

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

Relating to the Commission's Proceeding to
Develop a Policy Statement Addressing
Alternatives to Traditional Cost of Service
Ratemaking

DOCKET U-210590

COMMENTS OF PUBLIC COUNSEL

February 6, 2023

I. INTRODUCTION

1. The Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) files these comments in response to the Washington Utilities and Transportation Commission's (Commission) Notice of Opportunity to File Written Comments dated January 5, 2023 (Notice). The Commission's notice requested public comment regarding the proposed scope and timing for Phase 2A of this proceeding, as well as suggestions regarding further phases of this proceeding. Public Counsel thanks the Commission for the opportunity to provide comments on the Work Plan for Phase 2A as attached to the notice as well as the overall work plan filed on January 27, 2022. We offer the following comments regarding each work plan.

II. PHASE 2A SCOPE AND TIMING

2. According to the Draft Work Plan, Phase 2A begins in April 2023 with a notice for written comment regarding "parties' proposed calculations for the established metrics" to be filed in June 2023. It is Public Counsel's understanding that the Commission's initial work plan envisioned the release of a Phase 1 policy statement in March 2023, which would establish metrics. However, the Commission's January 12, 2023, Notice Temporarily Postponing Proceeding states that the Commission will not resume its work on the Phase 1 policy statement until May 2023 and provides no explicit date for the release of the Phase 1 policy statement. Public Counsel requests clarification regarding when the Commission intends to identify the approved metrics and that parties be provided with adequate time to develop calculation proposals of the approved metrics prior to filing their comments, even if that results in the comment deadline being extended slightly beyond June 2023.

3. Public Counsel also has concerns regarding the apparent postponement of Phase 2B (Multiyear Rate Plans Revenue Adjustment Mechanisms) outlined in the Phase 2A Draft Work Plan. These concerns are addressed in the section regarding the overall work plan, below.

III. PHASE 2A MOST IMPORTANT ISSUES

4. Public Counsel believes the concept questions identified in the Draft Work Plan for Phase 2A are the appropriate questions to address during the initial portion of Phase 2A. In addition, Public Counsel wishes to highlight the importance of addressing any implementation issues regarding data availability and metric calculation during Phase 2A. In some cases, it may be impossible to fully answer questions regarding data availability and metric calculations until the utilities produce sample data and calculations that the working group can review and discuss. Therefore, Public Counsel recommends that a trial run of the calculations be undertaken with actual utility data during Phase 2A following the initial comment period and workshop. Specifically, Public Counsel suggests the following schedule, which assumes that the comment deadline of June 2023 is maintained, but can be modified as needed:

- (1) June 2023: Written comments regarding calculations, reporting, and review
- (2) July/August 2023: Workshops to discuss calculations, reporting, and review. Ideally, the workshops result in general consensus regarding calculations.
- (3) September/October 2023: Utilities provide working group with draft calculations (including workpapers) of metrics using historical data (where available) or hypothetical data.
- (4) October/November 2023: Additional workshops and/or comments to resolve remaining issues with data calculations.

- (5) December 31, 2023: Policy statement establishing calculations, reporting, and review.

IV. OVERALL WORK PLAN

5. Public Counsel notes that the overall work plan filed in January 2022 envisions that Phase 2B (Multiyear Rate Plan Revenue Adjustment Mechanisms) will commence in April 2023 and be largely completed by the time that Phase 3 (Performance Incentive Mechanisms (PIMs)) commences. However, the Draft Work Plan for Phase 2A appears to shift Phase 2B much later, since comments regarding the Phase 2B work plan would not be undertaken until October 2023, implying that Phase 2B would not commence until 2024. This would likely cause Phase 2B to substantially overlap with Phase 3 (regarding the development of PIMs).
6. This potential overlap between Phase 2B and Phase 3 could make development of appropriate PIMs more difficult, as PIMs should account for the existing incentives that utilities face. These incentives are largely determined by the regulatory paradigm in place, especially the manner by which utilities' revenue requirements are set and adjusted. The design of a PIM should explicitly account for this. For example, under traditional cost of service regulation, regulatory lag serves as an incentive for utilities to contain costs between rate cases, since they face a lag in recovering the costs associated with investments made between rate cases. Thus, under traditional regulation, a utility is unlikely to make excessive investments to achieve a PIM target. However, if an MYRP is designed so that a utility's allowed revenues increase each year according to a utility cost forecast, then utilities are likely to invest more freely in projects that will ensure that PIM targets are achieved. For this reason, the design of PIMs (and associated rewards or penalties) must take into account the cost containment incentives provided by the

existing regulatory paradigm. If Phase 3 (the design of PIMs and associated penalties/rewards) is largely concurrent with Phase 2B (MYRP revenue adjustment mechanisms), this will impede the ability of workshop participants to account for the incentives that utilities face when designing PIMs. Therefore, it may be appropriate to postpone Phase 3 until Phase 2B is substantially complete.

7. Public Counsel also wishes to highlight the importance of having adequate baseline data for the establishment of PIMs during Phase 3. It is unclear if sufficient historical data for the approved metrics will be available by January 2024 for the design of PIMs. To expedite the process, Public Counsel recommends that the utilities provide up to 10 years of historical data (where available) for the established metrics as soon as practicable following the conclusion of Phase 2A.

Dated this 6th day of February 2023.

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