.¹²

17. Moreover, the process required under the proposed rule is unclear. Staff's response to stakeholders in the Summary of Comments indicates that parties would be asked to seek exemptions outside of rate cases. Staff stated, "However, Staff agrees that any party should be able to request use of an alternative method by applying for an exception from these rules *outside of a rate case filing*."¹³ It is difficult to envision when outside of a rate case filing that a party, other than a utility, might seek an exemption regarding cost of service studies.

18. Non-utility parties may or may not know when a utility plans to file a rate case. Even if a party is aware of an impending rate case, they may not have much advanced notice and, in all likelihood, they will not have seen the company's cost of service study.¹⁴ And, even if the company shares its cost of service study ahead of a filing, a party does not truly know if there are issues with it until it studies the details, including confidential work papers. For parties who use outside expert witnesses, confidential work papers are not available to their experts until they execute the appropriate confidentiality agreements, which takes place after the UTC issues a protective order. Particularly for parties other than the utilities, and most likely for utilities as

¹² It is important to note that not every party in every case will present alternatives. Undoubtedly, there will be cases where all of the cost of services studies will use the preferred methodology.

¹³ Summary of Comments at 4 (emphasis added).

¹⁴ Public Counsel acknowledges with appreciation that many – but not all – of the utilities regulated by the Commission do often discuss their plans with parties who regularly appear in their rate cases.

well,¹⁵ seeking an exemption to the cost of service study rules would need to take place in the context of a rate case.

19. Staff expressed the desire to limit party presentations in litigated matters at the workshop held on September 25, 2019. Staff stated, “I feel the whole point of these cost of service study rules in general are [sic] to stop having six different cost studies presented in a rate case.”¹⁶ Staff more directly stated:

We, Staff, the team, does not want every party - I’ll be honest, I personally don’t want every party to file six different rate cases - cost studies in a rate case because that kind of then makes these rules pointless, makes the last three years of work pointless almost ... I feel it’s one of the main reasons for these workshops and these rules in general is to stop having these fights in rate cases about which method is better.¹⁷

20. These “fights” are the philosophical differences the parties bring to a case. Glenn A. Watkins for Public Counsel noted that these “fights” have been ongoing over the course of his 40-year career. Mr. Watkins stated, “There is no right or wrong answer on this stuff, and the Commission has to use its wisdom in evaluating cost of services studies. It’s that simple.”¹⁸ Cost of service studies are a matter of art, analysis, and professional judgment.

21. Ronald Amen, a cost of service expert who appears regularly before the Commission, responded thoughtfully.¹⁹ Mr. Amen stated that making the bar too high in terms of an exemption stifles the theoretical and practical standpoint that must be considered. He agreed that

¹⁵ At least some of the utilities expressed a preference to address any exemption requirement during a rate case rather than outside of a rate case. *See*, Digital Recording from Workshop held by UTC at 1:28:35 to 1:29:55 (Sept. 25, 2019).

¹⁶ Digital Recording from Workshop held by UTC at 1:30:28 to 1:30:38 (Sept. 25, 2019).

¹⁷ Digital Recording from Workshop held by UTC at 1:31:04 to 1:31:41 (Sept. 25, 2019).

¹⁸ Digital Recording from Workshop held by UTC at 1:32:37 to 1:32:55 (Sept. 25, 2019).

¹⁹ Digital Recording from Workshop held by UTC at 1:41:11 to 1:42:40 (Sept. 25, 2019) (Ronald Amen’s full quote).

there is no right or wrong answer, but that “the Commission deserves to hear the arguments about why a particular methodology might best fit this particular company or not, and then, the views of other stakeholders that have theoretical or philosophical differences that from time to time are relevant.” Mr. Amen said, “If you make it too prescriptive, especially in these areas that have such an impact on the results, I think it does a disservice to the options that then you’re presented with.” Parties present the studies to provide the Commission with “information to render an opinion about how to apportion costs and reflect cost causation on the systems of these utilities.” According to Mr. Amen, more information is better than less, “particularly when you have changing environments in the industry.”

22. It is reasonable for the Commission to require parties appearing before it to present cost of service studies in a preferred methodology, and Public Counsel supports the efforts to streamline cost of service study presentations. It is unreasonable, however, to refuse parties the ability to present the best evidence they see fit for a particular case if they have met the Commission’s requirements. The Commission can weigh the evidence and accord it the appropriate weight, given each utility’s unique circumstances.

B. A Specific Requirement for Exemption Related to Cost of Service Studies Is Unnecessary.

23. Proposed WAC 480-xxx-070 is unnecessary. The purpose of these rules, as stated in proposed WAC 480-xxx-010(1), to establish a minimum filing requirement for cost of service studies. Practically speaking, that means that all parties presenting cost of service studies would be required to present a study that fully complies with the rules. As discussed above, parties should then be able to present evidence and arguments based on their own theories of the case for the UTC’s consideration. This ability to present alternative evidence is consistent with

proposed WAC 480-xxx-010(1), which states that the minimum filing requirements will allow for comparisons across cost of service studies. In this way, the Commission would have evidence and presentations from all parties and may assess how the preferred methodology compares to alternative methodologies and approaches.

24. Throughout this proceeding, Public Counsel has expressed concern about rules that are overly prescriptive. This provision strikes this very concern by severely limiting any party, including Staff witnesses, from offering evidence to provide a different approach to cost allocations. Virtually every expert in the field recognizes and agrees with the findings of the U.S. Supreme Court in *Colorado Interstate* regarding the expert judgement that is required in performing cost of service studies. Public Counsel continues to recommend that the UTC strike proposed WAC 480-xxx-070, Exemptions in its entirety.

VII. CONCLUSION

25. Public Counsel appreciates the opportunity to provide comments on the proposed cost of service rules. Overall, Public Counsel supports the goal of standardizing presentations to streamline the rate case experience. In general, these rules will standardize the presentation of cost of service studies. Public Counsel agrees with many of the policy decisions reflected in the proposed rules. However, as described in the comments above, Public Counsel continues to recommend modification to the proposed rules before they are adopted. One significant area that remains to be resolved is whether parties will be required to seek an exemption to offer alternative methodologies.
26. Cost allocation has long been a controversial component of rate cases (despite the long period in this jurisdiction where parties regularly settled rate spread issues). There are important

differences in how the stakeholders view cost of service studies. Those differences are not borne of ill will or rigid inflexibility, but reflect very different philosophical viewpoints.

Commissioners have the privilege and obligation of receiving those viewpoints and determining what is appropriate in a given case for a given utility and its customers.

27. Public Counsel will attend the adoption hearing scheduled for April 16, 2020. We look forward to reviewing stakeholder comments and participating in the discussion at the hearing. Any questions regarding these comments should be directed to Lisa Gafken (Lisa.Gafken@atg.wa.gov), Nina Suetake (Nina.Suetake@atg.wa.gov), or Corey Dahl (Corey.Dahl@atg.wa.gov).

Dated this 27th of March 2020.

ROBERT W. FERGUSON
Attorney General

/s/ Lisa W. Gafken
LISA W. GAFKEN, WSBA No. 31549
Assistant Attorney General
Public Counsel Unit Chief
Lisa.Gafken@atg.wa.gov
(206) 464-6595