

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of)	DOCKET U-180907
)	
WASHINGTON UTILITIES AND)	COMMENTS OF THE ALLIANCE OF
TRANSPORTATION COMMISSION)	WESTERN ENERGY CONSUMERS
)	
Notice of Inquiry into the Adequacy of the)	
Current Regulatory Framework Employed)	
by the Commission in Addressing)	
Developing Industry Trends, New)	
Technologies, and Public Policy Affecting)	
the Utility Sector.)	
_____)	

I. INTRODUCTION

1 Pursuant to the Washington Utilities and Transportation Commission’s (“Commission”) December 17, 2018 Notice of Opportunity to File Written Comments in the above-referenced docket, the Alliance of Western Energy Consumers (“AWEC”) submits these comments.

2 In the type of broadly defined docket the Commission has opened here, AWEC believes it is important to establish a clearly articulated scope and goal at the outset to ensure that stakeholders and the Commission can discuss and debate with each other under a common framework. AWEC participated in the Oregon Public Utility Commission’s recent investigation into utility regulation pursuant to Oregon Senate Bill 978 (“SB 978”). That investigation proved valuable in bringing together a very diverse group of stakeholders, many of which do not regularly participate in utility commission proceedings and, therefore, have perspectives that are not normally provided in the regulatory forum. This contributed to a comprehensive

investigation. Because the format was intentionally open-ended, however, each stakeholder brought a different agenda to the SB 978 meetings, some of which were unconstrained by the Oregon Commission's existing statutory authority. This often led to stakeholders talking past each other or at entirely different levels, rather than working from a common framework and set of principles. Some stakeholders in the Oregon proceeding, for instance, advocated for municipalizing all investor-owned utilities' service territories. Others advocated for deep decarbonization in Oregon, whether related to utility operations or not.

3 As discussed below, AWEC recognizes the need to investigate alternative forms of regulation to adapt to a changing energy landscape. AWEC also, however, strongly believes that the Commission should maintain its traditional role as an economic regulator that is dedicated to ensuring fair, just, reasonable, and sufficient rates for the specific services a utility provides to its customers. AWEC recommends that, at a minimum, the Commission clearly articulate at the outset of this proceeding if it intends in this docket to investigate whether this role should be expanded in some way (for instance, to regulate utilities both economically and environmentally), or whether it intends only to investigate alternative forms of regulation that will further its traditional role and obligations. AWEC advocates for the latter.

II. COMMENTS

1. **Please identify the problem statements and principles that are important to you or your constituency. Please indicate which problems are the most important to address during this process and which principles are most important to consider when developing potential solutions.**

4 AWEC sees two principal problems that are driving the push to investigate new forms of utility regulation in the Northwest and elsewhere. First, resources have evolved in such a way that the least-cost, least-risk decision often results in no return to the utility's shareholders,

and can even reduce a utility’s earnings. Rather than large, central station, utility-owned supply side resources, options for serving load include energy efficiency, demand response, and customer-owned generation. Evidence in various dockets also demonstrates that allowing large customers to transition their loads to the market can result in cost savings for customers when a utility has a near-term capacity need that these large customers can reduce or defer by eliminating the utility’s need to plan for them.^{1/} Even when supply-side resources are pursued, increased competition in the wholesale market – particularly with respect to renewable resources – has increased the value to customers of power purchase agreements (“PPA”) with third parties over utility-owned resources. Shareholders earn no return on a PPA, which rating agencies also impute as debt to the utility.

5 Thus, there is a disconnect between what is beneficial for customers and what is beneficial for a utility’s shareholders, at least with respect to resource acquisitions.

6 Second, rapid and uncertain technological and policy changes in the utility industry undermine the traditional long-term planning approach utilities have relied on historically, as well as the balance of risk between utilities and their customers that follows from a prudency determination of a utility resource decision. Under traditional regulation, utilities usually acquire long-term supply side resources to meet projected load and customers become responsible for paying the full return of and on that investment over the life of the resource once the Commission has found that this resource acquisition is prudent. This includes paying “stranded costs” if a resource is either sold or retired before its projected useful life, so long as

^{1/} See, e.g., Docket No. UE-161123, Exh. JAP-1CT (Oct. 7, 2016); OPUC Docket No. UE 335, Exh. AWEC/400, Mullins/4-13 (Sept. 4, 2018).

the utility again can demonstrate that selling or retiring this resource was the prudent course of action. Historically, the risk on customers of incurring such stranded costs has been relatively limited due to the fact that the universe of available resources to meet load was almost entirely large-scale central station supply side resources.

7 That risk has dramatically increased in recent years, however. Simply put, while 20-year forecasts of future load and resource costs have always been inherently uncertain, they are today little more than a guessing game. Any utility that projects the need for a new gas-fired resource must not only speculate about future gas costs and market prices, but about the likelihood of carbon pricing, what type of carbon pricing (i.e., cap and trade or carbon tax?), how high the price will be, whether allowances or similar cost-containment mechanisms will be available, whether such pricing will be state-specific or national, how regional initiatives like the Energy Imbalance Market and western RTO/ISO will impact market prices, and others.

8 And such uncertainties are not limited to fossil fuel-based resources. Even paired with storage, intermittent resources like wind and solar do not provide reliable capacity to withstand prolonged peak demand events like a series of very cold or very hot days – storage provides capacity measured in hours, not days. This makes intermittent resources vulnerable to being rendered obsolete by new technologies that are not only clean, but also dispatchable.

9 The heightened risk of being rendered obsolete or uneconomic in the relatively short-term shifts significant risk to customers following a prudence review of resources that are intended to be long-lived. In essence, traditional utility regulation imposes the full risk of uncertain future events on customers.

Alternative regulation should be designed to address these systematic deficiencies in a manner that inures to the benefit of customers and avoids unfair treatment for the utilities. Specifically, any proposal for an alternative form of regulation should be able to demonstrate a net benefit to customers as a consequence of this alternative regulation relative to traditional regulation. From AWEC's perspective, a showing of net benefits would involve a demonstration that an alternative form of regulation reduces customer costs and risks on balance when compared with the costs and risks they would face under traditional regulation. Performance-based ratemaking, for instance, may better align shareholder and customer interests by providing a financial incentive for utilities to pursue demand-side resources or PPAs with third parties, but only to the extent that the net consequence of providing a return on the acquisition of these resources results in a net savings for customers relative to what would have occurred in the absence of this return. Otherwise, performance-based ratemaking does not align utility and customer interests but, instead, misaligns them differently. Rather than shareholders missing out on an investment opportunity through the acquisition of demand-side resources, customers miss out on a lower cost resource acquisition by being required to pay a return on this acquisition that they would not need to pay under traditional regulation. If this is the consequence, the AWEC would be unlikely to see value in such an alternative form of regulation.

In addition, any form of regulation – traditional or alternative – should be demonstrably superior to market alternatives. The point of regulation is to substitute for competition where competition is impractical or infeasible: “any good program of public utility ratemaking must go a certain distance in accepting competitive price principles as guides to

monopoly pricing.”^{2/} Thus, if regulation has become a poor substitute for competition in certain areas of the utilities’ business, and competition is in fact both practical and feasible in those areas, then the Commission should seriously consider options for eliminating regulatory oversight in those areas in favor of market competition.

2. Please provide comments on problem statements and principles raised by other stakeholders and discuss their importance to you or your constituency.

12 In addition to the principles articulated above, AWEC agrees with many of the principles articulated by other parties, including safety and reliability, universal access, and equity. AWEC disagrees with principles to the extent that they seek to expand the utilities’ function as the provider of a service to their customers.

13 Because utilities provide a universal and essential service within their territories, there is a tendency to try to use them to perform broader public interest objectives. However, doing so can undermine the principal of equity. If utilities are required to undertake programs to further broadly defined state policies, these programs inure to the benefit of everyone, but only the utilities’ customers pay for them. Energy efficiency, for instance, benefits everyone in the sense that it reduces the need to rely on supply-side resources, many of which produce greenhouse gases; but utilities are only responsible for acquiring “cost-effective” energy efficiency because such acquisition provides a specific benefit to their customers – the acquisition of this energy efficiency is cheaper than the alternative.

14 If alternative forms of regulation become mechanisms for requiring utilities to go beyond their public service obligations to their customers, this has the potential to unfairly and

^{2/} James C. Bonbright et al., Principles of Public Utility Rates, 2d ed., 158 (1988).

unreasonably increase customer rates. Ultimately, while traditional regulation may no longer always accomplish the traditional goals of regulation – to ensure that utilities provide safe and reliable service to their customers at fair, just, reasonable, and sufficient rates, and that they plan to serve their customers at the lowest reasonable cost – AWEC continues to believe that these goals remain paramount to evaluating the success of any regulatory mechanism.

Dated this 17th day of January, 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