

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”) March 21, 2019 Notice of Opportunity to File Written Comments in the above-referenced docket, the Alliance of Western Energy Consumers (“AWEC”) submits these responses to the Commission’s questions on expedited rate filings (“ERFs”).

2 Preliminarily, AWEC believes that, properly constructed, ERFs are a preferable alternative ratemaking mechanism to many other options available to the Commission that would also address the Commission’s stated concern over regulatory lag. These include rate plans, attrition adjustments, and future test years. ERFs are preferable to these other mechanisms because ERFs still rely on setting rates based on known and measurable costs, provide a means for parties to audit expenses and investments, and can maintain an appropriate matching of costs and revenues. Other mechanisms that rely on forecasts to set rates make it much more difficult to determine what is fair and reasonable. They also provide the utility with an unfair advantage

because parties must resort to arguing about whether the utility’s projections are reasonable or not. This inevitably becomes framed not as whether the utility’s projections are reasonable, but whether other parties’ alternative projections are more reasonable than the utility’s, a construct that arguably shifts the burden of proof from the utility. Arguments over the appropriate budget or forecast are also arguments for which neither side can marshal real supporting evidence. This requires the Commission to make a judgment call that could expose it to reversal on judicial review if it can be argued that the Commission’s decision was not based on substantial evidence.

3 With these principles in mind, AWEC’s comments take the Commission’s questions out of order to address threshold criteria for ERFs first. AWEC’s comments do not respond to every question in the Commission’s notice, but AWEC reserves its right to respond to the comments of other stakeholders on each issue the Commission raised.

II. COMMENTS

A. Threshold Criteria

1. Under what circumstances is an ERF appropriate?

4 In its notice and in previous orders, the Commission has identified regulatory lag as a justification for ERFs. AWEC does not disagree that ERFs are a tool to address regulatory lag, but the presence of regulatory lag alone does not justify an ERF. The Commission “historically has tolerated some degree of regulatory lag in its ratemaking practice, recognizing that it is a factor in encouraging utilities to operate efficiently.”^{1/} Traditional rate base, rate-of-return regulation is intended to provide utilities with the *opportunity* to earn their authorized return, not a guarantee. Therefore, when the Commission has identified regulatory lag as a

^{1/} WUTC v. PacifiCorp, Docket No. UE-130043, Order 05 ¶ 181 (Dec. 4, 2013).

problem to be remedied, it is in circumstances where it prevents utilities from even having a realistic opportunity to earn their authorized return.^{2/} In this circumstance, the balance of traditional regulation – where utilities have a fair opportunity to over- or under-earn relative to their authorized ROE – is upset. Thus, the ability to file an ERF should be tied to the need to reset this balance.

5 Importantly, this means that ERFs should not be used to simply ensure that a utility earns its authorized ROE. A utility should still bear the risk that circumstances will result in under-earning, so long as contrary circumstances will result in over-earning. Any alternative ratemaking mechanism should be designed to maintain this balance. If it does not, then the utility’s ROE should reflect an associated reduction of risk.

6 It is also important to recognize that regulatory lag works in both directions. Between rate cases, a utility collects rates based on a fixed rate base, despite the fact that its facilities continue to depreciate. Rates do not reflect this accumulated depreciation in the interim period between rate cases, which works to utility shareholders’ advantage. This shareholder advantage is particularly impactful for renewable resources – those most likely to be added in the future – which depreciate quickly after being placed into service and, unlike legacy thermal resources, require very little ongoing capital additions to maintain operations. Thus, any mechanism that purports to “address regulatory lag,” including an ERF, should do so symmetrically and account not only for cost increases, but also cost decreases.

^{2/} WUTC v. Washington Natural Gas Co., Cause No. U-80-111, 44 P.U.R.4th 435 at *3-*4 (Sept. 24, 1981); WUTC v. Puget Sound Energy, Inc., Docket Nos. UE-060266/UG-060267, Order 08 ¶¶ 38-39 (Jan. 5, 2007).

2. What should be the standard to demonstrate the need for expedited rate relief?

7 AWEC recommends that a determination that a utility may file an ERF be first established in a general rate case preceding. If a utility desires to use the ERF mechanism, the utility should bear the burden to demonstrate that new rates adopted in the rate case will be insufficient to ensure that it has a fair opportunity to earn its authorized ROE in the rate effective period. AWEC takes no position in these comments on the type of evidentiary showing a utility would make to demonstrate its need for an ERF, believing that should be up to the utility. Upon such a finding, the Commission could allow the utility to file an ERF within a specified timeframe and consistent with other parameters that the Commission views to be reasonable.

8 Determining the appropriateness of an ERF in a general rate case first is important not only to ensure that the utility makes the proper evidentiary showing, but also to establish an appropriate baseline from which the ERF is processed. The principal reason an ERF might be workable is due to the fact that the utility's results of operations will have recently been considered in a general rate case, and thus, subject to a narrower range of controversy. Giving the utilities carte blanche opportunity to file an ERF at any time is problematic because ERFs could take the place of general rate cases, potentially resulting in rates that are unfairly skewed in favor of shareholders. Additionally, it could negate one of the Commission's principles in encouraging ERFs and other rate mechanisms, which is to reduce rate filings to promote administrative efficiency. Trading annual rate case filings for quarterly ERF filings, for example, would not promote this goal.

9 Further, if an ERF is to be used, the results of operations from the rate case should serve as the base for, and be constructed in such a way that is consistent with, the expected ERF

filing. As an example, parties to Puget Sound Energy's 2017 General Rate Case agreed to allow it to file an ERF as part of the stipulation resolving most issues in that case. Consequently, when Puget Sound Energy ultimately filed its ERF, there was a clear understanding of how the results of operations would be adjusted to set rates in the ERF period. In contrast, in the most recent PacifiCorp rate case, the Commission approved a multi-year rate plan. It would be undesirable for PacifiCorp to now file an ERF, without first going through the rate case process, since there is not necessarily a coherent base results of operations that could be used to establish a baseline in an ERF filing.

3. In the context of an ERF, what is the appropriate basis for determining whether a company's current rates are or are not fair, just, reasonable, and sufficient? Is the basis different than the standard for a general rate case (GRC)?

10 Just as in a general rate case, rates set in an ERF should be based on a holistic review of the utility's overall costs and revenues to derive rates that are fair and reasonable overall. While the scope of an ERF is necessarily narrower than in a general rate case, ERFs should not degenerate into single-issue ratemaking, as this will upset the balance between customers and shareholders and create greater risk of over-earning in a manner that is not just and reasonable. As noted above, costs not only increase between rate cases, but also decrease. An ERF should symmetrically capture both effects in a more limited and streamlined process, which AWEC discusses more fully below in Section C.

B. Policy Issues

1. Regulatory lag

a. *Are ERFs an important tool to address regulatory lag?*

11 As discussed above, AWEC believes ERFs are appropriate in limited circumstances to address regulatory lag, based on an evidentiary showing by the utility that it will be denied a fair opportunity to earn its authorized return absent the ability to file an ERF.

b. *Do ERFs effectively and efficiently remedy regulatory lag?*

12 The answer to this question is highly dependent on how ERFs are ultimately constructed, but they clearly alleviate regulatory lag relative to a scenario in which utilities may only file general rate cases. Additionally, as discussed below, AWEC believes that ERFs are preferable to other alternative ratemaking mechanisms because they remain tied to known and measurable costs.

c. *Are there other non-ERF solutions that would more effectively or efficiently resolve regulatory lag?*

13 To the extent it is appropriate to “resolve regulatory lag,” AWEC generally prefers an ERF, at least in concept, to other tools that could be used to address this issue. This would include a future test year, attrition, and rate plans. All three tend to set rates based on budgets and forecasts, and thus make review of utility expenditures and their reasonableness extremely difficult, if not impossible. Rate plans carry the additional risk of providing increased rates without an evidentiary showing of need. ERFs, conversely, are founded on pro forma adjustments to known and measurable costs, which are easier to audit and challenge.

- d. *If regulatory lag is cited as a reason for serial general rate cases, and ERFs alleviate regulatory lag, to what extent should the filing of an ERF be tied to the commitment to file fewer rate cases?*

14 AWEC's position on this issue is highly dependent on the scope of costs and revenues that the Commission determines should be included in an ERF. If, for instance, the scope of an ERF is severely restricted to pro forma updates of a limited set of costs, without consideration of other offsetting costs or revenues, then AWEC is more likely to advocate for a requirement that utilities file full general rate cases soon after the conclusion of an ERF so that rates are not unfairly skewed in favor of shareholders. Conversely, if an ERF is more balanced and accounts for a broader set of costs and revenues, AWEC can see the value in a longer rate stay-out.

2. Responsiveness to change

- a. *Are companies, ratepayers, and the Commission responding fast enough to the changing energy landscape? If not, how can ERFs be used to help companies, ratepayers, and the Commission respond?*

15 The changing energy landscape raises broad and fundamental questions about the traditional utility business model that far exceed the limits of an ERF. An ERF may help in some ways, like alleviating cost-recovery issues associated with quickly depreciating plant like smart meter technology and computer software used for the Energy Imbalance Market, but it has no role in addressing what business the utilities should be in. One the one hand, should they expand into additional markets, like electric vehicles, or, on the other, should their business narrow to exclude ownership of generation? Should both occur? ERFs have no role to play in answering these more fundamental questions.

C. Methodology

1. What is the appropriate conceptual framework for an ERF?

16 There are a number of potential procedural frameworks that the Commission might use in an ERF mechanism. When evaluating these frameworks, AWEC recommends the Commission consider two overarching principles. First, AWEC recommends any ERF be designed in a way that promotes the matching of overall costs and revenues of the utility. Second, AWEC recommends any ERF be designed in a way that will not limit the procedural ability of parties to review and present evidence for the Commission to consider.

17 From the perspective of an intervenor, AWEC does not oppose having a deadline for reviewing the utility's filing that is shorter than provided in a general rate case. That said, to accommodate the shorter review period the initial exchange of information from the utility to the intervenors needs to be robust and discovery timeframes should be similarly expedited.

18 Irrespective of the process adopted, it is important that an ERF filing result in a cohesive matching of overall costs and revenues, and with the same level of rigor that occurs in a general rate case. This means, for example, that the period used in performing rate base valuation should be the same period over which normalized revenues and expenses are measured. Similarly, the billing determinants used for setting rates should correspond to the sales forecast used to establish revenue requirement.

19 To be clear, within the context of an ERF it may be appropriate to assume no change with respect to certain ratemaking assumptions, since the utility will have just conducted a rate case. For example, it may not be necessary to address a utility's return on equity or capital structure, absent compelling evidence that these assumptions changed materially since the last

rate case was finalized. Similarly, it may not be desirable to change power costs of an electric utility in the context of an ERF, if parties are comfortable that existing power cost base line is reasonable.

20 On the other hand, it is possible that a material change has occurred with respect to these assumptions, and it is appropriate for parties to be given the opportunity to contest these assumptions, even in the context of an ERF. AWEC would oppose adopting any bright line rules that would limit the cost and revenue elements that may be addressed in an ERF. To the extent that a material change has occurred in an assumption used in the most recent general rate case, it is appropriate to provide parties with the opportunity to present evidence and arguments with respect to the assumption, even if the utility has not proposed to change the assumption in its ERF filing.

2. Should an ERF use a new test year or should an ERF use the test year from a recently completed general rate case and merely extend the pro forma period? If the pro forma period is extended, should an ERF only include those capital additions that were not included in pro forma adjustments of the last GRC?

21 AWEC generally supports using a new test year in the context of an ERF, while requiring the utility to document the line item changes in its filing. AWEC supports this approach because it will ensure that all elements of revenue requirement are considered in the ERF revenue requirement calculation, avoiding the undesirable scenario where the ERF considers cost elements that increased since the general rate case, while ignoring those costs elements that have declined.

22 For expense and revenue items, it is appropriate for the ERF to use normalization techniques that are substantially the same as those approved in the most recent rate case.

Further, to the extent that the new test period presents new or anomalous cost data, it might be necessary to perform additional normalization adjustments than were calculated in the most recent rate case.

23 For rate base, AWEC supports updating the rate base and plant balance to the plant in service at the time the utility makes its filings, or the most recent information available. Due to the expedited nature of the proceeding, AWEC recommends that no further adjustments for pro forma capital be permitted within the context of an ERF filing. Such a requirement will greatly simplify the review process involved with an ERF.

3. Should an ERF include all new plant in service, or just major investments? Should it exclude revenue-producing plant?

24 The ERFs that have been filed thus far have assumed that rate increases must be limited to less than 3% to avoid triggering the Commission's general rate case rules. AWEC recommends that the Commission maintain this requirement, which could require that some major investments be excluded from an ERF because they would result in too great of a rate increase. Barring this limitation, however, the ERF would be most effectively constructed to update all elements of rate base, not just major investments or non-revenue producing assets.

25 Rate base for existing utility property tends to decline over time, and limiting the ERF to just major investments might result in a situation where the increasing rate base of the new major plant additions is considered, but the declining rate base of existing plant is not. Further, the issue of defining which capital projects constitute a major investment has been controversial in the past with respect to pro forma plant additions, and applying that definition to an ERF might raise similar controversy.

AWEC is not necessarily opposed to including revenue producing plant in an ERF, as long as an appropriate amount of normalized revenues have been considered with respect to the new plant. For example, if a rate base valuation is conducted on an end of period basis, the revenues included in the revenue requirement should be normalized to reflect the level of customers and system demands at the end of the accounting period. In contrast, if a rate base valuation is based on monthly averages over the accounting period, then the normalized revenues over the accounting period would be more appropriate.

- 4. How should plant additions be treated in an ERF if parties do not have the time to perform a thorough prudence review? Should ERF rates be subject to refund if prudence determinations for investments cannot be completed?

AWEC recommends that the Commission provide sufficient time in an ERF to allow parties to conduct an adequate prudence review so that this issue is avoided. The Commission has a statutory limitation of ten months to review proposed tariff changes.^{3/} To ensure that an ERF is, in fact, expedited, AWEC believes an appropriate period that balances the interest of ensuring an expedited process while giving parties sufficient time to review a utility's case is six months, which may be extended to eight months upon a showing of good cause. Good cause could include the addition of a significant and complicated investment necessitating an involved prudence review, or the failure of the utility to provide information adequate to facilitate parties' review. In addition, to accommodate the shortened schedule, the Commission should require an expedited discovery process in which responses are due no later than seven calendar days after the request.

^{3/} RCW § 80.04.130(1).

28 As noted above, assuming an ERF remains limited to a rate increase of less than 3% for each customer class, the number of investments subject to a prudence review should be limited relative to a full general rate case. This should simplify the prudence review process and make it possible to perform such a review in a shorter time frame.

29 Importantly, AWEC's position on prudence reviews in an ERF is contingent upon an ERF construction that uses a new test year and updates all elements of rate base, as explained above. If the Commission considers a more limited framework for an ERF, AWEC may favor conducting prudence reviews exclusively in general rate cases.

5. How should expenses be handled in an ERF? Should expenses update to actuals or should they remain tied to the previous GRC?

30 AWEC does not oppose updating the expenses to be consistent with a new ERF test period. As discussed above, if expenses are updated, it will still be necessary to perform restating and pro-forma adjustments with respect to the expense items. AWEC recommends the adjustment methodology align with the methodology approved in the most recent GRC where possible. Further, it is also appropriate to consider adjustments for new or anomalous expense items depending on the facts and circumstances of the individual cases.

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Respectfully submitted,

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