

Agenda Date: January 26, 2023
Item Number: A1

Docket: U-220963
Company: Utility Companies

Staff: Amy Andrews, Deputy Director/CFO

Recommendation

Enter an order in this docket, setting utility regulatory fees associated with the 2022 annual reports as follows: increase electric, natural gas, and water utility regulatory fees for gross intrastate revenues in excess of \$50,000 from .02 of a percent to .04 of a percent, no later than February 28, 2023. No regulatory fee changes are recommended for the telecommunication industry or the community solar industry at this time and are recommended to remain at previous rates.

Additionally, Commission staff (Staff) recommends the Commission, on its own motion, authorize water companies to establish deferral accounts to track the difference between regulatory fees currently recovered in rates and any approved increased fee amounts for a period of up to three years, which will present the companies' ability to seek recovery of the fee difference in a future general rate case within the order.

Background

During the 2022 session, the legislature passed Senate Bill 5634, which amended Revised Code of Washington (RCW) 80.24.010 to update the level at which the Washington Utilities and Transportation Commission (Commission) assesses regulatory fees for utility companies. Specifically, the state increased annual regulatory fees to 0.1 percent of the first \$50,000 of gross operating revenue plus 0.4 percent of any gross operating revenue in excess of \$50,000. On October 28, 2022, the Commission amended its procedural rules in Docket U-220271 to reflect this statutory change.

RCW 80.24.020 requires fees be set at approximately the same reasonable cost of supervising and regulating the classes of utility companies regulated by the commission.¹ RCW 80.24.010 permits the commission to decrease the regulatory fee rate below the statutory level, by general order, by March 1 each year.

Regulatory fees paid by electric, natural gas, and water companies are passed through to customers using a gross-up factor in the rates charged by the companies and authorized by the Commission through general rate proceedings. Regulatory accounting principles do not allow for a single factor within the rate determination to be changed, in this case the Commission's regulatory fee, without considering other offsetting factors, such as power cost changes, depreciation, payroll expenses, etc. This is more commonly referred to as single-issue ratemaking and is not permitted. If a regulated company experiences costs not included in

¹ Electrical, gas, water, telecommunications, community solar and irrigation companies constitute class one. Currently, there are no irrigation companies regulated by the Commission.

current rates, it may petition the Commission to approve deferred accounting treatment for those costs under WAC 480-07-370(3). Those costs are then held in a regulatory account until the company's next general rate proceeding for consideration to include those prior period costs in future utility rates.²

The Commission does not economically regulate landline telecommunication companies (*i.e.*, the commission does not authorize the rate charged for service). Rather, the commission regulates this industry for registration, consumer protection, safety, and operating standards, generally.³ Regulatory fees paid by these companies are embedded within the rates charged to customers, but does not require a general rate proceeding to adjust those rates.

Community solar companies regulated by the Commission are similarly situated to telecommunication companies. The Commission's regulatory authority is limited to registration and consumer protection.⁴

Discussion

With limited exceptions, regulatory fees have not been changed in decades. The majority of fees have experienced no change since at least 1955 prior to the 2022 session.⁵ Meanwhile, our fund balance has been declining at an accelerated rate over the past decade for numerous reasons, a few examples include: collective bargaining agreement general wage increases; one-time cost associated with the new building which brought the Commission into compliance with Executive Order 16-07 for a modern workplace and reduced footprint; legislative and other mandates such as the Clean Energy Transformation Act (CETA), One Washington (OneWA),⁶ equity, broadband; additional funding for the Public Counsel Unit of the Attorney General Office; increasing costs associated with central service fees; and other inflationary factors. Current projections anticipate a negative fund balance during the current fiscal year and for the ensuing biennium. It is important to note the regulatory fee increase authorized by the 2022 session will not provide the necessary level of funding to sustain agency needs beyond the immediate fiscal year.

Additionally, workload continues to increase both in volume and complexity with each passage of legislation impacting the Commission. While the legislature provides expenditure authority to the Commission through the enacted budget, it generally does not provide additional revenue.⁷ In

² Deferred costs are not automatically approved in future rates but subject to the same Commission review and standards as other components of the general rate increase request.

³ See WAC 480-120.

⁴ See WAC 480-103. Currently, there are only four active community solar companies regulated by the commission.

⁵ Legislative regulatory fee history for RCW 80.24 are as follows: Set minimum fees (2003 c 296 §1); Pipeline fee methodology change (2001 c 238 §1); Set late fees (1994 c 83 §1); Changed due date to WAC specified from April 1 (1991 c 48 §1).

⁶ One Washington, led by the Office of Financial Management, is an enterprise-wide transformation program focused on replacing 1960's-era accounting system technologies. See [About | One Washington](#).

⁷ The Commission received General Fund expenditure authority for limited purposes during the 2022 session in order to accomplish the work required by certain enacted legislation.

other terms, the expenditure authority granted merely provides the Commission with the authority to spend the revenues already collected (our fund balance), not to access/collect additional fees to complete the work outlined in the fiscal note and required by the legislation.

In preparing its recommendation, Staff considered both the state of the Commission's finances, as well as the regulatory concept of cost causation. Generally, this principle recognizes that those that cause a cost should, to some degree, bear the burden of paying that cost. Staff also recognizes that our statutory requirement is to ensure fees are set at the approximate cost of regulation by class, not necessarily by individual industry.

The ongoing transformation shift in energy regulation is a significant driving factor in the Commission's need for additional resources. The complexity of the transition to clean energy, coupled with environmental justice and the statutory requirements associated with performance-based regulation implementation have exceeded our current staff bandwidth and the original estimates during legislative implementation. This is due, in part, to the complexity of layering the multiple mandates, the necessity to closely coordinate with other state agencies, and the increased number and diverse public interest groups that are taking part in agency proceedings. Additionally, while the Commission has expressed a desire for multi-year rate plans, other mitigating factors have prevented the ability to achieve plans longer than two years in most instances, thereby not significantly reducing the number of general rate proceedings coupled with new filings required by CETA. If regulatory fees are not set at the new statutory maximum for both electric and natural gas companies, the Commission will not be able to increase staffing levels to compensate for the increased workload. Staff are experiencing burnout and, with turnover, are lacking sufficient time to train new staff effectively or efficiently. Staff estimates the impact to an average electric customer of \$0.17 per month, and an average natural gas customer of \$0.11 per month.⁸

Regulatory fees collected from regulated water companies are currently, and historically have been, insufficient to cover the costs required to regulate the industry. While the industry is not required to be fully self-sustaining, the industry is requiring additional staff hours to support an increased number of filings associated with general rate proceedings, increased number of contract reviews, line extension requests, and technical assistance. For a point of reference, current regulatory fees do not cover the cost of a single FTE. Additionally, the water industry bears some burden related to the costs associated with inflationary costs (*e.g.*, general wage increase, central service costs, etc.). Staff estimates the impact of increasing the water company regulatory fee to the new statutory maximum for an average Class A customer of \$0.54 per month, Class B customer at \$0.06 per month, and Class C customer at \$0.04 per month.⁹

Over the past years, the work completed by our Telecommunication staff in Regulatory Services has been shifting while the industry continues to undergo technological changes and traditional landline service continues to decline in volume.¹⁰ Increasing workload for staff is currently

⁸ Estimates based on most recent general rate case in effect as of September 2021.

⁹ Estimates based on 2021 Annual Report filings.

¹⁰ The Commission does not normally regulate cable, internet, wireless phones, and VoIP (Voice over Internet Protocol).

driven by our supporting role in broadband, digital equity, 911 outage investigations, and the administration of the Universal Service Fund. This workload is partially funded from alternate sources; however, Staff believes it is inappropriate to require the traditionally regulated telecommunication companies to pay these partially unfunded mandate costs based on the cost causation principle. Therefore, Staff does not believe it is necessary or appropriate to collect additional revenues from this industry at this time.

Currently, there are only four regulated community solar companies regulated by the Commission. The workload associated with this industry to date has been minimal and current fees are sufficient to support the full time employee (FTE) requirement at this time.

Finally, Staff contemplated the potential impact to our regulated companies' ability to earn a reasonable rate of return given the inability to automatically adjust utility rates related to the potential increase in regulatory fees due the Commission resulting from 5634 SB. The industries impacted are those economically regulated by the Commission and required to implement a change in fees through general rate proceedings which include, electric, natural gas, and water companies.

While electric and natural gas companies are familiar with Commission rules that permit for deferral accounting, Staff is concerned water companies may not be as versed in these principles, particularly small to medium-sized water utilities. In fact, as of January 12, 2023, the Commission had already received a Petition for Accounting Order for deferred accounting treatment for increase in regulatory fee expense from all electric and natural gas companies, as well as two of the larger water companies.¹¹

Staff believes it is appropriate for the Commission, on its own motion, authorize water companies to establish deferral accounts to track the difference between regulatory fees currently recovered in rates and any approved increased fee amounts for a period of up to three years, which will present the companies' ability to seek recovery of the fee difference in a future general rate case within the order. This ensures that companies with less expertise or knowledge of deferred accounting are provided with the same opportunity as the larger and more sophisticated companies. On December 27, 2022, the Commission issued a Notice of Item to be Heard and Notice of Opportunity to File Alternative Accounting Petition to all regulated water companies in the docket as authorized under WAC 480-07-370(3)(a).

Conclusion

The passage of 5634 SB during the 2022 legislative session was intended to provide additional revenue for the purposes of providing the Commission with additional resources. Based on Staff consideration of the Commission's financial state, principles of cost causation, and setting rates at the approximate cost of regulating Class 1 industries, Staff recommends the Commission issue

¹¹ As of Jan. 12, 2023, the following petitions were received: Cascade Natural Gas, Docket UG-220912; Northwest Natural Gas, Docket UG-220423; Puget Sound Energy, Dockets UE-220407 and UG-220408; Avista Corporation, Dockets UE-220892 and UG-220893; PacifiCorp, Docket UE-220597; Suncadia Water, Docket UW-220433; and Cascadia Water, Docket UW-220431.

and order increasing the electric, natural gas, and water utility regulatory fees for gross intrastate revenues in excess of \$50,000 from .02 of a percent to .04 of a percent, no later than February 28, 2023, with no change to regulated telecommunication companies or community solar companies fees at this time.

The impact of not receiving the statutory regulatory fee maximum per Staff's recommendation include: (1) insufficient staff to thoroughly analyze regulated company filings which may lead to customers paying too much for services provided; (2) inability to meet statutory deadlines for adjudicated rate cases or open meeting proceedings; (3) failure to comply with executive orders regarding equity, diversity, and inclusion; (4) inability to adequately review regulated energy companies' clean energy investments and portfolios; (5) inability to provide technical assistance to companies; and (5) continue decline of staff morale and/or increase in turnover due to staff burnout.

Finally, to ensure equitable access to deferred accounting, Staff recommends the Commission, on its own motion and as permitted under WAC 480-07-370(3)(a), authorize water companies to establish deferral accounts to track the difference between regulatory fees currently recovered in rates and any approved increased fee amounts for a period of up to three years for those companies that do not file an individual petition prior to January 31, 2023.